



Application of the

PRINCIPLE OF BEST INTERESTS OF THE CHILD

by Child Welfare Committees

A HANDBOOK



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APPLICATION OF THE PRINCIPLE OF BEST INTEREST OF THE CHILD BY CHILD WELFARE COMMITTEES

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2025

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About Enfold

Enfold Proactive Health Trust, a non-profit based in Bengaluru, has been working since 2001 towards addressing sexual violence against children through personal safety and comprehensive sexuality education, support to survivors of child sexual abuse, restorative processes for children in the juvenile justice system and community, research, policy interventions, and capacity building.

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List of Abbreviations

BID	Best Interests Determination
BIP	Best Interests Principle
BIC	Best Interests of the Child
BNS, 2023	Bharatiya Nyaya Sanhita, 2023
BNSS, 2023	Bharatiya Nagarik Suraksha Sanhita, 2023
CALPRA, 1986	Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
CCI	Child Care Institution
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
CICL	Child alleged or found to be in conflict with law, as may be the case
CNCP	Child in Need of Care and Protection
CPCR Act, 2005	Commissions for Protection of Child Rights Act, 2005
CPP	Child Protection Plan
CRC	Committee on the Rights of the Child
CrPC, 1973	Code of Criminal Procedure, 1973
CSO	Civil Society Organisation
CWC	Child Welfare Committee
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
FAQ	Frequently Asked Questions
FGD	Focus Group Discussion
FIR	First Information Report
GC	General Comment
HMGA, 1956	Hindu Minority and Guardianship Act, 1956
HIV/AIDS	Human Immunodeficiency Virus, Acquired Immuno Deficiency Syndrome
HIV/AIDS(PC) Act, 2017	The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017
ICP	Individual Care Plan

IPC, 1860	Indian Penal Code, 1860
IT(P) Act, 1956	Immoral Traffic (Prevention) Act, 1956
JJ	Juvenile Justice
JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
JJ Model Rules, 2016	Juvenile Justice (Care and Protection of Children) Model Rules, 2016
JJB	Juvenile Justice Board
MIC	Model of the Individual Child
MTP Act, 1971	The Medical Termination of Pregnancy Act, 1971
NCPCR	National Commission for Protection of Child Rights
NGO	Non-Governmental Organisation
PCMA, 2006	Prohibition of Child Marriage Act, 2006
POCSO Act, 2012	The Protection of Children from Sexual Offences Act, 2012
POCSO Rules, 2020	The Protection of Children from Sexual Offences Rules, 2020
PUC	Pre-University Course
RPD Act, 2016	Rights of Persons with Disabilities Act, 2016
RTE Act, 2009	Right of Children to Free and Compulsory Education Act, 2009
SCPCR	State Commission for Protection of Child Rights
SIR	Social Investigation Report
SJPU	Special Juvenile Police Unit
SOP	Standard Operating Procedure
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child, 1989
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UOI	Union of India

Note: References to the JJ Act, 2015 and JJ Model Rules, 2016 take into account the Amendments made in 2021 and 2022, respectively.

Introduction

The "best interests" of a child is a term commonly used in the field of child protection. The application of the best interests principle (BIP), however, is complex, as there can be multiple perspectives of what it may be for an individual child. Best interests determinations (BID) are a vital part of decision making, as decisions by authorities and courts have a tremendous impact on the lives of children, their families and extended families, the community, and can also have an intergenerational impact.

In the Indian context, the Child Welfare Committee (CWC), a statutory body under the Juvenile Justice (Care and Protection of Children) Act, 2015, has the authority to dispose of cases of children in need of care and protection and pass legally binding orders. Though CWCs may have strong intentions to make decisions that are in the best interest of a child (BIC), often their decisions can be based on instinct and "what feels right" for the child. They may not have taken into account all elements necessary for a holistic view of the best interests of the child or been diligent enough to ensure the fulfilment of the child's basic needs and rights.[1] It therefore becomes vital for CWCs to recognise their legal obligation to understand and apply the best interests framework while assessing a child's needs and rights to arrive at legally binding orders.[2] While guidance is available on the meaning and elements of best interests in international standards such as the Committee on the Rights of the Child's General Comment No. 14[3] and the UNHCR (United Nations High Commissioner for Refugees) tool for Best Interests Procedure,[4] guidance for its application in the Indian context is absent. To fill this gap, Enfold Proactive Health Trust, Bengaluru, has brought out this Handbook aimed at enhancing the capacities of CWCs on BID.

In preparation for this Handbook, the Enfold team undertook a needs assessment in 2022, to gauge the current understanding and application of the BIP by CWCs, Case Workers, and Civil Society Organisations (CSOs), and also the constraints and challenges

1 JJ Act 2015, (JJ Act 2015) s 2(9).

2 JJ Act 2015, s 27(9).

3 UN Committee on the Rights of the Child (CRC), 'General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration' (art. 3, para. 1), 29 May 2013, CRC/C/GC/14 (General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration), Para 6, available at <https://www.refworld.org/docid/51a84b5e4.html> accessed 27 January, 2025.

4 UN High Commissioner for Refugees (UNHCR), '2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child', (May 2021), available at <https://www.refworld.org/docid/5c18d7254.html> accessed 27 January, 2025.

