

# JUVENILE JUSTICE ACT- A TOOL FOR CHILD PROTECTION

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VYOMA JAIN

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“THERE CAN BE NO MORE INTENSE DISCOVERY OF A SOCIETY’S SPIRIT THAN HOW IT TREATS ITS YOUNGSTERS.”-

NELSON MANDELA

# INTERNATIONAL FRAMEWORK

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- A landmark moment in Child rights came on 20th November 1989 the Magna Carta of Child Rights ,The United Nations Convention on the Rights of Child (UNCRC) came into force. It calls for a rights based approach for children , which includes the state as the duty bearer and children as right holders. India ratified the Convention in 1992, and therefore is required to conform with the legislation.
- Core rights recognised under the UNCRC-
  1. Right to survival
  2. Right to Development
  3. Right to Participation

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- The main concept enshrined in the UNCRC was the principle of the best interest of the child. (Section 3 of UNCRC) .
  - The focus of the Juvenile Justice System is to reform and rehabilitate the juvenile in conflict with law , so that they also may have access to the opportunities enjoyed by other children. Rule 1.4 of The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") defines Juvenile Justice as an integral part of the national process of any country. It aims at promoting juvenile justice to the greatest extent.

# DOMESTIC FRAMEWORK FOR CHILD PROTECTION

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The Indian Constitution –

- Article 15(3) - special provisions for women and children
- Article 24 – no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment
- Article 39(f)
- Article 45 – state shall endeavour to provide early childhood care and education for all children until they complete six years of age

# JUVENILE JUSTICE SYSTEM IN INDIA

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- The need for a separate judicial system for juveniles was recognised , leading to enactment of Juvenile Justice Act, 1986.
- After amendments in 2006, and 2011 , there were still gaps in the implementation of the act, and there was scope to make the act more child friendly.
- After various deliberations , Juvenile Justice ( Care and Protection of Children ) Act 2015 was enacted, where juveniles aged between sixteen to eighteen years of age are to be tried as an adult if he/she is alleged to have committed a heinous crime.
- The power to decide whether the juvenile will be tried as an adult or not, lies with the Juvenile Justice Board, on the basis of a preliminary assessment. After that, if there is a need for the trial of the said child as an adult, the board may transfer the case to Children's Court. However, there is no life imprisonment and capital punishment in case of juveniles, in conformity with the principles under UNCRC.

# JUVENILE JUSTICE ( CARE AND PROTECTION OF CHILDREN ) ACT 2015

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According to Anant Asthana, the title of the Act suggests that ,

“ care and protection of the child is the alternate to punishment , and the same is achieved by administration of the JJ Act 2015 in its true spirit. “

In its statement of aims and objectives, the JJ Act 2015 prescribes a child-friendly approach to be adopted in the adjudication and disposal of matters. The term has been defined as, “any behavior, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.”

- JJ act categorises children into 2 categories namely -
- CCL- children in conflict with law
- CNCL – Children in need of care and protection

Cases where CCL can be treated as CNCP – When JJB is satisfied that that a child before them is not a CCL but

# DEFINITIONS UNDER JJ ACT 2015

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- Child- A person who has not completed 18 years of age
- “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;
- Child in need of care and protection – 17 categories ( including child at the imminent risk of child marriage )
- Juvenile – A child below the age of 18 years

# GENERAL PRINCIPLES UNDER SECTION 3 OF JJ ACT

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- (i) Principle of presumption of innocence – Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- (ii) Principle of dignity and worth – All human beings shall be treated with equal dignity and rights
- (iii) Principle of participation – Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

- (iv). Principle of Best Interest – All decisions regarding the child shall be used on the primary consideration that they are in the best interest of the child and to help the child to develop full potential
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- (v) Principle of institutionalisation as a measure of last resort – A Child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.
  - (xiv) Principle of fresh start- All past records of any child except under the Juvenile Justice system should be erased except in special circumstances.
  - (xvii) Principles of Natural Justice – Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing , rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

**2.2. The Protection of Children from Sexual Offences (POCSO) Act, 2012** protects children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process, by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. POCSO Act, 2012, provides a comprehensive definition of all sexual crimes and sexual exploitation of children. Section 40, POCSO Act provides for free legal assistance during trial.

