

**CHILD PROTECTION
AND
JUVENILE JUSTICE SYSTEM**
for children in need of care and protection

Dr. Nilima Mehta

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CHILD PROTECTION AND
JUVENILE JUSTICE SYSTEM
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Towards a new dawn

“A nation-wide phone outreach emergency helpline for children in need of care and protection. Project supported by the Union Ministry of Women and Child Development.”

FOREWORD

CHILDLINE India Foundation (CIF) was born out of a field action project of the Tata Institute of Social Science, and has been implementing the CHILDLINE 24 hour toll-free, outreach based tele-helpline (1098) across the country since 1996. As of March 2008, the service is present in 81 cities/towns across 25 states. With over 11 million calls serviced to date, CHILDLINE 1098 is the single largest collection of the voices of children in distress in India. The CHILDLINE service has been presented by the Government of India as a response to the Child Rights Convention (CRC) of the United Nations, ratified by India in 1992.

India has a progressive record on legislations relating to Human Rights including Child Rights and Child Protection. The Juvenile Justice Act 2000 (JJA) was enacted in keeping with the standards for child protection provided by the UN Convention on the Rights of the Child. The recent amendments through the Juvenile Justice Amendment Act of 2006 have further strengthened the JJ process. However, the JJA is a central legislation that requires each state in India to set up the infrastructure and protocols to ensure that the JJA provisions are implemented at the ground level. But the gap between intent and practice is very wide. The factors responsible are many, ranging from ignorance to attitudinal blocks.

As a national network, CHILDLINE works with children on the ground and we face the brunt of the lack of knowledge of the JJ Act and its processes amongst the various stakeholders. It is precisely this need that we address by presenting a set of two Resource Manuals. First, Child Protection and Juvenile Justice System for Children in Need of Care and Protection by Dr. Nilima Mehta, Consultant, Child protection & adoption and former Chairperson, Child Welfare Committee, Mumbai. The second one, Child Protection and Juvenile Justice System for Juvenile in Conflict with Law by Ms Maharukh Adenwalla, Child Rights Activist and Advocate who was appointed to provide legal-aid to children in the Observation Home at Mumbai.

The two authors are stalwarts in the field of child rights and child protection. In commissioning them we ensured that the two manuals are comprehensive, reflect the perspective of NGOs engaged in grassroots level work with children and also reviews the judicial perspective.

We expect these manuals to provide social workers engaged in working with children, a better understanding of the laws while enabling them to make use of all the provisions in the best interest of the concerned child. In addition, the manuals will help empower them to strengthen the enforcement process and elicit greater accountability of all stakeholders.

As always we hope to receive your feedback on the manuals and will endeavor to update future editions to make the manuals handbooks for all stakeholders in Child Protection and Juvenile Justice.

A handwritten signature in black ink, appearing to read 'Kajol Menon', with a horizontal line drawn through the middle of the signature.

Kajol Menon
Executive Director

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CHILD PROTECTION IN INDIA: AN OVERVIEW

Children constitute the most vulnerable section of society and are considered a supremely important asset of our nation. Protection and Development programmes for the specially disadvantaged children should ensure that every child has equal opportunities for optimum personal growth. Socio-economic circumstances of a family often result in family stress, disintegration and child destitution. Special programmes have been evolved as a response to the needs of such families “at risk”. These services supplement or substitute parental care and supervision, to promote the overall well-

being of vulnerable children; prevent neglect, abuse and exploitation of children and provide care and shelter for disadvantaged children.

The practice of child protection has undergone a significant change when seen from a historical perspective. The traditional approach of custodial care in an institution is being replaced because of a strong conviction that the Right to Family is one of the most basic rights of a child. Recognising this right of a child to a family, all interventions must try and ensure that the physical, social,

CRITICAL CONCERNS

- Every fifth child in the world lives in India.
- Every third malnourished child in the world lives in India.
- Every second Indian child is underweight.
- Three out of four children in India are anaemic.
- Every second newborn has reduced learning capacity due to iodine deficiency.
- Decline in female/male ratio is maximum in 0-6 yrs: 927 females per 1000 (males).
- Birth registration is just 62% (RGI - 2004).
- Retention rate at Primary level is 71.01% (Elementary Education in India Progress towards UEE NUEPA Flash Statistics DISE 2005-2006).
- Girls enrolment in schools at primary level is 47.79% (Elementary Education in India Progress towards UEE NUEPA Flash Statistics DISE 2005-2006).
- 1104 lakh child labourers in the country (SRS 2000).
- IMR is as high as 58 per 1000 live births (SRS 2005).
- MMR is equally high at 301 per 100,000 live births (SRS 2001-03).
- Children born with low birth rate are 46% (NFHS- III).
- Children under 3 with anaemia are 79% (NFHS- III).
- Immunization coverage is very low (polio- 78.2%, measles- 8.8%, DPT- 55.3%, BCG- 78% (NFHS- III).

emotional and educational needs of the child are met in a secure, nurturing family environment. The primary focus of social work intervention is the strengthening of the family, prevention of family disintegration and abandonment of children. Traditionally in India, the child without parents was looked after by the joint / extended family, but these systems slowly disintegrated and the problem of child destitution has been on the increase. While institutional care has been one of the alternatives, even the best of institutions cannot be a substitute for the individualised care that a family can provide.

2

The traditional approach of long term institutional care resulted in the child being separated from his family environment. Research studies and experiences have shown that the negative and painful experiences in large, de-personalised institutions could result in an “Institutionalised Child Syndrome” accompanied by serious psychological problems. The predominance of Institutional care may lead families to seek institutionalisation as an option for caring for their children, when faced with crisis. The cost of child care in an institution also far outweighs its advantages, and even the best of institutions cannot substitute for the care in a family. Hence it is better to provide

support to families in crisis through alternate family based and community oriented Non-Institutional Services, so that the child can be looked after within his / her own family environment.

CHILD PROTECTION - A RIGHTS BASED APPROACH

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UN CRC) AND CHILD PROTECTION *

The Convention on the Rights of the Child represents a turning point in the international movement on behalf of Child Rights.

The Convention on the Rights of the Child (CRC) drafted by the UN Commission on Human Rights, was adopted by the General Assembly of the United Nations on 30th November, 1989 and ratified by India on 12th December 1992. This comprehensive document contains a set of universal legal standards or norms for the protection and well-being of children. The UN Convention on the Rights of the Child derives strength from its ratification by governments, implying thereby that governments agree to follow the principles and are committed to certain standards in dealing with children. It is guided by

* Source: UNICEF document on CRC

the principle, that the essential needs of children should be given the highest priority in the allocation of resources at all times. The CRC gives children their basic human rights - civil, economic, social, cultural and political, which enable children to achieve their full potential.

Every nation that has ratified the Convention, has to evolve a mechanism in the country, that would be a “watchdog” for children’s rights, and monitor the situation of its children.

The idea that children have rights, rights of their own, which transcend the family setting, is a concept that needs to be universally accepted. Society has a special responsibility towards children, whose vulnerability and dependence makes it mandatory for parents, adult authority figures and society as a whole to make a special response in law and practice. An all round effort needs to be made from the micro and macro levels - in the family, school and community to protect Child Rights. The umbrella principle in the provision of the CRC is “The Best Interest of the Child”, which prescribes the approach to be followed in all actions concerning children. There is no article in the Convention, and no right therein with respect to which this

principle is not relevant. The “Rights Approach” is primarily concerned with issues of social justice, non-discrimination and equity. The challenge facing developing nations is mobilisation of human and material resources required for the effective fulfilment of children’s rights. The CRC recognises that some of the changes needed can be achieved only “progressively”, but the process needs to be initiated, especially the Right to Protection, Health Care and Education. Our endeavour must be at least to fulfil a defined set of minimum core obligations, and ensure the use of limited resources to meet the basic requirements of children.

CHILD RIGHTS IN THE FAMILY, SCHOOL AND COMMUNITY

A “Rights” approach is an acceptance of the legal and moral obligation of the state and its institutions to fulfil its duties and responsibilities towards children. Children, in the past, were not regarded as holders of Rights - they were seen as possessions of adults who were the right holders.

FAMILY

The Family is the core unit of society and the major source of development of children. It provides nurturance, emotional bonding and socialisation to the child. An enriching and nurturing family life is essential in the development of the child's potential and personality. The family structure, composition, practices, interactions, relationships and environment all contribute to a child's development.

The CRC emphasises the child's right to grow up in a family environment, and be cared for by his own parents, as far as possible. When this is not possible, due to compelling circumstances, then all efforts must be made for appropriate alternative family care. Long term institutionalisation should be seen as the last form of rehabilitation for the child without a family.

- There is a need to integrate various policies to strengthen the family as a unit, enhance child development in the family and prevent child destitution.
- Families need to promote democratic values, irrespective of age and gender.
- There is a need for equitable distribution of resources within the family.

- There is a need for protection of Child's Rights within the family.
- Safeguards are needed for marginalised families and families in crisis.

SCHOOL

In order to fulfil its commitment as per the Constitution and CRC the state will have to make these efforts:

- Universal enrolment, retention and minimum levels of learning.
- Provide for and ensure free and compulsory universal elementary education for all children until the age of 14 years.
- The system of education must focus on the development and empowerment of people and aim towards achieving equity and social justice.
- Strengthen the school system, Non-Formal Education system, National Open School system and establish its links with the community.
- Making curricula relevant, meaningful, interesting and linked to life skills and grassroot realities.

- Special emphasis on the Girl Child and other vulnerable groups.

COMMUNITY

The CRC holds tremendous potential for furthering the Child Rights movement in the community. It is a common ground for groups working with children to collectively monitor the process of implementation of CRC within the country. This can be done through dissemination of information, awareness generation, training, documentation, publication, lobbying, policy development, mobilising resources and monitoring the progress. **Empowering children to demand fulfilment of their rights is a major role of the NGOs working in the field of children.**

- **Awareness:** Development and generation of awareness through media about CRC within policy makers, bureaucrats, police, parents, teachers and communities at large.
- **Advocacy:** To strengthen policy and programme development and promotion of Child Rights.
- **Social Marketing:** Use of marketing principles to promote programmes and create family and community support for Child Rights.

- **Social Mobilisation:** To initiate the process of bringing together allied fields for sustainable development.
- **Networking:** Collaboration and co-ordination between NGOs and the government to work collectively on children's issues.
- **Lobbying:** With politicians, bureaucrats and law makers for introduction of relevant changes and modification.
- **Policy Development:** Influence review and reform at the national and state level.
- **Campaigning:** Organise campaigns on Child's Rights through use of different media.
- **Training:** Through workshops, seminars and orientations, sensitising the functionaries in the field of child welfare.
- **Documentation and Research:** Publish articles, circulate contents of CRC and information on violation of children's rights.
- **Monitoring:** NGOs need to be vigilant about the states' adherence to the commitments made regarding the CRC

CONCLUSION

Children are a supremely important asset of our country, as stated in the National Policy for Children and hence it is obligatory for all:

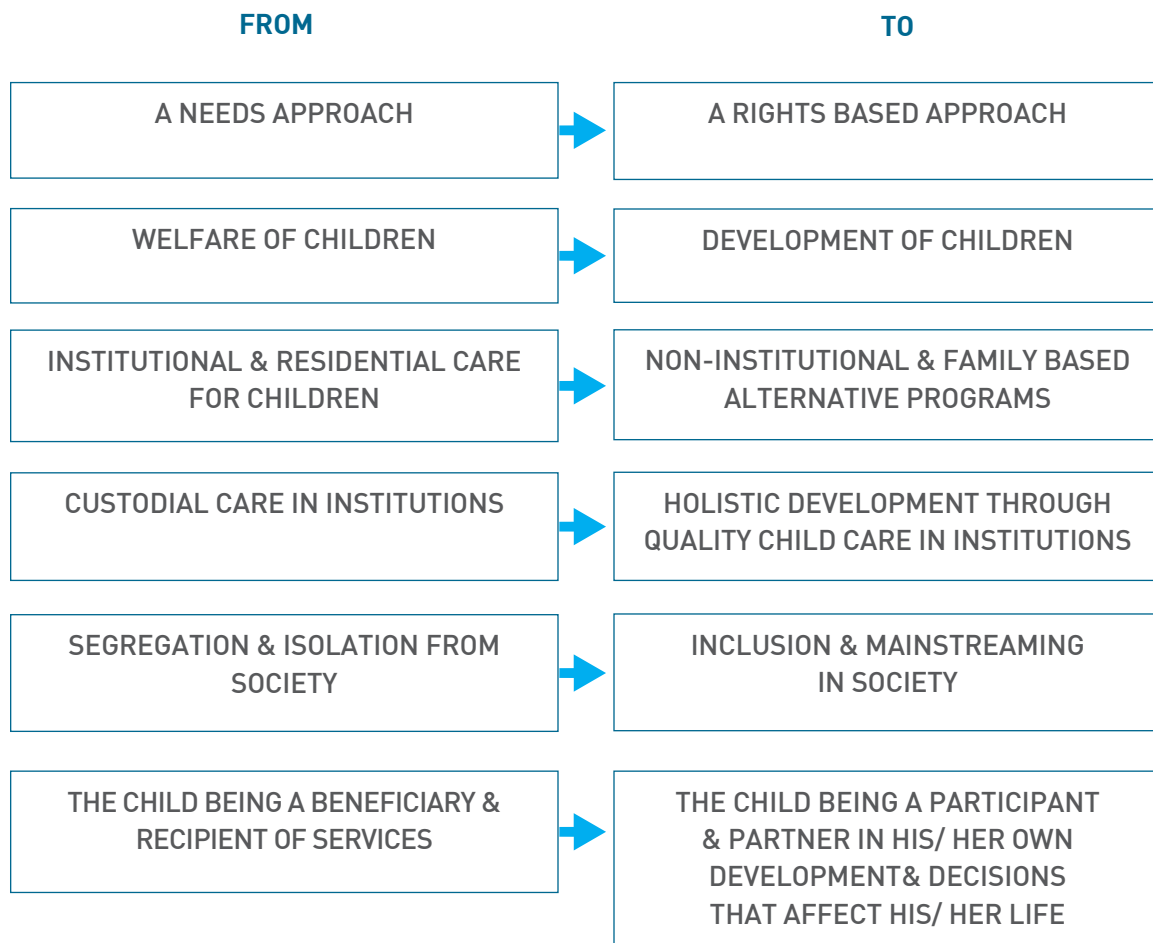
- To respect the participation rights of children
- To protect, particularly vulnerable groups
- To facilitate equal and effective access to health, educational resources
- To fulfil the basic “minimum care” needs / rights of all children

A systematic approach needs to be undertaken to evolve the implementation strategy for CRC

- A Rights oriented situational analysis
- Setting goals and standards to be met within a time frame
- Development of plans, programmes, policies at all levels and resource mobilisation
- Provision of monitoring and enforcement machinery to ensure that goals are achieved and children’s rights are protected

A paradigm shift from the “Welfare” to the “Developmental”, from the “Needs” to the “Rights” and from “Institutional Care” to “Non-Institutional Care” are significant changes in intervention for “Families at Risk” and “Children in Need of Care and Protection” (CNCP). The rehabilitation of abandoned and destitute children through institutional care has been the practice so far. The emphasis in future should be on improving the quality of child care in residential institutions, ensuring participation of children and simultaneously developing community oriented and family based alternatives. It is important that the UN-CRC is converted from being a declaration of intent to an effective tool for ensuring Child Rights.

A PARADIGM SHIFT IN APPROACH TO CHILD PROTECTION



NATIONAL & INTERNATIONAL POLICIES, PROGRAMMES, CONVENTIONS RELATED TO CHILDREN: AN OVERVIEW



THE CONSTITUTION OF INDIA

Articles 14, 15, 15(3), 19(1) (a), 21, 21(a), 23(1), 24, 39(e), 39(f) and 45 have a direct reference and impact on the welfare and development of the nation's children.

THE NATIONAL POLICY FOR CHILDREN

- Declared by the Government of India in 1974.
- To ensure that programmes of children are incorporated in the National Plans for the development of Human Resources.
- To ensure effective services for children in the areas of Health, Nutrition, Education and Recreation with special emphasis on the weaker sections of society.
- In organising these services, efforts would be directed "to strengthen family ties, so that full potentialities of growth of children are realised within the normal family and community environment".

NATIONAL PLAN OF ACTION FOR CHILDREN (NPA)

- Prepared by the Government of India under the title “A Commitment to the Child”.
- The NPA had particular significance for Children in Need of Care and Protection (CNCP) since it identified the various target groups of vulnerable children and called for improved protection of these children.
- The Plan is an outcome of an Inter-Sector, Inter-Department co-ordination and covered areas of health, nutrition, water and sanitation, education, children in need of care and protection, girl child, adolescent girls, children and environment, women, advocacy and people’s participation, resources, monitoring and evaluation.

NATIONAL PLAN OF ACTION FOR THE GIRL CHILD

- The Government of India prepared a separate Plan for the Girl Child for the period 1991-2000,

Three Major Goals Were:

- Survival and protection of the Girl Child and safe motherhood
- Overall development of the Girl Child
- Special protection for vulnerable girl children in need of care and protection.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

- The Convention on the Rights of the Child (CRC) drafted by the UN Commission on Human Rights, was adopted by the General Assembly of the United Nations on 30th November 1989.
- The CRC represents a turning point in the international movement on behalf of Child Rights.
- A comprehensive document containing a set of universal legal standards for the protection and well-being of children.
- The umbrella principle of the CRC is “The Best Interest of the Child” and that the essential needs of children should be given the highest priority at all times in the allocation of resources.

- The CRC gives children their basic human rights - civil, economic, social, cultural and political, which enable children to achieve their full potential.
- The CRC derives strength from its ratification by governments, implying that governments agree to follow the principles and are committed to certain standards in dealing with children.

The Rights cover four main areas: survival, development, protection and participation.

RIGHT TO SURVIVAL

Covers a child's right to life and the needs that are most basic to existence including an adequate living standard, shelter, nutrition and access to medical services.

RIGHT TO DEVELOPMENT

Includes those that children require in order to reach their fullest potential like the Rights to education, play and leisure, cultural activities, access to information and freedom of thought, conscience and religion.

RIGHT TO PROTECTION

Requires that children be safeguarded against all forms of abuse, neglect and exploitation and guarantees special care for refugee children, protection against abuse in the criminal justice system and involvement in armed conflict, child labour, drug abuse and sexual exploitation.

RIGHT TO PARTICIPATION

Empowers children to take an active role in their communities and nations encompassing the freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully.

India ratified the Convention on 11th December 1992, thereby re-affirming its commitment to the cause of children in India.

The range of rights can be summarised as the three Ps: provision, protection, and participation. Children have a right to be provided with certain services ranging from a name and nationality to health care and education. They have a right to be protected from certain acts, such as torture, exploitation, abuse, arbitrary, detention, and unwarranted removal from parental care and children have the right to participate in the

decisions affecting their lives. The CRC gives children their basic human rights- civil, economic, social, cultural, and political - which enable children to achieve their full potential.

The CRC is guided by the principle of a first call for children... a principle that the essential needs of children should, at all times, be given priority in the allocation of resources at all times.

There are four general principles enshrined in the Convention. These are meant to help with the interpretation of the Convention as a whole and thereby guide national programmes of implementation. The four principles are formulated, in particular, in Articles 2, 3, 6, and 12.³⁰ These are:

- **Non-discrimination (Art.2):** State parties must ensure that all children within their jurisdiction enjoy their rights. No child should suffer discrimination. The essential message is equality of opportunity. Girls should be given the same opportunities as boys. Refugee children, children of foreign origin, or children of indigenous or minority groups should have the same rights as all others. Children with disabilities should be given the same opportunity to

enjoy an adequate standard of living.

- **Best interests of the child (Art.3):** When the authorities of a state take decisions which affect children, the best interests of children must be the primary consideration. This principle relates to decisions by courts of law, administrative authorities, legislative bodies, and both public and private social-welfare institutions.
- **The right to life, survival, and development (Art.6):** The term 'development' in this context should be interpreted in a broad sense, adding a qualitative dimension-... not only physical health but also mental, emotional, cognitive, social, and cultural development.
- **The views of the child (Art. 12):** Children have the right to be heard and to have their views taken seriously, including any judicial or administrative proceeding affecting them.

VULNERABLE GROUPS



STREET CHILDREN



TRAFFICKED CHILDREN



MISSING CHILDREN



ABUSED CHILDREN



ORPHANED,
ABANDONED &
DESTITUTE CHILDREN



JUVENILES IN
CONFLICT WITH
LAW



CHILDREN
ENGAGING IN
SUBSTANCE ABUSE



CHILDREN AFFECTED
BY CONFLICTS &
DISASTERS



CHILDREN FROM
FAMILIES 'AT RISK'



MENTALLY ILL
CHILDREN



WORKING
CHILDREN



DIFFERENTLY
ABLED CHILDREN



HIV
HIV/AIDS AFFECTED/
INFECTED CHILDREN

VULNERABLE CHILDREN: CHILDREN IN NEED OF CARE AND PROTECTION (CNCP) & JUVENILES IN CONFLICT WITH LAW (JCL)

WHO ARE THE CHILDREN IN NEED OF CARE AND PROTECTION (CNCP)

Children are the most vulnerable section in society. They are dependent, have the least power, and have less control over their own lives. Among children there are some who are more marginalised and neglected than others because of their socio - economic cultural circumstances. These children are considered as Children in Need of Care and Protection.

