

**GOVERNMENT OF KERALA**

**Abstract**

Social Justice Department- Child Welfare Committee - Standard Operating Procedure - approved - Orders issued.

**SOCIAL JUSTICE (A) DEPARTMENT**

G.O (Rt) No.467/2014/SJD

Dated, Thiruvananthapuram, 31.07.2014.

Read:- Letter No. ICPS 1/17221/14 dated 02.07.2014.

**ORDER**

Government are pleased to approve the Standard Operating Procedure for Child Welfare Committee in Kerala as appended to this order.

(By order of the Governor)  
**L.A.GREGORIOUS**  
Deputy Secretary

To

- ✓ Director, Social Justice Department, Thiruvananthapuram.
- The Principal Accountant General (Audit), Kerala, Thiruvananthapuram.
- The Accountant General (A &E), Kerala, Thiruvananthapuram.
- The Information Officer, Web & New Media, Information and Public Relations Department.  
(for updating in the official website).
- Stock File/Office Copy.

Forwarded/By order,

Section Officer

**STANDARD OPERATING PROCEDURES  
FOR  
CHILD WELFARE COMMITTEES IN KERALA**

**Constituted Under Juvenile Justice (Care & Protection of Children) Act 2000**

**(As amended in 2006)**

**Government of Kerala**

**Department of Social Justice**

**2014**

**ABBREVIATIONS**

|         |   |
|---------|---|
| CARA    | Central Adoption Resources Agency                           |
| CH      | Children's Home   |
| CLPRA   | Child Labour (Prohibition and Regulation) Act 1986          |
| CWC     | Child Welfare Committee                                     |
| CINOCAP | Children in Need of Care and Protection                     |
| Cr. PC  | Criminal Procedure Code                                     |
| FIR     | First Information Report                                    |
| ICDS    | Integrated Child Development Scheme                         |
| ICPS    | Integrated Child Protection Scheme                          |
| IPC     | Indian Penal Code   |
| ITPA    | Immoral Trafficking (Prevention) Act 1986                   |
| JCL     | Juvenile in Conflict with Law                               |
| JJA     | Juvenile Justice (Care and Protection of Children) Act 2000 |
| JB      | Juvenile Justice Board                                      |
| JMFC    | Judicial Magistrate of First Class                          |
| LAPA    | Licensed Adoption Placement Agency                          |
| NGO     | Non Governmental Organization                               |
| PMCA    | Prohibition of Child Marriage Act 2006                      |
| PO      | Probation Officer   |
| POCSO   | Protection of Children from Sexual Offences Act 2012        |
| RIPA    | Registered Indian Placement Agency                          |
| Sec.    | Section   |
| SJPU    | Special Juvenile Police Unit                                |
| UNCRC   | United Nations Convention on the Rights of the Child        |
| VPO     | Voluntary Probation Officer                                 |

## CHAPTER 1

### INTRODUCTION

The Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006 and 2011, (JJ Act) is the legal framework to facilitate protection and treatment for 'juveniles in conflict with law' and 'children in need of care and protection.' It emphasizes rehabilitation and reintegration of children, by safeguarding their best interests, as a matter of their right. The Act provides for the setting up of the Juvenile Justice Board (JJB), as the competent authority to deal with juveniles in conflict with law, and the Child Welfare Committee (CWC) for children in need of care and protection. According to the Act, every individual under 18 years of age is to be treated as a child.

The role and functions of the Child Welfare Committees are complex and demanding. The Committee has the dual responsibility of operating within the confines of the law on the one hand, and interpreting the law to safeguard the "best interest of the child", on the other. In taking decisions in relation to the child in need of care and protection, the CWC has to take into consideration:

- the family background and socio - economic status of the child;
- the specific reason why the child has been produced before the CWC;
- the conditions which might have contributed to the situation the child is presently in;
- the overall health of the child – physical, emotional and mental status;
- the community and culture the child belongs to; and
- any interventions that may have taken place before the child being produced before the CWC

The decisions of the CWC are guided by the general principles laid down in the JJ Act, 2000 as amended in 2006, the JJ Rules 2007, the UN Convention on the Rights of the Child (CRC), 1989, and more recently the National Policy on Children, 2013. These principles convey the essence of the Act which is to ensure that:

- the child remains within the family and institutionalization is the last resort;
- every decision is made on a case to case basis, looking at the unique circumstances of the child and considering the best interest of the child;
- confidentiality is ensured in all proceedings pertaining to the child and the family;
- informed consent of the child is sought in all processes, including interviewing the child, medical examination and testing;
- the child's views are taken into account during decision making;
- protection of the child is ensured at all stages of rehabilitation and social integration; and
- the child's progress is reviewed regularly.

The term "best interests" broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences.

A "best interests determination" (BID) describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.

UNHCR Guideline: on Determining the Best Interest of the Child, May 2008

**Standard Operating Procedures (SOP) describe a specific method of accomplishing a task that is to be followed precisely the same way every time.**

The Standard Operating Procedures for the Child Welfare Committees in Kerala, are laid down with the objective of facilitating smooth functioning of the Child Welfare Committees across the State, and assisting the Committee Members to decide on the course of action in unfamiliar situations. It should, however, be noted here that these Standard Operating Procedures do not restrain individual Committees from taking decisions they consider most appropriate in specific situations.

The SOPs have been developed from existing best practices of the various CWCs across Kerala. In formulating these practices, the SOPs of Karnataka, Maharashtra and Odisha have been consulted. As the State has formulated the Rules under Juvenile Justice (Care and Protection of Children) Act as amended in 2006, the references are made to the said Rules.

## **CHAPTER 2**

### **POWERS, FUNCTIONS AND RESPONSIBILITIES OF THE CHILD WELFARE COMMITTEE**

#### **Introduction**

The Child Welfare Committee (CWC), constituted by the State Government under Section 29(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and made operational in the 14 districts of the State, is the competent authority to dispose of all matters in relation to children in need of care and protection.

The CWC consists of a Chairperson and four other members, of whom at least **two** shall be woman.

Soon after the government notifies the appointment of the CWC the Chairperson and members shall be inducted to their respective posts in a common induction function in the presence of the Director, Department of Social Justice and the Chairperson and members of the Selection Committee.

Within one week of induction, the outgoing Chairperson shall hand over charge (including handing over all registers and records, documents, and seals) and the new committee shall take charge in the presence of the District Social Justice Welfare Officer.

The Committee shall hold its sitting in the premises of the Children's Home, at a place in the proximity to the Children's Home, or at a suitable place set up by the State Government for the purpose, easily accessible to children.

The Committee will hold its sittings on one, or more than one day, every week, as decided with the approval of the Government. Special sittings to address special situations or urgent

problems may also be held. Such sittings can be held outside the regular sitting place, depending on the nature and urgency of the situation.

The regular sittings where witnesses are summoned shall be held from **11 a. m to 5 p. m.** However, Committee sittings shall not conclude until all the cases have been heard, or posted for subsequent dates.

The Chairperson shall make sure that all sittings are held on time.

The Chairperson and members of the Committee are required to attend a minimum of three fourth of the sittings held in a year. Every member of the CWC shall attend a minimum of four hours per sitting. **The quorum for the meeting shall be three including the Chairperson.**

For final disposal of the case, the Order of the Committee shall be signed by at least two members, including the Chairperson. For all the other communications, the signature of the Chairman is sufficient.

As far as possible, the Committee is to take decisions by consensus. In the event of a difference of opinion among the members, the opinion of the majority shall prevail. **Where there is no such majority, the opinion of the Chairperson shall prevail.**

There shall be register, where the names and addresses of those who come to the Committee sittings, shall be entered. The precedence in the sittings will be determined on a first-come first-served basis. Infants below one year, the differently abled, or seriously ill children brought to the sitting **shall be priority in attending the sitting.** Similarly, any senior citizen summoned to the hearing, or those with disabilities or serious physical illness shall be allowed to attend the Committee sitting without having to wait in the queue.

The sittings of the Committee are to be treated as confidential meetings and outsiders shall not be allowed to participate in the sittings. However, the Chairman, may allow others e.g. students, or subject specialists to watch the proceedings of the Committee, as and when s/he thinks fit.

Advocates will be allowed in the proceedings of the Committee, if the Chairperson is of the considered opinion that they are able to provide additional information helpful in understanding the case under consideration. In cases where advocates are allowed in the Committee sittings, they shall be required to present the Vakkalathnama in their favour, and proof of their identity. The advocates, representing any child shall be asked to present a written submission of their case under consideration.

In all decisions related to child in need of care and protection, the prime source of information shall be the child. The Committee will record the child's statements in the Committee sittings itself, or wherever considered necessary, in individual meetings between a member of the Committee and the child. Statements made in such meetings shall be recorded as statements given during the process of counselling. While recording the child's statement, the Committee member may allow the child's parent or a close relative to stay with the child if required.

The Chairperson shall have the administrative control of the Committee. In the absence of the Chairperson, the members present shall elect one among them, as the Chairperson for that sitting and final disposal of the case shall be in the presence of the Chairperson. All correspondence and communications to Government, Police and other stake holders shall be by the Chairperson. In the case of the Chairperson being absent for a period of time exceeding two weeks the Acting Chairperson shall sign all documents on behalf of the Chairperson.

The Committee shall designate one member as the information officer and the Chairperson shall be the Appellate the authority.

**Functions of the CWCs:**

**As per Rule 29 of the Kerala Juvenile Justice Rules 2014, the Child Welfare Committee will perform the following functions to achieve the objectives of the Act:**

- a. Take cognizance of the fact and receive children produced before the Committee;
- b. Decide on the matters brought before the Committee;
- c. Reach out to such children in need of care and protection who are not in a position to be produced before the Committee, being in difficult circumstances. The CWC is empowered to take suo-moto action on behalf of such children;
- d. Conduct necessary inquiry on all issues relating to and affecting the safety and wellbeing of the child (**Rule 8(15)**) through PO, VPO, Childline and other recognized agencies);
- e. Direct the Child Welfare Officer or Probation Officer or Childline or NGOs to conduct a social inquiry and submit a report to the Committee;
- f. Ensure necessary care and protection, including immediate shelter;
- g. Ensure appropriate rehabilitation and restoration, including passing necessary directions to parents or guardians or fit persons or fit institutions in this regard, in addition to follow-up and coordination with District Child Protection Society or State Adoption Resource Agency and other agencies;
- h. Conduct a periodic review and follow up on the progress of every child;
- i. Direct the Officer-in-charge of children's homes to receive children requiring shelter and care;
- j. Document and maintain detailed case record along with a case summary of every case dealt by the Committee;
- k. Provide a child-friendly environment for children;
- l. Recommend 'fit institutions' to the State Government for the care and protection of children;
- m. Declare 'fit person' for an individual child;
- n. Declare a child legally free for adoption;
- o. Keep information and take necessary follow-up action in respect of missing children in their jurisdiction;
- p. Maintain liaison with the JJ Board in respect of cases needing care and protection;
- q. Visit institution where children are sent for care and protection or adoption on a periodic basis to review the condition of children in institutions, with support of the State Government and suggest necessary action;
- r. Monitor associations and agencies within their jurisdiction that deal with children in order to curb the exploitation and abuse of children;

- s. Co-ordinate with Police, Labour Department and other agencies involved in the care and protection of children with the support of District and State Child Protection Units of State Government;
- t. Liaison and network with the corporate sector and non-governmental organizations for any of the above, including social inquiry, restoration and rehabilitation; and
- u. Maintain a suggestion box to encourage inputs from children and adults and take necessary action.