### 3.0 Organizations under the JJ Act, 2015.

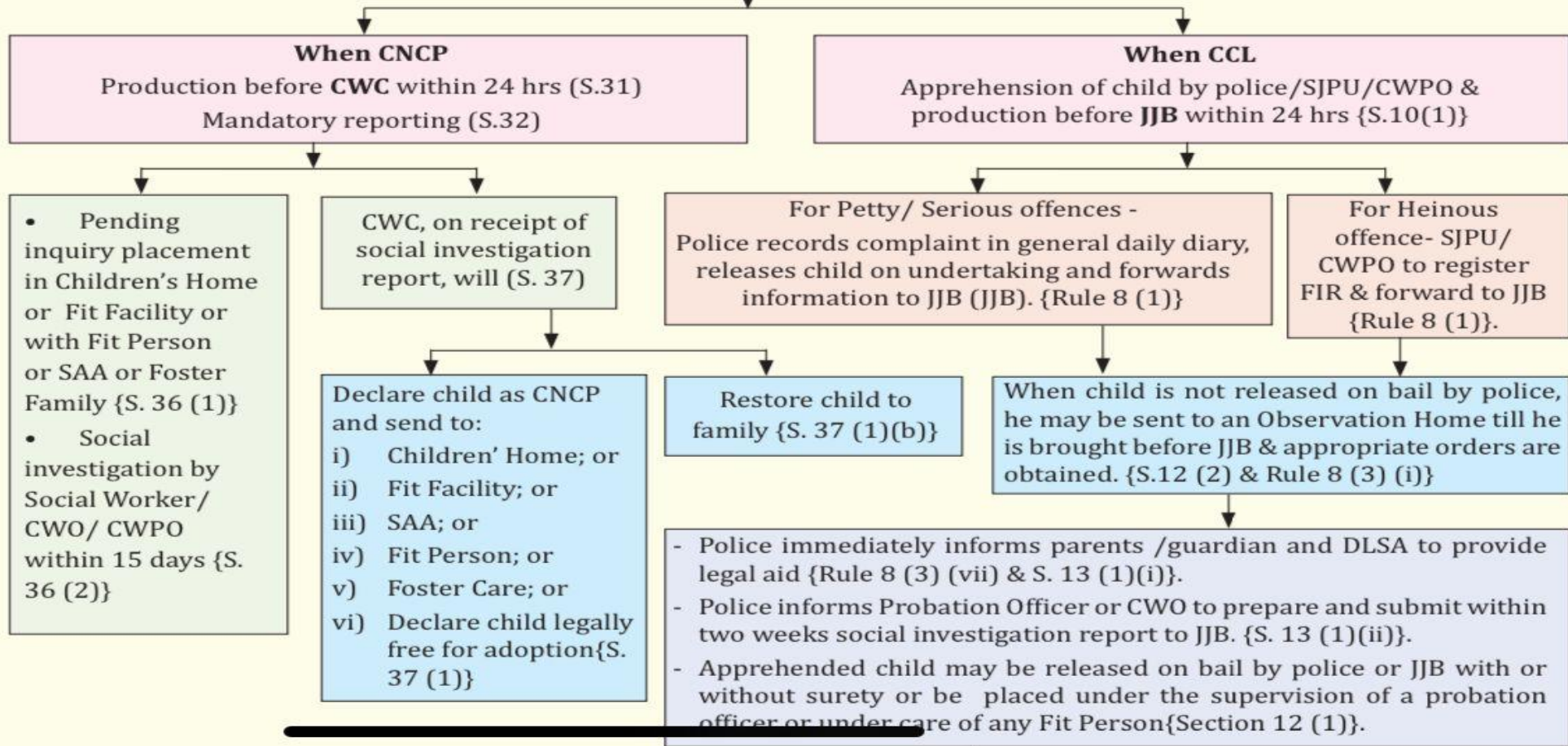
ORGANIZATIONS FOR CCL		ORGANIZATIONS FOR CNCP	
Section	Name of Organizations	Section	Name of Organizations
Section 106	State Child Protection Society	Section 106	State Child Protection Society
Sections 2 (26) & 106	District Child Protection Unit	Sections 2 (26) & 106	District Child Protection Unit
Section 54	Inspection Committee	Section 54	Inspection Committee
Section 107	Special Juvenile Police Unit/local police	Section 107	Special Juvenile Police Unit/local police
Section 4	Juvenile Justice Board	Section 27	Child Welfare Committee
Section 2 (20)	Children's Court	Section 2 (20)	Children's Court
Section 2 (48)	Probation Officer	Sections 2 (17)	Child Welfare Officer
Sections 2 (40) & 47	Observation Home	Sections 2 (19) & 50	Children's Home
Sections 2 (56) & 48	Special Home	Sections 2 (41) & 43	Open Shelter
Sections 2 (46) & 49	Place of Safety	Sections 32	Hospital
Sections 2 (27) & 51	Fit Facility	Sections 44, 45 (4), 51, 52	Foster Care/Sponsorship/Fit Facility/ Fit person {Section 2 (29), (58) (27) (28)}
Sections 2 (28) & 52 and 45 (4)	Fit Person and Sponsorship	Sections 2 (57) & 65	Specialized Adoption Agency
Section 109	State Commissions for Protection of Child Rights	Section 109	State Commissions for Protection of Child Rights
Section 109	National Commission for Protection of Child Rights	Section 109	National Commission for Protection of Child Rights
		Section 67	State Adoption Resource Agency
		Section 68	Central Adoption Resource Authority