These Children in Need of Care and Protection (CNCP) are found in the following situations:

- In Families 'At Risk'
- On the Street
- In Institutions

The following are some of the Vulnerable Groups that comprise the CNCP:

- Street children
- Orphaned, abandoned and destitute children

- Working children
- Abused children
- Children who are victims of Commercial Sexual Exploitation and Trafficking
- Children engaging in substance abuse
- Children in conflict and disaster situations
- Children in families 'at-risk'
- Differently-abled children
- Mentally ill children
- HIV / AIDS-affected / infected children
- Juveniles in conflict with the law

STREET CHILDREN

Street children are an extremely vulnerable group because they are forced to live on the streets due to compelling circumstances and where there is no protection, supervision and care from concerned adults. The term 'street children' covers several groups of children living on the streets, coming from different circumstances and for various

reasons. Often these children are found on railway platforms, bus stops, pavements, traffic lights and religious places. To make a living they have to resort to begging, rag picking, shoe shining, working as porters, working at food stalls and hotels etc.

Children on the street are primarily working children, who due to difficult circumstances have to support themselves and contribute to their family's income. They may have families but the nature and degree of contact varies from returning home daily, to a few times annually.

Another group of children have the street as their home and it is here that they seek food, shelter, livelihood and companionship. They have family ties, which are limited and very infrequent.

The abandoned and destitute street children have no ties whatsoever with their families. They are abandoned due to reasons like poverty, mental or physical handicap, and in some cases gender discrimination. These children are very much in need of care & protection.

The missing children have either run away from home or are victims of circumstances that have separated them from their families.

If the families are not traced they live on the streets and hence are part of the category of street children.

Dysfunctional families, poverty, exploitation, domestic violence, sexual abuse, neglect, alcoholism and drug abuse are some of the reasons that compel children to leave home and live on the streets. They are constantly exposed to the dangers of the city life and are vulnerable to exploitation, violence and various forms of abuse. Children on the streets do not have access to basic resources that are required for healthy growth and development. Their right to education, proper nutrition, clothing, shelter and medical care are grossly violated.

WORKING CHILDREN / CHILD LABOUR

Child labourers include children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development. They are sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future. (ILO, 1983 in Bajpai, 2003). When a child is engaged in wage earning, to support himself/ herself or the family, and it directly or indirectly interferes with the growth and

development of the child, it is child labour. This includes work in any sector – formal and non formal, organized and unorganized, within and outside the family. Even family labour that deprives the child of his /her right to education, recreation, physical, mental and emotional health is considered child labour.

The following are some of the situations in which children are engaged in work:

- Agriculture – Children working long hours and under severe hardships on the fields. They are also exposed to the hazards of working with modern machinery and chemicals.
- Hazardous industries / occupations- Like glass making, mining, construction, carpet weaving, zari making, fireworks and others as listed under the Child Labour Act.
- Small industrial workshops and service establishments.
- On the streets- Rag-pickers, porters, vendors and child prostitutes.
- Domestic Work - largely invisible and silent and hence face a higher degree of exploitation and abuse in the home of employees. They cannot seek help and many live in conditions of absolute bondage.

- As bonded laborers - This refers to any individual less than 18 years of age working in order to pay off a debt/ loan of the family.

Child labour is the result of a combination of factors; poverty, ignorance, illiteracy, unemployment of parents, non-availability and non accessibility to schools and school drop-outs due to irrelevant school curriculum. The employers also exploit children because they are cheap labour and because of their inability to fight against exploitation. The ineffective implementation and enforcement of legislations pertaining to child labour also contributes significantly to child labour.

- Deprivation of all Child Rights is a major consequence of child labour.
- Long working hours under stressful, hazardous conditions impairs the child's physical and psychological health.
- It undermines the child's dignity and self-esteem and deprives him/her of a healthy happy childhood.
- The lack of education creates an unskilled adult labour force with poor employment opportunities. Thus, child labour creates a vicious cycle of poverty, unemployment, underemployment and low wages.

ABUSED CHILDREN

Child abuse is the intentional, injury, as a result of maltreatment of children by parents, caretakers, employers including those individuals representing government / non-government bodies which may lead to temporary or permanent impairment of their physical, mental, emotional, psycho-social development, disability or death. (NIPPCD, 1988 in Bajpai, 2003). A general definition of child abuse incorporates any mistreatment or violation of the rights of children by societal institutions or individual caretakers. (Alvy, 1975 in NICP, 2000)

- Physical Abuse – It refers to violent actions that are manifested in physical injuries, cuts and bruises, burns, fractures, injuries, poisoning, foeticides and infanticide. Other forms of physical abuse including branding, forced blood donation, injury and illness are result of an exploitative situation.
- Emotional abuse – It arises out of deliberate neglect, illtreatment and lack of love, care and affection by parents or caregivers. It includes humiliating or frightening punishments, verbal abuse, scape-goating and belittling, exposing children to violence, allowing children to take drugs or alcohol and neglecting the child's psychological needs.

- Sexual Abuse – Child Sexual Abuse (CSA) is defined as any kind of physical, mental or verbal abuse, violation of a child with a sexual intent by a person who is in a position of trust or power vis-à-vis the child. It is any sexual behaviour directed at dependent, developmentally immature children and adolescents who are unable to give informed consent.
- Child Marriage – Child Marriage is also a form of child abuse. In many parts of India, girls are married at 12-14 years even before they are physically, psychologically and emotionally mature. Early marriage deprives the girl child of all child rights and the opportunity to attend school; they assume domestic and childcare responsibilities early, which hampers their intellectual and personality development and deprives them of a “childhood”.

Abuse/neglect can be due to various reasons such as poverty, ignorance, lack of adequate resources and discrimination on the basis of gender, and in all exploitative situations. Abuse/neglect has a long term effect on the psyche of the child and in some cases leads to personality disorders. It can also lead to ill-health and acute malnutrition in children. Children who have been sexually

abused may also suffer from physical, emotional and / or psychological trauma and have long term post traumatic stress disorder, depression, isolation and self-destructiveness are also some of the impacts of abuse. Sexually transmitted infections, HIV/AIDS or unwanted pregnancy can be some of the devastating effects of CSA. Sometimes the abused child is blamed and made to feel guilty and can face trauma and social stigmatization. As a result, he/she may feel worthless, powerless, angry, frightened, and lonely.

CHILDREN WHO ARE VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION AND TRAFFICKING

Commercial Sexual Exploitation (CSE) of children refers to using a child for sexual activities for the material or monetary gains of an adult. Those who profit from this commercial exploitation could include parents, family members, community members, procurers/agents, pimps, brothel owners etc.

Poverty and ignorance are the underlying causes of this worldwide phenomenon. Families themselves exploit their children to contribute to the household income. There are some communities where religious and

cultural systems, like the Devdasi or the Jogini, legitimize the sexual exploitation of young girls and ultimately many of them get into prostitution/sex work. Commercial sexual exploitation can be in the form of :

Prostitution - using a child for sexual activities for material or monetary gains.

Sex Tourism- In the last few years, the rapid growth of tourism has led to the expansion of the child sex industry. In India, there are increasing number of instances of CSE of children at popular tourist destinations where they become victims of paedophiles. Children are used as attractions for sex tourism.

Child Pornography – Audio-visual material using children in sexually abusive manners is another form of CSE of children.

Physical, psychological, emotional abuse leads to trauma to the child, as well as societal or family rejection and ostracism. Trafficking of children for domestic work, adoption, child labour and other abusive situations is also a serious concern.

CHILDREN ABUSED IN INSTITUTIONS

A child in an institution is any child below 18 years of age who is living in a residential organization that is entrusted with the care and protection of the child. Therefore institutions for children need to function as substitute families, and must provide for the child's physical well-being, as well as the child's emotional and developmental needs.

However there has been a significant increase in the number of cases of abuse- physical and sexual in institutions. In many cases, it is the 'caregivers', i.e. those who are entrusted with the care of children in the institution, who are the abusers. There are several cases, which go unreported, or no punitive action is taken against the perpetrators of the crime and this is an area of serious concern. The abuse can range from corporal punishment like beating, caning and physical assaults to deprivation of food, using abusive language, passing sexually abusive remarks, physical touching, molestation to rape. Improving the quality of child care in residential institutions and shelters is a major challenge that needs to be addressed.

CHILDREN ENGAGING IN SUBSTANCE ABUSE

Substance abuse involves taking a drug/ alcohol for reasons other than medical and in amount, strength, frequency or manner that damages the physical / mental functioning of a person, causing social or medical harm. Some drugs produce psychological dependency that is characterized by a persistent craving. Others produce a physical dependence too, where smaller quantities, sufficient earlier are no longer effective and the amount of drug intake has to increase. A child addict is an individual below 18 years of age who is either addicted or dependent on drugs.

Addictions can be for medicines, over the counter drugs, illegal drugs, beverages, cigarettes, food additives, adhesives, correction fluid, petrol/diesel solution, shoe polish and industrial chemicals. The potent fumes of certain solvents hit a part of the child's brain where it suppresses hunger, cold, and loneliness. Children are particularly prone to be lured into addictions by undesirable societal elements and to be manipulated for drug trafficking by organized drug groups.

Substance abuse leads to acute physical and emotional dependence on drugs which causes irreversible brain damage and sometimes even sudden death. The drug users who inject themselves with the narcotic, usually share the same syringe which is a major cause for the alarming spread of HIV/AIDS.

CHILDREN IN CONFLICT AND DISASTER SITUATIONS

Crisis situations like wars, insurgencies, political conflicts, natural and man made disasters, and displacement have a severe negative impact on families and cause adverse physical and emotional effects on the children caught in these situations. In such an event it often happens that the needs and rights of children are completely neglected. Their basic right to survival and protection are severely threatened.

Conflict is a situation where two or more groups of people do not agree with each other, cannot find a solution and try to force their views on each other. According to UNICEF, there are two types of conflict:

- National conflicts – These are internal conflicts like civil wars, state violence against its citizens, civil disturbances, ethnic conflicts, insurgency, violence against minorities, rebel groups inciting violence against the state.
- International conflicts – These are conventional wars; wars of mass casualties, wars of liberation, wars that transcend national borders, structural violence.

Disasters - It refers to the destruction of and damage to life and property on a large scale. Injury is caused to everyone in the environment. Disasters are of two types:

- Natural disasters – These include droughts, floods, earthquakes, cyclones, tsunamis, hurricanes.
- Man-made disasters – These include deforestation that causes soil erosion, landslides and floods; industrial accidents due to the release of hazardous waste and toxic chemicals into the environment that adversely affects all forms of life.

Displacement – It is the dislodgement of persons from their homes and land due to various reasons. This adversely impacts the

child's access to basic provisions, and services such as health and nutrition, schooling and welfare services. It violates the child's basic human rights to housing and to live in dignity.

- Developmental, infrastructural or industrial projects displace people from their traditional homes, lands, occupations and communities.
- Another form of displacement is collapsed houses, demolitions and evictions of slum/pavement dwellers that happen in metro cities.

All this has a major impact on the lives of vulnerable children leading to loss of stability, security, identity and feeling of safety. Disasters can also cause psychological damage, trauma and a permanent loss of a sense of security.

CHILDREN IN FAMILIES 'AT-RISK'

'At- risk' families are those that are likely to disintegrate and breakup due to social, economic, cultural pressures or any other physical, emotional or psychological crises. The children in these families are more

vulnerable to neglect, abandonment and destitution.

Some of the "Families at Risk" are

- Single parent families.
- Parents who lack economic means to fulfill their parental role due to poverty.
- Parents who have chronic or terminal illness or are mentally ill / challenged .
- Parents involved in crime and antisocial activities.
- Children of prisoners.
- HIV / AIDS infected and affected parents.
- Families of construction workers, migrants, labours and refugees as they may have no permanent homes.

Compelling socio-economic circumstances and pressures of urbanization and migration have led to the disintegration of the joint family and stresses of daily living have all put a strain on the family today.

In crisis situations like an illness, death, unemployment or desertion there are few social support systems to help such families. In these circumstances, the children become exposed to several dangers and become easy

targets for exploitation and abuse. This could also lead to long term institutionalisation which is not in the best interest of the child.

DIFFERENTLY-ABLED / CHALLENGED CHILDREN

A differently-abled person is one who finds it difficult to perform normal physical and/or mental function because of an impairment. For example, difficulty in walking, hearing, speaking and seeing. When the impairment interferes with the normal functioning of the individual, it is called a handicap eg. inability to work and earn due to immobility.

Such a person is unable to perform wholly or partially the functions of a normal personal or social life as a result of a congenital disability or a deficiency in his/her physical or mental capabilities.

Children could suffer from any of the following challenges / disabilities

- Locomotor disability
- Hearing disability
- Speech disability
- Visual disability

- Learning disability
- Mentally challenged
- Cerebral palsy

The causes could be:

- Genetic – Marriage between close blood relatives, maternal age, history of certain illnesses in the family, genetic mutation and chromosomal imbalances are some of the hereditary factors.
- Environmental – Maternal health during pregnancy - poor nutrition, young age, illnesses during pregnancy, certain medication taken can cause irreversible damage to the foetus. Accidents and illness can be the cause for disability in children.

Care and education of special needs children is a major challenge. Since some of the differently-able children are educated in special schools, they remain isolated from the rest of their peers and it is difficult to mainstream them in society. This isolation can lead to low self esteem, feelings of worthlessness, lack of self confidence and feeling of being discriminated against. Differently-abled children are also more vulnerable to abuse, neglect and abandonment.

Inclusive education, accessibility to resources making the environment easy for mobility are some of the interventions needed.

MENTALLY ILL CHILDREN

A mentally ill child is any individual below 18 years suffering from a mental illness. The term mental illness includes numerous psychiatric disorders. It is an illness that affects the normal functioning of the child. The illness varies in severity ranging from no manifested symptoms to being extremely confused, depressed, agitated or withdrawn. It may impact on the way the child behaves or interacts with other people. Mental illness is a disability and children with this condition respond well to treatment.

Some of the mental illnesses and behavioral problems encountered are: enuresis, thumb sucking, nail biting, stammering, stuttering, truanting, lying, stealing, acute depression, psychosis, schizophrenia and suicidal tendencies. The causes are a combination of genetic factors and acute traumatic environmental factors like abuse, neglect and exploitation. The intervention ranges from admission into hospitals, psychiatric help and long term psychotherapy and counseling in Child Guidance Clinics. It is important

to detect and recognize the symptoms of children with mental illness so that early intervention and treatment is made available.

HIV / AIDS – AFFECTED / INFECTED CHILDREN

HIV/ AIDS is assuming epidemic proportions and is of serious concern. Children with HIV / AIDS are most often victims of circumstances and may face the social exclusion directed at individuals with HIV and their families. Children who are infected or affected by this need intervention in the form of residential care, foster care, medical follow up and all other forms of protection.

Some of the children who are more vulnerable are:

- Children who are confirmed as infected by the virus
- Children born to HIV positive mothers, acquiring the virus in the womb.
- Children needing blood transfusions due to illness
- Children addicted to drugs
- Children who are sexually abused and exploited

- Children affected where parents / siblings are HIV positive
- Children vulnerable to HIV in high - risk communities

Some of the problems encountered are:

- Prejudice and social exclusion leading to discrimination, exploitation and abuse
- Denial of access to schooling
- The infected parent's earning capacity reduces and often the children have to resort to earning due to financial pressures, leading to "child-headed" household
- Emotional and physical vulnerability for children

JUVENILES IN CONFLICT WITH THE LAW

Crime is defined legally as a violation of the law. Children in conflict with the law are boys and girls below eighteen years of age, alleged to have committed offences and have been taken into custody by the police under the purview of the Juvenile Justice System. Children are vulnerable to abusive negative circumstances are influenced often by adults to engage in crime. They too need sensitive

and protective measures for suitable rehabilitation and they are also children for which children get convicted who need care and protection.

Some of the offences could be:

- Burglary, stealing and petty thefts
- Murder
- Rape/molestation & sexual abuse
- Causing grievous hurt or injury to another
- Other minor offences

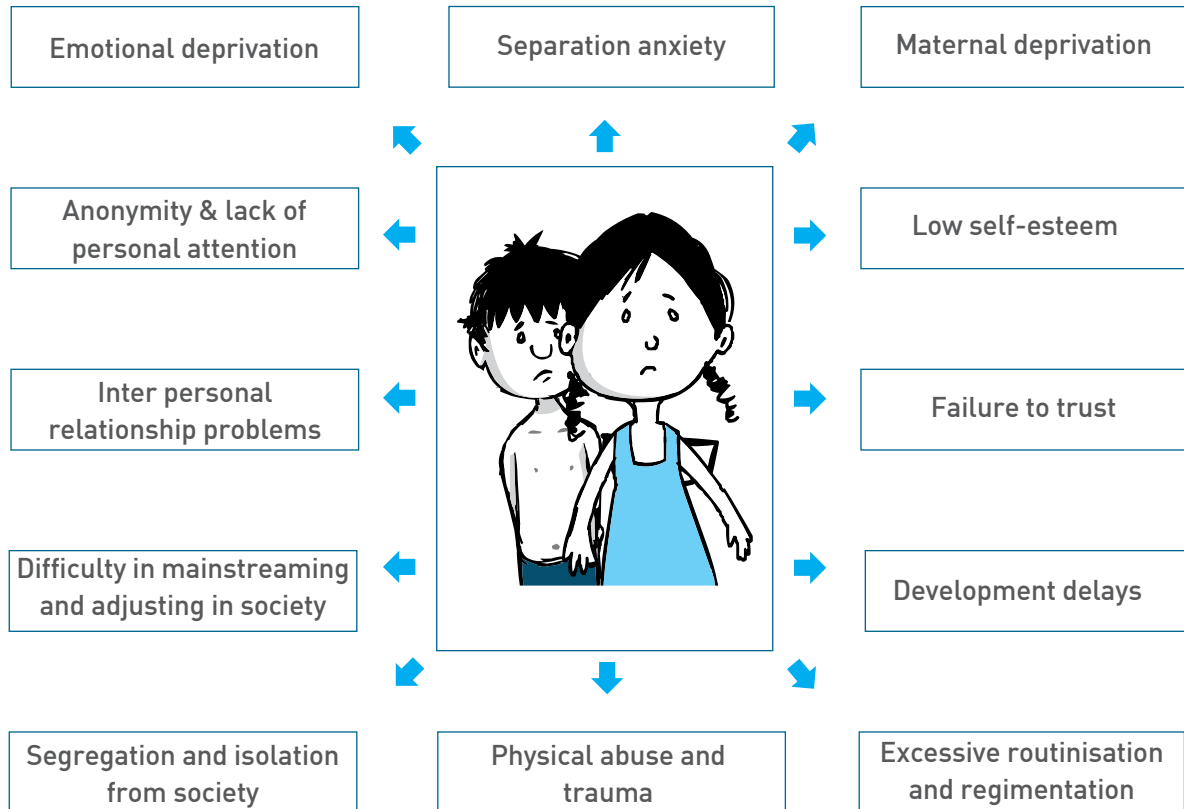
Some of the factors that lead to juvenile crime are:

- Poverty- Poverty deprives children of socio-cultural and economic opportunities for growth and development. Poverty related circumstances like severe hunger, illness, addictions, parental neglect, aggravate the situation. Such children are at greater risk than others of being inducted into crime.

- Family- Criminal acts of family members influence children and sometimes they themselves induct children into offences
 - Lack of appropriate guidance and discipline – Inconsistent discipline, parental indifference, abusive parenting can lead to a poor self image and personality problems, making children vulnerable to negative influences outside the home.
 - The home situation- Disintegration of the “families at risk”, severe family crisis, system, migration, and urbanization has all weakened the positive and nurturing influence of family on the child. Tension and emotional disturbances and abuse at home may drive the child away from the home and become vulnerable to criminal influences.
 - Victims of abuse- research indicates a correlation between child abuse and subsequent delinquency.
 - School dropouts – Not attending school regularly results in truancy, indulging in unhealthy leisure activities and committing petty crimes to earn a living.
 - Exposure to Media – Exposure to media violence not only increases physical aggressiveness in children but also makes them more accepting of violence.
 - Peer Influence- In adolescence, experimenting with drugs, gambling, drinking, inappropriate sexual behaviour, desire for quick money, getting involved in youth gangs often lead to violence and crime.
 - Lack of age appropriate sex education- this often leads to sexual abuse and molestation and even rape by young children.
 - Gang Culture- Observed especially among street children where the street gang is the substitute family and the child gets bullied into the anti social activities of the gang in return for survival, protection or favour.
- Children in need of care are protection are children who are in specially difficult circumstances and they need to be protected by adults from all kinds of neglect, abuse or exploitation. It is the responsibility of adults to ensure “To Every Child a Childhood.”

RATIONALE FOR NON – INSTITUTIONAL SERVICES

SOME OF THE NEGATIVE ASPECTS OF LONG TERM INSTITUTIONALISATION OF THE CHILD



THE NON-INSTITUTIONAL APPROACH & INTERVENTIONS FOR CHILD PROTECTION.

Non-Institutional Services are based on Article 20 & 21 of the UNCRC and the conviction that “Every child’s best interests are met in a nurturing family environment and it is every child’s basic right to be brought up in a family”.

RATIONALE:

The best of institutions cannot substitute the care in a family environment. The negative and painful experiences in large impersonal institutions may result in the ‘Institutional Child Syndrome’ accompanied by long term emotional, psychological and personality problems. The cost of childcare in an institution also far outweighs its advantages. Hence it is better to provide support to families in crisis through alternate family-based, community-oriented services, so that the child can be looked after within a family environment rather than in institutions.