The Committee should maintain a resource directory of Childline, NGOs, shelter homes, open shelters, children's homes, SAAs, hospitals, rehabilitation centers, counseling centers/counselors, and interpreters whose services could be accessed or to which children could be referred to by the members.

The CWC should also maintain a directory of names, and contact details of the CWCs in the other districts and states as well as contact details (telephone numbers and mail ids) of the police officers in the district.

#### **Powers of the Committees:**

Section 29 (5) of the JJ Act states that the Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure 1973(2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class.

According to Section 31 (1) of the JJ Act the Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

The Committee can exercise the judicial powers conferred to:

- a. summon witnesses to the sitting of the Committee;
- b. insist on compliance of its orders;
- c. issue warrants if the summons are not honoured;
- d. direct the police to investigate all offences against children, cognizable or otherwise;
- e. directly hold investigation from the victims, visit sites, summon witnesses on receipt of the report of a complaint from the child, parents, or anyone else; and
- f. compel the production of child in need of care and protection, before the Committee.

The Child Welfare Committee, functioning as a Bench of Magistrates, exercises civil functions only. It does not have the powers conferred upon the Judicial Magistrate of First Class, to pass orders awarding penalty on anyone for any offence committed against children.

The powers with respect to criminal aspects that the CWCs have are:

- taking evidence of the child;
- issuing of summons or warrants; and
- prohibiting the publication in print or visual media of the name, address or school or any other particulars which may lead to the identification of the child or publishing the picture of any such child – unless the Committee feels that such disclosure is in the best interest of the child.



### **Rights of the CWCs:**

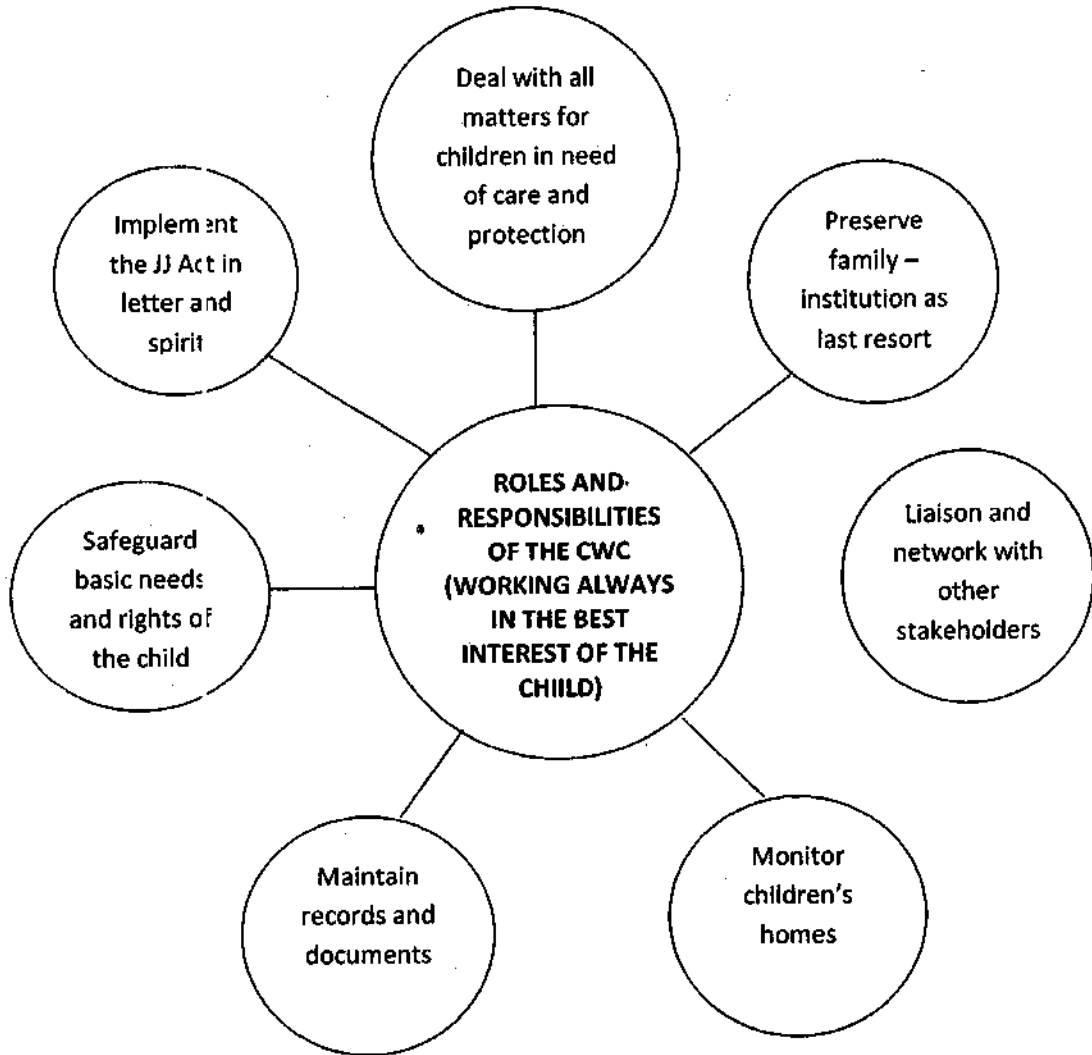
Section 67 of the JJ Act states that no suit of legal proceedings shall lie against any officer and staff appointed in pursuance of the **said Act** in respect of anything which is in good faith done or intended to be done in pursuance of the said Act or any of the rules made there under.

### **Responsibilities of the CWCs:**

The Committee is responsible for:

1. Follow up: The CWC should ensure that there is follow up for every child brought before it after the case has been finally heard and disposed of.
  - For the first three months, follow up of the child should be done once every month
  - From 3 months to a year, the follow up should be at least once in 3 months
  - Further follow up should be done depending upon the situation of the child:
    - a. for those children who are institutionalized, the CWC should continue to monitor the progress of the child's health, education and psycho-social well being at least once a year; and
    - b. for those children who are released from institutions or are placed in non-institutional alternative care, the follow up of the child should be conducted annually for at least 2 years.
2. Monitoring the standards of care and protection in institutions within their jurisdiction. If the CWC find malpractices in relation to the care of children in institutions, such matters should be reported to the Director, Social Welfare Department to take immediate action.
3. Ensuring that institutionalization is only the last resort – no order should be passed for long term institutionalization of any child. Orders placing a child in an institution should be reviewed every year. Reasons why family based non-institutional services were not considered should be clearly recorded.
4. Providing an interpreter or translator when the child does not speak the local language.
5. Filing an FIR on behalf of the child, if necessary.
6. Proper documentation and record keeping.

7.



## CHAPTER 3

### CHECKLIST OF STANDARD PROCEDURES TO BE FOLLOWED BY THE CWC FOR ALL CHILDREN ENTERING THE JUVENILE JUSTICE SYSTEM

1. Production of a child before CWC
2. Review of application and its purpose
3. CWC to issue an initial order
4. Inquiry period/ case review
5. Preparation of an Individual Care Plan
6. Decision related procedure
7. Repatriation and reintegration
8. Convergence and networking with other stake holders

#### 1. Production of a child before the CWC

Section 32 of the JJ Act deals with the production of a child before the Committee. A child in need of care and protection can be produced by:

- any police officer or special juvenile police unit (SJPU);
- any public servant;
- childline or any registered NGO;
- any social worker or public spirited citizen; or
- the child himself

At the time, when the child is brought into the Juvenile Justice system:

- if the CWC is not in session the child may be produced before an individual member for being placed in safe custody;
- in case a single member is also not accessible, the child shall be taken to a place of safety and be produced before the CWC in its next sitting.

The place of safety for a child could be a reception center, shelter home special adoption agency (SAA), children's home or any "fit institution".

The application for admission to such a home shall be submitted by the adult/producer of the child to the Superintendent of the Home.

When the child is produced before the CWC, an application for CWC's intervention should be submitted stating the reasons for which the child is being produced before the CWC, or any reason that makes the child vulnerable and in need of care and protection of the State. This application should be submitted by the person or agency that produces the child before CWC.

If the producer of the child is a person other than the parent, the report submitted by the producer of the child must contain the following information:

- the circumstances under which the child came to the producer;
- whether or not the child was kept in the police lock up or jail, or was in a place of safety (particularly when the police is the producer);
- whether the child faced any ill-treatment in the place of safety;

- whether the child was placed in a place of safety within 24 hours and produced before the CWC at its immediate next sitting.

A child below 2 yrs need not be produced before the CWC for the first hearing if the child is ill or hospitalized or not in a position to travel a long distance. The producer is expected to present the application with the photograph of the child to the CWC. A child below 2 years need not be present every time his/her case comes up for hearing. However, the child must be brought before the CWC at least once and at the time of the final decision.

## 2. Review of application by CWC and its purpose

- The CWC will talk to the child or accompanying adult to ascertain basic facts/information about the child to establish the purpose stated in the application
- As per the need, the CWC can pass the necessary order for immediate medical or other help.
- The CWC will also speak to the child to ascertain the wishes of the child – for instance to find out whether the child wants to go back to the family

This procedure of the first meeting of the CWC with the child will be complete when the CWC gives the initial order.

The next date of review of the case will be noted on the order of the CWC and in the case file of CWC. This record is part of the centralized record of the CWC and this docket of the child should be available to CWC when it meets the child for follow up.

## 3. CWC to issue an initial order

The order should include the following (which are given under as examples)

- Admission into Children's Home/Shelter Home in Form X
- Order to superintendent/Shelter Home /Police for medical examination .The CWC should immediately ensure a **medical examination** of the child by directing the authorities of the Children's Home to carry out a medical examination through competent medical personnel In case of rescue operation where there are larger group of children being produced to the CWC, the CWC can also pass an order for a Medical team to go to the Children's Home to carry out the medical examination.

*It is important to note, however, that admission of any child to the Children's Home shall not be dependent on medical examination.*

The CWC should direct the Medical Officer to conduct a detailed physical examination and specifically look for signs of physical and/or sexual abuse

It is important that the findings of the medical examination are recorded in writing.

- Order SJPU/Police for age verification if there is a dispute regarding age
- Issue tracing memo to the police in case of a missing child
- Issue summons to investigation officer (Police) for evidence, including FIR
- Order to Probation Officer/Voluntary Probation Officer to submit an Inquiry Report in Form XIII

The CWC will record the meeting with the child and the decision of the CWC in the order sheet, and file it in the child's docket. All details must be recorded in the order sheet.

The next date on which the CWC will review the case must be recorded and be intimated to all parties concerned.

#### **4. Inquiry Period/Case Review**

Section 33(2) of the JJ Act states that the inquiry about the circumstances of the child be completed within four months. The CWC shall take a decision regarding the child at the end of this period – with every child's case being reviewed individually.

During the pendency of the case, the case should come up before the CWC for a review at least once in every 15 days in the four months period.

The CWC shall direct the PO or the person appointed to enquire about the details of the child to submit the report within four month.

The CWC will track the follow up done by the PO and record the notes on the docket accordingly.

If the Probation Officer is unable to undertake home inquiry visits due to other demands on his/her time, to expedite the home inquiry, the CWC can appoint a Voluntary Probation Officer (VPO) to expedite the home enquiry.