# CHILD WELFARE COMMITTEE

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- U/S 27 of the Act to discharge duties in relation to children in need of care and protection. It consists of a chairperson and 4 members, one of whom should be a woman.
- The committee shall function as a bench and shall have the powers conferred by the CrPC , 1973 on a metropolitan magistrate.
- The District Magistrate shall conduct a quarterly review of the functioning of the committee.
- The DM shall be the grievance redressal authority for CWC.
- Mandatory reporting of a missing /abandoned /Child separated from guardian before CWC in 24 hrs ( Section 32)

# CHILD



# INSTITUTIONAL CARE FOR CNCP UNDER JJ ACT

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The CWC on production of a child, can send the child to any of the following -

- Children's home – U/S 50 of the Act , for the placement of children in need of care and protection
- Open Shelter- U/S 43 of the Act- functions as a community based facility for children in need of residential support , on short term basis - to protect them from abuse or keeping them away from a life on the streets.
- Fit Facility – U/S 51 of JJ ACT, the committee can recognise a facility being run by government or an NGO registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific purpose.

## **12. Inspection Committees under the JJ Act, 2015 (u/s 54 and Rule 41):**

State Government shall appoint Inspection Committees for the State and District for all institutions registered or recognised to be fit under this Act, it shall mandatorily conduct visits to all facilities housing children, at least once in 3 months in a team of not less than 3 members, of whom at least one shall be a woman and one shall be a medical officer, and submit reports within a week to the DCPU or State Government. **District Inspection Committee** shall comprise of following members:

- a) Member of the Board or the Committee;
- b) District Child Protection Officer as the Member Secretary;
- c) Medical Officer;
- d) One member of the civil society working in the area of child rights, care, protection and welfare;
- e) One mental health expert who has experience of working with children.

District Inspection Committee shall inspect all CCIs in the district in **Form 46** at least once every 3 months, submit the report of the findings to the DCPU or the State Government.

# JUVENILE JUSTICE BOARD

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- Set up under Section 4 of JJ Act, it is constituted in every district for exercising the powers and discharging its functions relating to children in conflict with law.
- Board shall consist of Judicial Magistrate of first class with at least three years experience ( Principal Magistrate) and two social members, one of whom has to be a woman.
- Section 15 (1)- In case of heinous offence alleged to have been committed by a child, who has completed 16 years of age, the board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence , ability to understand the consequences of the offence and the circumstances in which allegedly committed the offence...

*The Supreme Court Court read the proviso to Section 15(1) of the JJ Act as a mandatory condition.*