The "best interests" of a child is a term commonly used in the field of child protection. The application of the best interests principle (BIP), however, is complex, as there can be multiple perspectives of what it may be for an individual child. Best interests determinations (BID) are a vital part of decision making, as decisions by authorities and courts have a tremendous impact on the lives of children, their families and extended families, the community, and can also have an intergenerational impact.

within which CWCs function. As part of the needs assessment, focus group discussions (FGDs) were held with CWC Chairpersons and Members, Case Workers, and representatives of CSOs. Further, the functioning of CWCs in two districts each in Uttar Pradesh and West Bengal was observed, and interactions were held with young persons who had appeared before the CWC (whose cases had been disposed of) and their families. Case files of children whose cases were before the CWCs were also studied to understand the manner in which orders are written, and the extent to which the BIC is referenced and/or its application explained. This helped gain insight into the ground reality of the functioning of the CWCs in these two States, specifically with regard to the application of the BIP, as well as the stakeholders responsible for contributing to this process while performing their duties related to the care and protection of vulnerable children. The feedback and questions raised in the three training programs conducted with CWCs, social workers, counsellors and protection officers from Uttar Pradesh on Best Interests Determination added nuance to this Handbook.

This Handbook aims to contextualise the application of the BIP by CWCs for Children in Need of Care and Protection (CNCP) under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015). It includes a checklist that can be used by CWCs to perform their functions effectively and make decisions in the best interests of individual children. It offers CWCs a framework for the application of the BIP, which could enable each of these children to fully and effectively enjoy all their rights and also ensure holistic care, protection, treatment, development, rehabilitation, and social reintegration of CNCP appearing before them, as envisaged in the Preamble of the JJ Act, 2015.

DESIGN OF THE HANDBOOK

An FAQ style has been adopted to offer a simplified explanation of the relevant legal framework. References have been made to the international and domestic legal framework, while focusing on the Indian context. Case studies have been incorporated to facilitate reflection and application of the BIP in cases of child victims of sexual abuse, children with disabilities, children and adolescents found in situations of labour, elopement, trafficking, child marriage, etc. The names used in the case studies are fictitious, and other identifying information has been altered.

Needs Assements in Uttar Pradesh, West Bengal and Bihar

Online Focus Group Discussions



31 Civil Society Organisation



22 Case workers / social workers



32 CWC Chairperson / Members

In-person Interviews



10 Young persons & **9** families



4 Former CWC members & **2** experts

Observation of CWCs	**Lucknow**	**Bahraich**	**Kolkata**	**Nadia**
Case Studies	**26** case studies	**18** files		

Chapter I

explains the role of the CWCs, their powers and functions and the definition of CNCP.

Chapter II

introduces the BIP, expands on its elements and explains the procedure to be followed by the CWCs for a BID.

Chapter III

deals with Advancing Children's Best Interests in Specific Situations and provides case studies for the application of the BIP.

Chapter IV

includes the checklist on BID to be used by CWCs, along with a sample Social Investigation Report (SIR), and the final order in that case.

HOW CAN THE HANDBOOK BE USED AND BY WHOM?

The process of BID is formally undertaken for making decisions for CNCP by CWCs, established under the JJ Act, 2015. The Handbook and checklist are designed for use by CWCs to strengthen the decision-making process and operationalise the application of the principle of best interest while passing orders.

The Handbook and checklist may also be used by other functionaries such as Case Workers, Probation Officers, District Child Protection Units (DCPU), and CSOs to guide their actions concerning CNCP.


JJ ACT 2015

CHAPTER 1

Overview of the JJ Act, 2015, Rights of Children in Need of Care and Protection, and the Role of Child Welfare Committees

1.1 WHAT ARE THE OBJECTIVES OF THE JJ ACT, 2015?

The objective of the JJ Act, 2015, as reflected in its Preamble is to **"consolidate and amend the earlier legislation relating to children alleged and found to be in conflict with law (CICL) and children in need of care and protection (CNCP) by catering to their basic needs through proper care, protection, development, treatment, social reintegration..."**[5] The Act aims to enable this through the adoption of "a child-friendly approach in the adjudication and disposal of matters in the BIC and for their rehabilitation through processes provided, and institutions and bodies established, and for related matters."[6]

1.2 WHAT ARE THE PRINCIPLES OF THE JJ ACT, 2015 AND WHO IS REQUIRED TO ADHERE TO THEM?

Section 3, JJ Act, 2015 lists 16 principles that are fundamental to its effective implementation by the Central Government, State Governments, Juvenile Justice Boards (JJBs), CWCs, and other agencies. Functionaries appointed by the State Government or the State Child Protection Society, Special Juvenile Police Units (SJPU), DCPUs, CSOs, volunteers, and others also need to abide by these principles.

5 JJ Act 2015, Preamble.

6 JJ Act 2015, Preamble.

FUNDAMENTAL PRINCIPLES UNDER SECTION 3, JJ ACT 2015



BEST INTEREST



FRESH START



DIVERSION



NATURAL JUSTICE



PRESUMPTION OF INNOCENCE



RIGHT TO PRIVACY AND CONFIDENTIALITY



POSITIVE MEASURES



PARTICIPATION



FAMILY RESPONSIBILITY



NON WAIVER OF RIGHTS



DIGNITY AND WORTH



PRINCIPLE OF SAFETY



EQUALITY AND NON-DISCRIMINATION



NON STIGMATIZING SEMANTICS



REPATRIATION AND RESTORATION



INSTITUTIONALISA-TION AS A MEASURE OF LAST RESORT

Here are some ways in which these principles may be applied by a CWC:

- While on an inspection visit to a Child Care Institution (CCI) run by a CSO, a few children rescued from trafficking are found to have been segregated from the other children by the staff, for fear that they would share their experience of sexual exploitation with the other children. The CWC inquires further into this and then instructs the manager of the home to ensure that the children are not discriminated against, as this is a violation of the **principles of equality, non-discrimination and dignity.** The CWC instructs the management to ensure that all the staff and children are provided with age-appropriate sessions on personal safety and sexuality by trained professionals, along with counselling.
- A Case Worker refers to a child rescued from trafficking as a prostitute in the SIR that was submitted to the CWC. The CWC summons the Case Worker and helps her understand that such derogatory language offends the dignity of the child and is a violation of the **principle of dignity and worth, as well as the principle of non-stigmatising semantics.**
- A 6-year-old child with intellectual disability hailing from a low-income family, who has no mother, siblings, or close relatives, expresses to the CWC that she desperately wants to go back home. She has bruises on her legs and hands, and the SIR reveals that she is being severely beaten by her alcoholic father, has never been to school and is being forced to beg along with her father. Recognising their duty to apply the **principle of participation**, the CWC arranges for a special educator with skills in communicating with children with intellectual disabilities, and facilitates a conversation with the child, helping her understand that she is being physically abused, and is being denied her right to education, and right to health. They help her understand that, though the **principle of institutionalisation as a measure of last resort** requires them to consider allowing her to stay in her own home, or to place her in foster care, neither of these options is in her best interest. They also explain that though it will be challenging for her, the CWC's decision to place her in a CCI that has specialised services for children like her is indeed in her **best interest.** The CWC even arranges for her to visit the said CCI, to enable her to feel more comfortable with their decision. They inform her that her father will be permitted to visit her regularly and that only once his father changes his abusive behaviour, she may be permitted to go back home. The CWC arranges for counselling for the father and instructs the Case Worker to provide him with references to de-addiction centres and ways through which he can access government schemes for the unemployed.
- Children who were rescued from situations of begging during the visit of a senior politician to a city reported that they were beaten by the police, made to stay overnight in the police station, and produced before the CWC only the next morning. The CWC summons the police to inquire into this allegation and writes a letter to the Superintendent of Police to take necessary action, as this is a violation of the **principle of safety.**
- 12 girls are rescued from a brothel during a raid. The CWC, which sits only twice a week, begins conducting inquiries. A local leader, on hearing about the successful raid, comes along with his official photographer and is welcomed into the CWC by the Chairperson. He starts asking the children their names and details about their hometowns. One CWC Member intervenes and requests the photographer to stop taking photographs, and the leader to leave the room. The leader gets furious and shouts at the

member, asking her, 'Who do you think you are?" The member presents her credentials and issues an oral warning to him. She states that she is a CWC Member, which has the powers of a Judicial Magistrate of the First Class, including the power to initiate legal proceedings against him for obstructing the course of justice. She asserts that she must ensure that the **principle of privacy and confidentiality** is not violated.

- While reviewing the Individual Care Plan (ICP), prepared by a Case Worker for a girl with a disability residing in a CCI, the CWC finds that no effort has been made to identify government schemes that she could access to promote her well-being and reduce vulnerabilities. The CWC calls the Case Worker and underscores the need for her to apply the **principle of positive measures.** They then instruct her to identify all the applicable government schemes, as well as other resources that may be available in the child's own family/extended family and community, and revise the ICP. The CWC, while passing the final orders, attaches the revised ICP and specifically orders that the identified entitlements be made available to the child and that progress reports be submitted regularly.
- The quarterly report prepared by one CWC for submission to the District Magistrate reveals that although final orders for the transfer of children to their homes in other States had been passed, 16 of them were still languishing in the CCI. On inquiring into the cause for the delay, the CWC finds that there are no escorts available, as there are numerous staff vacancies in the CCI, the police are busy with election duty, and the DCPU does not provide adequate funding for NGO volunteers willing to escort the children. The CWC calls for a meeting with the DCPU and expresses concern about the violation of the **principle of repatriation and restoration,** and requests that the matter be brought to the notice of the State Government for necessary action at the earliest.
- A child who was sexually abused by her father is placed in a CCI despite her mother's protests. The CWC refuses to let the mother enter their premises or speak. The information provided in the SIR reveals that the mother is self-employed, has shifted her residence and has cut off all communication with her husband. Aggrieved by the CWC's order, the child's mother files an appeal claiming that the order violates the **principle of natural justice** as she was not given an opportunity to be heard, and also violates Rule 4(6), Protection of Children from Sexual Offences Rules, 2020 (POCSO Rules, 2020). The appellate court passes an order in her favour, and the child is released into the mother's custody.

1.3 WHAT IS A CWC, AND WHAT IS ITS COMPOSITION?

The CWC is a quasi-judicial body established under the JJ Act, 2015, vested with the powers[7] to dispose of cases pertaining to the care, protection, treatment, development, and rehabilitation of CNCP.[8] The CWC must also provide for their basic needs and protection.[9] Its orders are legally binding in nature.