When the PO/VPO is absent at the time of hearing of the case, the CWC shall record the absence of the PO in the case sheet and adjourn to a suitable next date.

The CWC can extend the time of the inquiry process even after the stipulated four month period by giving its reasons in writing if it feels that the inquiry is not complete or is not satisfied with it.

#### **5. Preparation of an individual care plan**

The CWC must direct the Probation Officer or Voluntary Probation Officer to prepare an individual care plan, for the immediate and long term rehabilitation of the child. The CWC must ensure that the PO/VPO takes into account the wishes of the child and the best interest of the child while drawing up the rehabilitation plan.

#### **6. Decision related procedure**

The final decision regarding the child is based on the detailed home inquiry report. The CWC must make sure that children are not released to parents or caregivers without ascertaining the capabilities of the parents to take good care of the child.

#### **7. Repatriation and Reintegration**

After necessary investigation the CWC will determine whether the child can be:

- restored to the family;
- repatriated to his/ her home state;

- offered non-institutional care services (counselling/ legal aid/ sponsorship/ foster care/ adoption); or
- placed in an institution.

*The decision to place a child in an institution must be for the shortest period of time. The CWC must not pass any order that commits a child to long term institutional life up to 18 years.*

There has to be a periodic review and follow up by the CWC, especially for those children who are placed in institutional care but also for children placed in non-institutional alternatives/interim care to review the progress and development of the child.

The CWC must maintain a separate docket for each child containing the original application and all original papers, case sheets; decision/order related papers etc. This docket will remain in the centralized records of the CWC as confidential documents for seven years.

The case file will remain in the filing system of the Home under the Superintendent.

#### 8. Convergence and networking with other stakeholders

In the process of rescue, interim care, rehabilitation and reintegration, the child needs the support of many other stakeholders that are outside the JJ system. The CWC can call upon these stakeholders to assist in meeting the needs of the child and for the child's protection.

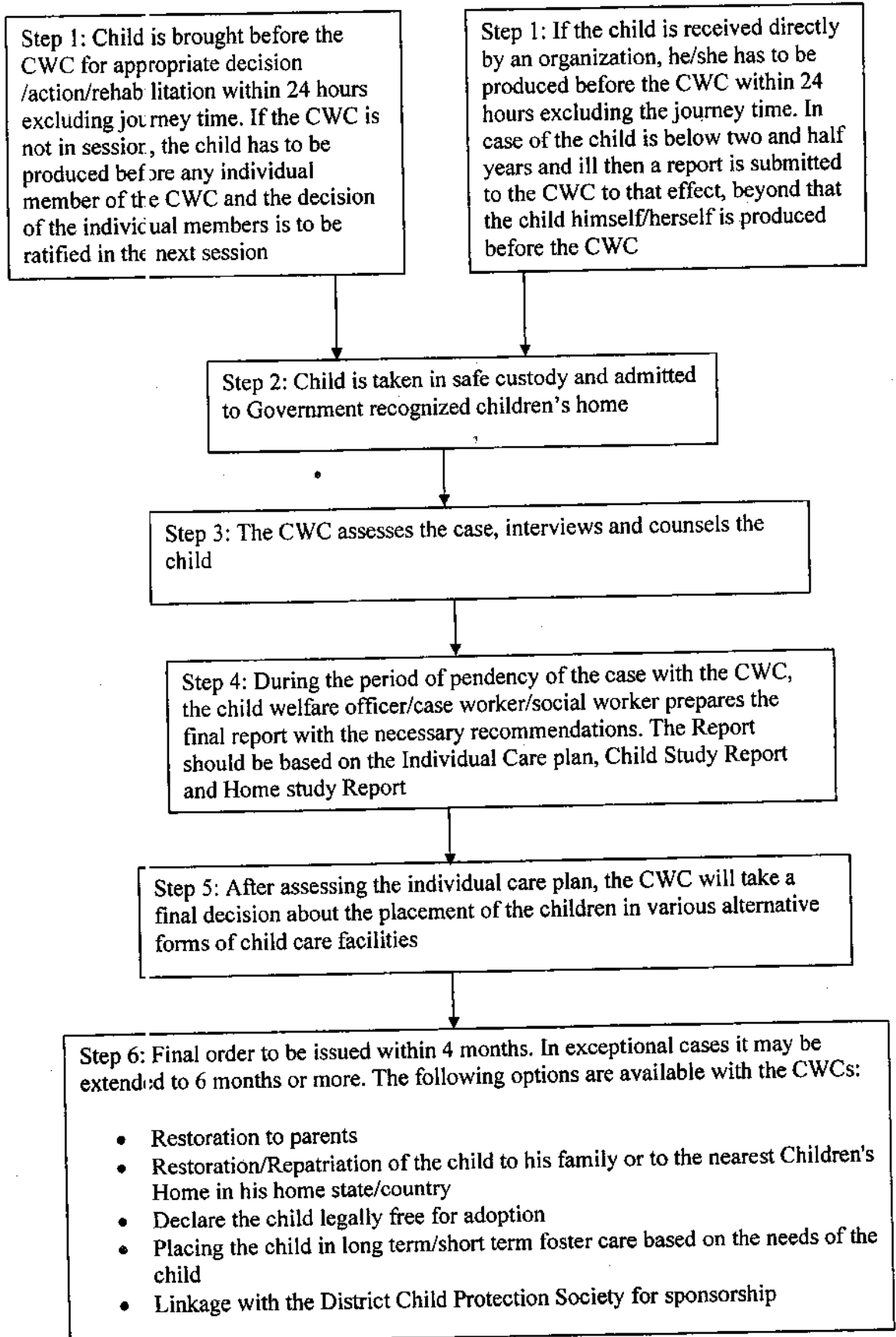
The CWC can ask the District Child Rights Protection Unit (DCPU) to facilitate the co-ordination and convergence with other State Department and civil society bodies in the interest of children.

The table below shows the areas of coordination with different stakeholders

| S. No. | Department                                   | Area of co-ordination   |
|--------|--|---|
| 1.     | Police, especially SJPU                      | <ul style="list-style-type: none"> <li>• Rescue of the child</li> <li>• Procuring evidence, documents</li> <li>• Filing complaint/ registering FIR</li> <li>• Recovery of property</li> <li>• Tracing family</li> <li>• Providing escorts when necessary</li> <li>• Help the legal proceedings in the court.</li> </ul> |
| 2.     | Health Department                            | <ul style="list-style-type: none"> <li>• Medical examination and necessary treatment</li> <li>• Ensure free of cost medical treatment</li> <li>• Age determination of the child</li> </ul>  |
| 3.     | Legal experts and Judiciary                  | <ul style="list-style-type: none"> <li>• Understanding the case from the legal point of view</li> <li>• Free legal assistance to the child</li> </ul>   |
| 4.     | Education department                         | <ul style="list-style-type: none"> <li>• Ensure retention and enrolment of the child in the schools to combat drop out</li> <li>• Implementation of the RTE Act 2009</li> </ul>   |
| 5.     | Non-governmental and voluntary organizations | <ul style="list-style-type: none"> <li>• Production of the child</li> <li>• Filing complaint</li> </ul>   |

|    |       |  |
|----|-------|--|
|    |       | <ul style="list-style-type: none"><li>• Assistance in tracing parents of the child</li><li>• Social investigation</li><li>• Placement of the child</li><li>• Professional services like counseling, psycho-social support, legal counseling and aid, tuitions, vocational training</li><li>• Help police in inter-state transfer of the child</li><li>• Follow-up of cases</li></ul> |
| 6. | Media | <ul style="list-style-type: none"><li>• Sensitize society about the rights and needs of children</li><li>• Highlight best practices</li></ul>  |

### Checklist of standard procedures – matrix





## **CHAPTER 4**

### **PROCEDURES IN RELATION TO IMPORTANT SECTIONS OF THE JUVENILE JUSTICE ACT, 2000 and CrPC, 1908**

This Chapter covers the procedures in relation to the some important sections of the Act. These include:

**Presumption and determination of age – Section 49; Rule 19**

**Appeals and revisions – Sections 52 and 53**

**Amendment to orders – Section 55**

**Transfer of children – Sections 38, 56 and 57; Rules 92 and 93**

**Offences against children – Sections 23, 24, 25 and 26**

**Procedures in case of a death of a child in an institution – Rule 72**

**Bonds and execution of bonds – Section 65; Rules 27 (17) and 93 (2)**

**Summons and warrant – Section 61 and 70 (Cr. PC)**

#### **1. Presumption and Determination of Age**

According to Section 49 of the JJ Act, the CWC has the authority to determine the age of the child who is produced before it. When there is a doubt whether the person is a child or not, the CWC shall make due enquiry and take the evidence necessary in order to determine the age of the child. The evidence taken should not be an affidavit. The CWC shall record its finding by stating the age of the person as nearly as possible.

#### **Guidelines for age verification**

Rule 19 (3) specifies the documents which can be accepted to determine the age of the child:

- i. the matriculation or equivalent certificate; or
- ii. the date of birth certificate from the school (other than a play school) first attended; or
- iii. the birth certificate given by a corporation or municipal authority or a panchayat

When the verification done is accepted by the CWC, then it may record the finding as to the age of the child. When the verification is not accepted, the CWC may declare the document false and give its reasons for considering it false or its objections to it.

When valid documents to prove the age of the child are not available the CWC will need to issue an order to the SJPU/ police for age verification by a duly constituted medical board. The verification must be done within 30 days of the order or the date of the next hearing – whichever is earlier. The age verification test may present an age range (e.g. 14-16 years/ 16-18 years). In such a case the CWC can accept the lower age in the best interest of the child.

After examining the documentary evidence and/ or medical opinion the CWC must record its finding with respect to the age of the child – this will be the final order of the CWC and record its reasons for accepting this as the age of the child.

## 2. Appeals and Revisions

The decision of the CWC decisions may be challenged before a higher court. Parents, employers or institutions may file an appeal on the decision of the CWC. It is therefore important that the CWC records its order and the reasons for giving the order in a systematic and detailed manner in the case sheet.

All orders should be signed by at least two members. The CWC should ensure that all the other records and documents are maintained by the Probation Officer with the case docket of the child in the centralized records of the CWC.

The details in an order should include information such as why the child came to the CWC; who was present at the hearings; the decision taken about the age of the child; details of the inquiry conducted by the PO, and the final decision taken by the CWC. All these records are important, especially when the case goes into appeal.

When the Court seeks clarification from CWC on its decisions, the documents and records can be submitted to the Court. Meetings with the public prosecutor are useful for discussing the case of the child. Wherever required the CWC should seek legal representation in matters where their decisions are challenged in any higher courts.

### Appeals

Any person aggrieved by an order of the CWC can appeal to the Sessions Court within 30 days.

The Sessions Court can entertain an appeal filed after the 30 days period if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal on time.

No appeal can be filed if the CWC does not find the child to be a neglected child.

No appeal can be filed from any order of the Sessions Court to the High Court, only a revision can be filed for.

### Revisions

The provisions of reviewing the decisions of the lower Court are essential for the protection of life and liberty. Section 53 of the JJ Act states that the High Court may at any time either on its own motion or an application received in this behalf call for the record of any proceeding in which any Child Welfare Committee has passed an order for the purpose of satisfying as to the legality or propriety of any such order and may pass such order as it thinks fit.