# TYPES OF OFFENCES UNDER THE ACT

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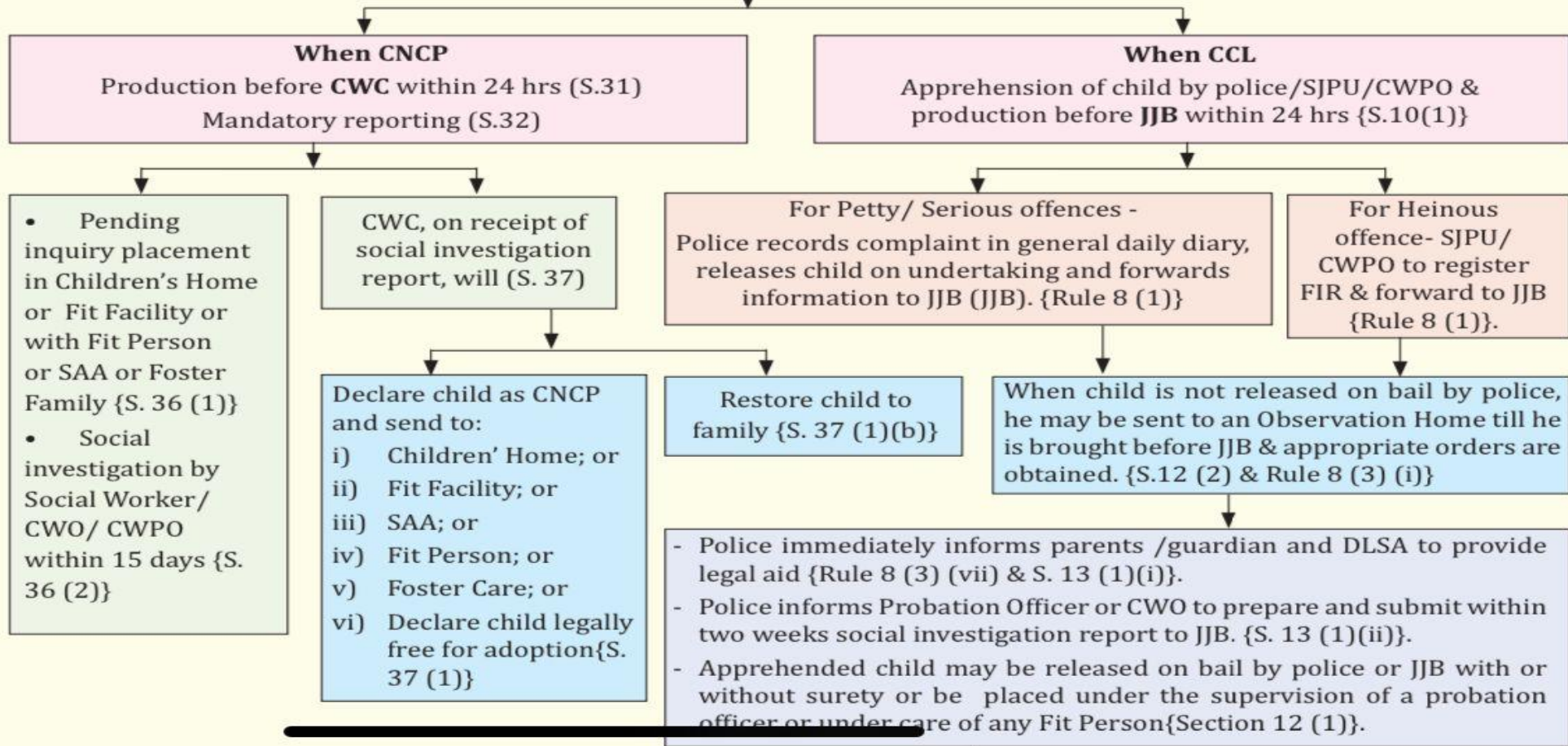
- Petty Offences Section 2 (45) - It includes those offences which have maximum imprisonment up to 3 years under Indian Penal Code (45 of 1860)
- Serious Offences Section 2 (54) - It includes those offences for which imprisonment between 3 to 7 years have been provided.
- Heinous Offences Section 2(33) -It includes those offences for which the sentence is a minimum imprisonment of 7 years or more under the Indian Penal Code (45 of 1860)

# INSTITUTIONS FOR CCL

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- Place of Safety- U/S 49 of the Act – to place a person above 18 yrs of age or CCL who is between 16-18 yrs of age and is accused or convicted for committing a heinous offence.
- Special Home- U/S 48 of the Act- for CCL who are found to have committed an offence , and are placed there by the order of JJ Board.
- Observation Home- U/S 47 of the Act – for temporary reception, care, and rehabilitation of any child alleged to be in conflict with law, during pendency of any inquiry under the Act.