OBJECTIVES OF NON-INSTITUTIONAL SERVICES

- Ensure the child’s right to a family.
- Strengthen the family as a unit and prevent family disintegration.
- Develop preventive, supportive, community-based, family-oriented outreach programmes for the CNCP.
- Provide the necessary counselling support to families “at risk” in order to prevent abandonment and institutionalisation of the child due to social and economic circumstances.
- Arrange for substitute family care when the child’s own family of origin cannot look after him due to special circumstances.
- Work towards de-institutionalising the child and reinstate/rehabilitate him in his own biological family or a substitute adoptive or foster family.
- Mobilise resources within the local community so that the innate capacities of the people are developed, leading to people’s participation.

OVERVIEW OF NON-INSTITUTIONAL SERVICES

ADOPTION

- It is considered as the best non-institutional service for the orphaned, abandoned, destitute child since it provides permanent planning and substitute care in a family environment.
- When the birth parents relinquish a child permanently, due to compelling circumstances, an adoptive family would be the best alternative for the child without parental care.
- Prior to adoption, several formalities need to be completed in order to ensure that the child will receive physical, emotional and financial security in the new home. Pre-adoption counselling prepares a couple to be emotionally ready for adoptive parenthood.
- As per the Hague Convention and also since a child adjusts best within his/her own socio-cultural milieu, rehabilitation through in-country adoption is the first option after which inter-country adoption is considered for the orphaned child.

- An urgent review of all orphans and destitute children in the institutions should be undertaken for permanent rehabilitation through adoption, so that children who can be declared legally free for adoption by the Juvenile Justice System do not languish in an institution, indefinitely.
- For the older children very specialised counselling services and preparation is required before considering adoption.

FOSTER CARE

- Provides temporary, substitute care for children, whose parents are unable to care for them due to illness, death, desertion of one parent or any other crisis situation.
- The child is placed or cared for in another related and unrelated family for a short or extended period of time. The biological parents usually visit regularly and eventually after the rehabilitation, the child may return to his/her own home.
- It is important to assess the suitability, competence and motivation of the foster parents as well as their compatibility in terms of ethnic, socio-cultural and

economic background to facilitate the child's adjustment and transition from the natural home to the foster home and minimise emotional trauma.

- The Foster Care Scheme must provide financial support to the foster family to care for the child as well as support to the natural parents towards rehabilitation so that they may take the child back when possible.
- It could also be a service for prevention of abandonment for the single, unwed mother who does not want to give up her child irrevocably in adoption but needs support for a temporary period.
- Kinship Foster Care and Group Homes are some of the services that also need to be developed or strengthened.

SPONSORSHIP

- Currently recognised as one of the most effective programmes to provide financial support to families to meet the medical, nutritional and educational needs of their children and improve the general quality of life.
- The child is not separated from his/ her own birth family and continues to enjoy

the security of a family environment that is necessary for a healthy development and growth.

- Empowering the family as a unit to become self sufficient, independent is a very effective approach in sponsorship.
- There are various modalities for implementation of this programme like the Individual-to-Individual sponsorship, Group Sponsorship or Community Sponsorship.
- Sponsorship also is a preventive/ supportive service that prevents institutionalisation of the child for the purpose of care and education.

COMMUNITY CENTRES

- Vulnerability and the consequent destitution of children are high in the deprived and underprivileged sections of society.
- Community-based, outreach services like Counselling Centres, Child Guidance Clinics, Juvenile Guidance Bureaus, Family Service Centres and Recreation Centers should be set up so that communities have easy access to such assistance.

- These multi-purpose counselling centres are very effective in controlling juvenile offences, family break-ups and institutionalisation of children.

DAY-CARE/NIGHT-CARE SHELTER

- It is a related service to foster care where the child is placed in a substitute family only during the day or night, as in the case of working mothers or single parents, for the time they are at work.
- This service helps to keep “families at risk” together and who might otherwise have considered full time foster placement or institutionalisation of the child.
- NGOs could assist in locating families in the neighbourhood who are willing to provide day care facilities and co-ordinate the two.
- The children can also be looked after in groups as in creches, day-care centres or night shelters.

FAMILY ASSISTANCE

- This service is especially useful for families “at risk” to help them overcome temporary crisis situations like

unemployment or serious family illness that may lead to family breakdown.

- The goal is to enhance the growth of the family towards being self-reliant by providing opportunities for self-employment through self help groups income-generating schemes, so that they become financially independent (e.g. vegetable vendors, tailors, cobblers and small home-based business).
- Thus, a family is supported in discharging its functions, preventing disintegration due to economic pressures.

SCHOOL SOCIAL WORK

- School counsellors or social workers in Government and Municipal schools are very effective in preventing dropouts, reducing levels of wastage and stagnation, providing child guidance, family counselling and other support services.
- The social worker helps promote the school as a centre for learning inputs, nutritional and health inputs and introducing supportive services to education.

- School social work services are essentially to improve quality of education to make education more relevant to social realities, make educational opportunities available to children and ensure that they are utilised.

Primary schools in both urban and rural areas are a good base for providing non-institutional services to children and their families.

COUNSELLING

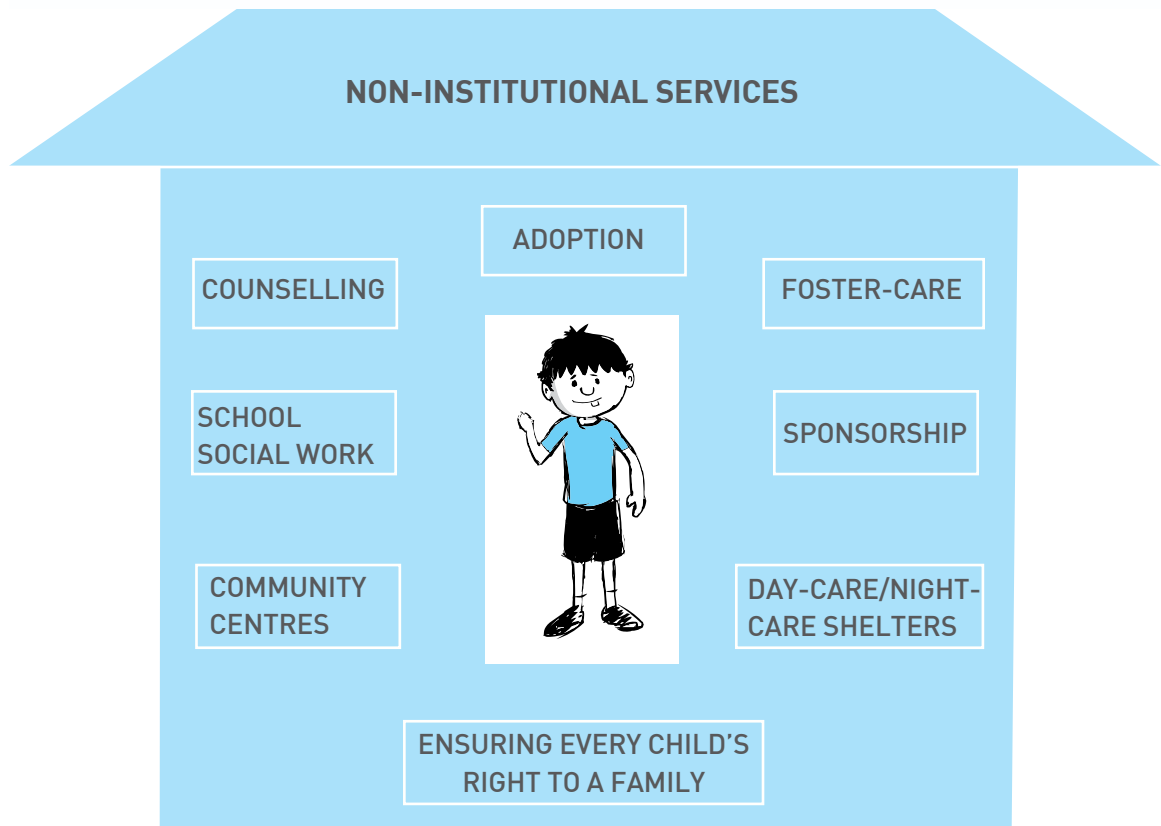
Counselling is the most integral, intangible component of all the non-institutional services. By providing the necessary emotional support, families who are “at risk” are helped to mobilise their own strengths to cope with crisis situations so that they do not seek institutionalisation of children as a solution to the problem. The counselling services gives them a sense of reassurance

that when their own coping mechanisms fail to function effectively, professional intervention will help them tide over the crisis. The rehabilitation of abandoned and destitute children through institutional care has been the practice so far. However, the emphasis in the future should be on programmes to consider more community-based, non-institutional services.

Short-term institutional care can be considered as an option during an interim period when other alternatives are being explored. We cannot do away with institutions completely, because for some children that becomes the only option. But the two approaches of Institutional and Non-Institutional care should be seen as complementing each other. Simultaneously efforts have to be made to improve the quality of child care in institutions and also develop small, personalised, “ Group Homes”, “Cottage Systems” with house parents so that a nurturing family like environment can be created.

CONCLUSION

A paradigm shift from “Welfare” to “Developmental”, from “Needs” to “Rights” and from “Institutional Care” to “Non-Institutional Care” is significant change in intervention for “Families at Risk” and “Children in Need of Care and Protection” (CNCP). The rehabilitation of abandoned and destitute children through institutional care has been the practice so far and definitely needed for some children. The emphasis in future should be on improving the quality of child care in residential institutions, ensuring participation of children and simultaneously developing family based alternatives. It is important that the UN-CRC is converted from just being a declaration of intention to an effective tool for ensuring Child Rights.



JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2000 AN OVERVIEW

HISTORY AND BACKGROUND OF THE JJ ACT 1986, 2000 & 2006

The Juvenile Justice system in India is based on the principle of promoting, protecting and safeguarding the rights of children. Recognising the vulnerability of children and the need for special and different treatment, it was in 1986 that for the first time, a uniform Juvenile Justice Act (JJA) was enacted for the whole of India, when Parliament decided to replace the Children's Acts in various states in India. This Act incorporated the UN Standard Minimum Rules for administration of Juvenile Justice ('Beijing Rules') of 1985. It was enacted for the care, protection, treatment, development and rehabilitation of neglected or delinquent children.

However, the history of the implementation of the JJA, 1986, is a history of hopes not realised and promises not fulfilled. A review of the Act was undertaken to look into the lacunae as well as its non implementation. This process together with India's ratification of the UN Convention on the Rights of the Child (CRC) in 1992, as well as the changing social attitudes towards offences by children and the need for a more child-friendly

juvenile justice system were some of the factors that led to the passing of the Juvenile Justice (Care and Protection of Children) Act 2000 (JJA 2000). This Act replaced the earlier Act of 1986.

The JJA, 2000 was based on the principles of the UN Convention on the Rights of the Child, the 'Beijing Rules', the United Rules for the Protection of Juveniles Deprived of their Liberty and all other relevant national and international instruments clearly defining children as persons upto the age of 18 years. The Act is based on the provisions of the Indian Constitution and the UN CRC.

A SYNOPSIS OF THE JJ ACT 2000

PREAMBLE

The preamble of the Act states that it is an Act to consolidate the law relating to juveniles in conflict with law and children in need of care and protection by providing for proper care, protection, and treatment, by catering to their development needs, and by adopting a child-friendly approach in the settlement and disposition of matters in the best interest of children and for their ultimate rehabilitation

through their various established institutions under this Act.

The Act is based on the provisions of the Indian Constitution and the four broad rights of the UN CRC namely:

- Right to Survival
- Right to Protection
- Right to Development
- Right to Participation

PRELIMINARY

This Chapter mainly enumerates the various definitions of words and expressions used in the Act. The Act defines 'juvenile' or 'child' as a person who has not completed his/her eighteenth year of age [Section 2 (k)]. Under the Act there are two distinct categories of children.

- 'Juvenile' for a child in conflict with the law [Section 2(1)]
- 'Child' for those in need of care and protection [Section 2 (d)]

Children in need of care and protection include those:

- Found without a home or shelter.
- Living with a person who is likely to carry out a threat of killing or injuring the child.
- Living with a person who has a history of abusing/ neglecting children and hence the child is in reasonable danger of being a victim of similar behaviour.
- In the category of mentally or physically disabled children; sick or terminally ill children or those with an incurable disease with no one to support or care for them; children who are being or likely to be tortured, abused and exploited; children at risk of being inducted for drug abuse or trafficking; child victims of armed conflict and natural calamities.
- Whose parent/ guardian is incapable of looking after the child; abandoned, missing and runaway children whose parents or guardians cannot be found even after inquiry.

Other definitions in this chapter include the various types of institutions/ homes for children and all the competent authorities under the Act.

Section 3 - Continuation of inquiry in the case of a juvenile or child who ceases to be one: If during the course of an inquiry, a juvenile or child completes his/her eighteenth year of age, the inquiry shall continue and orders shall be passed, treating the person as a child.



JUVENILE IN CONFLICT WITH LAW

This sub chapter deals with children in conflict with the law.

SECTION 4 – JUVENILE JUSTICE BOARD (JJB)

The State Government is empowered to constitute one or more Juvenile Justice Boards for every district to deal with children in conflict with the law.

MEMBERS

A Metropolitan Magistrate or a Judicial Magistrate of the first class and two social workers of which at least one shall be a woman.

QUALIFICATIONS

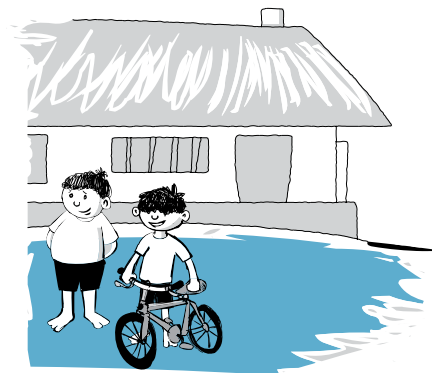
The magistrate should have special knowledge or training in child psychology or child welfare.

Social workers should have been actively involved in health, education or welfare activities relating to children for at least seven years.

TERMINATION

The State government may terminate the appointment of any Board member, after an inquiry:

- If found guilty of misusing power vested by the Act
- If convicted of an offence involving moral principles
- If he/ she fails to attend the Board proceedings for three consecutive months without valid reasons or is absent for three – fourth of the sittings in a year



SECTION 5 – PROCEDURES, ETC., IN RELATION TO BOARD

- A child in conflict with law can be produced before any individual member of the Board, when the Board is not sitting.
- An order passed by a Board in the absence of any of its members is valid at any stage of the proceedings, provided there are at least two members, including the Principal Magistrate at the time of the final clearing of the case.
- If there is a difference of opinion among the Board members regarding any order passed, the majority opinion shall be taken and if there is no majority then the Principal Magistrate's opinion shall be final.

SECTION 6 – POWERS OF THE JUVENILE JUSTICE BOARD

The Board has the exclusive power to deal with all matters under the Act pertaining to the juvenile in conflict with the law.

If the case comes up for appeal or revision before the High Court or Sessions Court, these Courts will exercise the same powers conferred on the JJB under the Act.

SECTION 7 – PROCEDURE TO BE FOLLOWED BY A MAGISTRATE NOT EMPOWERED UNDER THE ACT

If a juvenile or child is produced before a Magistrate who does not have the powers conferred under the Act, he/she shall forward this individual along with a record of the proceedings to the competent authority (JJB) empowered under the Act.

SECTIONS 8 AND 9 - HOMES TO BE ESTABLISHED UNDER THE ACT

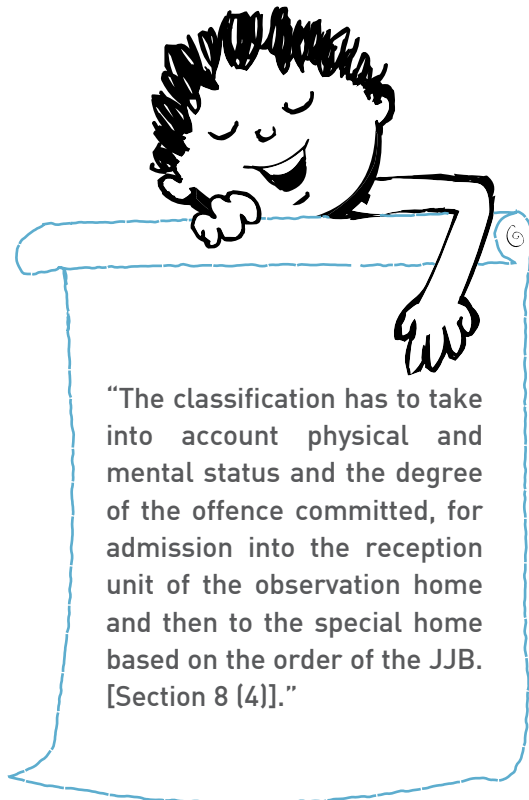
Observation and Special homes have to be established for children in conflict with law by the State Government itself or under an agreement with voluntary organizations in every district or group of districts.

OBSERVATION HOMES

Observation homes are established for the temporary reception of any child in conflict with law pending any inquiry regarding them under the Act [Section 8 (1)].

The observation home will have a reception unit, where the child, who is not placed under the care of a parent or guardian, will be initially kept for :

- Preliminary inquiries,
- Care and classification of children into age groups such as 7-12 years, 12-16 years and 16-18 years.



SPECIAL HOMES

Special homes are for the reception and rehabilitation of juvenile in conflict with law [Section 9 (1)].

SECTION 10 – APPREHENSION OF CHILD IN CONFLICT WITH LAW

- As soon as the police takes a child in conflict with law in custody, he / she shall be placed in the charge of the Special Juvenile Police Unit [Section 2 (w)] or the designated police officer who will immediately report the case to a member of the Board (1) within a period of twenty-four hours of his/her apprehension excluding the time necessary for the journey, from the place where the juvenile is apprehended to the Board. In no case shall a juvenile in conflict with law be placed in a police lockup or lodged in a jail.”
- The State government may make rules to make provision for persons, including voluntary organizations, to produce a child in conflict with law before a Board member [(2) (ii)].

STEP-BY-STEP PROCEDURES OF THE JUVENILE JUSTICE BOARD (JJB)



The child who is taken charge of / caught / apprehended by the police is brought before the JJB within 24 hours

If the JJB is not in session, for any reason, then the child can be produced before the Metropolitan Court, who is holding additional charge of the JJB



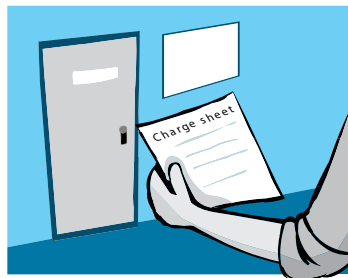
Child sent to the observation home for safe custody

If the parents / guardian are present before the JJB, the magistrate can release the child on bail, on certain terms and conditions, if the JJB deems it fit, and in some of the offences which are minor in nature

If the JCL is not released on bail, he / she stays in the Observation Home till the matter is completed before the JJB. The child is to be presented before the JJB, at least every 15 days

The police to file a charge sheet within 90 days before the JJB for all children who are in the Observation Home, as per the orders of the JJB.

For the child who has been released on bail, the police file the charge sheet when it is ready.



When the charge sheet is filed and the child is brought before the JJB for a hearing, the JJB explains to the child the charges leveled against him



If the JCL pleads guilty, the JJB passes a final order under section 15 of the JJ Act, with an admonition or decision to keep the child in a Special Home till 18 years or release the child under probation / supervision and follow up.



If the JCL does not plead guilty, the trial of the case continues before the JJB

Once the trial is over, the final orders are passed under Section 15 of the JJ Act

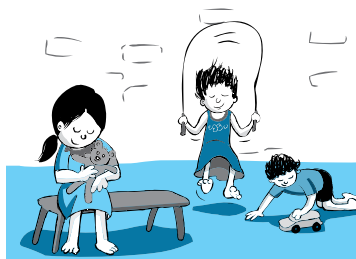


INTERVENTION STEPS BY THE JUVENILE JUSTICE BOARD



Child in conflict with the law is brought before the JJB by the SJPU or designated Police Officer within 24 hours of apprehension

The child cannot be placed in a police lockup



Child is interviewed by the Judicial Magistrate & two social workers who function as a bench & a detailed inquiry is conducted

Probation officer/child welfare officer also meets the child & the child's history is recorded

If the age of the child is in question, an order is passed for age verification or proof of age. (As per the amended Act, age of juvenility is as of, on the date the offence was committed)

Pending enquiry, an order is passed for the child to be kept in the Observation Home or the child is placed in charge of parents & handed over to them, with surety or without, under supervision and to be produced before the JJB, during the pendency of enquiry

The JJB order a social investigation report from the PO



Once the trial is over, the Board passes the final orders

Orders that can be passed against a child includes:

- Admonition/ counseling to the child & parents
- Directing the child to go for group counseling
- Order the Juvenile to perform community service
- Order a fine
- Release the child on probation of good conduct in the care of parent/ fit person with or without surety (not exceeding three years)
- Juvenile can be placed in a fit institution (not exceeding three years)
- Ordered to be sent to a special home (not exceeding three years)

SECTION 11- CONTROL OF CUSTODIAN OVER A JUVENILE

The person in whose charge a child is placed will have control over the child as a parent would and be responsible for his maintenance, for the entire period specified by the Board, even though he may be claimed by his parents or any other person.

SECTION 12 – BAIL OF JUVENILE

- When a child accused of a bailable or non-bailable offence is arrested, detained or appears before a Board, he / she shall be released on bail with or without surety unless there are reasonable grounds for believing that the release will expose him / her to moral, physical or psychological danger. In such a case, he / she is to be sent to an observation home or place of safety.
- When the officer in charge of the police station does not release the child on bail, he / she shall be kept in an observation home until he / she can be brought before a Board.