If the appeal is rejected by the Sessions Court, the person can file a revision application against that order in the High Court. The revision application must be filed within 90 days.

### 3. Power to amend orders

Section 55 of the JJ Act gives CWC the power to amend its orders for two reasons:

- i. If the CWC receives an application, it may amend any order passed by it regarding the institution to which the child is to be sent or the person under whose care or supervision a child is to be placed. This amendment will be valid only if two members of the Committee are present and approve the amendment decision. **Also, the parties concerned or their defence should be present to see that no order that is prejudicial is passed.**
- ii. Clerical mistakes in the order passed by Child Welfare Committee or errors from any accidental slip or omission may, at any time, be corrected by the Child Welfare Committee either on its own or on an application received in this behalf.

### 4. Transfers

Three kinds of transfers are possible:

- i. Transfer of a child to another district within the state (inter-district transfer)
- ii. Transfer of a child to another state (inter-state transfer)
- iii. Transfer of a child to another country (inter-country transfer)

#### Inter-district transfer

If any child is to be transferred from one district to another district of the State, it is preferable that the child is handed over to the CWC of the child's home district. This will ensure that every child in need of care and protection remains within the protective net of the CWC and that an appropriate decision will be taken which in the best interest of the child.

The CWC of the child's home district shall make inquiries through the Probation Officer or police about the willingness and fitness of the parents or relatives to receive the child at their place of residence.

In case there is no parent or the parent is not able to take back the child, the home district CWC shall place the child in a fit institution and shall proceed further according to the law.

The entire case files and other documents in the custody of the CWC shall be handed over to the CWC of the home district of the child.

The CWC shall issue escort order to SJPU or staff of the home to escort the child.

A girl child must be accompanied by a woman officer.

Until the escort is made available, the child will remain in the Children's Home in safe custody.

If the child is sent directly to an institution or handed over to the parent, a copy of the order should be sent to the CWC of the home district for information and follow up.

An undertaking in Form V of JJ Rules 2014 is necessary if the child is handed over to a parent or guardian.

The CWC can transfer the child from one children's home to another within the district if it is in the best interest of the child and brings her/him closer to her/his natural place of stay or other siblings. Such a transfer shall be only after the completion of evidence and cross examination that may be required in legal proceedings involving the child.

*No child should be transferred on the ground that the child has created problems or has become difficult to manage in the existing institution, is suffering from chronic or terminal illness or has become handicapped.*

#### **Inter-state transfer**

In case of inter-state transfer, the transfer of the child should be to the CWC of the home district of that State. The copy of the order of the CWC shall be sent to the State Government or the State Child Protection Unit and to the Superintendent of the home where the child is placed. On receipt of approval from the State Government/SCPU, the Superintendent of the Home shall arrange to escort the child at Government expenses to the place or person as specified in the order.

The process of transfer shall be initiated, once the Department of Social Justice gives its clearance.

The process for inter-district transfer detailed as above, is to be followed in all such cases. If there is no CWC in the home district of the child then contact should be made with the CWC closest to the home district of the child. In case it is not possible to determine the home district, the child should be transferred to the CWC in the state capital.

#### **Inter country transfer**

In keeping with the principles of the Convention on the Rights of the Child, a child who is not a citizen of India, and who has lost contact with his family shall also be protected. In such cases the child should be treated as a victim and not as a criminal.

The FRRO (Foreigner's Regional Registration Office) must be informed about the child as soon as possible.

The CWC will need to contact the Embassy or High Commission of the country and provide all the necessary details of the child. In case the CWC is able to contact the family of the child directly, then the Red Cross/ Red Crescent in the concerned country may be contacted to arrange for repatriation of the child. The child should be placed in a Government children's home until such time as repatriation takes place.

### **5. Special Offences**

According to Section 27 of the JJ Act, the offences punishable under Sections 23 (punishment for cruelty to a child), Section 24 (employment of a child for begging), Section 25 (penalty for giving intoxicating liquor, narcotic drug or psychotropic substances to a child) and Section 26 (exploitation of a child employee) are cognizable.

In such a situation the role of the CWC is to:

- direct the police to record the statement of the child as a complaint, if the child is produced before CWC other than by Police;
- ensure that legal action is initiated against the adult offender/s by filing of the FIR and that the Police have applied the relevant Sections of the JJ Act along with appropriate Sections of the IPC or other Acts;
- order the Police to file the register FIR if the offence is outside the jurisdiction of the CWC. This means that if the crime or offence against the child has occurred outside CWC's jurisdiction, the CWC can ask the local Police Station to take the statement of the child and send it to the Police where the crime has occurred;
- provide any additional information to the police in response to a written request made by them;
- make a periodic follow up with the Police to track whether action has been taken against the perpetrators and that they have been prosecuted after investigation under the criminal court; and
- direct the PO to prepare the child for the trial, with relevant information, when the child is summoned to appear before the court as a victim or witness.

### **6. Procedure to be followed in case of death of a child in an institution**

Rule 72 details the procedures to be followed in case of death of a child in an institution.

In the event of an unnatural death or suicide, an inquest and post mortem examination should be conducted at the earliest.

In a case of natural death or illness, the Officer in Charge shall obtain a report of the Medical Officer stating the cause of death and a written intimation about the death

shall be given immediately to the nearest Police Station, the CWC, the District and State Child Protection Unit and the parents or guardians of the child.

Whenever a sudden death or violent death or death from suicide or accident takes place, immediate information should be given to the Officer in Charge and the Medical Officer, who in turn shall inform the nearest police station and the parents of the child.

If the child dies within 24 hours of his admission to the institution, immediate information should be given to the Medical Officer, the nearest police station and the parents of the child. The officer in Charge should also give immediate intimation to the CWC.

The Officer in charge and the Medical Officer should record the circumstances of the death of the child and send a report to all the above mentioned authorities and to the nearest Government hospital where the body has been sent for examination, inspection and determination of the cause of death. They should also record in writing their views on the cause of death, if any, and submit it to the concerned CWC and nearest Police Station

The Officer in Charge and the Medical Officer should make themselves available for any inquiry concerning the cause of death and any other details before the CWC.

As soon as the inquest is held, the body should be handed over to the guardian. In the absence of any claimant; the last rites should be performed under the supervision of the Officer in Charge in accordance with the known religion of the child.

#### **7. Procedure for execution of Bond**

The CWC has the power to direct the parent, relative or fit person, to sign a bond that sets the terms by which the child will be cared for, protected and rehabilitated. The relative or fit person has to give an undertaking to the CWC through Form IX and by the **Child in Form VI**, if the child is above 14 years of age.

#### **8. Summons and Warrants**

The CWC can direct relevant persons connected with the child's life and circumstances to appear before the CWC. These include any significant adult related to the particular case (parents, teachers, neighbours, doctors, employers, and social worker/NGO staff).

Such persons can be directed to appear before the CWC through a letter sent by Registered Post (with AD).

If there is no response to the letter, then the CWC can issue a summons.

##### **Summons**

Under Section 61 of the Cr. PC the CWC can issue a summons through the SJPU/Police. The summons is to be prepared in duplicate, the original is to be given to the party that is being summoned and the second remains as a copy. If the party does not

turn up on the day that they were summoned for the hearing, the CWC can order the Police to serve the summons again.

Under Section 66 of the Cr. PC a summons to a government servant can be sent to the Head of the Office by registered post.

If the summons are served to the Police for evidence or any other matter and the Police is unable to attend on that date, the police will give its reasons in writing for not being able to appear before the CWC. This application has to be approved by the concerned senior officer.

#### **Warrant**

If the summons is not responded to, the CWC may issue a bailable warrant under Section 70 of the Cr. PC.

If the person fails to appear and also fails to give reason and proof for not being able to appear before CWC, a non- bailable warrant may be issued and the Police can arrest the person accordingly.

## CHAPTER 5

### PROCEEDINGS FOR SPECIFIC CATEGORIES OF CHILDREN IN NEED OF CARE AND PROTECTION

Section 2 (d) of JJ Act defines children in need of care and protection. They include:

- Begging child
- Street child
- Working child
- A child who is mentally or physically challenged
- Children of parents considered unfit for their care
- Abandoned child and missing child
- Surrendered child
- Child trafficked for sexual exploitation
- Child who is a victim of abuse
- Victim child in child marriage

**It is important to remember that the above categories may overlap.** For example a working child may also have faced abused, or may have been trafficked. The CWC will have to examine the complexities and multiple dimensions of each case presented before it. When the child's situation cuts across different categories, the CWC has to examine and apply the procedures that are applicable to the different categories in which the child falls. Irrespective of which category the child comes under, the procedures laid out in Chapter 3 have to be followed in all cases.

The CWC should work in convergence with the Departments of Police, Home, Education, Health, Labor and WCD the Nodal Department etc. and call upon them to make use of the provisions under other specific legislations such as CLPRA, ITPA, PCMA 2006, IPC, Cr. PC, and POCSO) to offer protection to children in a wider sense

The additional points that need to be considered and the procedures that need to be followed for children in specific circumstances as well as the procedure to be followed for declaring a child legally free for adoption are given in the following pages.



## I. BEGGING CHILD

Using a minor as an exhibit for the purpose of soliciting or receiving alms is considered as begging and is punishable under Section 363 A of the IPC.

As per IPC begging refers to "the practice of soliciting or receiving alms in a public or private place by any means".

Children may be found begging to support themselves or their families. They may also be forced to beg by gangs that thrive on their exploitation. The difference in circumstances between these two categories needs to be kept in mind by the CWC while deciding the case.

As per section 24 of JJ Act, employment of a child for begging is punishable with 3 years imprisonment and fine.

The procedure to be adopted by the CWC when a case of a child who is begging is brought before the CWC is:

### 1. Producing the child before the CWC

On noticing a child begging, a concerned citizen, NGO representative, child rights activist, Childline and police can inform the CWC or produce the child before the CWC.

The producer should submit a report on the circumstances under which the child comes to their notice.

The producer should also have a report on the efforts made by them to inform the police.

The CWC should establish the age

### 2. Ensure age verification

The CWC should establish the age of the child under Section 49 of the JJ A and Rule 19 (3).

### 3. Ensure medical examination as per the procedures explained in Chapter 3 of this document.

### 4. Ensure comprehensive inquiry into the case through the PO or VPO or police as explained in Chapter 3 of this document. The inquiry report must provide an assessment of the family situation of the child in detail and an explanation of whether it will be in the best interest of the child to restore him/her to their family. The CWC should ensure that verification of the parents is conducted. If there is any history of harassment of the child by the parent, the police need to be informed of the offences and be directed to take appropriate action.

### 5. Filing charges

In the case of children being exploited for begging by family or others, the CWC should direct the police to undertake necessary legal action by filing an FIR u/s 24 of the JJ Act or relevant Sections of IPC.

In the case the parent /family of the child cannot be located after due inquiry, the child shall be considered as a missing child and the procedures pertaining to missing children must be carried out to trace the family. The police may be directed to act as per the circular from DGP and register the name of the child with [www.missingchildsearch.net](http://www.missingchildsearch.net).

In the case of a child begging for his/her own survival, the CWC should investigate and find out if the child is a street child or an abandoned child. The CWC should then follow the specific procedures as listed under these sections.