# CHILD



- (i) JJB holds an inquiry & completes it within 4 months extendable by 2 more months only {Section 14 (2)}
- (ii) If inquiry by Board for petty offences remains inconclusive even after extended period, the proceedings shall stand terminated. Extension of time for completion of inquiry for Serious or Heinous offences shall be granted by CJM or CMM {Section 14 (3) & (4)}.
- (iii) Summary Trial Procedure to be followed in case of petty offences and procedure of Trial in a Summons Case to be followed in Serious and Heinous offences. {Section 14 (5) (d), (e) & (f)}

JJB obtains social investigation report from Probation Officer {Section 13 (1)(ii)}

In case it appears to JJB that child brought before it is CNCP, it may refer child to CWC. {Section 17 (2)}

Where JJB is satisfied that child brought before it has not committed any offence, it shall pass order to that effect {Section 17 (1)}

Where JJB is satisfied on inquiry that child irrespective of age has committed a petty/ serious/ heinous offence, it may pass orders {Section 18 (1)}.

- Order for rehabilitation of child for maximum of 3 years {Section 18 (1) (g)}.
- alongwith inclusion of Individual Care Plan prepared by Probation officer or CWO or Social Worker. {Rule 11 (3)}.

**3.2. Flow chart in JJB for CCL between 16-18 years who allegedly commits a Heinous Offence**

**Juvenile Justice Board (JJB)**

JJB conducts a preliminary assessment with regard to his mental & physical capacity to commit such offence, ability to understand the consequences of the offence & circumstances in which he allegedly committed the offence, u/s 15. If JJB feels that child should be treated as adult, transfers the case to Children's Court. {Section 18 (3)}

JJB passes an order for rehabilitation of CCL where it is satisfied on preliminary assessment that matter should be disposed off by Board.  
JJB shall follow the procedure for Trial as in a Summons Case in accordance with the Code of Criminal Procedure, 1 973 {Section 15 (2) & Section 18(1) & (2)}

# MISSION VATSALYA-

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- Roadmap to achieve development and child protection priorities aligned with the Sustainable Development Goals (SDGs).It lays emphasis on child rights, advocacy and awareness along with strengthening of the juvenile justice care and protection system with the motto to 'leave no child behind'.
- The Mission was launched by WCD , GOI on 5<sup>th</sup> July for effective implementation of Juvenile Justice Act.
- Section 106 of JJ Act, envisages setting up a District Child Protection Unit ( DCPU) to take up matters related to children with a view to ensure implementation of the Act.

# ROLE OF DISTRICT MAGISTRATE

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- The District Magistrate shall be responsible for the implementation of the Mission in the district. The District Child Protection Unit will function under the overall supervision of District Magistrate in ensuring service delivery and care and protection of children in the district.
- The District Magistrate shall facilitate effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015; and all other legislations, Rules and regulations for ensuring child welfare, child rights and child protection in the district, viz. Protection of children from Sexual Offence Act, 2012; the prohibition of Child Marriage Act 2006; the Hindu Adoption and Maintenance Act (HAMA) 1956; the Child Labour (Prohibition and Regulation) Act 1986; the Commissions for Protection of Child Rights Act, 2005; etc. and any other Act that comes into force for protecting child rights.

# NON- INSTITUTIONAL CARE SERVICES

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- One of the guiding principles of the Act asserts that a child shall be placed in institutional care as a measure of last resort. In this spirit, the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Model Rules framed there under accord priority to non- Institutional care in the rehabilitation and reintegration of children through Sponsorship, Foster Care, adoption and After Care in a family and community based alternatives for care.
- The Mission will support children through following modes of Non-Institutional Care:
  - i) Sponsorship: financial support may be extended to vulnerable children living with extended families/biological relatives for supporting their education, nutrition and health needs.
  - ii) Foster Care: the responsibility of the child is undertaken by an unrelated family for care protection and rehabilitation of the child. Financial support is provided to biologically unrelated Foster Parents for nurturing the child.

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- iii) Adoption: finding families for the children found legally free for adoption. Specialized Adoption Agencies (SAA) will facilitate the adoption programme.
  - iv) After Care: the children who are leaving a Child Care Institution on completion of 18 years of age may be provided with financial support to facilitate the child's re-integration into mainstream of society. Such support may be given from the age of 18 years up to 21 years, extendable up to 23 years of age to help her/him become self-dependent.
  - A monthly grant of Rs. 4000/- per child shall be provided for Sponsorship or Foster Care or After Care to the state government.

# GOVERNMENT AIDED SPONSORSHIP ( SECTION 2(58) )

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- This type of sponsorship shall be of two categories, namely **preventive** and **rehabilitative**.