The CWC comprises a Chairperson and four other members, as the State Government may see fit to appoint.[10] A person appointed to the CWC:

1. "must hold a degree in child psychology, psychiatry, law, social work, sociology, human

7 JJ Act 2015, s 27(1).

8 JJ Act 2015, s 29(1).

9 JJ Act 2015, s 29(1).

10 JJ Act 2015, s 27(2).

health, education, human development, or special education for Children with Disabilities, and should have been actively engaged in health education or welfare activities pertaining to children for a minimum of seven years or

2. they must be a practising professional with a degree in one of the aforementioned fields."[11]

At least one of these appointed persons must be a woman, while another should be an expert on matters concerning children.[12]

1.4 WHO IS A CHILD IN NEED OF CARE AND PROTECTION (CNCP)?

Children are vulnerable due to their age, circumstances, location, socio-economic status, caste, tribe, gender, disability, religion and ethnicity. **Section 2(14), JJ Act, 2015 defines a "CNCP" to mean a child:**

1. "who is found without any home or settled place of abode and without any ostensible means of subsistence; or
2. who is found working in contravention of the provisions of this Act or labour laws for the time being in force or is found begging, or living on the street; or
3. who resides with a person (whether a guardian of the child or not) and such person—
   - has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
   - has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
   - has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
4. who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
5. who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
6. who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered; or
7. who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
8. who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
9. who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking; or
10. who is being or is likely to be abused for unconscionable gains; or
11. who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
12. who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;"

11 JJ Act s 27(4).

12 JJ Act 2015, s 27(2).

In ***Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v Union of India (UOI) and Ors,***[13] the Supreme Court held that the definition of this term should not be limited to this list, and must be given a broad interpretation:

> **"The definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring State care and protection."**

Definitions are to be understood and read in conjunction with the objective of the law. Therefore, while all children require care and protection to thrive and achieve their full potential, **the law envisages children to legally be considered as CNCP only in certain specified situations, i.e., if they require care, protection and rehabilitation by the State.** For instance, if a child is sexually assaulted by her uncle who lives in the same house, or if children are abused by a staff member in a CCI, they will have to be produced before the CWC, as the violence they are experiencing is at the hands of a person living with them. On the other hand, if the abuse takes place in a school or a park and the child's family members are capable of ensuring the child's care and protection, this child does not have to be produced before the CWC. Similarly, not all children in street situations are necessarily CNCP. If such children have loving and caring families, they need not be rescued by separating them from their families and producing them before the CWC, only due to reasons of poverty. **The UN Guidelines for the Alternative Care of Children clarify that "financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care [...] but should be seen as a signal for the need to provide appropriate support to the family"**[14] Family strengthening measures are also emphasised in the National Commission for Protection of Child Rights Standard Operating Procedure for Care and Protection of Children in Street Situations, which states, "...due to poverty, children are vulnerable and are on the street with their families. So, keeping in mind the BIC, the family should be provided the benefits of the schemes."[15] This will "not only help the families in their rehabilitation but also break the cycle of abject poverty, displacement and destitution.[16]

Similarly, children of incarcerated parents or sex workers, or children who have lost one or both parents due to COVID, cannot be assumed to be CNCP if they have extended family and relatives to look after them. Institutionalising children found in such situations of vulnerability, without diligent inquiry into whether the parent/s are indeed neglecting, abusing or exploiting the child, will amount to a violation of the principle of institutionalisation as a measure of last resort. It could also result in violation of the child's right to be in contact with family, and sometimes could even result in the child losing access to their ancestral property, due to the negligence of concerned authorities. The lack of institutions that house siblings of different genders could also result in the separation of siblings. Instead, CWCs may explore possibilities of placing them together in one foster care family, or in the care of a fit person,[17] who could include a person from the children's extended family, along with sponsorship.

13 (2020) 14 SCC 327 (Supreme Court of India).

14 The Guidelines for the Alternative Care of Children, General Assembly resolution 64/142, annex, para 15.

15 NCPCR and Save the Children, Standard Operating Procedure for Care and Protection of Children in Street Situations, 2020, p. 30, available at https://ncpcr.gov.in/uploads/167662954363ef562781cc7_standard-operating-proceduressop-for-care-and-protection-of-children-in-street-situation-2020.pdf

16 ibid.

17 Section 2(28), JJ Act defines fit person as follows: "fit person" means any person, prepared to own the responsibility of a child, for a specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose, by the Committee or, as the case may be, the Board, to receive and take care of the child."

The DCPU's role becomes significant in this context. As per the JJ Model Rules, 2016, the DCPU is tasked with identifying CNCP and families which are at risk.[18] The DCPU must also assess the number of children in difficult circumstances and create district-specific databases to monitor the trends and patterns of children in difficult circumstances.[19]

It is important to note that children may migrate with their families for livelihood reasons, and every child on the move with their family or residing in a location away from their domicile is not necessarily a CNCP.

CWC orders are legally binding. It can amend its order only in terms of a change of placement, if appropriate.[22] All CWC orders can, however, be appealed in the Children's Court, except for decisions related to foster care, sponsorship or aftercare, for which the appeal shall lie with the District Magistrate. If there is any grievance regarding the functioning of the CWC (distinct from the orders they pass), an affected child or anyone connected with the child may file the grievance before the District Magistrate, and the District Magistrate shall dispose of the same within 30 days by passing appropriate orders.[23]

1.5 WHAT ARE THE POWERS OF CWC?

CWCs have the authority to inquire into and dispose of matters pertaining to care, protection, treatment, development and rehabilitation of CNCP, as well as to provide for their basic needs and protection.[20] CWCs are vested with the powers of a Judicial Magistrate of the First Class as laid down under the CrPC, 1973/BNSS, 2023,[21] when they sit as a bench conducting an inquiry under the JJ Act, 2015.

1.6 WHAT IS THE JURISDICTION OF CWCs?

CWCs have geographical jurisdiction over children in the assigned district or group of districts, as specified by the State Government. With respect to subject-matters, the CWC has jurisdiction over matters pertaining to the basic needs, care, protection, treatment, development, and rehabilitation of persons below the age of 18 years who are 'children in need of care and protection' as defined under Section 2(14), JJ Act, 2015.[24]

GRIEVANCE REGARDING THE FUNCTIONING OF THE CWC



Can be filed by affected child or anyone connected with the child



District Magistrate shall dispose the grievance within 30 days

18 JJ Model Rules 2016, rule 85(1)(vii).
19 JJ Model Rules 2016, rule 85(1)(viii).
20 JJ Act 2015, s 29 (1).
21 JJ Act 2015, s 27(9).
22 JJ Act 2015, s 104(1).
23 JJ Act 2015, s 27(10); JJ Model Rules 2016, rule 20(4).
24 JJ Act 2015, s 29(1).