6. **Ensure individual care plan for child is prepared**  
Pending inquiry, the CWC shall send the child to designated place of safety. The CWC must direct the Probation Officer or Voluntary Probation Officer to prepare an individual care plan for the immediate and long term rehabilitation of the child. An individual care plan is necessary both when child is being institutionalized and when child is handed over to family. This would include rehabilitation of child through education, linking the child to services of counseling or sponsorship, as required.
7. **Child from within the jurisdiction of the CWC**  
After necessary investigation, if the child can be reintegrated with the family, the CWC should see whether parents are fit to care for the child in the child's best interest. This should be the first option to be exercised by the CWC. The child should be handed over to the family after proper counseling of the parents and executing a bond in Form IX.  
The CWC can decide, considering the best interest of the child, to keep the child in a fit institution. As far as possible, the child shall be placed in an institution closest to where his/her parents or guardians live, unless the child has been subjected to abuse or exploitation by parents or guardians.
8. **Repatriation to family**  
If the child's residence is not within the jurisdiction of the CWC and if the child can be repatriated, steps regarding such procedures should be followed. If the child cannot be repatriated, the CWC must initiate short and long term rehabilitation in its jurisdiction.
9. **Follow up**  
After the order is given, follow up should be done by the CWC once a month during the first three months to ascertain that the child is not being used for again begging, but is in school.  
If the child is to continue in a children's home, the Committee shall direct the Officer-in-charge of the home to submit quarterly progress reports of the child and produce the child before the Committee for an annual review.

## II. STREET CHILDREN

Street children are children who live and work on the streets with little or no family support. Some of them may be abandoned; while some may have a family but may not want to be reunited with the family. Some may be runaway children, living alone on the street.

The procedure to be followed when a street child is produced before the CWC is:

**1. Order a medical check-up**

Keeping in mind that children, who have lived on the streets for long, may be suffering from various infections or injuries, attending to their physical health should be a priority for the CWC. The CWC must order a medical check-up within 24 hours. If required, the CWC may order for age verification also. These directions must be issued in writing to the Police or Superintendent of the home where the child is placed

**2. Initiate family tracing**

As early intervention will help the child and the family to be re-united family tracing should be initiated at the earliest.

The CWC should send the information about the child to the Police/Missing persons Bureau/Missing child home-link to help trace the child's family.

**3. Ensure the PO develops a plan of action**

The CWC must enable the PO to draw up an age-appropriate plan for the child while inquiry is pending.

An appropriate educational and vocational program can be initiated for the child. Wherever possible, mainstreaming the children into formal schools would need to be initiated. The CWC should ensure that children placed in an institution are enrolled for such classes and monitor their progress regularly. NGOs working with children may be invited to develop such programs within the Children's Home.

### III. WORKING CHILD

Section 2 (d) (ia) of the JJ Act includes a working child in its definitions of a child in need of care and protection.

The Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA) is the central legislation governing child labour in India. The Department of Labour is concerned with the enforcement of this Act. Section 3 of the Act **prohibits** the employment of children below 14 years in specified "hazardous" occupations or processes as detailed in the Schedule to the **said Act** and regulates the working conditions of children in other areas of employment. Children engaged in non-hazardous employment shall not be allowed to work more than 4 ½ hours a day and such employment can be only by observing the guidelines issued by the Hon'ble Supreme Court in the 1996 case of *M C Mehta vs. the State of Tamil Nadu*.

As per Section 26 of the JJ Act, whoever ostensibly procures a child less than 18 years for the purpose of any hazardous employment is liable to be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine. Employment of children as domestic servants, employment in hotels and restaurants has also been prohibited by the Government of India since 2006. In a recent decision the Hon'ble High Court of Delhi has held that the JJ Act would apply to children between the ages of 14 and 18 years, as well as to those children employed below 14 years in non-scheduled occupations and processes.

#### How child labour enactments can be used by the CWC

The CWC can give directions to the relevant enforcement agencies (Police and the Labour Departments) to use the provisions of CLPRA for children below 14 years who are found working in occupations and processes that are prohibited under the Act. Even if there is a dispute to age, if the child worker is not getting the minimum wages as declared by the State Government, the police can use the provisions of the Bonded Labour System (Abolition) Act 1976.

A working child rescued by the Police, the Labour department officials or NGOs needs to be produced before the CWC for immediate shelter or handing over to the parents.

Procedure to be followed when a working child/labourer is produced before the CWC:

#### 1. Ensure age verification

The CWC should use the powers given to it by Sec.49 of the JJ Act to determine the age of the child. This becomes important in cases of child labour since the definition of age as per the JJA (18 years) differs from the CLPRA (14 years). This would ensure that the FIR and subsequently the charge sheet filed by Police uses the appropriate legal provisions under the respective Acts (either JJ Act or CLPRA) (Read with Rule 19 JJ Rules).

2. **Ensure medical examination:** the procedures for medical examination (detailed out in Chapter 3 General Procedures of this document) are to be followed.

3. **Ensure comprehensive police investigation**

The CWC must direct the police to collect all forms of evidence that shall be used in the legal proceedings like documents of employment, attendance musters, if any, photographs of the workplace, statements of the children, and family members if any, in the place of employment, statement of other adult workers, NGOs who participated in the rescue and others and any other important evidence. This would help in the process of prosecution.

**4. Ensure strong charge sheets are prepared**

An FIR must be filed and CWC must ensure that copy of FIR is submitted to the CWC by the police for its records. Once the police investigation is complete, the CWC must ensure that the charge sheet is prepared and judicial proceedings under the Criminal Procedure Code are initiated against the offenders.

To make sure that the case is a strong one, and the offenders do not go unpunished, the CWC must check that all Sections of different laws which are applicable are incorporated, inputs from NGOs are taken and the reports of the Probation Officer, statements recorded by the Child Welfare officer etc. are part of the charge sheet.

**5. Ensure individual care plan for the child is prepared**

Based on the processes of home inquiry and discussions with the child, the PO/VPO must prepare the rehabilitation plan for the child. Immediate rehabilitation can begin through educational and recreation activities. Counseling facilities should be provided for those children who have faced abuse, exploitation or separation from the family.

**6. Repatriation and reintegration**

In terms of the plan, after necessary investigations, the CWC would first need to determine whether the child can be reintegrated with his/her biological family or not. This would depend on whether the child is willing to go back to his/her family, and the circumstances within the family that determine whether the family is a safe place for the child.

The process of integration of the child with the family would differ based on whether the child is from within the district of Jurisdiction of CWC or from another district, state or country. If the child cannot be repatriated, the CWC must initiate short and long term rehabilitation in its jurisdiction.

**If child is from within the district of jurisdiction of the CWC**

The CWC should see whether parents are fit to care for the child, so that the child can be sent back home. This should be the first option to be exercised. If the parents are found fit, they should be counselled and made to sign a bond in which they agree that they will not send the child back to work but to school.

Family based alternative care approaches like counselling, sponsorship, or foster care could help to keep the child within the biological family.

If the family is found to be unfit, the CWC should explore appropriate institutional care options or place the child in educational hostels run by different departments of the State.

**If the child's residence is not within the jurisdiction of the CWC, an order for inter-district, inter-state or inter-country transfer, as the case may be needs to be passed.**

The CWC must secure the Rescue Certificate from the Labour Department or Police and this should be along with the other documents at the time of repatriation of the child.

**7. Follow up**

After the order is given, particularly for children from within the same district, follow up should be done by the CWC once a month for the first three months to see that the child is in school and has not started working again. For the period of the next one year, follow up needs to be done every three months. After completion of a year, follow up can be decided on a case by case basis.

It is important to remember that the full rehabilitation of the child from the world of labour can be completed only through education.

#### IV. CHILDREN WITH SPECIAL NEEDS

Children with special needs are those children with identified disability, physical health, or mental health conditions requiring early intervention, special education services, or other specialized services and supports. Children with disabilities have a right to all the facilities and entitlement of all children, while needing unique support.

**As per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, persons with the following conditions are considered as persons with disability: blindness, low vision, hearing impairment, loco motor disability, mental retardation, mental illness and cured leprosy.**

It is mandatory to give admission in the Children's Home to each and every child round the clock by an authority responsible for the management of Children's Home.

Procedure to be followed when a child with a disability is produced before the CWC:

##### **1. Appointment of a Probation Officer for an inquiry**

The CWC must pass an order appointing a Probation Officer or a Voluntary Probation Officer for the inquiry.

Children with certain disabilities such as autism may not be able to communicate very well with authorities. In such a situation the CWC can order that a specialist or a special educator help the PO in handling the case.

The inquiry of the PO should look into the circumstances under which the child came to the CWC. If the child has been abandoned or is a missing child, procedures for the same have to be followed. The inquiry should also look at whether the child has been abused or used for begging and the specific procedures in such cases should be followed. It also needs to be ascertained if the family is in a position to take care of the child, the socio-economic circumstances, and the willingness to meet the unique needs of the child. etc are to be ascertained.

##### **2. Interim care arrangement and procedures**

Pending the report of the PO/VPO, the CWC must ensure that interim care arrangements are made that include: a medical check up and assessment and age verification.

An assessment of the nature and degree of disability of the child needs to be immediately ordered by the CWC. The assessment can be done by specific hospitals and institutions registered with the Government for this purpose. This will enable the child to get a disability certificate that makes the child eligible for certain entitlements and welfare amenities from the government. The CWC should keep a list of such institutions and refer the children to them.

The professionals doing the assessment should also recommend the future course of action that would be needed for the child. This would include, but not be limited to, provision of aids and appliances such as crutches, hearing aids, and wheelchairs.

Recommendations on the educational and therapeutic needs of the child – whether s/he requires special education, occupational therapy, physiotherapy, speech and language therapy, communication therapy, counseling also need to be made.

The CWC should also determine the age of the child as early as possible.

### **3. Ensure the PO develops a plan of action**

The CWC must direct the PO to draw an age and ability-appropriate plan for the child with the help of a special educator or rehabilitation professional experienced in working with children with disabilities.

### **4. Education and rehabilitation**

An appropriate educational and rehabilitation program needs to be initiated, in consultation with specialists in the area. The services of specialists such as special educators, occupational therapists, physiotherapists, speech and language therapists, communication therapists, counselors and others should be accessed.

The necessary aids and appliances should be provided for the child.

The CWC should ask for reports from the PO whether all children with disabilities in the Home are enrolled in the education and rehabilitation program and a periodic monitoring should be done. NGOs should be invited to develop such comprehensive programs within the Children's Home.

### **5. Protection of children**

Special efforts need to be taken by the staff to ensure that the child is not abused in any manner (physical or sexual abuse, bullying, teasing).

### **6. Referral**

The CWC can also explore the possibility of referring the child to a specialized institution serving the unique needs of the child, run by an NGO, if the strength of children in a State run/State aided home is large and the facilities are inadequate.

### **7. Repatriation**

If the family is traced, the parents need to be counseled on the unique needs of the child and what needs to be done to ensure optimal development of the child. A list of referral services can be provided to the parents. The views and opinions of the child need to be taken into consideration, if the child is capable of communicating.

### **8. Final order of CWC**

Depending on the report of the PO and efforts at tracing the family, the CWC must give its final decision in writing.

If the family is in a position to take care of the child, and the child is willing, the child may be handed over to parents after proper counseling.

In case the family is not traced or the child does not want to go back to the family, a long term plan for rehabilitation has to be drawn up. The child may need to be transferred to a fit institution that offers long-term care and is able to meet the developmental needs of the child. Arrangements for care such as sponsorship, and foster care could also be made.