## Criteria-

- (1) Where mother is a widow or divorced or abandoned by family;
- (2) Where children are orphan and are living with the extended family;
- (3) Where parents are victims of life threatening/terminal disease;
- (4) Where parents are incapacitated or unable to take care of children both financially and physically.
- (5) Children in need of care and protection as per the JJ Act,
- (6) Children covered under the PM CARES For Children Scheme.
- Economic Criteria for Preventive Sponsorship For preventive sponsorship, children in conditions of extreme deprivation based on the “proxy parameters” of - types of residential locality, social deprivation and occupation shall be selected, whose family income does not exceed: a) Rs. 72,000/- per annum for rural areas, b) Rs. 96,000/- per annum for others.

# SPONSORSHIP AND FOSTER CARE APPROVAL COMMITTEE ( SFCAC)

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- Every district shall have a Sponsorship and Foster Care Approval Committee (SFCAC) to review and sanction sponsorship (for preventive settings only) and Foster Care fund. The Committee will recommend eligible children to DM through DCPU .The DM shall give approval based on the recommendation of the Child Welfare Committee or refer the cases for review.
- The composition of the Sponsorship and Foster Care Approval Committee SFCAC –
  - 1. District Magistrate Chairperson
  - 2. Chairperson/Member, Child Welfare Committee Member
  - 3. Representative of Specialized Adoption Agency (SAA) Member
  - 4. Representative of a Voluntary Organisation working in the area of Child Protection Member
  - 5. District Child Protection Officer Member Secretary
  - 6. Protection Officer (Non-Institutional Care) Member

# FOSTER CARE

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- Foster Care as mentioned in section 44 of JJ Act 2015, is an arrangement whereby a child is placed for the purpose of alternate care in the domestic environment of a family, usually on a short term or extended period of time, with unrelated family members for purpose of care and protection. ( Max 2 children)
- Group Foster Care - group of unrelated children are placed with a foster family or under the care of Foster Care givers in a family like setting who may/may not be having their own biological children. Group Foster Care is defined as a family like care in a fit facility for children in need of care and protection who are without parental care. ( Max 8 Children )

# CHILDREN ELIGIBLE FOR FOSTER CARE:

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- Children in the age group of 6-18 years who have been staying in Child Care Institutions for over two years, and have not been declared legally free for adoption may be placed in Foster Care based on their Individual Care Plan developed in the institution.
- Children whose parents are terminally ill and have submitted a request to the Committee or the District Child Protection Unit for taking care of their child as they are unable to take care of their child; such children may be preferably placed in Foster Care.
- Children in need of care and protection as per the JJ Act namely without home, victim of any natural calamity, child labour, victim of child marriage, trafficked child, HIV/AIDS affected child, child with disabilities, missing or runaway child, child beggars or living on the street, tortured or abused or exploited children who require support and rehabilitation.

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- Duration of Foster Care-
  - Foster care for short term period means for a period of not more than one year.
  - Foster Care for extended period of time is placement of a child by the Committee for a period exceeding one year.