SECTION 13 – INFORMATION TO PARENT, GUARDIAN OR PROBATION OFFICER

After a child is arrested, the officer in charge of the police station or the special juvenile police unit shall inform:

- The parent or guardian of the child, if found, and direct him to be present at the Board
- The probation officer [Section 2 (s)] to enable him to obtain information regarding the child's past history, family background and any other details that will assist the inquiry.

SECTION 14 – INQUIRY BY BOARD REGARDING JUVENILE

When a child is produced before the Board, it shall hold an inquiry, which has to be completed within four months from the date it was started unless an extension is required in special circumstances, which have to be recorded in writing.

SECTION 15 – ORDER THAT MAY BE PASSED REGARDING JUVENILE

The Board shall have to obtain the social investigation report on the child either through a probation officer or a recognized

voluntary organization and, after taking into account the findings, pass an order. When a Board is satisfied that a child has committed an offence, it can pass the following orders:

- Allow the child to go home after advice or a warning and counseling.
- Instruct the child to participate in group counseling and similar activities.
- Order the child to perform community service.
- Order the parent of the child or the child himself / herself to pay a fine if he / she is above fourteen years of age and is earning money. In addition, if it is in the interest of the child and the public, the Board may order that the child remain under the supervision of a probation officer for not more than three years.
- Direct the release of the child on probation of good behavior and placed under the care of a parent, guardian, or other fit person after executing a bond with or without surety for any period not exceeding three years. If it is in the interest of the child and the public, the Board may order that the child remain under the supervision of a probation officer for not more than three years.
- Direct the child to be released on probation of good conduct to the care of a fit institution [Section 2 (h)] for any period not exceeding three years. If it is in the interest of the child and the public, the Board may order that the child remain under the supervision of a probation officer for not more than three years.
- If at any time, the Probation Officer or other fit person report to the Board that the child under their supervision has not been of good behavior, or the fit institution is no longer able or willing to ensure good behavior and well being of the child placed in its care, the Board can order the child to be sent to a special home.
- Order the child to be sent to a special home till he / she completes his eighteenth year of age. In case the child is over seventeen years but less than eighteen, he / she should be kept in the special home for at least two years.

SECTION 16 – ORDER THAT MAY NOT BE PASSED AGAINST JUVENILE

- No child in conflict with law shall be sentenced to death or life imprisonment, or imprisoned for not paying a fine or surety.
- If a child is sixteen years or older and the Board is of the opinion that the offence committed is of so serious a nature or that his behavior is such that he cannot be sent to special home and none of the provisions in section 15 are suitable or sufficient, the Board may order such a child to be kept in a place of safety and report this to the State Government who may provide for protective custody.

SECTION 17- PROCEEDING UNDER CHAPTER VIII OF THE CODE OF CRIMINAL PROCEDURE NOT COMPETENT AGAINST JUVENILE.

- No proceedings or order shall be passed against a juvenile under Chapter VIII of the CPC.

SECTION 18 – NO JOINT PRECEDING OF JUVENILE AND PERSON NOT A JUVENILE

- No juvenile shall be charged or tried for any offence together with an adult. If a

juvenile is accused of committing an offence with any person not a juvenile, the Board shall order a separate trial for the other person.

SECTION 19 – REMOVAL OF DISQUALIFICATION ATTACHING TO CONVICTION

- A juvenile who has committed an offence and has been dealt with (convicted) under the Act shall not suffer disqualification, as stated by any other law. The Board is empowered to order that all the relevant records of a conviction be removed after the period of appeal has expired or after a reasonable period.

SECTION 20 – SPECIAL PROVISION IN RESPECT OF PENDING CASES

- If any proceedings of a juvenile are pending in any court in any area on the date on which this Act comes into force in that area, they shall continue in that court and if the juvenile is found to have committed an offence, the court shall not pass any sentence but record the findings and forward it to the Board which shall pass orders with regard to the juvenile under the provisions of the Act.

SECTION 21 – PROHIBITION OF PUBLICATION, ETC., OF JUVENILE INVOLVED IN ANY PROCEEDING UNDER THE ACT.

- The Act prohibits any report in any newspaper, magazine, news-sheet or visual media disclosing the name, address, school or any other particulars regarding a juvenile in conflict with law that will lead to his identification, nor shall any picture of the juvenile be published.
- If the authority holding the inquiry is of the opinion that such disclosure is in the interest of the juvenile, then reasons for this have to be recorded in writing.
- Any person disregarding this provision shall be fined upto Rs 1000/-.






SECTION 22- PROVISION IN RESPECT OF ESCAPED JUVENILE

Any police officer can take charge without a warrant, of a juvenile who has escaped from a special home or an observation home or from the person under whose care he was placed under the Act. The juvenile should be sent back to the home from where or person from whom he escaped and no proceedings

should be initiated against him for such an escape. The board that passed the order with regard to the juvenile should be informed.

PENALTIES AND PUNISHMENT OF SPECIAL OFFENCES AGAINST JUVENILES UNDER THE ACT

This section deals with Penalties and punishment meant for adults for offences done against the child under the Act. Section 27 - Certain special offences under the Act are cognizable.

SECTION	OFFENCE	PUNISHMENT
 <p>23 - Cruelty to juvenile or child</p>	<p>Assaulting, abandoning, exposing or intentionally neglecting the juvenile or child or causing him / her to be assaulted, abandoned, exposed or neglected such that it is likely to cause the child mental or physical suffering</p>	<p>Imprisonment for upto six months or a fine or both.</p>
 <p>24 - Employment of juvenile or a child for begging</p>	<p>(1) Employing or using a juvenile or child for the purpose of begging or causing him to beg. (2) The person who has actual charge of the juvenile or child assists in the above offence</p>	<p>Imprisonment for upto three years and fine. Imprisonment for upto three years and fine.</p>
 <p>25 - Penalty for giving intoxicating liquor, narcotic drug or psychotropic substance to juvenile or child</p>	<p>Giving or causing to give a juvenile or child intoxicating liquor in a public place, any narcotic drug or psychotropic substance, except when it is prescribed by a qualified medical practitioner in the case of sickness.</p>	<p>Imprisonment for upto three years and fine.</p>
 <p>26- Exploitation of juvenile or child employee</p>	<p>Procuring a juvenile or child for the purpose of any hazardous employment, keeping him/her in bondage and withholding his/her earnings or using such earnings for his/her own purposes.</p>	 <p>Imprisonment for upto three years and fine.</p>

[Adapted from Bajpai, A., 2003]

CHILD IN NEED OF CARE AND PROTECTION

This chapter deals with the provisions relating to children in need of care and protection.

SECTION 29 – CHILD WELFARE COMMITTEE (CWC)

The State Government is empowered to constitute one or more Child Welfare Committees for a district or a group of districts to deal with children in need of care and protection.



CHAIRPERSON OF THE CWC



MEMBER OF THE CWC



MEMBER OF THE CWC



MEMBER OF THE CWC



MEMBER OF THE CWC

MEMBERS

A Chairperson and four other members of whom at least one should be a woman and another member should be an expert on matters concerning children.

QUALIFICATIONS OF THE COMMITTEE:

The qualification of the chairperson & the member shall be as prescribed in the rules.

POWERS

The Committee will function as a bench of magistrates with the powers of a metropolitan Magistrate or a Judicial Magistrate of the first class.

TERMINATION

The State government may terminate the appointment of any Committee member, after an inquiry:

- If found guilty of misusing power vested by the Act
- If convicted of an offence involving moral principles
- If he/ she fails to attend the Board proceedings for three consecutive months without valid reasons or is absent for three –fourth of the sittings in a year

SECTION 30 – PROCEDURE, ETC., IN RELATION TO COMMITTEE

- A child in need of care and protection can be produced before any individual member of the Committee for being placed in safe custody, when the Committee is not in session.
- An order passed by the Committee in the absence of any of its members is valid at any stage of the proceedings.
- If there is a difference of opinion among the Committee members regarding any interim decision made, the majority opinion shall be taken and if there is no such majority then the Chairperson's opinion shall be final.

SECTION 31 – POWERS OF COMMITTEE

- The Committee is empowered to deal exclusively and is the final authority with regard to cases for the care, protection, treatment, development and rehabilitation of children and to provide for their basic needs and protection of human rights.

SECTION 32 – PRODUCTION BEFORE COMMITTEE

Any child in need of care and protection can be produced before the committee by any one of the following persons:

- Any police officer or special juvenile police unit or a designated police officer.
- Any public servant
- Childline, a registered voluntary organization or any other voluntary organization or agency recognized by the State Government.
- Any social worker or public spirited citizen authorized by the State Government.
- By the child himself / herself

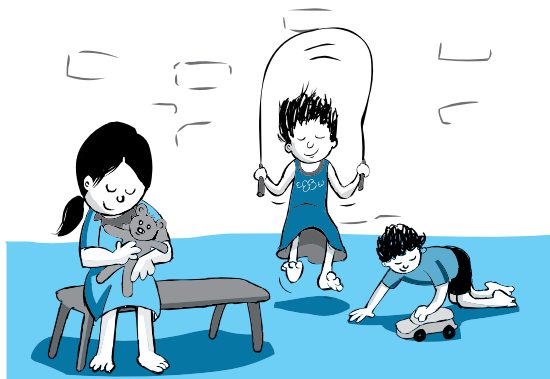
SECTION 33 – INQUIRY

- On receiving a report from any person or agency authorized to produce the child before the CWC, as mentioned in Section 32, the Committee, can pass an order to send the child to a children's home so that an inquiry can be conducted by a social worker or the child welfare officer.

- The inquiry has to be completed within four months from the date of receiving the order and if this period has to be extended, reasons have to be recorded in writing.
- On receiving the inquiry report, if the Committee is of the opinion that the child has no family or other support, it may pass an order allowing the child to continue staying in the children's home or shelter home till suitable rehabilitation is found or till he / she completes eighteen years of age.

SECTION 34 AND 37 – HOMES TO BE ESTABLISHED FOR CHILDREN IN NEED OF CARE AND PROTECTION.

The State Government will establish children's homes, either by itself or in association with voluntary organizations in every district or group of districts.



THE PURPOSE OF THESE HOMES:

- Safekeeping of children in need of care and protection during the period of inquiry.
- Subsequently for the care, treatment, education, training, development and rehabilitation of these children. (Section 34)

HOMES RUN BY VOLUNTARY ORGANIZATIONS:

- The State Government can give recognition to well known, experienced voluntary organizations and assist them in establishing and running shelter homes.
- These homes will function as drop-in centres for children in need of urgent support brought by any of the persons mentioned in Section 32.



SECTION 35 – INSPECTION

- Inspection committees for the children’s homes will be appointed by the State Government, at the state, district and/or city level and will consist of representatives from the State Government, local authority, the CWC, voluntary organizations, medical experts and social workers.

SECTION 36 – SOCIAL AUDITING

- The Central or State Government will monitor and evaluate the functioning of the children’s homes at time periods and through persons and institutions specified by that Government.

SECTION 38 – TRANSFER

- If the inquiry reveals that the child is from a place outside the jurisdiction of the Committee, then it will pass an order transferring the child to the competent authority that has jurisdiction over the child’s place of residence.
- The child will be accompanied by the staff of the home where he / she resides presently and the State Government may provide for a travelling allowance for the child.

SECTION 39 – RESTORATION

- The primary objective of a children’s home or shelter home will be the restoration of and protection to a child under their care and protection who is deprived of his / her family environment, either temporarily or permanently.
- The Committee is empowered to restore a child in need of care and protection to his / her parent, guardian, fit person or fit institution.

Restoration of a child, in the context of this section, means, a restoration to:

- Parents
- Adoptive parents
- Foster parents

PROCEDURES OF THE CHILD WELFARE COMMITTEE (CWC)

The CWC meets in the premises of a Children's Home in the District. Cases are brought before the CWC during the designated time and days that the Committee is functioning

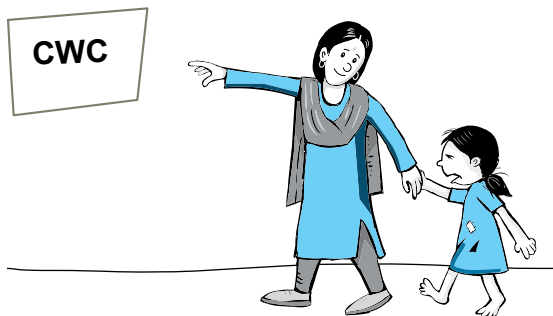
If the CWC is not in session on a particular day, the child is admitted directly by the Superintendent and then brought before the CWC the next day. The child can also be brought before an individual member of the CWC

The CWC meets and interviews the child to get the history and understand the background of the problem in a 'Child Friendly' manner and environment. The Child welfare Probation Officer is present before the CWC, the case is discussed with him and an 'Intake Endorsement' is done.

EXAMPLE OF INTAKE ENDORSEMENT

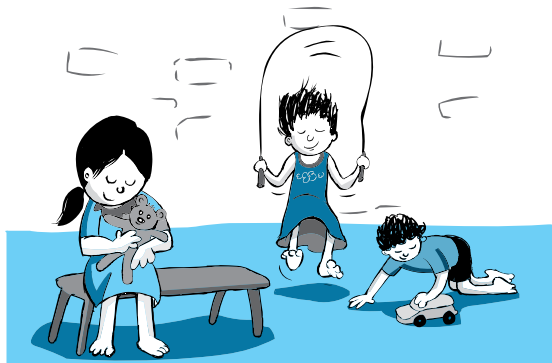
- Girl Child / GC Sangeeta was brought before the CWC by the (NGO) / (Concerned Police) / (Person) on under Section 32 of the JJ Act 2000
- Sangeeta was taken in safe custody at the Children's Home..... Under Section 33 of the JJ Act 2000
- The probation officer is directed to make an enquiry and submit a report to the CWC on
- Issue a memo to the police to come before the CWC to record the evidence and submit his report
- Issue a memo to SJPU to escort the child for Medical Examination, Age Verification or tracing the family of the child (if from the area).
- Next date for the hearing will be (at a short interval, so that procedures can be expedited)

STEP BY STEP PROCEDURES AND INTERVENTION STEPS TO BE FOLLOWED BY THE CWC IN THE PROCESS OF REHABILITATION



STEP-1 Child is brought before the CWC for suitable decision /action / rehabilitation by the Police, Childline, NGO or any concerned citizen

STEP-2 Child is taken in safe custody (NOT remand) and admitted to government recognised "Children's Home" in the Reception Unit (NOT Observation Home)



STEP-2 a. Child can be given in the safe custody of any of the following:

- Children's Home
- Children's Institutions, which are Licensed/ Recognised Adoption Agency (0-6 years)
- Shelter Home (for Street and Runaway children)
- Place of Safety (e.g. Foster Family / Fit Person)
- Refer to organisations having Non Institutional Services for Prevention of Abandonment / Institutionalisation (e.g. Foster Care, Sponsorship, Community Services)

STEP-3 If child is received directly by an organisation, then the he / she is to be brought before the CWC within 24 / 48 hours (if the child is below two years and is unwell then a report is to be submitted to the CWC)

STEP-4 CWC to assess the case / study the report of the police / child welfare officer / interview and counsel the child



STEP-5 During this period the Probation Officer prepares the final report with the necessary recommendations.

STEP-5 a. Report prepared through:

- Interviewing the child
- Making appropriate enquiries
- Corresponding with the family if there is one
- Counselling the child

STEP-6 Final order to be given within 4 months (extendable to 6 months ONLY when necessary)



STEP-6 a. Possible Decisions:

- Restoration to Parents
- Repatriation of the child to his family or to the nearest Children's Home in his home state
- Declare the child destitute and legally free for adoption
- Admission to an institution (To be reviewed every year)
- Long term foster care (for children who are not legally free for adoption)

REHABILITATION AND SOCIAL REINTEGRATION

This chapter deals with provisions related to the rehabilitation and social reintegration of the child in conflict with law or the child in need of care and protection.

SECTION 40 – PROCESS OF REHABILITATION AND SOCIAL REINTEGRATION

The process of the child's rehabilitation and social reintegration has to begin in the children's home or special home itself. This can be carried out through various non-institutional services provided for by the Act:

- Adoption
- Foster care
- Sponsorship
- Sending the child to an after-care organization.

SECTION 41 – ADOPTION

While the family has the primary responsibility for providing care and protection to their children, adoption has to be resorted to for the rehabilitation of orphaned, abandoned, neglected and abused children.

The children's homes or the institutions for orphans run by the State Government will be recognized as adoption agencies both for inquiry and placement of such children for adoption. This will be done in accordance with State Government guidelines for adoption.

The Juvenile Justice Board is empowered to give a child for adoption and conduct investigations necessary for giving a child for adoption, in keeping with guidelines of the State government.

A child can be given for adoption only if the following conditions are complied with:

- Two members of the CWC have declared the child free for placement in the case of abandoned children
- The two month period of reconsideration given to the parent is over in the case of surrendered children
- The consent of the child who can understand and express his consent has been obtained.

The JJB/CWC can allow a child to be given in adoption to a single parent and also to parents to adopt a child of the same sex irrespective of the number of their living, biological sons or daughters.

SECTION 42 – FOSTER CARE

This is of two types:

- Those infants who are to be ultimately given in adoption, may be placed temporarily in foster-care.
- A child may be placed with another family in foster care for a short or extended period of time. During this time the biological parents usually visit regularly and eventually when rehabilitation is complete, the child may return to his own family.

SECTION 43 – SPONSORSHIP

- The objective of sponsorship is to provide financial support to families, to children's homes and special homes to meet medical, nutritional, educational and other needs of the children in order to improve their quality of life.
- Various schemes of child sponsorship such as individual-to-individual sponsorship, group or community sponsorship can be carried out as per State Government rules.

SECTION 44 – AFTER-CARE ORGANIZATION

The State Government may provide for the setting up or recognition of after-care organisations for the purpose of taking care of both children in conflict with law / in need of care & protection:

After they leave the special homes and children's homes, in order to help them live an honest, productive and useful life.

The child cannot stay in the after-care organization for more than three years. If he is above seventeen but less than eighteen years of age, then he can stay till he is twenty years of age in the aftercare organisation.

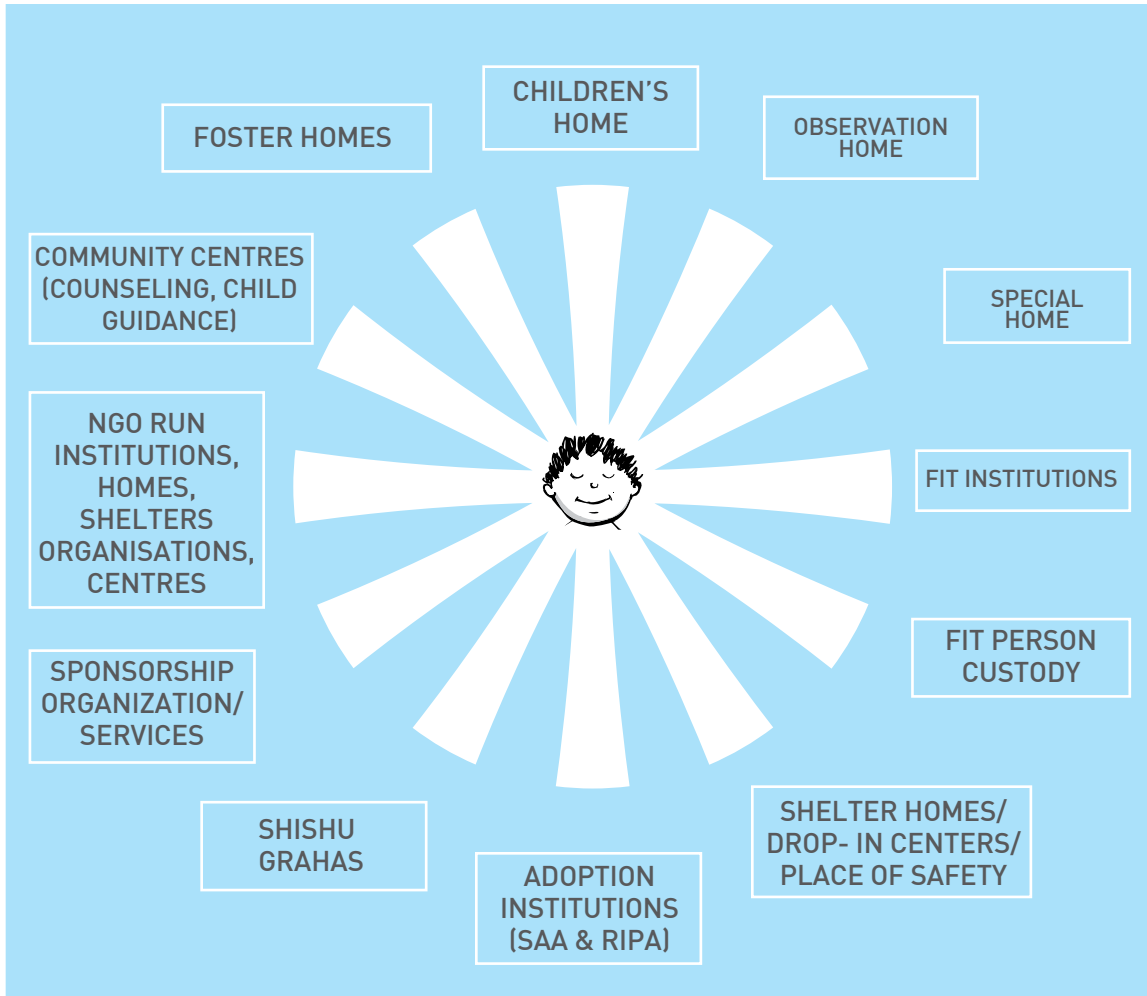
The probation officer or any other government appointed officer has to prepare and submit a report on the child before he / she is discharged from the special home or children's home. The report should include:

- the reasons for the need for after-care for the child
- the kind of after-care required
- the time period for such after care and
- the progress made by the child this far

SECTION 45 – LINKAGES AND COORDINATION

The State Government may make rules to enable effective networking and co-ordination between various government, non-government, corporate and other community agencies to assist in the rehabilitation and social reintegration of the child.