The CWC **can also continue to deal with children who left a CCI and have attained the age of 18 years, in order to enable aftercare services for that person till the person attains 21 years of age, and in exceptional cases for another two more years.**[25] Similarly, if a girl is above 18 years, has been released from the CCI and has nowhere else to go, she must be provided with accommodation in Working Women's Hostels, or other such government facilities for women, till she can make some other arrangement.[26] Additionally, if the parents or guardians of children refuse to accept them, they may not be restored back to the family, and the Committee may provide alternate means of rehabilitation for them.[27] However, it is important to note that the orders passed by CWCs concerning such a person are not binding, as the individual has attained majority and is legally not a child.

Under Section 8(3)(g), JJ Act, 2015, the JJB can transfer the matters concerning a CICL stated to be a CNCP at any stage, to the CWC, "thereby recognising that a CICL can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved." **The CWC will also have jurisdiction in matters related to children alleged or found to be a CICL, when the JJB has transferred the matter to them in any of the following scenarios:**

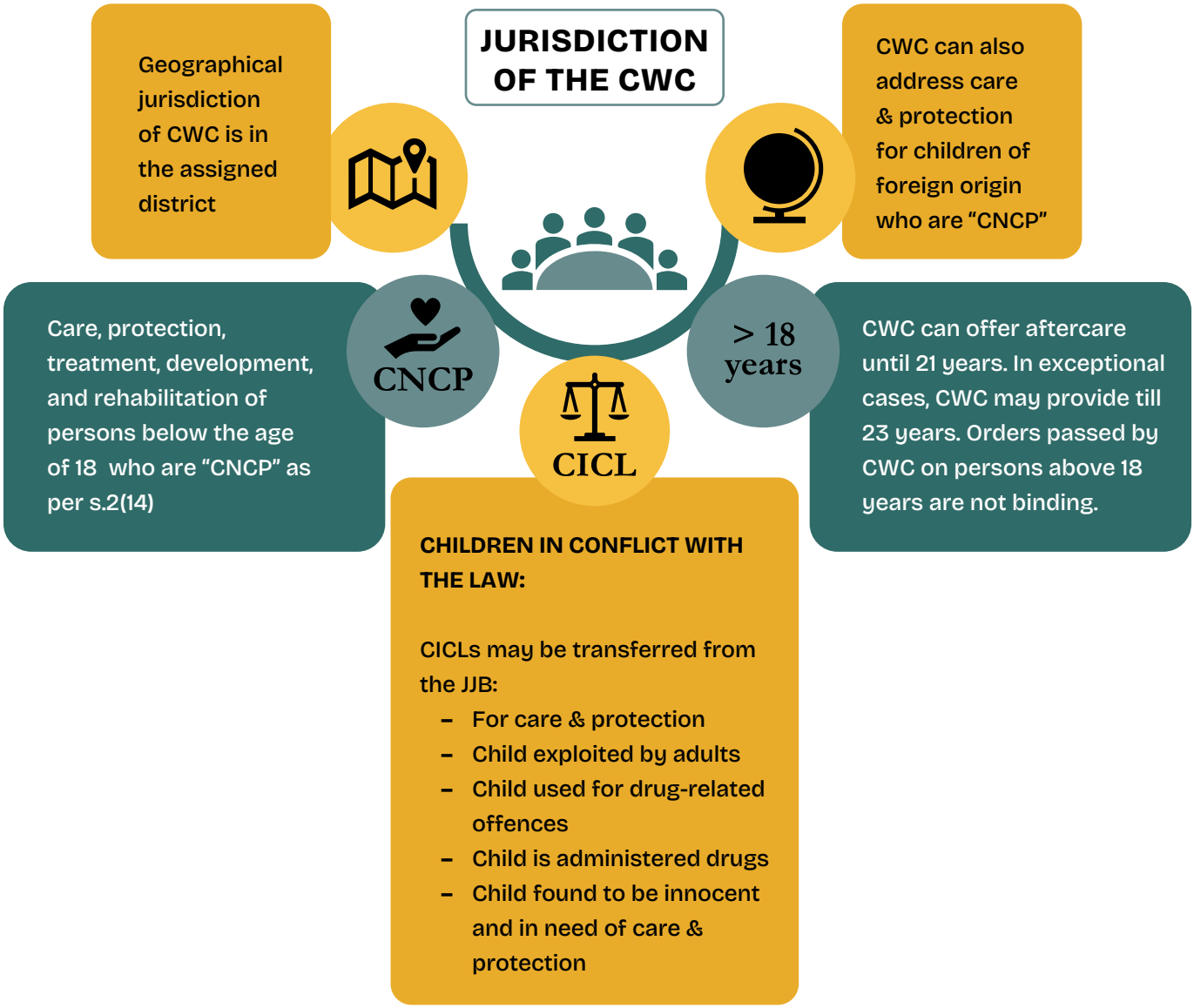
- for care and protection;[28] or
- when the child is found to be exploited by adults who are members of a militant group, or, who has surrendered;[29] or
- when the child has been used for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance;[30]
- when a child is found to have been administered narcotic drugs or psychotropic substances or found under the influence of the same;[31] or
- when a child is found to be innocent and the JJB is of the opinion that the child may be in need of care and protection by the State.[32]