# LEGAL PROVISIONS UNDER JJ ACT

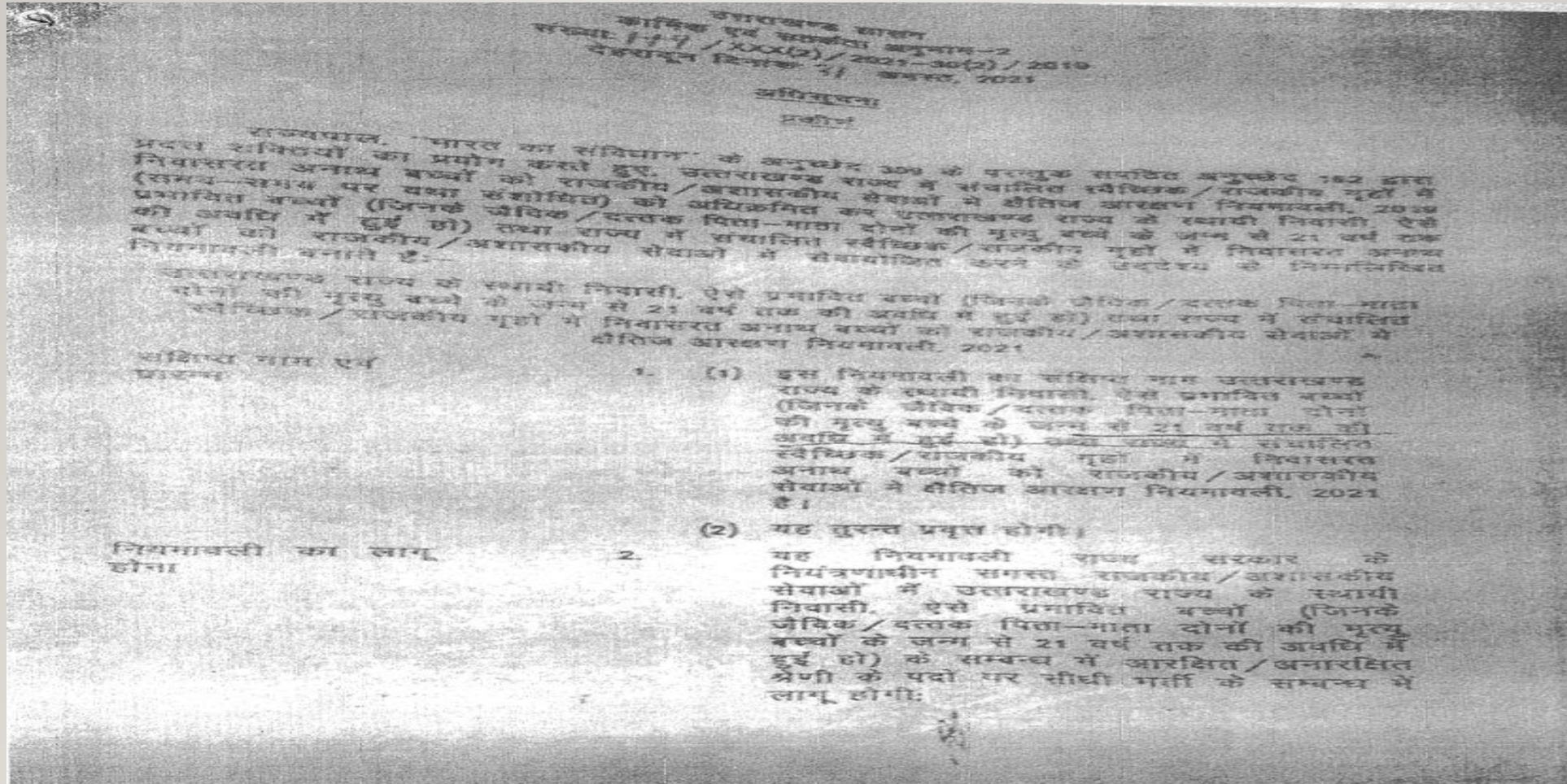
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- JJ Act provides a comprehensive legal framework for protection of children whether in need of care and protection (CNCP) or in conflict with law (CCL).
- The Act lists the following offences against children which are punishable with imprisonment and/or fine under JJ Act, 2015:
  - (i) Disclosure of identity of children – imprisonment upto 6 months or fine upto Rs 2.00 lakh or both (Section 74).
  - (ii) Cruelty – imprisonment upto 3 years or with fine of Rs 1.00 lakh or with both. Greater punishment with rigorous imprisonment upto 10 years and fine of Rs 5.00 lakh if cruelty is done to child who is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb (Section 75 read with Rule 55).
  - (iii) Employment for begging – imprisonment upto 5 years and fine of Rs 1.00 lakh. In certain circumstances, it is punishable with rigorous imprisonment upto 10 years and fine of Rs 5.00 lakh (Section 76).

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- (iv) Giving intoxicating liquor or narcotics drugs or psychotropic substance- imprisonment upto 7 years and fine upto Rs 1.00 lakh (Section 77 read with Rule 56).
  - (v) Using for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance - rigorous imprisonment upto 7 years and fine upto Rs 1.00 lakh (Section 78 read with Rule 57).
  - (vi) Exploitation of child employee - rigorous imprisonment upto 5 years and fine of Rs 1.00 lakh (Section 79).
  - (vii) Adoption without following prescribed procedure - imprisonment upto 3 years or with fine of Rs 1.00 lakh or with both (Section 80)

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- (viii) Sale and procurement of children for any purpose - Rigorous imprisonment upto 5 years and fine of Rs 1.00 lakh. In certain circumstances, the punishment is imprisonment upto 7 years (Section 81 read with Rule 59).
  - (ix) Corporal punishment in CCIs—first conviction with a fine of Rs 10,000/- and for every subsequent offence with imprisonment upto 3 months or fine or with both. In certain circumstances, it is punishable with imprisonment upto 3 years and fine of Rs 1.00 lakh (Section 82 read with Rule 60).