TYPES OF INSTITUTIONS/ CHILD PROTECTION SERVICES & PROGRAMMES



MISCELLANEOUS

This chapter deals with miscellaneous measures provided for under the Act

SECTION 46 – ATTENDANCE OF PARENT OR GUARDIAN OF JUVENILE OR CHILD

A competent authority can direct any parent or guardian actually in charge of a juvenile or child that is produced before it, to be present at any of the proceedings.

SECTION 47 – DISPENSING WITH ATTENDANCE OF JUVENILE OR CHILD

If at any stage of the inquiry, the competent authority is of the opinion that the juvenile or child is not required to be present at the proceedings, it can direct the child not to attend and continue in his / her absence.

SECTION 48 – COMMITTAL TO APPROVED PLACE OF JUVENILE OR CHILD SUFFERING FROM DANGEROUS DISEASES AND HIS / HER FUTURE

- If a child is suffering from an illness that requires long term medical treatment, the competent authority may send the child to a recognized place for the required treatment.

- If a child is found to have diseases like leprosy, sexually transmitted infections, Hepatitis B, tuberculosis or a mental illness then he / she will be handled separately through specialized referral services.

SECTION 49 – PRESUMPTION AND DETERMINATION OF AGE

When the competent authority feels that the person produced before is a juvenile or a child, it has to make the necessary inquiries to verify the age of the child. It has to gather evidence and then record the finding whether the person is a child or not, stating the age as accurately as possible. This age recorded will be considered the child's true age and no subsequent proof to say otherwise shall be considered valid.

SECTION 50 – SENDING A JUVENILE OR CHILD OUTSIDE JURISDICTION

When the competent authority, is convinced after enquiry that the juvenile or child, resides in a place outside it's jurisdiction, it will hand over the child to a relative or any other fit person at his / her place of residence who is willing to ensure care and control him/ her. Any subsequent matter with respect

to the juvenile or child will be handled by the competent authority of the place the child is sent to.

SECTION 51 – REPORTS TO BE TREATED AS CONFIDENTIAL

The report submitted by the probation officer or social worker to the competent authority is to be considered confidential. However it can be shared, if the competent authority considers it necessary to reveal the contents of the report to the child or his parent or guardian in order to give them a chance to give evidence regarding the matter in the report.

SECTION 52 – APPEALS

Any person dissatisfied with an order passed by the competent authority under the Act, can make an appeal in the Sessions Court within thirty days of the date of the order. The Sessions Court can admit an appeal after the expiry of the thirty day period if the petitioner is able to give satisfactory reasons for not filing the appeal in time.

An appeal cannot be made in the following cases:

- an order, made by the Board, acquitting a juvenile alleged to have committed an offence
- an order, made by a Committee, that a person is not a neglected child.

A second appeal will not be admitted against any order of the Sessions Court made on the first appeal.

SECTION 53 – REVISION

The High Court, either on its own or on an application made, has the power to ask for the records of the proceedings of an order passed by any competent authority or the Sessions Court to be sure of the validity of the order. It may pass a revised order, provided that it has not been unfair to any person by not giving him a reasonable chance of being heard.

SECTION 54 – PROCEDURE IN INQUIRIES, APPEALS AND REVISION PROCEEDINGS

When a competent authority is conducting any inquiry; while hearing appeals or revising proceedings, the procedures to be followed must be, as far as is possible, in keeping with the provisions of the Code of Criminal Procedure, 1973 [2 of 1974].

SECTION 55 – POWER TO AMEND ORDERS

- Any competent authority, on the basis of an application received, can amend any order with regard to the institution to which a juvenile or child is to be sent to or the person under whose care or supervision a juvenile or child is to be placed.
- An amendment can be passed only if there are at least two members of the competent authority and the parties present during the hearing.
- Clerical mistakes resulting in unintended errors or omissions in orders passed can be corrected by the competent authority at any time either on its own or on an application made.

SECTION 56 – POWER OF COMPETENT AUTHORITY TO DISCHARGE AND TRANSFER JUVENILE OR CHILD.

The competent authority is empowered to transfer a child or juvenile from one children's home or special home to another, if it is in the best interest of the child or juvenile, provided that such a transfer does not increase the total period of stay of the child in such a home.

SECTION 57 – TRANSFER BETWEEN CHILDREN'S HOMES, UNDER THE ACT, AND JUVENILE HOMES OF LIKE NATURE IN DIFFERENT PARTS OF INDIA.

The State Government or local authority can order the transfer of a child or juvenile from any children's or special home outside the State to any other similar home or institution after informing the local Committee or Board.

SECTION 58 – TRANSFER OF JUVENILE OR CHILD OF UNSOUND MIND OR SUFFERING FROM LEPROSY OR ADDICTED TO DRUGS.

If a juvenile or child kept in a home or institution, established under the Act, is suffering from leprosy or is mentally ill or is addicted to drugs, the competent authority can order such an individual to be transferred to an appropriate facility for a period certified by the medical officer as necessary for his proper treatment.

SECTION 59 – RELEASE AND ABSENCE OF JUVENILE OR CHILD ON PLACEMENT

- The competent authority, on the basis of a report of a probation officer or social worker or a government or voluntary

organization, may consider releasing the child or juvenile from the children's or special home and handing him over to his parents, guardian, or any other authorized person who is willing to take charge of the child's education and vocational training or to look after him / her for rehabilitation.

- The competent authority may also permit the juvenile or child to go on leave under supervision for maximum seven days, excluding the time taken for traveling, for special occasions like examinations, family wedding, death of a relative, accident or serious illness of a parent or any other emergency. This leave will be counted as part of the time the juvenile or child has to be kept in the home.
- If permission for leave is cancelled and the juvenile or child does not return to the home, the competent authority can order that he / she be taken charge of and returned back to the respective home. In such a case, the time for which he is absent shall not be counted as part of the time he has to stay in the home.

SECTION 60 – CONTRIBUTION BY PARENTS

- The competent authority, on whose direction a juvenile or child is sent to a home or placed under the care of a fit person or institution, can order the parent or any person responsible for the child or juvenile to contribute towards his / her maintenance according to their income.
- The competent authority may direct, if necessary, the Superintendent or Project Manager of the home to pay for the traveling expenses of the juvenile or child and/or his / her parent or guardian from the home to his place of residence at the time of sending him / her.

SECTION 61 – FUND

The State Government or local authority can create a Fund of voluntary donations, contributions or subscriptions made by individuals or organizations for the welfare and rehabilitation of the juvenile or child under the Act. The State advisory board will administer this Fund.

SECTION 62 – CENTRAL, STATE, DISTRICT AND CITY ADVISORY BOARDS.

- The Central or State Government may form a Central or State advisory board consisting of well-known social workers, representatives of voluntary child welfare organizations, the corporate sector, academicians, medical professionals and the concerned Department of the State Government.
- The district or city level inspection committee (Section 35) can also function as the district or city advisory boards.
- The purpose of the advisory board is to advise the Government on matters relating to the setting up and maintaining of homes, mobilization of resources, provision of educational, training and rehabilitation facilities for the child and juvenile and co-ordination among the various official and non official agencies concerned.

SECTION 63 – SPECIAL JUVENILE POLICE UNIT

- Special training and instruction shall be given to police officers who are primarily involved with prevention of juvenile

crime or handling of juveniles or children, to enable them to function more effectively.

- Every police station should have at least one ‘juvenile or child welfare officer’, who is a police officer with aptitude and proper training and who will handle the juvenile or child in co-ordination with the police.
- The Special juvenile police unit consisting of all the above police officers, will be created at the district and city level to co-ordinate and improve the handling of juveniles and children by the police.

SECTION 64 – JUVENILE IN CONFLICT WITH LAW UNDERGOING SENTENCE AT COMMENCEMENT OF THIS ACT.

Any juvenile undergoing imprisonment at the time the Act is brought into force can, by an order of the State Government or local authority, be sent to a special home or fit institution for the remainder of the sentence; and the juvenile shall then be dealt with under the provisions of the Act.

SECTION 65 – PROTECTION ON RESPECT OF BONDS

Bonds taken under the Act will be protected as far as possible, by the provisions of Chapter XXXIII (33) of the Code of Criminal Procedure, 1973 (2 of 1974).

SECTION 66 – DELEGATION OF POWERS

The State Government may direct that the same powers that it can exercise under the Act, can be exercised by an officer subordinate to the government or the local authority.

SECTION 67 – PROTECTION OF ACTION TAKEN IN GOOD FAITH.

Legal action cannot be initiated against the State Government or a voluntary organization running a home or an officer or any staff appointed under the Act for any action taken with the good intention of following the Act or the orders made.

SECTION 68 – POWER TO MAKE RULES

The State Government, by notification in the Official Gazette, can make rules to provide for any or all of the following matters with respect to the Act:



- The term of office of the members of the Board and the reasons for which they would have to resign.
- The qualifications of the Chairperson and members and the tenure of their appointment.
- The timings of Board and Committee meetings and the procedure for dealing with business at the meetings.
- The management of observation homes, special homes and children's homes including the standards and the various types of services to be provided and the circumstances and manner in which the certification of the home maybe granted or withdrawn.

- Persons through whom a juvenile can be produced before the Board and the procedure for sending a juvenile to an observation home.
- The method of making a report to the police and to the Committee and of entrusting the child to a children's home pending the inquiry.
- Appointment of inspection committees for children's homes, their tenure and purpose.
- Facilities to be provided by shelter homes.
- For implementing the foster care scheme and the various schemes of child sponsorship.
- Matters relating to after-care organizations.
- For ensuring effective networking between various agencies to facilitate rehabilitation and social reintegration of the child.
- The purpose and method in which the fund will be managed.

Every rule made under this Act must be presented before the State Legislature.

SECTION 69 – REPEAL AND SAVINGS

The Juvenile Justice Act, 1986, stands revoked and any action taken under this Act shall be considered valid under the corresponding provisions of the JJ Act, 2000.

SECTION 70 – POWER TO REMOVE DIFFICULTIES

If there is any difficulty in implementing any of the provisions in the Act, the Central Government can pass an order to remove the difficulty, within two years from the date the Act comes into force. The order made must be presented before each House of Parliament.

JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) AMENDMENT ACT, 2006

An Act to Amend the Juvenile Justice (Care and Protection of Children) Act, 2000

SALIENT FEATURES AND SYNOPSIS

A review of the JJ Act, 2000 was undertaken to make amendments in the existing legislation. In 2006, the act was further revised with 26 amendments and came into effect from 22nd Aug 2006.

SALIENT FEATURES

JJ ACT 2000

- Enacted on 30th December 2000
- Notified on 22nd April 2001
- Central rules notified on 30th June 2001
- This act repealed the Juvenile Justice Act, 1986

JJ AMMENDMENT ACT 2006

- Enacted on 22nd August 2006
- Notified on 23rd August 2006
- Central rules notified on 26th October 2007
- Replaced the JJ Act 2000

PREAMBLE – KEY AREAS OF REFERENCE

- Child friendly approach
- Best interest of children
- Proper care, protection, treatment and rehabilitation, reintegration.
- Constitution / Human Rights / CRC / Beijing Rules/ UN Rules for Protection of Juveniles

OBJECTIVES OF THE ACT

- To modify the long title of the Juvenile Justice Act (JJA) so as to broaden the scope of rehabilitation of the child in need of care and protection or a juvenile in conflict with law under the Act through not only the institutional but also the non-institutional approach.
- To clarify that the JJA shall apply to all cases of detention or criminal prosecution of juveniles under any other law.
- To remove doubts regarding the relevant date in determining the juvenility of a person and the applicability of the JJA.
- Exclusion of the local authority from the provisions authorizing them to discharge or transfer a child in need of care and protection or a juvenile from a children's home or special home or for sending a juvenile in conflict with the law undergoing imprisonment, to a special home or a fit institution.
- To lay down a procedure whereby a claim of juvenility can be raised before any Court.
- To have a minimum period of twenty-four hours, excluding the time needed for the journey from the place where the juvenile in conflict with the law was apprehended, within which he / she should be produced before the Board and a similar provision with regard to production of a child before the Child Welfare Committee (CWC).
- To provide for alternatives to detention in the observation home in order to achieve the intentions of the JJA.
- To do away with the involvement of any police officer in the inquiry process, for the child in need of care and protection as this work is assigned to the CWC and to cover other cases where the child can remain in a children's/ shelter home after completion of enquiry.
- To widen the scope of adoption of a child to childless parents and to limit the same to citizens of India only under the JJA.
- To provide for a flexible period of leave that may be given to a child on special occasions like examination, marriages and deaths of relatives, accident or serious illness of parent or any similar emergency.

- To ensure the applicability of model rules framed by the Central Government in the States/ Union territories who have not yet made their own rules, till rules are framed in this regard by these States/ Union territories.

AN OVERVIEW OF THE JJ AMMENDMENT ACT, 2006

CHAPTER I

- Definitions – Articles 1 – 3

CHAPTER II

- Juvenile in Conflict with Law – Articles 4 – 28

CHAPTER III

- Child in Need of Care and Protection – Articles 29 – 39

CHAPTER IV

- Rehabilitation and Social Integration – Articles 40 – 45

CHAPTER V

- Miscellaneous – Articles 46 – 70

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 has made twenty-six (26) amendments, which are included in the next chapter.



COMPARATIVE OVERVIEW OF THE JUVENILE JUSTICE ACT (2000) AND JUVENILE JUSTICE AMENDMENT ACT (2006 AMENDMENT)

JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2000

- Short Title - Juvenile Justice (Care & Protection Of Children) Act, 2000
- Long Title - An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection..... and for their ultimate rehabilitation [through various institutions established under this enactment]
- 3. Section 1
 - i Short title, extent [and commencement]
 - ii _____

JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) AMENDMENT ACT, 2006

- Short Title – This Act may be called The Juvenile Justice (Care And Protection Of Children) Amendment Act, 2006.
- Amendment of long title – In the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the principal Act), in the long title, the words “through various institutions established under this enactment”, will be substituted by the words “and for matters connected therewith or incidental thereto” shall be substituted
- Amendment of Section 1 – In section 1 of the principal Act,-
 - iii. In the marginal heading, for the words “and commencement”, the words “commencement and application” shall be substituted.
 - iv. After sub-section (3), the following sub-section shall be inserted, namely:-“(4) Irrespective of any other law in force at

■ Section 2

i _____

ii _____

iii Clause (h) “fit institution” means a governmental or a registered non- governmental organization or a voluntary organization prepared to own the responsibility of a child and such organization is found fit by [competent authority.]

iv Clause (l) [“ juvenile in conflict with law” means a juvenile who is alleged to have committed an offence.]

- v Clause (m) [“local authority” means Panchayats at the village and Zila Parishads at the district level and shall also include a Municipal Committee or Corporation or a Cantonment Board or such other body legally entitled to

present, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under any other law.

- Amendment of Section 2 – In section 2 of the principal Act,-

ii. After clause (a), the following clause shall be inserted, namely:-“(aa) “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.

ii In clause (d),-(III) after sub-clause (i), the following sub-clause shall be inserted, namely:- “[ia]who is found begging, or who is either a street child or a working child,”; (IV) in sub-clause(v), after the word “abandoned”, the words “or surrendered” shall be inserted;

iii In clause (h), for the words “competent authority”, the words “State Government on the recommendation of the competent authority” shall be inserted;

function as local authority by the Government.]

iv for clause (l), the following clause shall be substituted, namely:- “(l) “ juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.v clause (m) shall be omitted

- Omission of certain expressions – Throughout the principal Act the words “local authority”, “or local authority” and “or the local authority”, wherever, they occur, shall be omitted.

- Section 4(1) Notwithstanding anythingthe State Government may, [by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification,] one or more..... under this Act.

- Amendment of Section 4 – In section 4 of the principal Act, in sub-section (1), for the words “ by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification”, the words “within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district” shall be substituted.

- Section 6(1) Where a Board has been constituted for any district [or a group of districts,] such

- Amendment of Section 6 – In section 6 of the principal Act, in sub-section (1), the words ‘or a group of districts’ shall be omitted.

(1) Whenever a claim of juvenility is raised before any Court or any Court is of the opinion that the accused person was a juvenile on the date the offence was committed, the Court shall make an inquiry, take evidence that may be required (but not an affidavit) so as to determine the age of such a person, and shall record the finding whether the person is a juvenile or child or not, stating his age as nearly as may be: If a claim of juvenility is raised before any Court, it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined as per the provisions contained in this Act and the rules made in this respect, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing an appropriate order, and the sentence, if any, passed by a Court shall be considered to have no effect.”

- Section 10

(1) [As soon as a juvenile in conflict with law is taken in custody by the police, he shall be placed in the charge of the special juvenile police unit or the designated police officer who will immediately report the case to a member of the Board.]

- Section 12

- Amendment of Section 10 – In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:

“(1) As soon as a juvenile in conflict with law is apprehended by the police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce him before the Board, within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile is apprehended to the Board:In no case shall a juvenile in conflict with law be placed in a police lockup or lodged in a jail.”

- Amendment of Section 12 – In section 12 of the principal Act, in sub-section (1), after the words “with or without surety”, the words “or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person” shall be inserted.

- Section 14
- Amendment of Section 14 – Section 14 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following subsection shall be inserted, namely:-“(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the number of pending cases of the Board every six months, and shall direct the Board to increase the frequency of its sittings or may constitute additional Boards.”
- Section 15 Sub-section (1), clause (g) – [Order the juvenile to be sent to a special home till he / she completes his / her eighteenth year of age. In case the juvenile is over seventeen years but less than eighteen, he should be kept in the special home for at least two years.]
- Amendment of Section 15 - In section 15 of the principal Act, in sub-section (1), for clause (g) the following clause shall be substituted, namely:-
(g) make an order directing the juvenile to be sent to a special home for a period of three years: The Board may reduce the period of stay to such period as it thinks fit, if it is satisfied, that, with regard to the nature of the offence and the circumstances of the case, it is appropriate to do so and record reasons for the same.

- Section 16

i (1) No juvenile in conflict with law shall be sentenced to death [or life imprisonment,] or imprisoned for not paying a fine or surety.

ii (2) [Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.]

- 14. Section 20

- Amendment of Section 16 - In section 16 of the Principal Act –

(i) in sub-section (1), for the words “or life imprisonment”, the words “or imprisonment for any term which may extend to imprisonment for life” shall be substituted;

(ii) in sub-section (2), for the proviso, the following proviso shall be substituted, namely:-“ Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under section 15 of this Act.”

- 14. Amendment of Section 20 - In section 20 of the principal Act, the following proviso and Explanation shall be inserted, namely:-“Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass an appropriate order in the interest of such a juvenile. Explanation – In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of

clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act also the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

- 15. Section 21 – [Prohibition of publication, etc., of juvenile involved in any proceeding under the Act. The Act prohibits any report in any newspaper, magazine, news-sheet or visual media disclosing the name, address, school or any other particulars regarding a juvenile in conflict with law that will lead to his identification, nor shall any picture of the juvenile be published. If the authority holding the inquiry is of the opinion that such disclosure is in the interest of the juvenile, then reasons for this have to be recorded in writing. Any person disregarding this provision shall be fined upto Rs 1000/-.]

- 15. Substitution of new section for Section 21 – For section 21 of the Principal Act, the following section shall be substituted, namely:- “21.Prohibition of publication of name, etc., of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act.(5) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars that could lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published: For reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion

- 16. Section 29 Sub-section (1) The State Government may, [by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification,] one or more..... under this Act.

- 17. Section 32

(a) Sub-section (1) clause (iv) - Any social worker or public-spirited citizen [authorized by the State Government.]

(b) Sub-section (2) – The State Government may make rules... of making the report [to the police] and the Committee pending the inquiry.

such disclosure is in the interest of the juvenile or the child.(6)Any person who goes against the provisions of sub-section (1) shall be liable to a penalty, which may extend to twenty-five thousand rupees.

- 16. Amendment of Section 29 – In section 29 of the Principal Act, in sub-section (1), for the words “by notification in Official Gazette, constitute for every district or a group of districts specified in the notification”, the words “within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district” shall be substituted.

- 17. Amendment of Section 32 – In section 32 of the Principal Act,-

(a) In sub-section (1),-(i) in clause (iv), the words “authorized by the State Government” shall be omitted(ii) the following proviso shall be inserted at the end, namely:-
“Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four

hours excluding the time necessary for the journey.”

following proviso shall be inserted at the end, namely:-“Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.”

(b) In sub-section (2), the words “to the police and” shall be omitted.

- Section 33 (a) Sub-section (1) – On receipt of a report the Committee [or any police officer or special juvenile police unit or the designated police officer] shall hold an inquiryor child welfare officer.

(b) Sub-section (3) – [After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children’s home or shelter home till suitable rehabilitation is found for him / her or till he attains the age of eighteen years.”]