## V. CHILDREN OF PARENTS CONSIDERED UNFIT FOR THEIR CARE

While the family is considered the best place for a child to grow up in, there may be certain conditions which make the family an unsuitable place for the child to live in. In such situations, the child may require alternative care arrangements.

Either the CWC can declare parents unfit or the parents themselves may express their inability to look after the child.

The family cannot be termed as permanently unfit. They are "currently" unfit, which means that at the time they approach the CWC for support to care and protect their child, they are in a phase of life where internal or external circumstances have lowered their capacity to take care of their child. This aspect needs to be ascertained and reviewed by the CWC through their interviews with the parents and the home inquiry report of the PO. The JJ Act upholds that if parents are given support by way of counseling, an opportunity to earn a livelihood (if they are unemployed) or linked with an appropriate scheme of the Government that helps to fulfil a financial need, or medical treatment, they could again become fit to care for their child.

The role and responsibility of the CWC is to make sure that the parents are rendered fit in the shortest possible period. The access to services such as legal aid, rehabilitation services for parents, medical treatment, counseling, and sponsorship will have to be facilitated by the concerned Government departments.

### **CWC declaring parents to be unfit**

Parent/parents may be declared unfit by the CWC on the following grounds such as:

- physical or sexual abuse of the child by the parent;
- parents found to be drug users;
- parents who are terminally ill and are unable to take care of the child;
- parents suffering from severe mental illness;
- parents accused of child abuse or rape; and
- parents serving prison term

In the above circumstances, where living at home can be dangerous or harmful for the child or where the family is not in a position to take care of the child, the CWC can declare the family unfit for the care and protection of the child. The CWC should reach this decision only after the detailed inquiry process by the PO. The reason why the parents are declared unfit needs to be clearly documented by the CWC.

### **Parents expressing inability to care for the child**

Parents on their own initiative may express their inability to look after their child and request the CWC to admit the child in the Children's Home. Examples of such situations are a single mother who is working full time, parents who are separated, serious illness in the family where one parent is hospitalized and the other is the only one to care for him/her.

When the parent/s feel the need to hand over their child for shelter, care and protection, the CWC should spend enough time with the parents and help them to understand that they need not consider themselves unable to care for their child. Through non-institutional, family based alternatives like day care, counseling, or placement of the child in the care of a close relative, the child can be prevented from being institutionalized.

**Under no circumstances should the CWC allow children to be institutionalized for reasons like serious behaviour problems in the child or lack of educational facilities.** In such cases the parents and child should be referred for counseling, alternative care so that the parents continue to take responsibility for their children, who can continue to stay at home.

Specific procedure to be followed in case the parents are considered unfit:

**1. In case, a child is produced before the CWC by the parent themselves**  
The parents should first make an application to the CWC requesting admission for their child to the Children's Home. The application should contain the reason for such a request.

When the CWC receives such an application, it should fix a meeting with the parents to explain to them the importance of a family and home in a child's life and that institutionalization should be the last resort. The option of placing the child with a relative may be explored by the CWC where appropriate.

**2. In case of a child produced by anybody other than the parent**  
The CWC needs to evaluate the situation and ask for reasons from the producer who brought the child in order to decide whether the parents are unfit and the child needs to be institutionalized. As far as possible the CWC shall summon the parents in order to explore and understand the situation fully.

**3. Ordering a home enquiry report**  
The CWC should direct the PO to conduct a home enquiry based on the application that it has received. The CWC shall also speak to the child in order to ascertain the wishes of the child.

**4. Order that may be passed**  
Based on the above, the CWC shall pass the necessary orders keeping in mind the principle of family responsibility and the fact that institutionalization of the child should be the last resort.

If the CWC feels that the child is in need of protection and care and that there is no alternative other than to keep him or her in an institution, then the CWC shall pass an order for admitting the child into the Children's Home. The child should not be admitted in the Children's home for more than a year during which period, the family is strengthened with the help of other Government schemes or NGO programs, so that the family or parents become fit to care for their child.

The CWC can pass an order to insist that parents to visit the child in the institution at least once a month, so as to maintain a close relationship with the child. The PO may be directed to bring to the CWC's notice if parents violate this order. Also the CWC may require the parent or other person liable to maintain the child to contribute to his maintenance in the Home according to their income (Section 60 of the JJ Act).

**5. Follow up**

The CWC must review the case every year by directing the PO to undertake a home visit and prepare a home enquiry report. The CWC can change the decision of institutionalization and send the child back to the family depending on the family circumstances, or withdraw the child from non-institutional alternative care services if the family is once again empowered to take care of the child.

## VI. ABANDONED CHILD AND MISSING CHILD

### Abandoned child

An abandoned child refers to a child left alone for an extended period of time in a public or private setting with the intent to dispose of the child. The parents of abandoned children choose to wilfully withhold physical, emotional, and financial support from the minor children.

### Missing Child

A child found without any adult accompanying him/her. A missing child is usually unable to express verbally or nonverbally his/her whereabouts and is one whose parents cannot be located.

In all cases when an abandoned or missing child is produced before the CWC, the police must be informed so that family tracing can be facilitated.

Procedure to be followed when an abandoned child or a missing child is produced before the CWC:

#### 1. Verify if the FIR has been filed and the police has been ordered to trace the family of the child

The child should be produced before CWC within 24 hours, unless child is unwell or hospitalized, in which case the CWC should be duly informed. The CWC needs to first verify whether an FIR or missing complaint exists for the child and that the Complaint/Noting in Police diary has been completed with the local police station (within 24 hours) along with a photograph of the child. If this has not been done, the CWC shall order the police to do so and to initiate proceedings to trace the family of the child.

#### 2. Admit child to a place of safety

The child should be admitted to the nearest children's home. In case the child is able to indicate his/her place of residence or some clue about the place of residence or parents is got, then the CWC can issue an order to the SJPU/ Pos/ NGOs to:

- verify the information; or
- escort the child to his place of residence and trace the family

#### 3. If the child has a claimant/s

During the process of inquiry by PO and Police, if the parents are traced, the CWC shall summons them to appear before the CWC within a week. The CWC will try and understand if the child was missing or if the child had been abandoned. If a Missing Complaint had been made by the parents with the Police, the child should be handed over to the parent without delay

If the child was abandoned, the CWC must try and understand the reasons why the child was abandoned and assess whether the parents are fit to take responsibility of the child. If so, the parents will need to be counseled to assume responsibility of the child. If the parents wish to surrender the child, they will have to execute a proper surrender document, giving consent for the child's adoption/guardianship/suitable rehabilitation.

#### 4. Documents required from the claimants of child

Whoever comes to claim the custody of the child should have following documents:

- documentary evidence such as birth certificate of the child, his/her school leaving certificate stating the claimants as parents/guardians and family photograph if available;
- copy of the missing persons complaint if it had been reported to the police;
- the letter from police station stating the receipt of the complaint; (This cannot be replaced by an NOC from the police)
- police report verifying that the claimant of the child is the parent/guardian of the child and that police have no objection to handing over the child to the claimants; and
- the CWC's verification of the veracity of the parents

#### 5. Restoring of the child to parent/guardians and discharge from the institution

Based on the documents produced by the claimants, the report of the police and the report of the PO recommending restoration of the child to the claimants, the CWC should make its own assessment of whether the parents/guardians are fit to look after the child. If the CWC decides to hand over the child to the parents it shall pass an order that they find the parents/guardian fit and before handing over the child to the parents/guardians (Section 39(3) (a) of the JJ Act). The parents/relatives/guardians must sign a bond in Form IX **before the child** is restored to them.

#### 6. Refusing custody to parents/claimants

If through questioning, the CWC establishes that there is substantial evidence indicating that the parents/claimants are not fit individuals, then, in the best interest of the child, the CWC can refuse the custody of the child to the claimants and can admit the child in the Children's Home. The CWC should clearly indicate the reasons for the decision.

The CWC should recommended counseling or other support services for the parents so that their capacities to take care of the child are enhanced and the child can be integrated with the family in the shortest possible time. The CWC should review the decision of institutionalization of the child at least once a year. If required the CWC may extend the period of institutionalization.

#### 7. Declaration of child legally free for adoption

If parent/parents fail to respond to the notice issued in the regional newspaper and the TV announcements or are not located through the police or NGO missing person links, the CWC shall come to the conclusion that the child was abandoned by the parents.

Under Rule 40 (3), after due process of inquiry and once the CWC is satisfied that all possible efforts to locate the parents/guardians have failed, the CWC can declare that the child is legally free for adoption, and place child in a Children's Home which is licensed for Adoption.

**8. Repatriation of a missing child from another state or country**

If the child's residence is in a different state or country then after verification of the information given by the child, the Social Justice Director will need be informed of the details given by the child. The process of repatriation discussed in Chapter 3 will need to be followed.

**9. Procedure to be followed for a child missing from an institution**

If a child is missing from an institution, the institution shall report this to the CWC. The CWC shall institute an inquiry into the matter and as part of the inquiry, take the statements of the staff of the institution and other children to understand the circumstances, reasons and manner of the child's escape from the institution. The CWC will also ensure that the matter has been reported to the police. In case the child has escaped from an institution and the child is found or returns back, the CWC shall be informed by the Superintendent of the home.

## VII. SURRENDERED CHILD

As per to Rule 2(t) of the JJ Rules a surrendered child is a child, who in the opinion of the Committee is relinquished on account of physical, emotional and social factors beyond the control of the biological parent/parents.

Rule 40(4) states that a surrendered child is a child who has been declared as such after due process of inquiry by the CWC and in order to be declared free for adoption, a surrendered child shall be any of the following:

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

**In case the child to be surrendered is a child of an adult/ adult couple, the following procedure shall apply:**

If the biological mother/biological parents want to surrender her/their child, the mother/parents come directly to the CWC or through any agency.

The CWC will interview the biological mother/parents and assess the reasons why the mother/parents want to give away the child. If the reason for surrendering the child is due to a crisis that can be overcome through other forms of non-institutional support such as foster care, sponsorship or short term institutional care, or other schemes of the Government, the CWC should provide this information.

If required, the CWC may refer her/them to an agency for professional counseling to strengthen their coping capacities to deal with the crisis that they are facing. The CWC should not take a hasty decision, but make use of the counseling service to see if the child can remain within the biological family. The detailed assessment report by the counselor should be placed on record and considered before taking the final decision.

If the CWC is convinced that the parent/couple is not in a position to take care for the child, the CWC can discuss with her/them the choice of surrendering the child and placing the child for adoption, foster care or other alternative care.

In case a married couple is surrendering the child, the marriage certificate of the biological parents and birth certificates of other children, if any, have to be submitted. These are collected to verify the exact status of the family. The document of surrender must be signed by the father and mother of the child. In the absence of the signature of one parent, the document will be considered invalid and the child shall be treated as abandoned and further procedures shall be followed accordingly.

**In case the child to be surrendered is a child of a minor biological mother (below 18 years) the following procedure shall apply:**

If the child who is to be surrendered is a child of a minor, then the parents/guardian of the minor are to be involved in the process of surrender. The surrender deed has to be jointly executed by the parent and the minor mother. If there is a dispute between the

parents and the minor mother about surrendering the child, the decision of the minor mother will prevail. If however, the CWC feel that the life of the child to be surrendered is in danger, then the CWC can deny the custody of the child to the minor mother. The CWC will order the child to be placed in a SAA until such time that the CWC is convinced that the mother is in a position to take care of the child. In such a case, the deed of surrender (DOS) cannot be executed under any circumstances.