The CWC will also **have jurisdiction over a child from a foreign country who falls under the definition of a CNCP.** Child victims of cross-border trafficking, for instance, should be produced before the CWC and treated as CNCP, and not prosecuted under the Foreigners Act, 1946.[33] If such a child is produced

25 JJ Model Rules 2016, rule 25.
26 JJ Model Rules 2016, rule 79(9).
27 JJ Model Rules 2016, rule 82B(5).
28 JJ Act 2015, s 8(3)(g) and 30(xiv).
29 JJ Model Rules 2016, rule 9(3).
30 JJ Model Rules 2016, rule 9(3).
31 JJ Model Rules 2016, rule 56(2).
32 JJ Act 2015, s 17(2).
33 Ministry of Home Affairs, 'Advisory on preventing and combating human trafficking in India - dealing with foreign nationals', No. 14051/14/2011-F.VI, 1 May 2012, para 2(iv) available at <https://www.mha.gov.in/sites/default/files/AdmdmntAdvForeign-030512_2.pdf> accessed 27 January 2025.
34 ibid.

before the JJB, they may transfer the child to the CWC to be dealt with as a CNCP in accordance with the advisory issued by the Ministry of Home Affairs, which states that:[34]

> "[i]f, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned."



CASE STUDY 1

Identity of a Child in Difficult Circumstances

Anshu, a 16-year-old girl, lived in a slum with her father. Her mother had passed away when she was a baby. Anshu fell in love with her neighbour and became pregnant. Her neighbour abandoned her after she told him about the pregnancy. Since she was worried about her father's reaction and did not have any other family members whom she could trust, she kept quiet about it. Anshu eventually gave birth to a baby and abandoned the baby near a building under construction. The baby was found, and after some inquiry, the police found out that Anshu had abandoned the baby. She was apprehended and produced before the JJB.

1. **Should Anshu be treated as a CICL, a CNCP, or a child victim?**
2. **How can the JJB and CWC deal with Anshu's case together?**

Anshu will be regarded as a victim of a sexual offence as she is below 18 years and her consent is of no relevance under the POCSO Act, 2012 which sets the age of consent at 18 years (Section 2(d), POCSO Act, 2012). Abandonment of a child under 12 years by a parent or person having the care of such a child is an offence under Section 317, IPC, 1860/ Section 93, BNS, 2023. However, there are two provisions in the JJ Act, 2015, which need to be considered in the context of the liability of a parent abandoning a child. The proviso to Section 75, JJ Act, 2015, which pertains to punishment for cruelty to a child states that if the "abandonment of a child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of the said section shall not apply in such cases". Further, the second proviso to Section 38(2), JJ Act, 2015, which relates to the procedure for declaring a child legally free for adoption states that "notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act." Even if a case is registered against Anshu under Section 317, IPC, 1860/Section 93, BNS, 2023, the JJB has an option under Section 8(3)(g), JJ Act, 2015, of referring her to the CWC for care and protection, and also disposing the matter if it appears that her being in conflict with the law is unfounded.

CASE STUDY 2

Treatment of Child Victims of Trafficking

Rani was 12 years old when she was trafficked by an auto-rickshaw driver known to her. When her family found out, they disowned her and refused to maintain any contact with her. Rani was subjected to repeated rapes, physical beatings, deprived of food, and kept in isolation. Around the time she turned 15 years, she fell very sick and contracted a sexually transmitted infection. Since she could not work and considerable money had to be spent on her medicines, the brothel keeper told her that she had to recruit two young girls who could work till the time she recovered. Rani went back to her village and convinced two 10-year-old girls to accompany her to the city. When one of the girls realised that Rani was trying to induct them into sex work, she protested and raised an alarm. The police were called, and an FIR was registered against Rani under Section 370, IPC, 1860/Section 143, BNS, 2023. She was apprehended and produced before the JJB, while the two younger girls were produced before the CWC.

1. **Should Rani be treated as a CNCP or a CICL?**
2. **What is the CWC's role in cases of trafficking?**

Children who are used by adults to traffic others, or are used in any aspect of trafficking, are victims themselves and require care and protection under Section 2(14)(viii)(ix) and (x), JJ Act, 2015. The CWC should also bear in mind that under Section 83, JJ Act, 2015, using a child by militant groups or other adults for illegal activities is an offence, and action should be taken against adults who use children to recruit others for exploitative purposes.

In this context, the case of ***Delhi High Court Legal Services Committee v Union of India,***[35] is appropriate. In this case, two girls were trafficked from West Bengal to Delhi and were forced into prostitution. The father of one of the girls sought her physical custody, and the

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35 Crl. Rev. No. 443/2009 & Crl.M.A.No.3071/2010 decided by the Delhi High Court on 12.08.2014.

Metropolitan Magistrate granted the same. However, it was urged by the petitioners that it was not the Metropolitan Magistrate, but the CWC which had the jurisdiction to deal with the matter of competence of custody claims. Thus, the issue before the court was whether the JJ Act, 2000, would prevail over the Immoral Traffic (Prevention) Act, 1956 (IT(P) Act, 1956). Further, if it does, should the child be treated as a CICL or as a CNCP? **The Delhi High Court held that in this situation, the CWC would have jurisdiction over the placement of the child, and the JJ Act would prevail over the IT(P) Act, 1956. It also held that a child found to be involved in trafficking should be treated as a CNCP and not as a CICL:**

> "A person under the age of 18 years, if found involved in any aspect of trafficking or prostitution, within the meaning of the expression in the IT Act, (the Court is referring to the IT(P), 1956 Act here), or is rescued in police action under Section 15/16 of the IT Act cannot be treated as a "juvenile in conflict with law" as defined Section 2(l) and has to be treated as a "child in need of care and protection" as defined under section 2(d) of the JJ Act, 2000." In pursuance of this, it also held that, "Notwithstanding the provisions of Section 17 and 17(A) of the Immoral Traffic (Prevention) Act, 1956 by virtue of Section 31(1) and 39(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is only the Child Welfare Committee constituted under Section 29 of the enactment which has the final authority in respect of the custody and restoration of a child victim - a child in need of care and protection."