- Amendment of Section 33 – In section 33 of the Principal Act,-(a) In sub-section (1), the words “or any police officer or special juvenile police unit or the designated police officer’ shall be omitted; (b) for sub-section (3), the following sub-sections shall be substituted:- “(3) The State Government shall review the number of pending cases of the Committee every six months, and shall direct the Committee to increase the frequency of its sittings or may constitute additional Committees.” “(4) After the completion of the inquiry, if the Committee is of the

- g)parents;
- h) adopted parents;
- i) foster parents;]

■ Section 41

(i) Sub-section (2) – [Adoption shall to be resorted to for the rehabilitation of orphaned, abandoned, neglected and abused children through institutional and non-institutional methods.]

Sub-section (3) – [In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, the Board shall be empowered to give children in adoption and carry out investigations that are required for giving children in adoption.]

Sub-section (4) – [The children’s homes or the institutions for orphans run by the State Government will be recognized as adoption

shall be substituted, namely:
“Explanation – For the purposes of this section “restoration of and protection of a child” means restoration to –

- j) parents;
- k) adopted parents;
- l) foster parents;
- m) guardian;
- n) fit person;
- o) fit institution.”

■ Amendment of Section 41 - In section 41 of the principal Act, - (i) for sub-sections (2), (3) and (4), the following sub-sections shall be substituted, namely:

(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanisms as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a Court after it is satisfied that investigations have been carried out, as are required for giving such

agencies both for inquiry and placement of such children for adoption in accordance with State Government guidelines for adoption.]

(ii) Sub-section (6) – [The Board may allow a child to be given in adoption-

(d) to a single parent, and

(e) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters.]

children in adoption.

(4) The State Government shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption agencies in the manner prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3):

Provided that the children's homes and the institutions run by the State Government or a voluntary organization for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3)."

(ii) For sub-section (6), the following sub-section shall be substituted namely:-“(6) The Court may allow a child to be given in adoption-

(a) to a person irrespective of marital status; or

(b) to parents to adopt a child of same sex irrespective of the number of living

- Section 57 - Transfer between children's homes, under the Act, and juvenile homes of like nature in different parts of India. [The State Government or local authority can order the transfer of a child or juvenile from any children's or special home outside the State to any other similar home or institution after informing the local Committee or Board.]

- Amendment of Section 59 Sub-section (2) - The competent authority may also permit the juvenile or child to go on leave under supervision [for maximum seven days], excluding the time taken for traveling, for special occasions like

biological sons or daughters; or
(c) to childless couples.”

- Substitution of new section for Section 57 – For section 57 of the principal Act,, the following section shall be substituted, namely:-“57. Transfer between children's homes under the Act, and juvenile homes of like nature in different parts of India. The State Government may direct any child or juvenile to be transferred from any children's home or special home within the State to any other children's home, special home or similar institution or to such institutions outside the State in consultation with the concerned State Government and with prior intimation to the Committee or Board, as the case may be, and such an order shall be considered to be operative for the competent authority of the area to which the child or the juvenile is sent.”

- Amendment of Section 59 - In section 59 of the principal Act, in sub-section (2), for the words “for maximum seven days”, the words “for a period generally not exceeding seven days” shall be substituted.

examinations, family wedding, death of a relative, accident or serious illness of a parent or any other emergency.

■ Section 62

- Insertion of new Section 62A – After section 62 of the principal Act, the following section shall be inserted, namely:

“62A. Constitution of Child protection Unit responsible for implementation of the Act. Every State Government shall constitute a Child Protection Unit for the State and, such Units for every District, consisting of officers and other employees as may be appointed by that Government, to take up matters relating to children in need of care and protection and juveniles in conflict with the law with a view to ensure the implementation of this Act including the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and coordination with various official and non-official agencies concerned.”

- Section 64 – in any area in which this Act is brought into force, the State Government or the local authority [may direct] that a juvenile..... of this Act.

- Amendment of Section 64 - In section 64 of the principal Act,- (i) For the words “may direct”, the words “shall direct” shall be substituted: (ii) The following proviso and explanation shall

be inserted, namely:-“ Provided that the State Government, or as the case may be the Board may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass an appropriate order in the interest of such a juvenile.

Explanation – In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his / her case including the issue of juvenility, shall be deemed to be decided in terms of clause (l) of section 2 and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he / she ceases to be a juvenile on or before such date and accordingly he / she shall be sent to a special home or a fit institution, as the case may be, for the remainder of the period of the sentence. But such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.”

- Section 68

- Amendment of Section 68 - In section 68 of the principal Act,-

(a) In sub-section (1), the following proviso shall be inserted, namely:-“Provided that the Central Government may, frame model rules with respect to all or any of the matters with respect to which the State Government may make rules under this Section, and where any such model rules have been framed with respect to any such matter, they shall apply to the State until the rules with respect to that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.”

(b) In sub-section (2),- “(i) in clause (x) after the words, letter and brackets “sub-section (2)”,the following words, letter and brackets shall be inserted namely:- “and the manner of registration of institutions under sub-section (3)”; (ii) after clause (xii), the following clause shall be inserted, namely:-“(xii-a) rehabilitation mechanism to be resorted to in adoption under sub-section (2), notification of guidelines under sub-section (3) and the manner of recognition of specialized adoption agencies under sub-section (4) of section 41;”

(c) Sub-section (3) shall be renumbered as sub-section (4) thereof, and before sub-section (4) as so renumbered, the following sub-section shall be inserted namely:

(3) Every rule made by the Central Government under this Act shall be laid, as soon as possible after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

As per the ammended JJ Act, “Adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship. [Section 2(aa)]

REHABILITATION AND SOCIAL REINTEGRATION ALTERNATIVES (ARTICLE 40-45)

The following are the Non-Institutional alternatives provided under this Act:

- Adoption
- Foster care
- Sponsorship
- After care organizations

THINGS TO BE KEPT IN MIND FOR ADOPTION

Adoption (Article 41)

- CWC (at least 2 members) must declare the child legally free for adoption
- Two months reconsideration period must be over for surrendered children
- Child’s consent is necessary where a child can understand and express himself

AMENDMENT OF SECTION 41 - In section 41 of the principal Act, -

- For sub-sections (2), (3) and (4), the following sub-sections shall be substituted, namely:

(2) Adoption shall be resorted to for the rehabilitation of children who are orphan, abandoned or surrendered through such mechanisms as may be prescribed.

(7) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and

notified by the Central Government, children may be given in adoption by a Court after it is satisfied that investigations have been carried out, as are required for giving such children in adoption.

(8) The State Government shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption agencies in the manner prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3):

Provided that the children's homes and the institutions run by the State Government or a voluntary organization for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3)."

- For sub-section (6), the following sub-section shall be substituted namely:-

“(6) The Court may allow a child to be given in adoption-

- To a person irrespective of marital status; or
- To parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or
- To childless couples.”

ROLE OF THE CWC IN DECLARING THE CHILD LEGALLY FREE FOR ADOPTION

If a child is found abandoned / destitute, then the procedure of going through the Child Welfare Committee / the District Collector (in the absence of the Child Welfare Committee) will have to be followed, before declaring the child legally free for adoption.

PROCEDURES TO BE FOLLOWED FOR AN ABANDONED CHILD

In case of orphaned and abandoned children the following procedures shall apply:

- a) Specialised Adoption Agencies shall produce all orphaned and abandoned children who are to be declared legally free for adoption before the committee within twenty-four hours of receiving such children, excluding the time taken for journey;

b) A child becomes eligible for adoption when the committee has completed its inquiry and declares the child legally free for adoption.

c) Such declaration shall be made in the prescribed form.

d) A child must be produced before the Committee at the time of declaring such a child legally free for adoption.

e) Whenever intimation is received by police about an abandoned infant, the police shall take charge of the infant and arrange to provide immediate medical assistance and care.

f) Subsequently the child shall be placed in a specialised adoption agency or recognised and certified children's home or in a pediatric unit of Government hospital followed by production of the child before the Committee within twenty-four hours.

g) Procedure for declaring a child abandoned and certifying him / her legally free for adoption:

- In case of an abandoned child, the recognised agency shall within twenty-four hours, report and produce the child

before the Committee with the copy of the report filed with the police station in whose jurisdiction the child was found abandoned.

- The Committee will institute the inquiry, which shall include a thorough inquiry conducted by the Probation Officer or Child Welfare Officer, as the case may be and who shall give report in Form XIII to the Committee containing the findings within one month.
- There shall be a declaration by the specialised adoption agency, stating that there has been no claimant for the child even after making notification in at least one leading national newspaper or one regional language newspaper for children below two years of age and for children above two years. An additional television or radio announcement and notification to the missing persons squad or bureau shall be made.
- The steps stated in (iii) shall be taken within a period of sixty days from the time when the child is found. In case of a child below two years of age and in case of children above two years of age, this period shall be four months.

- The period of notification shall run concurrently with the inquiry to be conducted and report submitted under clause (ii) of this sub rule.
- The Committee shall declare the child legally free for adoption on completion of the process of inquiry, including declaration of the specialised adoption agency made under clauses (ii) and (iii) of this sub rule.
- No child above seven years who can understand and express his / her opinion shall be declared free for adoption without his / her consent.

Where there is no CWC functioning, the District Collector shall be empowered to issue the Certificate of Abandonment and the same procedure, as mentioned above, is applicable.

PROCEDURES FOR SURRENDER OF A CHILD FOR ADOPTION

The surrender / relinquishment of a child can be done only by the biological / birth parents of the child. In case of an unwed mother, i.e. where the child is born out of wedlock, the mother is considered the sole legal guardian of the child hence she can sign the Document of Surrender (DOS). If the mother is married, then the DOS has to be executed by both parents. In the event of death of one of the parents, or divorce, the death certificate or divorce decree needs to be produced as proof. In the event, that this is not available, or if the mother is separated / abandoned by the putative father of the child, then the procedure for an “abandoned child” with the CWC needs to be followed. The DOS cannot be executed by any relative / guardian of the child. In such cases, the CWC procedures for an abandoned child are to be followed.

SURRENDER OF A CHILD BY THE BIRTH / BIOLOGICAL PARENT/S

In case of surrendered children the following procedure shall apply.

- a) A surrendered child is one who had been declared as such after due process of enquiry

by the committee and in order to be declared legally free for adoption. A 'surrendered' child shall be any of the following:

- Born as consequence of non-consensual relationship;
- Born of an unwed mother or out of wedlock;
- A child in whose case one of the biological parents is dead and the living parent is incapacitated to take care;
- A child where the parents or guardians are compelled to relinquish him / her due to physical, emotional and social factors beyond their control.

b) Various efforts shall be made by the committee for counselling the parents, explaining the consequences of adoption and exploring the possibilities of parents retaining the child and if, the parents are unwilling to retain, then, such children shall be kept initially in foster care or arrangements for their sponsorship will be made.

c) If the surrender is inevitable, a deed of surrender shall be executed on a non judicial stamp paper in the presence of the committee.

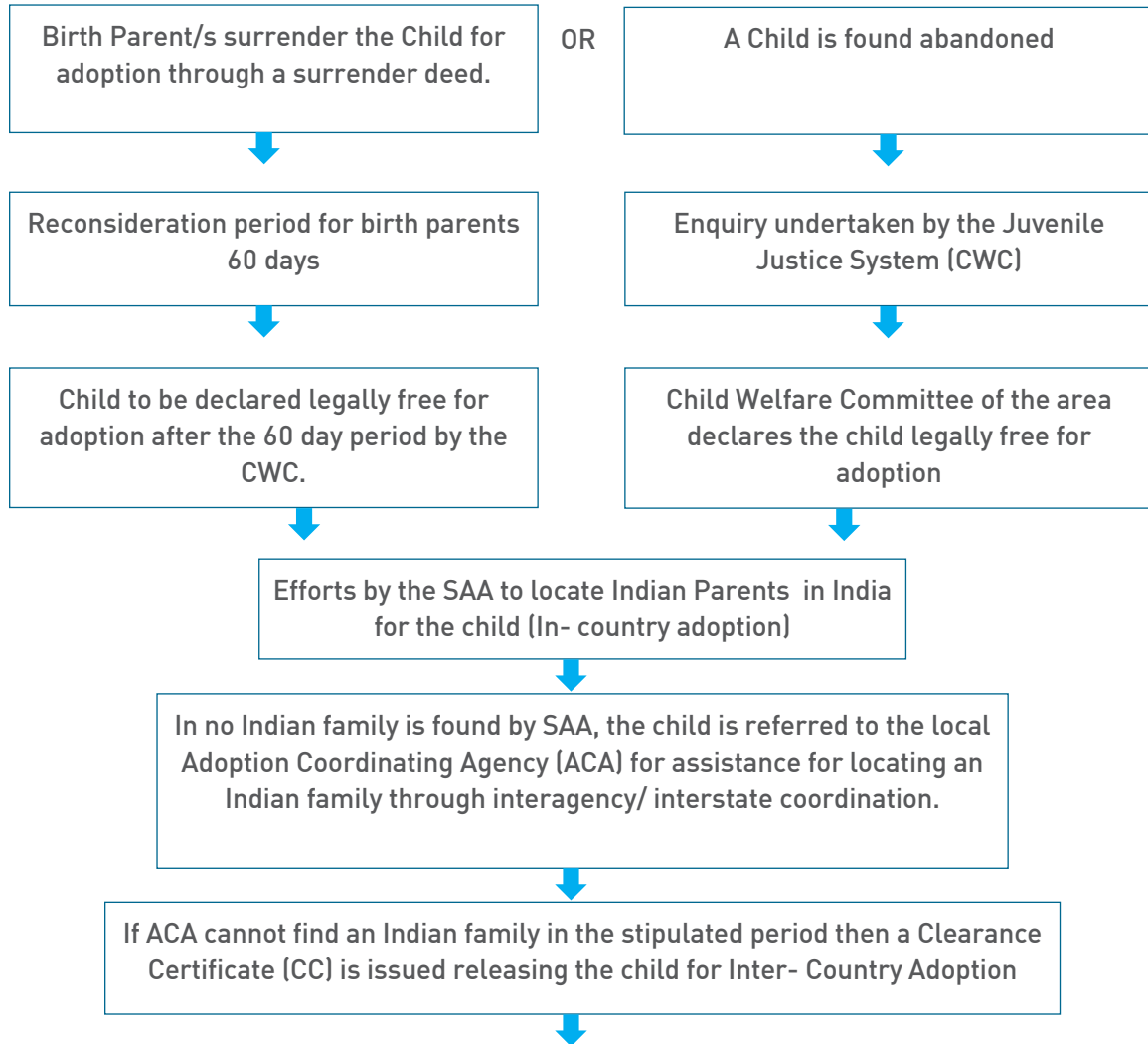
d) The adoption agencies shall wait for completion of two months reconsideration time given to the biological parent or parents after surrender.

e) In case of a child surrendered by his biological parent or parents, the document of surrender shall be executed by the parent or parents before the committee.

f) After due inquiry , the committee shall declare the surrendered child legally free for adoption as the case may be after a sixty days' reconsideration period as per Central Adoption Resource Agency guidelines.

For the purpose of section 41 of the Act, 'court' implies a civil court, which has jurisdiction in matters of adoption and gaurdianship and may include the court of the district judge, family courts and city civil court.

THE ADOPTION SEQUENCE IN INDIA



The Recognized Indian Placement Agency can refer a child to the Enlisted Foreign Adoption Agency for a suitable family (with the child study report and medical report) (Priority in referral as per CARA guidelines)



When the family accepts the child, the adoption Dossier and acceptance paper are sent back to the Indian Agency for processing



The SAA sends one set to CARA for a No Objection Certificate (NOC)



When the NOC is received, the case is filed in the court for legal guardianship / Adoption



The case is scrutinized by a Scrutiny Agency, on behalf of the court to ensure that the Child is legally free for adoption, that the parent's documents are in order and that the placement is in the best interest of the child