The CWC should interview the minor mother who is going to surrender the child to understand the social circumstances. This inquiry will help the CWC to assess the situation and take steps if there were other violations against the minor, who has come to surrender her child. All the details revealed by the minor are to be kept confidential, even from her parents.

After speaking to the minor, her parents and guardians, and verifying the circumstances, the CWC may proceed with the process of surrender by executing surrender deed in form XV. The document needs to be signed by the minor mother as well as her parents/ guardians.

If for any reason this procedure cannot be completed, the surrender become invalid and the procedure for abandoned child should be initiated.

#### **Final order**

The order for surrender shall be issued by the CWC and the child shall be placed in a SAA for care and protection. The case file of the CWC should contain the following facts and documents:

1. Original surrender document
2. Interview of the parent recorded by CWC
3. Statement of the biological mother for surrendering the child
4. Affidavits of the witnesses
5. Order of admission into the Licensed Adoption and Placement Agency (LAPA) / Specialized Adoption Agency (SAA)

The LAPA / SAA shall wait for the completion of the 60 days reconsideration time given to the biological parent or parents after surrender. After this period, the adoption agency may be directed to commence the process for declaring the child legally free for adoption.

**If the mother comes back to claim the child within 60 days**, the CWC must carefully examine the reasons why the mother has changed her mind. The CWC should order the PO to enquire into all facts of the case, especially verifying if the parent/s is capable for providing for the adequate care of the child. The child can then be handed over, after signing a bond by all the parties involved at the time surrender of the child. The bond serves as a guarantee that the child will be cared for.

In the case of a minor mother claiming her child, the CWC should maintain a follow up with the minor mother, the child and the family of the biological mother, once a month for first three months, then once every three months for a year, and then once a year for two years.

**If the mother/parents do not reconsider the decision to surrender the child**, the CWC, on application from the SAA, shall declare the surrendered child legally free for adoption in Form XIV. The child must be produced before the Committee at the

time of declaring the child legally free for adoption. The CWC examines the child and reviews the progress of the child and declares the child legally free for adoption.



## VIII. CHILDREN TRAFFICKED FOR COMMERCIAL SEXUAL EXPLOITATION

Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the UN Convention against Transnational Organized Crimes, 2000 defines trafficking in persons to “mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

Trafficking is associated with various forms of exploitation, including for labour, slavery, organ trade, illegal adoption, and other illegal activities and for the purpose of commercial sexual exploitation.

The child may be rescued by the Police or NGOs and produced before the CWC. In case of mass rescue operations, the victims will generally be produced before the Sessions Court, unless there is a clear indication that the rescued victim is a minor. In case where the victim is found to be a minor after the age verification is undertaken on the orders of the Sessions Court, the Court will issue an order for the child to be produced before the CWC.

Care should be taken to ensure that the child is, at no time, in touch with the family members, pimps, or brothel keepers as they could be the traffickers or their agents or representatives. It is important that the child meets her family only under competent supervision of the Superintendent or PO so that the child is not pressurized by the family to turn hostile and return home

After age verification, if it is established that the person is a major, then he/she has to be produced before the appropriate Criminal Court as per the ITP Act.

Special procedures to be followed when a victim of child trafficking is produced before the CWC:

### 1. Ensure medical examination

The CWC should direct the Medical Officer to conduct a detailed physical and gynecological examination, to look specifically for signs of physical and /or sexual abuse and whether any organ is missing.

The process of medical examination has to commence within 24 hours, especially for the collection of evidence in matters of rape. HIV testing with consent, and on advice of the medical officer, will also be conducted. It is important that the consent is recorded in writing

### 2. Ensure comprehensive police investigation

The CWC must direct the police to collect all forms of evidence that shall be used in the legal proceedings like photographs, statements of the children and NGOs present during rescue and any other important evidence. The interview at the police station

must be carried out by the Woman Police constable or conducted in the presence of female representative of an NGO, as mandated under Section 15(6A) of the ITPA 1956.

The CWC should verify the forwarding report, injury report, FIR copy along with statement of the woman police officer, Case Diary, and belongings of the victim against the list provided by the police.

The CWC should also avoid giving repeated permissions for interviews by the police that could increase the trauma and distress faced by the child.

### **3. Ensure that a strong FIR is prepared**

The CWC must make sure that a strong FIR is prepared by using relevant sections of IPC read with sections of ITPA. The CWC must insist that Section 23 of JJ Act is also included in the FIR.

Documentation by the CWC of the entire case should be detailed, so that it can be used as evidence in the court. Section 164 of the Cr. PC accepts a child's statement before CWC as evidence. The CWC must insist on receiving a copy of the FIR and all the supporting documents that have been attached to the same. The CWC must also ask for a copy of the Charge Sheet and verify it.

### **4. Ensure that an individual rehabilitation plan is prepared**

The CWC must direct the Probation Officer or Voluntary Probation Officer to prepare an individual care plan, for the immediate and long term rehabilitation of the child. Under no circumstances should the child be sent back, if there is a likelihood of the parents, members of the extended families having been involved in trafficking or if the child is not willing to go back.

### **5. Release**

If the child can be restored to the parents, this should be done after the process of enquiry is complete. The parents should sign a bond (Form IX) which details their responsibility for the care and protection of the child.

### **6. Transfer**

If the child's residence is not within the jurisdiction of the CWC, an order for an inter-district or inter-state transfer needs to be passed. The child must be transferred as per the provisions of Section 38 of the JJ A (along with Rules 92 and 93 of the JJ Rules).

## IX. CHILD WHO IS A VICTIM OF ABUSE

The World Health Organization defines child abuse as “all forms of physical and/or emotional ill treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”

The relevant sections of the Indian law applicable to a child who is a victim of sexual abuse include:

- Sections 23, 24, 25 and 26 of the Juvenile Justice ( Care and Protection of Children ) Act, 2000
- Sections 3 to 15 of the Protection of Children from Sexual Offences Act (POCSO), 2012
- Section 375 of the Indian Penal Code (rape)
- Section 376 of the Indian Penal Code (punishment for rape)
- Section 377 of the Indian Penal code (unnatural offences)
- Section 354 of the Indian Penal Code (assault or criminal force to woman with intent to outrage her modesty)
- Section 511 of the Indian Penal Code (punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment)

It is important to deal with the child who has been abused with sensitivity. The child should be placed in a comfortable and friendly environment when being interviewed and should not be pressurized to answer any questioning s/he is not willing to.

During the interview, a representative from the NGO/Childline associated with the CWC or the child should be present. In the case of a female child, a female member must be present. If a family member is not an abuser, one person from the family, with whom the child is most comfortable, can be present.

The dignity of the child should be given the utmost priority. In the process of the interview utmost care should be taken so that there are no biases or moral judgements that would make the child feel guilty or responsible for the abuse. The role of the CWC is to win the child’s confidence and secure and maintain the child’s trust.

Procedure to be followed when a child who has been abused is produced before the CWC:

### 1. Determine who has abused the child and nature of abuse

The CWC must verify:

- who has abused the child;
- the nature of abuse;
- where the abuse took place; and
- for how long the child has been abused.

### 2. Ensure safety of the child

In case the abuser is a part of the immediate surroundings of the child, or in the case of a child who has no adult supervision, the CWC should place the child in the nearest children's home/shelter home/open shelter for temporary care and treatment.

**3. Record the statement of the child, and of the producer of the child**

The CWC should record the statement of the child in as much detail as possible as part of the initial counseling process. If the child has been directly produced before the CWC, then the statement of the person who has produced the child also needs to be taken. Photographs in the case of physical abuse can be accepted by the CWC along with this statement.

**4. Ensure complete medical examination – including gynecological examination in case of sexual abuse of a girl child**

The child must be referred for a complete medical examination as soon as possible and a copy of the examination report must be submitted to the CWC. In case of sexual abuse a gynecological examination must also be asked for, by the CWC. The CWC must also arrange for medical care if needed.

**5. Direct the police to register an FIR**

The CWC must direct the police to register an FIR against the abuser/s – this direction must be given in writing, along with copies of the statements made by the child and the person who produced the child before the Committee.

The police should also be directed to inform the CWC about the action taken by them. A copy of the FIR must be submitted to the CWC by the police.

**6. If child has been abused in institutional care**

In the event of physical, sexual or emotional abuse in an institution, the CWC should immediately report the incident to the Director of Social Welfare.

The CWC must order a special investigation of the abuse and instruct the local police station to file an FIR and conduct necessary investigations.

If needed, the child should be transferred to another institution or to a fit person.

**7. If the child has been sexually abused**

All children who are victims of sexual abuse are children in need of care and protection, and must be produced before the CWC.

The CWC must:

- ensure that the child is safe;
- declare the parents to be fit persons, if the child is safe at home;
- inform the police about the abuse and direct them to take necessary action against the abuser/s;
- verify the provisions of the FIR that is registered;
- arrange for a medical examination to be conducted, without delay;
- take steps for compensation to be paid to the child (according to Section 33 (8) of the POCSOA, 2012); and
- make arrangements to provide a support person for the child (according to Rule 4 (7), The Protection of Children from Sexual Offences Rules, 2012)

**8. Arrange for counseling/ crisis intervention**

The CWC can arrange for professional counseling for the child (and the family, if needed) to deal with the trauma caused by the abuse.

**9. Ensure rehabilitation and social integration**

The procedures for rehabilitation and social integration of the child will be the same as that for children trafficked for commercial sexual exploitation.

## X. VICTIM CHILD IN CHILD MARRIAGE

Child marriage represents one of the worst forms of violence against any child, depriving them of a childhood, and pushing them into a phase of life for which they are not ready physically, emotionally or mentally.

Section 2(b) of the Prohibition of Child Marriage Act 2006, defines child marriage as a marriage where either of the contracting parties is a child.

The minimum age for a valid marriage is 18 years for

### Specific legislation pertaining to child marriage

**Prohibition of Child Marriage Act 2006:** All offences under this Act are cognizable and non-bailable. The Act allows for injunctions or orders to stop a marriage.

Child Marriage Prohibition Officers (CMPO) are to be appointed by the State Governments whose duty is to prevent and prosecute solemnization of child marriages. The concerned officers at the block level are the Child Development Project Officers (CDPO). The Act also gives the District Magistrate powers to stop and prevent solemnization of child marriages by employing appropriate measures and minimum police force.

Under the Act, a marriage is void, that is invalid if the child has been forced, compelled, enticed or kidnapped and the marriage has been carried out against her/his consent. Even if the absence of such circumstances, a child who wishes to annul the marriage can do so by approaching the appropriate Court.

The CWC can use provisions of this Act for the protection of the child.

The CWC could be intimated about a child marriage through the Child Marriage Prohibition Officer under the Act, Childline or any public spirited citizen. The CWC can come to know of such a marriage through media reports or by the child himself/herself.

### Specific procedure to be adopted by CWC when a case of child marriage is brought before the CWC:

#### 1. If the child marriage is about to take place

If the marriage of a child is about to happen, the first duty of the CWC is to initiate action to stop the marriage. The CWC should direct the CMPO, who has the powers of a police officer (Section 16(3) of the Act) or the District Magistrate to stop the marriage.