1.7 DOES THE CWC HAVE JURISDICTION IN CASES IN WHICH THE CUSTODY OF A CHILD IS CONTESTED BETWEEN FAMILY MEMBERS?

There have been numerous instances of a parent approaching the CWC to seek the custody of their child when divorce and custody proceedings are simultaneously pending in Family Courts. CWCs are unsure of their role in such cases and have, in various instances, granted custody of the child to one parent over the other. **However, several High Courts have clearly held that the CWC cannot decide on the custody of a child when proceedings are pending in a Family Court.**[36]

To begin with, Family Courts have the jurisdiction to adjudicate on matters pertaining to the custody of a minor child.[37] The Guardians and Wards Act, 1890, confers power on a court of competent jurisdiction, not the CWC, to decide aspects of guardianship, custody, and visitation rights.[38] The issue of guardianship with respect to Hindus can only be decided under the provisions of the Hindu Minority and Guardianship Act, 1956, (HMGA, 1956), and the CWC is not competent to decide on this issue.[39] The mandate of the CWC is limited to matters concerning the rehabilitation, adoption, reintegration, and restoration of CNCP.[40] The JJ Act, 2015, does not mention custody matters as falling within the purview of the CWC's functions.

In ***Geetanjali Dogra v The State,***[41] the Delhi High Court held that Section 2(14)(iii), JJ Act, 2015 does not envisage the situation of a child whose parents are involved in a dispute regarding their custody. Here, it must be noted that in ***Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v Union of India (UOI) and Ors***,[42] the Supreme Court held that the definition of the term CNCP should not be interpreted as an exhaustive definition and should be extended to all children requiring State care and protection. An attempt was made to rely on this interpretation in ***Nidhi Luharuwalla v State of Karnataka,***[43] ***Geetanjali Dogra v The State,***[44] ***and Rajlakshmi Foundation v The State of Madhya Pradesh,***[45] with the intent to expand the definition of Section 2(14), JJ Act, 2015, to include custody matters. However, none of the three High Courts engaged with this argument and held that the CWC cannot determine custody matters.

Section 31, JJ Act, 2015, enumerates the authorities/ individuals who may present the child before the CWC. These include a police officer, SJPU, Child Welfare Officer, officer of the DCPU, public servant, childline service, any NGO recognised by the government, social worker, public-spirited citizen, doctor, or nurse, among others. As pointed out by the Madhya Pradesh High Court in the case of ***Priya Yadav v State of MP***,[46] "[i]n the said provision, no space has been provided to take action by the CWC on an application submitted by the husband against the wife to produce the child who are litigating in the Court of Law."

36 *Nidhi Luharuwalla v State of Karnataka*, 2019 SCC OnLine Kar 254, decided by the Karnataka High Court on 7.02.2019; *Geetanjali Dogra v The State*, 2019 SCC OnLine Del 10009; *Priya Yadav v State of MP*, 2016 SCC OnLine MP 11923; *Neelam Bohra v Child Welfare Committee*, 2020 SCC OnLine Raj 560; *Rajlakshmi Foundation v The State of Madhya Pradesh*, Writ Petition No. 25356 of 2018, decided by the Madhya Pradesh High Court on 3.02.2022.

37 *Geetanjali Dogra v The State*, 2019 SCC OnLine Del 10009; The Family Courts Act 1984, s 7(1)(a)(g) and s 20.

38 ibid.

39 *Rajlakshmi Foundation v The State of Madhya Pradesh*, Writ Petition No. 25356 of 2018, decided by the Madhya Pradesh High Court on 3.02.2022.

40 JJ Act 2015, s 1(4)(ii).

41 *Geetanjali Dogra* (n 37).

42 in *Re: Exploitation of Children in Orphanages* (n 13).

43 2019 SCC OnLine Kar 254.

44 *Geetanjali Dogra* (n 37).

45 *Rajlakshmi Foundation* (n 39).

46 2016 SCC OnLine MP 11923.

Section 37, JJ Act, 2015, specifies the kind of orders that the CWC has the power to pass. Neither in this provision, nor anywhere else in the Act or JJ Model Rules, 2016, is the CWC conferred with the power to decide on the custody of a child.[47] As clarified by the Rajasthan High Court in the ***Neelam Bohra v Child Welfare Committee***:[48]

> "Looking to the overall scheme of the provisions … the CWC is required to immediately act on an information received pertaining to a CNCP as per the Act; whereafter, the action in terms of the Act, has to be swift and the CWC is required to proceed strictly in accordance with the procedure as prescribed by the Act and the Rules and can't at its whims continue with the proceedings either seeking to conciliate between the parties, which normally would be in a case, where the dispute is between the parents of the child in question and in rest of the cases, such situation would not arise and during the period of conciliation, pass orders providing for visitation rights etc., which in a summary procedure as envisaged under the Act, cannot be supported and sustained."