Adoption/ guardianship order granted by the court



All documents authenticated and sent to foreign agency/ adoptive parents

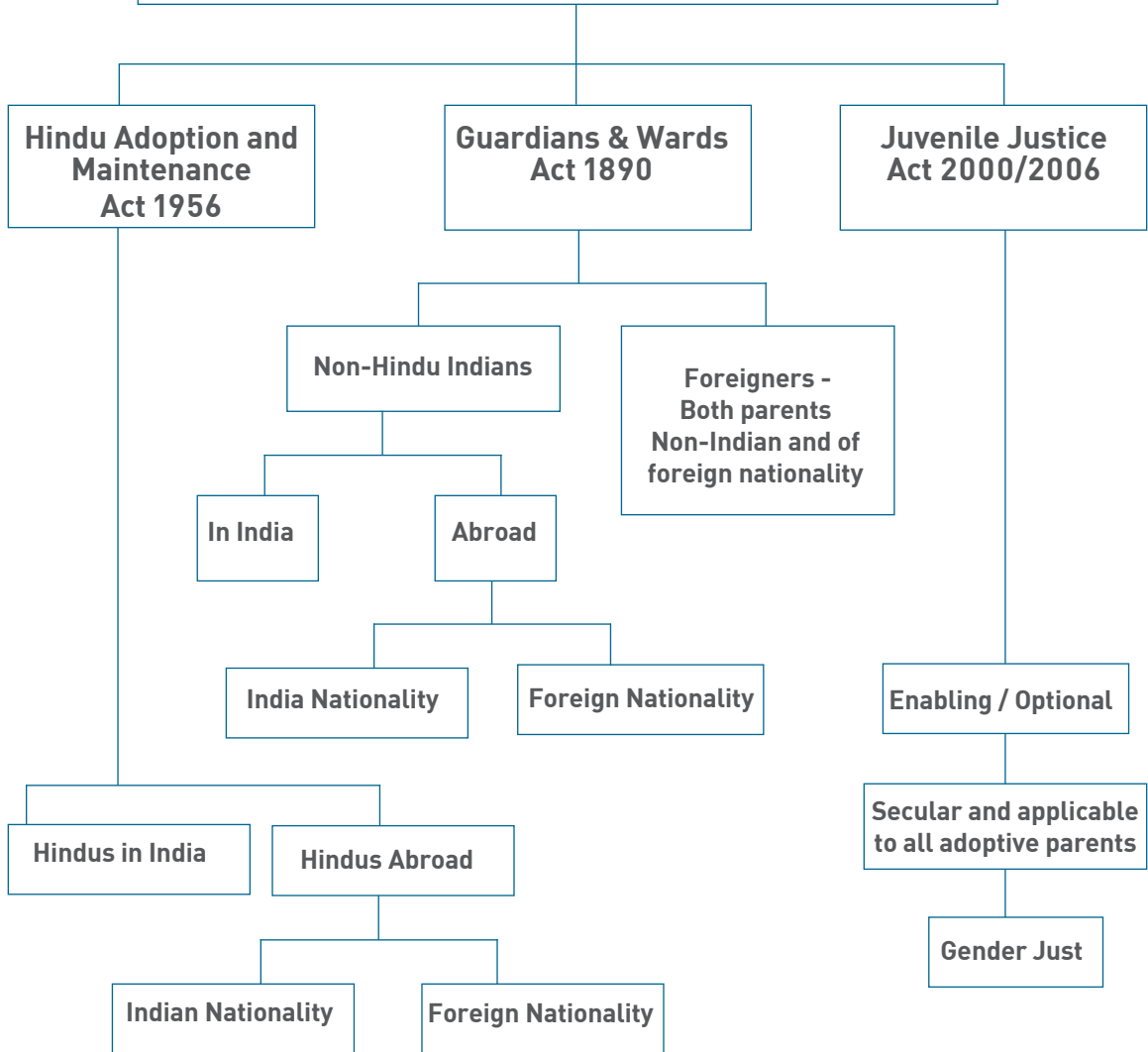


Application filed for passport and then visa/ entry permit for the child

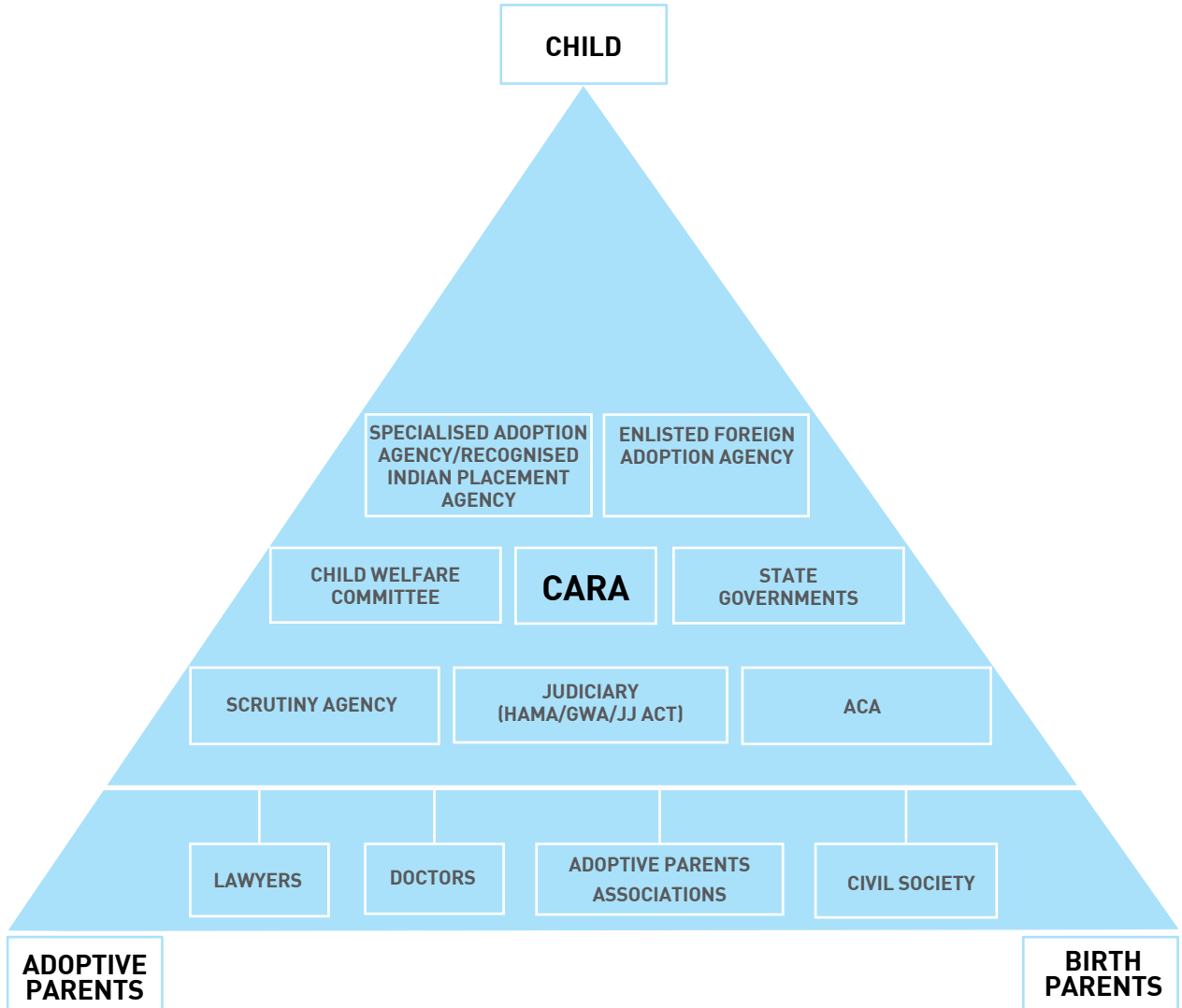


Child ready for travel with the adoptive parents

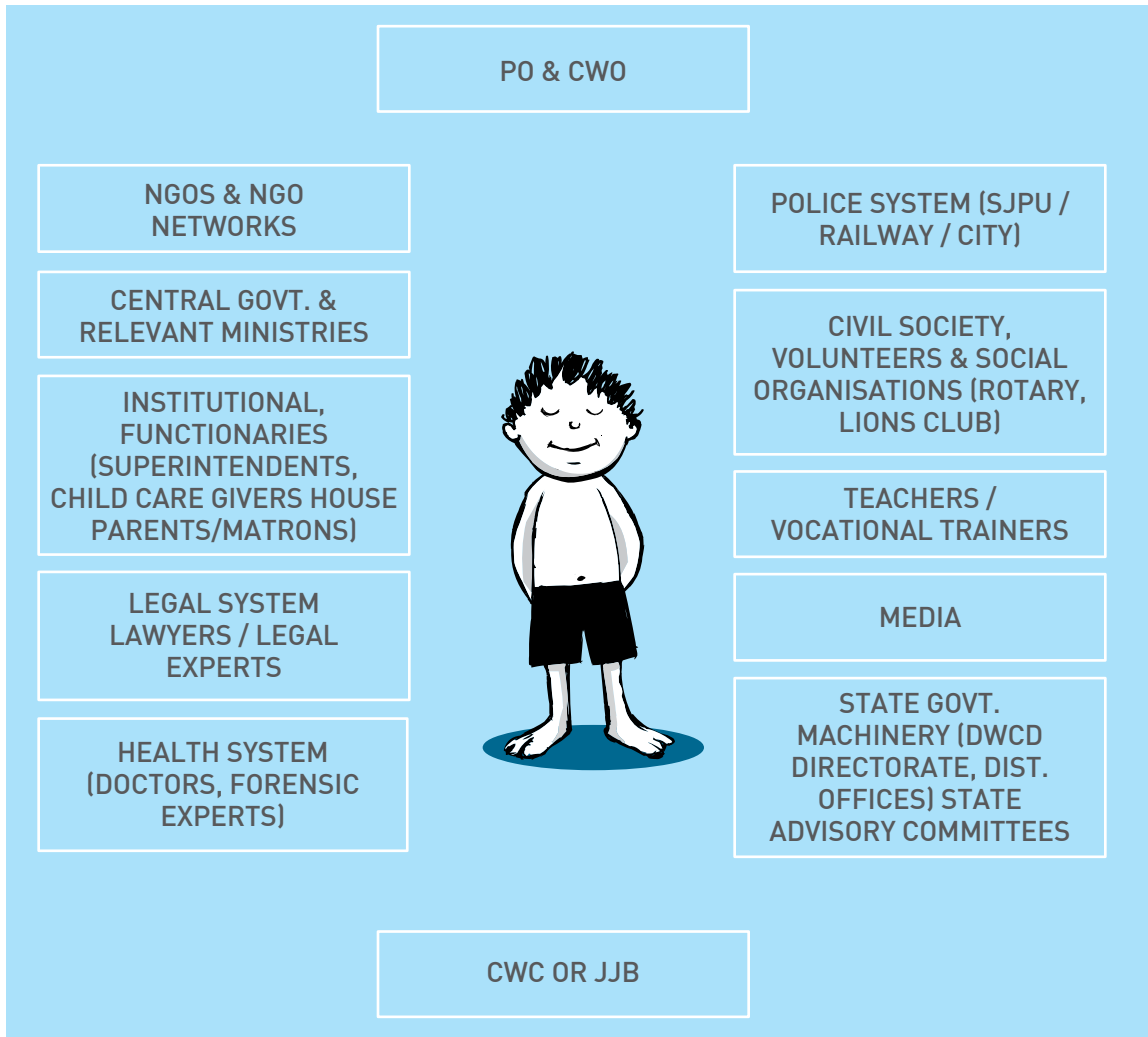
ADOPTION OF CHILDREN - THREE LEGISLATIONS



KEY PARTNERS IN THE ADOPTION PROCESS



ROLE OF JJ FUNCTIONARIES AND ALLIED SYSTEMS



ROLE OF JJ FUNCTIONARIES AND ALLIED SYSTEMS

This chapter deals with the roles & responsibilities of the different committees, agencies, organizations & individuals involved in the protection of children under the Juvenile Justice System.

An inter-disciplinary approach with collaboration and partnership between all the JJ functionaries and allied systems is the most critical aspect of interventions in the Juvenile Justice System.

Each one has an important role and responsibility and they need to function with a single goal of working for 'The Best Interest of the Child, and in a Child Friendly Environment'.

CHILD WELFARE COMMITTEE & JUVENILE JUSTICE BOARD

Departments/persons involved –

CWC – for children in need of care & protection (CNCP).

JJB – for Juvenile in conflict with law (JCL)

Responsibilities –

- Care, Protection, Rehabilitation and Development of CNCP & JCL

PROBATION OFFICERS/ CHILD WELFARE OFFICERS/ SOCIAL WORKERS

Responsibilities – Assist the CWCs & JJBs in:

- In intake
- History taking
- Conducting enquiries
- Preparing reports
- Home visits
- Individual and group counseling

INSTITUTIONAL FUNCTIONARIES (SUPER-INTENDENTS, CHILD CARE GIVERS, HOUSE PARENTS)

Departments/persons involved –

Superintendents, Child Care Givers, House Parents

Responsibilities –

- Provide care, protection and rehabilitation of children admitted to the residential institutions
- They are the ones who live with the children 24x7 and hence have a major responsibility. They have to provide an environment in the institution which is “Child Centered and Child Friendly”, accompanied by a sensitive and nurturing attitude towards the children
- Harsh, negative, punitive approach is detrimental to the child’s development and rehabilitation. At the same time the challenge is to maintain a certain discipline and system within the organization.

Ongoing seminars, workshops and sensitization trainings, need to be ensured, because it is a critical component of attitudinal change in the staff.

TEACHERS AND VOCATIONAL TRAINERS

Responsibilities –

- Provide education - formal and / or non-formal

- Vocational training in various job oriented courses so that they are empowered to support themselves when they leave the institution
- Teaching of “Life Skills” and Vocational Skills”

POLICE SYSTEM

Even though there is a constant effort to ‘decriminalise’ the Juvenile Justice System and view the child as a ‘victim’ of a social system created by adults - the role of the police is very crucial.

Departments/persons involved –

City Police, Railway Police, Special Juvenile Police Unit (JAPU), designated child welfare police officers

Responsibilities –

- Assist the CWCs and JJBs at various levels
- Their role is to produce the child before the CWC/JJB
- Give a report on the case
- Conduct enquiries
- Escort children for tracing and repatriation

- Hospitals for medical investigations and age verification
- Record evidences and give the final NOC and recommendations in cases

Once again a “Child Friendly” police system need to be ensured through on going sensitivity trainings.

HEALTH SYSTEM

Departments/persons involved –

Government, Municipal and Police Hospitals, Forensic Experts, Doctors and Psychiatrists

Responsibilities –

- Provide regular medical examinations and care to children in the residential institutions.
- Age verification
- Gynecological examination and forensic testing, in case of rape/ sexual abuse
- Medical treatment in case of accidents and physical injuries
- Psychiatric treatment for emotional trauma and psychological problems and
- Long term treatment in case of children with mental illness

LEGAL SYSTEM

The CWCs and JJBs are part of a larger legal system and often the assistance of the higher courts is required in cases of abuse against children.

Departments/persons involved –

Judges, lawyers

Responsibilities –

- Lawyers can be appointed as amis curis of the court
- Legal aid to victim
- Legal guidance in complex matters to the CWC
- Recommend amendments to existing legislation to ensure its effective implementation.

STATE GOVERNMENT MACHINERY

Departments/persons involved –

The state machinery comprising of

- State Governments or policy level
- Department of Women and Child Development – at policy level
- Directorate, the District Offices and Probation Officers - at grass root level

Responsibilities –

- All issues related to the Juvenile Justice System
- Macro to micro interventions
- Networking
- Policy development and
- Implementation of laws

CENTRAL GOVERNMENT AND RELEVANT MINISTRIES

Departments/persons involved –

Ministry for Women & Child Development, Ministry of Labour, Ministry of Social Justice & Empowerment and Ministry of Law

Responsibilities –

Macro level interventions like

- Child Protection Policies for Children,
- National Plan of Action
- National Commission for Protection of Child Rights
- Enactment of various Child Protection Bills and Laws and
- National Schemes for Child Protection

MEDIA

Departments/persons involved –

Print & electronic media

Responsibilities –

- Creating awareness
- Reporting cases of child abuse and exploitation
- Molding public opinion on sensitive issues and
- Working towards the protection and promotion of child rights

Sensitivity’ and not ‘sensationalisation’ is the most important responsibility of the media.

CIVIL SOCIETY

The mobilization of the entire civil society is necessary to protect the rights of vulnerable children. Only when society gets sensitized and become aware of the issues of children and recognize that they are the future of the nation, will there be significant contribution towards the promotion of Child Rights.

Departments/persons involved –

Social organizations, Volunteers and Concerned Citizens

Responsibilities –

- Being aware of child rights
- Prevent child abuse within own premises (either home/establishment)
- Take an injured child to the hospital
- Help a child in distress either by reporting to police /CHILDLINE (1098)

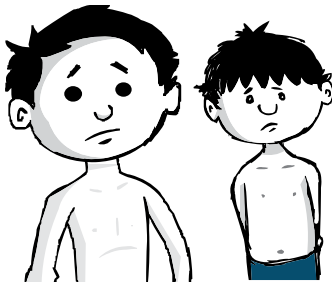
Government and NGO partnerships are very important for the Best Interest of the Child. The concept of Collaboration and Co-Management involves the sharing of functions, when the primary responsibility is of the government, but support can be elicited from and provided by NGOs.

This section looks at case studies & the issues and interventions in the context of the problem.

The first two cases of (1) Child Labour and (2) Child Abuse in an Institution, give details and guidelines about what needs to be done. Based on these case studies, similar intervention can be kept in mind when dealing with other vulnerable groups.

SEXUAL ABUSE IN CHILD CARE INSTITUTIONS

Institutional abuse of children in child care institutions needs to be addressed very seriously since the children are meant to be in 'safe custody' of the state and it would be really ironical and very disturbing – if instead of protection they faced abuse.



Ranjit & Aslam are 10 and 12 year old boys residing in a children's home for boys. The caretaker of the institution used to regularly abuse them sexually and threaten the children with dire consequences if they told any one.... the children were too frightened to speak and tell anyone..... they ran away from the institution and were brought before the CWC by the police.

Rights Of Children That Have Been Violated:

UN CRC

Art 34 - Protection against all forms of sexual exploitation and abuse:

State parties undertake to protect all forms of sexual exploitation and sexual abuse. For this purpose State parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- The inducement or coercion of a child to engage in any unlawful sexual activity.
- The exploitative use of children in

prostitution or other unlawful sexual practices.

- The exploitative use of children in pornographic performances and materials.

INDIAN CONSTITUTION:

The State has a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected through:

- Clause (3) of Art 15
- Clauses (e)(f) of Art 39
- Art 45 and
- Art 47

INTERVENTION

ACTION / PROCEDURE TO BE FOLLOWED BY CWC/JJB IN CASE OF CUSTODIAL ABUSE IN CHILD CARE INSTITUTIONS:

If there is an incidence of abuse in a residential care institution, it is a case of exploitation against a child in custody and it is a cognizable offence.

In the events of custodial rape or sexual abuse, the action to be taken shall be as follows:

- In case any resident makes any complaint, or occurrence of such nature come to the knowledge or the officer in-charge, a report shall be placed before the CWC who in turn shall order for special investigation.
- The CWC shall direct the local police station to register case against the person found guilty under the relevant provisions of the IPC, 1860 (45 of 1860)
- The special juvenile police unit shall also take due cognizance of such occurrences and conduct necessary investigations.

PROCEDURES TO BE FOLLOWED WHEN THE CHILD IS PRODUCED BEFORE THE COMMITTEE:

If the committee on the basis of the report of medical officer or probation officers or social worker or officer-in-charge concludes that the child is abused, then the committee shall issue summons to the concerned persons to be present on the dates specified in that behalf.

If the committee on an inquiry arrives at a conclusion or if they found any prima facie evidence, which confirms that the child was abused physically or sexually, then they shall

send the report to the State Advisory Board, the Directorate & Department Of Women & Child Development for suitable action.

In case of abuses, the child shall be sent for trauma counselling.

DUTIES OF THE OFFICER-IN-CHARGE

The superintendent shall be responsible for the following:

- To provide homely atmosphere of love, affection, care, development and welfare of juveniles/children and ensure and safeguard the rights of the child or juveniles in all possible manner within the frame of rules and regulations.

ROLE OF THE POLICE

The police shall strictly adhere to the guidelines of the Supreme Court of India and High Court while dealing with the juvenile/child.

The police shall also ensure that the provisions of the Convention of the Rights of the Child have been strictly adhered to and all actions are initiated in the best interest of the child.

OTHER STEPS TO BE FOLLOWED (RECOMMENDED THROUGH PRACTICE) :

Write to the following people:

- District Women and Child Development office or the concerned office
- Directorate or Commissionerate, Department of Women and Child Development or the concerned department
- Secretary, Department of Women and Child Development or the office concerned
- Board of Control (OCH Act 1960)
- Inspection Committees
- State Advisory Board (JJ Act 2006)
- State Women's Commission (in case of a girl's institution)
- Chief Secretary
- State Human Rights Commission
- High Court appointed Monitoring Committee
- National/State Commission for Protection of Child rights

Local follow-up by NGOs/Persons involved in the case:

- With the police station where the complaint has been lodged
- With the CWC
- With the institution and children in the institution
- With the local community and community groups for building pressure if need be
- With the local press and regional press/ if need be state/national press
- With other institutions and members of QIC & AC network wherever available

ARTICLES / SECTIONS THAT CAN BE APPLIED AGAINST THE PERPETRATORS:

SEC 23, JJ ACT 2000: PUNISHMENT FOR CRUELTY TO JUVENILE/CHILD

Whoever having the actual charge of or control over a juvenile or the child assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical

suffering shall be punishable with imprisonment for a term which may extend to six months or fine or with both.

SEC 27, JJ ACT 2000: SPECIAL OFFENCES

The offences punishable under section 23, 24, 25, 26 shall be cognisable.

SEC 28, JJ ACT 2000: ALTERNATIVE PUNISHMENT

Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such act as provides for punishment which is greater in degree.

IMPORTANT POINTS TO BE KEPT IN MIND:

- That a complaint of molestation/rape as the case may be has been lodged
- That all procedures have been systematically followed
- That the accused should not be left on bail
- That the children abused need to be talked to and discuss about the issue

- That the staff in the institution is involved in the process
- That the management of the institution is questioned and that the license of the institution is cancelled as per the investigations
- That there are no male superintendents in girls' institutions
- That local pressure is built upon the institution
- That the abused children's identity is not disclosed
- And that all actions taken in the best interest of the child

Make every case of abuse a case for advocacy. Document all possible details about the case and the institution. Correspond with the concerned officials and keep all the records. Make a detailed case file. But do not sensationalize the issue.

CHILD LABOUR

“Every child below 14 years, who is out of school is a potential child labourer /worker”, is considered to be a working definition of child labour. Children work under very serious and hazardous conditions, detrimental to their growth. We must ensure that every child below 14 years is rescued from an abusive, exploitative situation, is suitably rehabilitated and brought within the fold of the education system.



Ashfaq is a 13 years old... 'young ' boy... working 14-16 hours a day in a Zari factory. He is belted, beaten, burnt, hit, kicked brutally and is subjected to the worst kind of physical abuse that is ever conceivable... he is one of the hundred children rescued in a “child labour” raid and rescue operation by an NGO...

INTERVENTION BY THE CWC

- When the children are rescued from the “Child Labour” situation they are brought by the concerned police station to the nearest designated Children’s Home, of the State Government for safe custody of the children.
- The children are met by the CWC at the first sitting after the rescue operation and admitted to the Children’s Home.
- When admitted the children are met by the Superintendent and the Probation Officer as part of the ‘ Reception Unit’ work and given an orientation to their stay in the institution. This is a very important aspect of the “Child friendly” approach at intake.
- The CWC meets with the child and listens to the history of the child, family background & circumstances under which he came to the working situation, work conditions, the treatment by the employer. A lot of emotional support and sensitivity is required to make the child feel comfortable and reassured.
- The CWC does an “endorsement” of the “Intake” and gives appropriate instructions to the police dept., the social workers/ Child Welfare workers

or Probation Officers on action to be taken.

- A complete medical check up is to be done, the age verification of all the children have to be done immediately
- The Probation Officer makes his own enquiry through individual and group counselling situations, sends a letter to the family of child, and presents the enquiry report to the CWC.
- The CWC keeps a hearing for the children preferable every week/ two weeks, and writes an endorsement of what happens at each meeting.
- Once all procedures and enquiry is completed a final order is passed by the CWC on the future rehabilitation plan for the child.

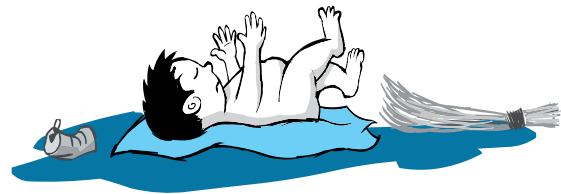
A REHABILITATION PLAN FOR THE CHILD INVOLVES:

- The NGO’s working in child labour to assist in preparing reports, interviewing & counselling the child. Only in some cases where the police may need assistance for the same, escorting and repatriating the child to his home state.

- The SJPU-Special Juvenile Police Unit and the concerned police assist in escorting the child for medicals and repatriations. They play a critical role in insuring that the right sections of IPC, CLA, JJ Act and other relevant Acts are applied properly for the prosecution of the employers.
- The Labour Dept / Commissioner for Child Labour is a very critical link in this process and he prepares all the reports and documents that will enable the child to get compensation at the State level.
- Networking with CWC/state government/NGOs in the state where children are sent to ensure that they receive education and proper rehabilitation and keep a follow up.

ABANDONED CHILD

This is the case of an 'abandoned child' where the child has been left by the parent/guardian, as there may have been compelling psycho-socio economic circumstances like unwed motherhood, extreme poverty, desertion, unwanted girl child or acute mental / physical illness.



A new born baby was found wrapped in a plastic bag in a railway compartment of a local train and brought before the CWC by a passenger and accompanied by the railway police

INTERVENTION

- Infants / children between 0-3 years are kept in child care institution (CCI) that have a child care home, a foster care home or specialized adoption Agency (SAA)

- The CWC passes an order for the child to be given in safe custody to any of the recognized child care institutions.
- The Procedures to be followed – Refer: Section on Adoption.
- The enquiry of the CWC is to be completed within a four-month period, in the 'Best Interest of the Child.'

COMMERCIAL SEXUAL EXPLOITATION AND CHILD TRAFFICKING

This is a very typical case of trafficking of minors for Commercial Sexual Exploitation and Abuse. Cross border and interstate trafficking of young girls is a major issue before the CWC, because one has to ensure that the rescued minors do not go back into the same situation and are suitably rehabilitated.



Mangu is 14 years old.....She was brought from her little home town in West Bengal by an 'uncle' with the promise of a job in Mumbai. Mangu was sold at a local brothel.... She was rescued by an NGO working for trafficked minors and sex workers.

INTERVENTION

The intervention needs to be a collaborative effort between all the allied systems working for vulnerable children, and have a multi-pronged approach of Prevention, Rehabilitation and Empowerment.

- Raid, Rescue, Relief & Rehabilitation, Restoration Reintegration into society. (Steps in the process of Rescued Minors).
- NGOs role: To assist the CWC in enquiring, providing shelter and counselling to the rescued minors, provide legal assistance so that one can break the nexus of pimps, brothel keepers and traffickers. To also help in providing vocational training so that the girls are empowered to be self supportive and earn a livelihood.
- The role of the police is also to assist the CWC by providing the FIRs, proper chargesheeting of the brothel keepers and keeping a vigil for prevention of re-trafficking.