# UTTARAKHAND RESERVATION FOR ORPHANS –



अध्यायी की प्रभाव

परिभाषाएं

मृत्यु, उत्तराखण्ड राज्य में सम्बन्धित  
जीविक/राजकीय गुहों व निवासस्थान  
आवास बच्चों के सम्बन्ध में उत्तराखण्ड अधिनियम  
की तारीख पर सीधी जाती है सम्बन्ध में उत्तर  
होगी।

परन्तु यह और कि उत्तराखण्ड में मृत  
सरकारी सेवकों के आश्रितों की जाती  
नियमावली, 1974 (समय-समय पर सम्बन्ध  
वाशेधित) के अन्तर्गत सेवायोगित व्यक्ति के  
सम्बन्ध में इस नियमावली के उपबन्ध लागू  
नहीं होंगे।

3. यह नियमावली किसी अन्य नियमावली या  
आदेशों में किसी प्रतिकूल बात को होते हुए  
भी प्रभावी होगी।

4. जब तक कि विषय या शब्दों में कोई  
प्रतिकूल बात न हो, इस नियमावली में—

(क) "संविधान" से भारत का संविधान अभिप्रेत  
है;

(ख) "सरकार" से उत्तराखण्ड सरकार अभिप्रेत  
है;

(ग) "नियुक्त प्राधिकारी" से सम्बन्धित सेवों  
नियमावली में किसी ऐसी श्रेणी अथवा  
श्रेणियों के पदों के सम्बन्ध में जिस पर यह  
नियमावली लागू होती है, में उल्लिखित  
नियुक्त प्राधिकारी अभिप्रेत है;

(घ) "सहाय प्राधिकारी" से सम्बन्धित जिले के  
जिलाधिकारी अभिप्रेत है;

(ङ) "प्रभावित बच्चों" से उत्तराखण्ड राज्य के  
स्थायी निवासी, ऐसे प्रभावित बच्चों (जिनके  
जीविक/दत्तक पिता-माता दोनों की मृत्यु  
बच्चे के जन्म से 21 वर्ष तक की अवधि में  
हुई हो) अभिप्रेत है;

(च) "अनाथ बच्चों" से उत्तराखण्ड राज्य में  
महिला सशक्तिकरण एवं बाल विकास  
विभाग के अन्तर्गत संचालित व पंजीकृत  
स्वैच्छिक/राजकीय गुहों में निवासरत  
अनाथ बच्चों अभिप्रेत है, जिनके माता-पिता  
एवं माता-पिता पक्ष के किसी भी रिश्तेदारों  
की कोई जानकारी उपलब्ध नहीं है;

प्रभावित बच्चों /  
अनाथ बच्चों को  
राजकीय / अशासकीय  
सेवाओं में सेवायोजन  
हेतु दौतिज आरक्षण  
पूर्व प्रमाण पत्र

5. (1)

प्रभावित बच्चों / अनाथ बच्चों को जिनकी  
पुष्टि अपेक्षित अभिलेखों में सक्षम प्राधिकारी  
द्वारा समुचित रूप से करते हुये सम्बन्धित  
जनपद के जिला प्रोवेशन अधिकारी की  
संस्तुति पर तब जिलाधिकारी से अग्र्यून  
अधिकारी द्वारा इस आशय का प्रमाण पत्र  
जारी किया गया हो, उत्तरसम्बन्ध लोक  
सेवाओं में सेवायोजन हेतु 05 प्रतिशत  
दौतिज आरक्षण प्रदान किया जायेगा।

(2)

इस नियमावली के प्रख्यापन के पश्चात्  
प्रभावित बच्चों / अनाथ बच्चों का  
रजिस्ट्रीकरण सम्बन्धित जिले के जिला  
प्रोवेशन अधिकारी की संस्तुति पर समुचित  
अभिलेखों के परीक्षण के उपरान्त सम्बन्धित  
जिले के जिलाधिकारी कार्यालय में कराना  
आवश्यक होगा।

आज्ञा से,

(अरविन्द सिंह हयाकी)  
सचिव।

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THANK YOU