The CWC should also inform the police as the offences are cognizable and non-bailable. An application with Judicial Magistrate of First Class or Metropolitan Magistrate may also be filed to stop the marriage.

In cases where the marriage is taking place outside the CWC's jurisdiction, the CWC should take assistance of the CWC which has jurisdiction over the place to stop the marriage.

**2. If the marriage has already taken place**

In case the marriage has already taken place, then the first step of the CWC is to determine whether the person who is a party to marriage, is a child as defined under Section 2 (k) of JJ Act. The CWC can order for verification of age as per Section 49 of the JJ Act.

The CWC then needs to determine whether the marriage in question took place or not. For determining this, the CWC should rely on the findings of the police, report of Child Marriage Prohibition Officer, discussions with the child and documents of marriage.

The CWC can check with the child if she was compelled into the marriage and give her information about her rights under the Prohibition of Child Marriage Act to call for the marriage to be voidable and her right to maintenance and action against the party that was involved.

**The offences under Child marriage are punishable u/s 9, 10, and 11 of the Act.**

**3. Custody of the child**

After determining that the person in the marriage is a child (below 18 years) and in need of care and protection, the CWC should take custody of the child, especially where the marriage is void. In a voidable marriage, especially where the child may be almost 18 years, the CWC may summon the parents. With counseling and with the involvement of NGOs and the local panchayat, the two families can be made to agree that the child will stay with her family until she is 18 years of age. A bond will have to be signed, to this effect.

The CWC is also authorized to take any child born out of this marriage into their custody along with the minor biological mother. The CWC may take decisions regarding the mother and her child keeping in mind the best interest of both of them.

## XI. PROCEDURES FOR DECLARING A CHILD LEGALLY FREE FOR ADOPTION

**Rule 2 (m) of the JJ Rules, 2014** defines an orphan to mean a child who is without parents or willing and capable legal or natural guardians.

Section 2 (aa) of the JJ Act defines adoption as 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.

The best interest of the child without a family is served by providing the child an opportunity to be placed with a family within the child's own socio-cultural milieu. Due consideration is to be given to the child's upbringing and to his/her ethnic, religious, cultural and linguistic background while placing a child for adoption.

Inter-country adoption should be seen as an option to be considered only when in-country adoption is not possible.

The role of the CWC in adoption is to declare a child legally free for adoption. It is only after this certificate is issued by the CWC that a child can be placed for adoption by the SAA.

### **Procedure for declaring a child legally free for adoption**

Any producer as per section 32 (1) of the JJ Act, shall produce all orphaned and abandoned children as well as those children whose parents wish to surrender them before the Committee.

The children need to be brought before the CWC to undertake and complete the inquiry procedures for the child to be declared legally free for adoption.

Children below 2 years need not be produced before the CWC immediately; instead the Licensed Adoption Placement Agency /SAA/Children's Home can present the relevant documents (written report with photograph) to the CWC within 24 hours of receiving the child, excluding travel time. However, the child must be produced before the Committee during the period of inquiry and definitely at the time of declaring the child legally free for adoption.

A child becomes eligible for adoption, when the Committee has completed its inquiry and declares that the child legally free for adoption; such a declaration shall be made in Form XIV.

The child must be produced before the CWC at the time of declaring such a child legally free for adoption.

### **Procedure to be followed by the CWC:**

In all cases the CWC must follow the procedures as mentioned in Section 41(3) and (5) (a), (b), (c) of the JJ Act, Rule 33 (3) and (4) of the JJ Rules, 2014 and the guidelines for the pre-adoption process in Chapter II of the CARA guidelines (2011).

1. Section 41 (5) of the JJ Act, 2000 states that no child shall be offered in adoption:



- a. until two members of the Committee declare the child legally free for placement in the case of abandoned children,
  - b. till the two months period for reconsideration by the parents is over in the case of surrendered children, and
  - c. without his consent in the case of a child who can understand and express his consent.
2. Procedure for declaring a child abandoned and declaring him legally free for adoption:
- a. the recognized agency shall report and produce the child before the Committee within 24 hours along with a copy of the report filed with the police station in whose jurisdiction the child was found abandoned;
  - b. the CWC must institute a process of inquiry and the report of the Probation Officer or Child Welfare Officer should be submitted within a month in **Form XIII**;
  - c. the SAA must give a declaration to the CWC stating that there has been no claimant for the child even after notification in the print and visual media;(for children below 2 years of age the notification should be in at least one leading national newspaper and one regional newspaper and for children above 2 years, an additional television or radio announcement and notification to the missing persons squad or bureau shall be made). Further this step should be taken within 60 days of finding the child when the child is below 2 years of age, and within 4 months when the child is above 2 years of age;
  - d. the CWC can declare the child legally free for adoption on completion of this process of inquiry and notification.

In case a claimant appears for the child, the SAA shall refer the case to the CWC. The SAA shall abide the decision taken by the CWC.

3. Procedure to be followed in the case of surrendered children:
  - a. the CWC must counsel the parents, explaining the consequences of adoption and exploring the possibilities of the parents retaining the child;
  - b. if the parents are unwilling to retain the child then the CWC must keep such children initially in foster care or arrange for their sponsorship;
  - c. if the surrender is inevitable, then a deed of surrender must be executed by the parent/s in Form XV, in the presence of the CWC;
  - d. the parent/s shall be given two months time to reconsider the decision to surrender the child;
  - e. after due inquiry the CWC shall declare the child legally free for adoption in Form XIV.
4. An orphan, abandoned or surrendered child who is declared legally free for adoption shall be placed, as far as possible, with the nearest LAPA/SAA by an order of the CWC.
5. Transfers, if any shall be carried out as per Section 57 of the JJ Act. The LAPA/SAA may transfer a child to another branch within the state, provided the branch to which the child is being transferred has an independent license and the CWC has declared the child free for adoption and issued a transfer order.

It is the role of the CWC to review whether adequate efforts have been made for adoption of the child by that branch, or to find a suitable adoption agency within the district, prior to issuing such a transfer order.

6. If there are older children in an agency, (particularly when the child declared legally free for adoption by the CWC is above 6 years and the agency where the child is placed has a license to keep children for adoption only up to 6 years of age), the CWC should take stock of the efforts made by that agency for adoption, and transfer such a child to another home with a license for adoption of older children so as to address the age specific rehabilitation needs of the child.
7. If Indian adoptive parents have not been found for older children and special need children, such children are placed in a Recognized International Placement Agency (RIPA) that is licensed for inter-country adoption.
8. Transfer of the child from one institution to another, should be accompanied by available documents pertaining to admission, preliminary case history, documentary evidence to prove that the child is legally free for adoption, and a permission letter for transfer of the child. The SAA / LAPA/ RIPA/ Children's Home with license for adoption shall verify all the facts before accepting the child as it is legally responsible for the placement of the child.
9. If the child's parents are dead, and the child has been placed by the child's guardian or family member in the JJ system for care and protection through the CWC it must be noted that such a child is not an orphan. He/she cannot be declared legally free for adoption, until the relative or guardian surrenders the child or gives their consent to declare the child legally free for adoption.

**CHAPTER 6  
RECORDS AND REGISTERS TO BE MAINTAINED BY THE CWC**

All cases coming to the CWC must be assigned an OP number. The system of numbering should be:  
OP number/ Code/ Year

The code refers to the nature of the case and should be as:

- A Abandoned child
- B Child found begging
- D Child with disabilities
- FC Petition for foster care/ child placed in foster care
- R Runaway child
- S Surrendered child
- PA Child who has been physically abused
- S Street child
- SA Child who has been sexually abused
- TR Child who has been trafficked
- UP Child of unfit parents
- W Working child

(Thus 213/SA/2012 will refer to the 213<sup>th</sup> case seen by the CWC. The child was seen in 2012 and was a victim of sexual abuse)

**Every child coming to the CWC must have an individual case file. This file should have:**

1. OP number
2. Petition filed by producer (with name and complete address)
3. Documents related to child – e.g. FIR, medical examination report, proof of age
4. Brief summary of proceedings
5. Decision taken
6. Date of next hearing
7. Date and signature of member who dealt with the child

**The CWC must have the following seals:**

1. Seal of the CWC (official, round seal)
2. Seals for Chairperson and members – with names and designation
3. Date seal

The following registers must be maintained by the CWC:

**1. General Register:**

This register is for every child brought before the CWC. It should contain the following information:

- 1) Date
- 2) OP number
- 3) Name of the child
- 4) Age
- 5) Sex
- 6) Names and address of parents (if available)
- 7) Who produced by

- 8) Decision taken by the CWC
- 9) Name and address of the home where the child is placed
- 10) Date of admission to the home
- 11) Reason for admission (as per Section 2 (d) of the JJ Act)
- 12) With whom the child is released (if not admitted to a home)
- 13) Nature of bond executed (if any)
- 14) Closing date
- 15) Remarks

## **2. Register for execution of bonds**

This should have the following details:

- 1) Name and address of the child
- 2) Name and address of the parents
- 3) Name and address of person to whom the child has been handed over to
- 4) Bond amount and mode of payment
- 5) Bond executed by
- 6) Order issued by

## **3. Register of children declared legally free for adoption**

The following details must be recorded in this:

- 1) OP number
- 2) Name of child (if given)
- 3) Age and sex of child
- 4) Police station
- 5) SA Agency where the child is placed
- 6) Date of surrender of child
- 7) Date of free for adoption order
- 8) Date of completion of adoption process
- 9) Closing date of case

## **4. Register for visits to institutions**

This should contain the following information:

- 1) Date of visit
- 2) Name of Institution visited
- 3) Visited by
- 4) Findings
- 5) Remarks for follow up

## **5. CWC Members Attendance Register**

### **6. Minutes register**

A minutes register must be maintained for all meetings of the CWC. Details of cases taken for consideration, disposal and such other proceedings are to be recorded in the minutes book. All other discussions and proceedings are also to be recorded and approved by the Chairperson.

### **7. Inward and outward register and file**

This is for all correspondence received and sent (by ordinary or registered post/ e mail/ courier/ hand delivered).

**8. DPO enquiry register**

This should have the following details:

- 1) OP number
- 2) Date of writing for enquiry
- 3) Address of DPO
- 4) Date of receiving report

## **ANNEXURES**

### **Essential reading**

- The Juvenile Justice (Care and Protection of Children) Act, 2000
- The Kerala Juvenile Justice (Care and Protection of Children) Rules, 2014
- The Protection of Children from Sexual Offences Act, 2012
- The Protection of Children from Sexual Offences Rules, 2012
- The Guidelines Governing the Adoption of Children, 2011

### **Useful web sites**

[www.missingchildsearch.net](http://www.missingchildsearch.net)

[www.trackthemissingchild.gov.in](http://www.trackthemissingchild.gov.in)

<http://keralapolice.org>

<http://sjd.kerala.gov.in>

[www.ncpcr.gov.in](http://www.ncpcr.gov.in)

**Formats of orders**

- Form IX      Undertaking by parent or fit person to whom child is restored**
- Form X       Order of short term placement pending enquiry**
- Form XI      Order of restoration of a child to an institution**
- Form XII     Order for enquiry**
- Form XIV     Order for declaring a child legally free for adoption**
- Form XV      Deed of surrender**
- Form XVII    Order of foster care placement**
- Form XIX     Order of aftercare placement**
- Form XXII    Escort order**