Document all possible details about the case. Correspond with the concerned officials and keep all the records. Make a detailed case file. Inform the media for awareness creation and advocacy. But do not sensationalize the issue.

CHALLENGES BEFORE THE CWC

- Ensuring that the minor is brought immediately before the CWC and not kept at the police station after rescue.
- Making sure that the rescued minors are not kept together with the brothel owners in the police station.
- Age verification is done immediately so that minors receive protection in the designated children's institutions and are not subject to further exploitation.
- There is a lot of pressure from pimps / brothel owners to manipulate the age of the trafficked minors to have them declared as majors / adults.
- When there is a major rescue operation, it is important that there is adequate pre-planning to have enough facilities in institutions to keep the rescued minors.
- CWC has to expedite the process of enquiry, home visits, repatriation and work under a lot of time pressures, but at the same time to ensure there is no compromise on the thoroughness of the enquiry.
- CWC has to deal with a lot of indirect / direct pressures and efforts at intimidation from parents, relatives and those involved with the trafficking for immedi-

ate release and restoration of the minor.

- The statements of the minors, police report / evidence recorded before the CWC, the enquiry report of the probation officers and the NGO social workers, home visit reports are all very important aspect of the responsibility of the CWC.
- CWC has to ensure that this process is so thorough and detailed because it would help to ensure that it leads to prosecution and conviction of the Traffickers.
- A very planned rehabilitation process for each minor needs to be prepared to ensure that reintegration and mainstreaming into society takes place and that they may never return to the same situation.
- Passing appropriate orders for follow-up through NGOs / Networks is a major challenge before CWC.
- Finally victim protection at all stages of rescue, age verification, evidence recording of police, identification of trafficker, trial, residential care and repatriation.
- Keeping proper records, documentation, statistics are also important aspects of the CWC work since it would help in

understanding larger issues of prevention and identifying source districts.

- A sensitive, caring, emphatic attitude towards victims of trafficking so that there is no further victimisation of victims.
- All enquiries by all allied systems must be conducted in a “Child Friendly” environment.
- All decisions have to be in the “Best Interest of the Child”.

TRAFFICKING OF MINORS: IMPORTANT ISSUES TO BE ADDRESSED

- Understanding the causative factors that lead to trafficking of minors and preventing this at the source level.
- Effective implementation and enforcement of existing legislations.
- Review of existing laws to ensure that they “protect” the victims rather than further victimise them.
- Punitive action against the perpetrators and not the victims of sexual exploitation
- Check proliferation of gangs operating in child trafficking and book brothel owners, that will lead to prosecution and conviction

- Introduce a more “humane” element in the law and the treatment by the police of the victims of abuse and exploitation
- Better access for the victims of CSE & T to education, health and family support services, through the development of community services for counselling and prevention of child abuse / exploitation
- Mobilise Tourism Industry to work against sex tourism and commercial sexual exploitation of children
- Effective action to prevent and eliminate societal stigmatisation of child victims of CSE & T
- Promote participation of the children so that they can express their views in their own rehabilitation
- Capacity building, skills development and income generation programmes for developing economic independence in women
- Include issues related to CRC and Child Abuse in the curriculum of educational institutions and training colleges
- Better co-ordination and co-operation between all the allied systems that are involved in combating trafficking
- Establishing and following a PROTOCOL for PRACTICE so that there is some amount of clarity and uniformity at the implementation level
- NGO and Government partnership with a single focussed goal of prevention, protection and rehabilitation of traf-ficked minors for commercial sexual exploitation
- Evolve an ADVOCACY strategy for creation of awareness in the civil society and a community based rehabilitation plan on the issue of trafficking for sexual exploitation
- Facilitate bilateral agreements within regions to address cross-border trafficking
- Need to have a “Rights Based Approach” in the prevention, protection and rehabilitation of victims of commercial sexual exploitation

The important aspect to keep in mind is that the entire operation is a logical process of arrest and prosecution of these cases leading to the logical conclusion of conviction of traffickers.

STREET CHILDREN

The issue of Street Children is a phenomenon of large urban cities. The children have left home due to poverty, abuse, compelling circumstances i.e. the 'Push' factor and are often attracted to the glamour of city life, the 'Pull' factor. The challenge before us is to provide appropriate care and protection to such children.



Santosh is 16 years and lives on the streets of Mumbai.... He ran away three years ago from his village since he had an alcoholic step father who beat him mercilessly and was often left to starve.....

INTERVENTION

- Under the JJ Act, there is a provision for "Shelter Homes". The best form of alternative is to refer them to these homes which provide a "place of safety" for these children, because they very much value their freedom, earn during the day and would like a protective home as a shelter for the night.
- It is important to provide an opportunity for at least the main education through non-formal education classes and the NOS system or any form of learning, and provide an integrated, holistic Life Skills programme and vocational training that will prepare them for the future
- The NGO run shelter homes are better alternatives to closed residential institutions for rehabilitation of Street Children for they provide the right balance between freedom and protection.
- As per the JJ Act Rules certain norms & criteria have been laid down for the recognition & functioning of "Shelter Homes" & this should be adhered to in the best interest of child.

CHILD DOMESTIC WORKER

The “invisible” child domestic worker’s situation is of real concern because until now it being part of the unorganized sector there was very little enforcement and protection by law. But with the new government regulation dated October 2006, child domestic workers are now included and covered under the Child Labour Act.

It is also important to apply the provisions of the JJ Act for the prevention and protection of the domestic child worker.



Shaku is 15 years old. She was brought by a lady from her village to work as a domestic help, since her own family was too poor to feed their six children. Shaku worked like a slave and suffered the physical abuse of her employer. She had no where to go and no one to complain to. The neighbours heard her screams and one day reported to the police.

INTERVENTION

- When the police/NGOs bring a child before the CWC, who has been rescued, then the child is kept in safe custody in a protective environment.
- Detailed statement of the child needs to be recorded so that the police can take action against the employers.
- Counselling and support services are to be provided at the Children’s Home and with assistance from NGOs who work specially for Domestic Workers.
- After discussing the child’s own wishes, suitable alternative rehabilitation plans have to be worked out with the child’s participation.

POSSIBLE ALTERNATIVES/ BY PRIORITY:

- Restoration and reunion with the child’s own family, if that is the wish of the child, and the family is fit to take care of the child
- Stay at a Children’s Home / Institution till the child reaches the age of 18 years - where they can learn vocational and life skills.

SEXUAL ABUSE OF CHILDREN IN THE FAMILY

Sexual Abuse of children by relatives & in the family environment is quite common but is very difficult to detect since the children are too frightened to report and fear the consequences of their action. Protecting children and at the same time reporting the crime becomes very essential to prevent further abuse. Children need to be empowered with the knowledge of appropriate and inappropriate “touch and behaviour” of relatives, so that they can protect themselves from any abusive situation



Shehnaz is 14 years old. She lived with her mother in a large family of eight siblings, a step father and grandfather. The step-father sexually abused her regularly, and she was too frightened to tell anyone. She was rescued by her neighbour and is now 12 weeks pregnant.

INTERVENTION

- When sexually abused children are brought before the CWC it requires very sensitive and special handling so that the child is able to articulate her emotions, and relate the experience.
- The statement of the child needs to be recorded in great detail before the CWC, since this can be produced in the court of law when required.
- There is need for intervention of a child guidance clinic counsellor and social worker who is experienced in this kind of work, so that the victim receives emotional support.
- The CWC also needs to issue a memo for medical and a gynecological examination at a designated hospital and medical center and these reports can be produced when there is a court hearing. There is a very poor conviction rate of rapists and sexual abusers since there is no sufficient evidence to prove the crime.
- If the minor is pregnant and the pregnancy is not too advanced then on medical advice an MTP can be performed with the consent of the parent / guardian.

- If the pregnancy is too advanced then the girl is sent to an institution for girls where she could be counselled and kept till her delivery.
- When the child is born a DNA test can be done to establish the crime and appropriate legal action can be taken.
- After suitable counselling, if the girl decides to, then she can give up the child for adoption and then be suitably rehabilitated.

CHILD ENGAGED IN SUBSTANCES ABUSE

Children engaged in substances abuse are very vulnerable to adult drug peddlers who get them hooked on to various forms of addictions. The children become extremely dependent on the drugs since it helps them to escape from trauma and become insensitive to pain, hunger or any emotional stress. They become so dependent, that they are unable to leave it , unless treated at special rehabilitation centers.



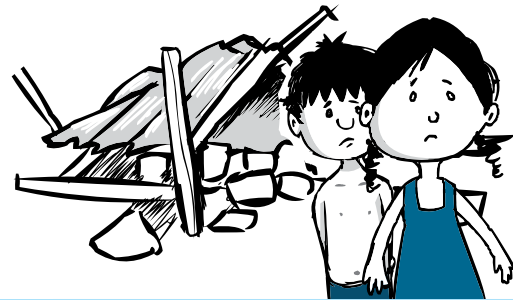
Shantiram is seventeen years old..... He has been living and working on the railway platform, ever since he was twelve years. He lives with a gang of people who drink 'solution', 'sniff' glue and smoke drugs..... He was 'rounded' up one day by the railway police and brought before the CWC.

INTERVENTION

- When children like this are brought before the CWC, the main issue to look at is their de-addiction at rehabilitation centers so that they can be treated appropriately.
- The role of the police is to locate the drug peddlers and abusers, who the children can help identify so that measures are taken for their arrest.
- NGO and Government run de-addiction and rehabilitation centers play an important role in the rehabilitation of such children.
- After they have been treated they can be send for vocational training for self-employment, and life skills programmes to cope with life situations.

CHILDREN AFFECTED BY NATURAL AND MAN-MADE DISASTER SITUATIONS

The major principles underlying the rehabilitation of children affected by natural calamities and man made disasters is that they should not be uprooted from their families, natural surroundings and should be rehabilitated in their own socio cultural milieu. Since they have already faced a trauma, they should not be further traumatized by sending them to an unfamiliar environment.



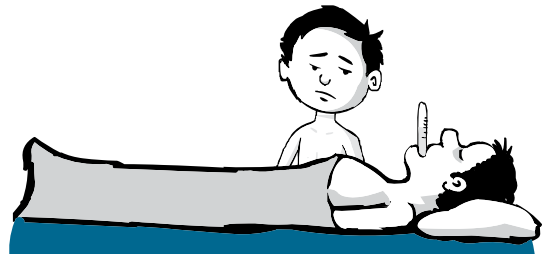
Vasu is a ten years old orphan who lost his entire family in the Tsumani... He is living in the temporary rescue camp set up for the families affected by the disaster.

INTERVENTION

- Children who have been orphaned in a natural disaster are brought before the CWC for finding suitable children's homes/ institutions that can provide them shelter.
- CWC works in partnership with the NGOs to find the appropriate mode of rehabilitation for children - in terms of permanent planning through adoption if it is a completely orphaned child, or long term foster care with relatives who would be willing to take care of the child.
- Long-term institutionalization must be the last mode of rehabilitation, and only if other modes of family based rehabilitation fails.
- Support to families, single parents, guardians in the form of sponsorship assistance should be part of the rehabilitation services.
- Post trauma counseling for coping with death, loss, grief and shock should be an integral component of rehabilitation.

CHILDREN AFFECTED AND INFECTED BY HIV /AIDS

Children affected and infected by HIV /AIDS have become an area of serious concern for social workers. The inadequate and incorrect knowledge about the illness leads to stigmatization of families and children.



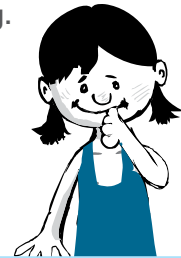
Laxmi, Sunil and Santosh's father died of AIDS. Their mother is also infected with the HIV AIDS virus and admitted in a hospital. The children are school going and need support for their education..... Their grandmother would like to admit them in an institution.

INTERVENTION

- When the CWC is approached for institutionalisation of a child, the first attempt should be to convince the family to take care of the child and explain the importance of a nurturing family environment. Kinship care is the best alternative for such children.
- The NGOs providing non-institutional services can assist the CWC in 'gate keeping' and preventing children getting into institution, through alternative services- like Sponsorship and Foster care.
- Institutionalisation should be the last alternative for children in need of care protection.

MENTAL ILLNESSES

Children are very vulnerable & hence face serious consequences of a traumatic event or any kind of abuse. Mental illnesses in children get precipitated with acute trauma or any environment that is abusive, threatening or emotionally disturbing.



Shraddha is 16 years old and lives in an institution for girls since she has no family.... She is acutely depressive and has attempted suicide several times.... She is diagnosed to be mentally ill.

INTERVENTION

- The challenge before the CWC is to handle the cases of mental illness in children's homes because it is very hard to find nurturing, loving and supportive child care functionaries who could patiently and sensitively handle such children.

- The CWC must ensure referrals and treatment through visiting psychiatrists in the institution or arrange for the child to be sent under police escort for regular therapy in hospitals.
- Facilities for a visiting psychotherapist counselor can also be arranged for the diagnosis & treatment of mental illness in children.
- NGO assistance can be sought for the suitable rehabilitation of such children.

CHILDREN IN CONFLICT WITH LAW

Children in Conflict with Law are child offenders who may have committed small petty crimes like robbery, stealing, pick pocketing, ticketless travel, gang fights on street corners or serious offences like terrorist activities, violent acts, attempted murder or sometimes even murder.



Shakeel is 17 years old... He was brought by the police to the JJB for a “murder” offence. Shakeel’s father was an alcoholic, unemployed and abusive man who used to brutally beat his mother..... One evening when the father was beating his mother, in a fit of anger and in attempt to save her he threw a heavy object on the father who then died.... He is brought by the police to the JJB, as a child in conflict with the law.

INTERVENTION

- The police produce the juvenile in conflict with law before the JJB. The child is interviewed by the magistrate and two social workers who function as a bench and then by the probation/child welfare officer.
- The child can be left off with an admonition or for serious offences be sent to the Observation Home for the period of the trial, or released on bail with the parents, after signing a bond.
- After the trial is complete and the judge feels that the child needs residential care, then he is committed to a Special Home till the age of 18 years.
- The child can also be kept under supervision at home with orders for community service and regular counseling and follow up

LIST OF ABBREVIATIONS

ACA	: Adoption Coordinating Agency	NPA	: National Plan of Action for Children
AIDS	: Acquired Immuno Deficiency Syndrome	PO	: Probation Officer
CARA	: Central Adoption Resource Authority	RIPA	: Recognised Indian Placement Agency
CEDC	: Children in Especially Difficult Circumstances	SAA	: Special Adoption Agency
CLA	: Child Labour Act	SJPU	: Special Juvenile Police Unit
CNCP	: Children in Need of Care and Protection	UN	: United Nations
CRC	: Convention on The Rights of The Child	UNCRC	: United Nations Convention on the Rights of the Child
CSA	: Child Sexual Abuse	UNCF	: United Nations Children’s Fund
CSE	: Commercial Sexual Exploitation		
CWC	: Child Welfare Committee		
CWO	: Child Welfare Officer		
EFAA	: Enlisted Foreign Adoption Agency		
FIR	: First Information Report		
HIV	: Human Immuno Virus		
IPC	: Indian Penal Code		
JCL	: Juveniles In Conflict With Law		
JJA	: Juvenile Justice (Care and Protection of Children) Act, 2000		
JJB	: Juvenile Justice Board		
NGO	: Non Government Organisation		
NOC	: No Objection Certificate		
NOS	: National Open School		

ANNEXURE 1

IMPLEMENTATION OF THE JJ ACT- IMPLEMENTING INDICATORS -

The following is a check-list of implementing indicators at the State level

- Notification of the State Rules
- Appointment, setting up & effective functioning of CWCs and JJBs in all the districts of the State
- Setting up a Children’s Home and Observation Home in every district
- Separation of the Observation Home and Children’s Home
- Setting up of a Reception Unit in every Children’s Home and Observation Home
- Setting up of Special Homes in every district / or group of districts
- Appointment of State Advisory Board and District Advisory Boards
- Appointment of Inspection Committees
- Social auditing of the Children’s Home
- Recognition of Shelter Homes/ Drop-in-Shelters
- Preparing rules for foster care, sponsorship & aftercare programmes
- Establishment / Recognition of After Care Associations
- Evolve systems & procedures for effective linkages between Government, NGOs, Corporate and Civil Society
- Setting up Special Juvenile Police Units
- Appointing in every police station a designated “Child Welfare Officer”
- Creating a “Fund” for the welfare and rehabilitation of the child / juvenile

ANNEXURE 2

TRAINING MODULE FOR JJ SYSTEM FUNCTIONARIES –

The following are some of the suggested topics for JJ training workshop for CWC & JJB members & other JJ functionaries.

CHILD PROTECTION IN INDIA - AN OVERVIEW

- Changing trends / children's policies and programmes
- Welfare, Development to a Rights Based Approach
- Institutional and Non-Institutional Approaches
- Institutional care- Types of institutions/ government & NGOs
- Non- Institutional Services:
 - Adoption
 - Foster care
 - Sponsorship
 - Community Services

CHILDREN IN NEED OF CARE AND PROTECTION: VULNERABLE GROUPS

- Child Abuse /sexual exploitation / trafficking
- Child labour
- Street children
- Orphan, Abandoned, destitute
- Missing / lost and found
- Specially Challenged- Mentally, Physically, Emotionally
- HIV/AIDS affected children
- Orphaned, abandoned and destitute children
- Children engaged in substance abuse
- Children affected by conflicts and disasters
- Children –from families 'At Risk'

CHILD & THE LAW

- Constitutional Provisions
- UN-CRC/ Beijing rules on Juvenile Justice
- Other legislations impacting on children
- JJ Act 2000 / 2006

JUVENILE JUSTICE ACT 2000/2006 - AN OVERVIEW

- Salient features/ comparison of old and new ammended act
- Different sections
- Role powers and functions of JJB/CWC and step by step procedures
- Detailed Analysis of the rules of JJ Act 2006
- Documents required in implementation of JJ Act

ROLE OF THE STATE GOVERNMENT

- Hierarchy and structure of the government departments
- Relevant department- functions and roles
- Various officers- their roles and functions

ROLE AND RESPONSIBILITIES OF VARIOUS CHILD CARE FUNCTIONARIES IN GOVERNMENT INSTITUTIONS

- Superintendent
- House parents
- Care givers
- Social Workers and Counsellors

ROLE OF THE POLICE

- Various police departments/zones- structure and functions.
- Role of SJPU
- FIR, diary copy, NC

ROLE OF NGOS – PARTNERSHIP OF NGOS / CWC/GOVT.

- Areas of collaboration
- Type of services/ assistance that NGOs can provide
- Knowledge of various networks and alliances (QICAC, CHILDLINE, CCVC, FACSE , CACL, NACSET, CACT)

CWC SESSION - ROLE PLAY

- A complete role play of a case, from intake to restoration/ rehabilitation
- Discussion, Evaluation and Assessment of various cases

METHODOLOGY/ PARTICIPATORY APPROACH

- Use of case studies/ role play
- Films & different media
- Sharing of Knowledge/ Development of Attitudes/ Counselling skills/ Experiences
- List of Terminology (Glossary of correct terms)

RELEVANT CRC ARTICLES FOR THE PROTECTION OF RIGHTS OF THE CHILD

TRIBAL CHILD

Articles: 2,3,6,7,8,14,15,16,
17,19,27,30,32,36,37,38,39

RURAL CHILD

Articles: 2,3,6,7,8,14,15,16,
17,19,27,30,32,36,37,39

STREET CHILD

Articles: 2,3,4,10,11,14,
14,16,17,19,20,25,31,32,
35, 36,37,40

FAMILY

Articles: 3,4,5,12,13,14,16,
17,18,19,20,21,26,27,30

GIRL CHILD

Articles: 2,3,6,12,13,14,
15,16,17,19,31,32,35,36,37

CHILD LABOUR

Articles: 2,3,4,11,14,16,15,
17,19,31,32,35,36,37,40

DRUG ABUSE

Articles: 5,9,17,33,40

ENVIRONMENT

Articles: 2,6,17,24,27,28

CHILD ABUSE

Articles: 3,5,9,16,17,19,
25,34,37

EDUCATION

Articles: 3,12,13,17,18,
28,29,30

HEALTH

Articles: 3,17,18,24

URBAN CHILD

Articles: 3,24,15,17

ADOPTION

Articles: 20,21

DIFFERENTLY ABLED

Articles: 2,3,5,6,8,9,14,
15,16,17,19,23,25,31



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SOME IMPORTANT ASPECTS TO REMEMBER WHEN TAKING DECISIONS IN RELATION TO CHILDREN

- The 'Best Interest of the Child' is the guiding principle in all work with children.
- A 'rights oriented' approach is taken in all the decisions and rehabilitation plans for children.
- The child's 'Right to Participation' is respected and the child is consulted while making decision in all matters that impact his / her life.
- All efforts must be made to ensure that the child grows up in his own family and in a nurturing environment.
- Prevention of family breakdown and destitution of children, and strengthening of families 'at risk' through supportive services is therefore the first priority and form of intervention.
- If the child's own family cannot look after the child then other family based, community oriented alternatives should be considered.
- Long term institutional care as a form of rehabilitation (like commitment to an institution till 18 years) should be the very last alternative for a child.
- When handling matter related to Children in Need of Care and Protection and Juveniles in Conflict with Law we have to ensure that all proceedings are conducted in a sensitive and child friendly environment, and with a "Child Centered" approach.