The High Court also held that guardianship, custody, and visitation rights are matters to be adjudicated by a court of law, by persons who have been trained in the law.[49] Since CWC Members are appointed by the State Government, and may not be trained in the law, or may not be well-versed with the provisions of the law, they are not qualified to pass orders on matters pertaining to guardianship, custody, or visitation rights.[50]

1.8 WHAT ARE THE FUNCTIONS OF THE CWC?

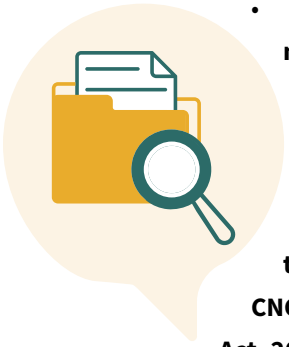
The functions of the CWC are listed under Sections 30 and 32, JJ Act, 2015 and Rule 17, JJ Model Rules, 2016, as amended in 2022, as well as Section 19 of the POCSO Act, 2012 and Rule 4, POCSO Rules, 2020. They include:

TAKING COGNISANCE AND ACTING ON REASONABLE APPREHENSION



- Taking cognisance of and receiving children **produced** before it.[51]
- Taking **suo-motu cognisance** of cases and reaching out to CNCP who have not been produced before the CWC. Such a decision must be taken by at least three members.[52]

CONDUCTING INQUIRIES IN MATTERS RELATED TO A CNCP



- Ensure that all **efforts are made for the restoration of abandoned or lost children** to their families.[53]
- Determine whether a person **appearing before them is a child and indeed a CNCP under Section 2(14), JJ Act, 2015** and **declare** the child to be CNCP.[54]

47 *Priya Yadav v State of MP*, 2016 SCC OnLine MP 11923; JJ Act 2015, s 37.
48 *Neelam Bohra v Child Welfare Committee*, 2020 SCC OnLine Raj 560; JJ Act 2015, s 30.
49 *Priya Yadav v State of MP*, 2016 SCC OnLine MP 11923.
50 ibid.
51 JJ Act 2015, s 30(i). POCSO Rules 2020, rule 4(4).
52 JJ Act 2015, s 30(xii).
53 JJ Act 2015, s 30(x).
54 JJ Act 2015, s 37(1)(a) and JJ Model Rules 2016, rules 19(1) and rule 19(2).

- Inquire into issues related to and affecting the **safety and well-being** of children under JJ Act, 2015.[55]
- Deal with **children transferred by the JJB to the CWC.**[56]
- Direct the Child Welfare Officer, Probation Officer, DCPU or an NGO for an **SIR to be completed** in 15 days and consider the **SIR while passing the orders.**[57]
- Conduct an inquiry for **declaring fit persons** for the care of CNCP and directing the placement of a child in **foster care**.[58]

ENABLING ACCESS TO LEGAL AID SERVICES WHERE APPROPRIATE



In the course of the inquiry, if facts emerge that indicate the child is a victim of an offence or any rights have been violated, the CWC should take necessary steps to **facilitate legal redress.**[59]



COORDINATE WITH THE POLICE, LABOUR DEPARTMENT AND OTHER AGENCIES

involved in the care and protection of children, with support of the DCPU, or the State Government.[60]

PASSING ORDERS TO ADVANCE CARE, PROTECTION AND REHABILITATION



- **Pass well-reasoned interim and final orders** to ensure the care, protection, treatment, development, rehabilitation and reintegration required for such a child in the child's best interests.[61]
- Pass **necessary directions to functionaries** or to parent(s)/legal guardians, or fit persons, fit facilities, as appropriate.[62]
- Pass orders for **sponsorship and placement of a child in foster care** in appropriate cases, and **aftercare** for children leaving institutional care on attaining 18 years.[63]
- Identify a **registered institution, or fit facility** for placement of each child requiring institutional support, based on the child's age, gender, disability and needs, keeping in mind the available capacity of the institution.[64]
- Consider the **Individual Care Plan (ICP)** while passing orders, finalise the ICP and include it with the final order.[65]
- Direct the DCPU to **ensure access to relevant government schemes and entitlements** applicable to the child in accordance with the principle of positive measures under Section 3(vii), JJ Act, 2015.
- Directing the DCPU or CCI staff to **ensure that the child or family is supported in procuring essential identity documents.**

55 JJ Act 2015, s 30(ii).
56 JJ Act 2015, s 17(2).
57 JJ Act 2015, s 30(iii) and s. 37(1), JJ Model Rules 2016, rule 19(8A).
58 JJ Act 2015, ss 30(iv) and 30(v).
59 JJ Act 2015, s 30(xvii).
60 JJ Act 2015, s 30(xv).
61 JJ Act 2015, ss 29(1), 30(ii) and s 30(vi).
62 JJ Act 2015, s 30(vi).
63 JJ Act 2015, ss 30(1)(v), 37(1)(e)(f) and 39(4).
64 JJ Act 2015, s 30(vii).
65 JJ Act 2015, s 30(vi).

OVERSIGHT OF CCIS



- Conduct at least **2 inspections a month of residential facilities for CNCPs** and recommend action to the DCPU and State Government for improvement in the quality of services.[66]
- Submit **quarterly reports of inspection** to the NCPCR or SCPCR, for monitoring under S. 109, JJ Act, 2015.[67]
- Review the **Children's Suggestions book or Complaint book** during every visit to a CCI.[68]
- Carry out random **one-to-one and group interaction with children,** in the absence of CCI staff, to understand their concerns and provide inputs to the CCI, during each visit.[69]
- **Conduct an inquiry into complaints of abuse of a child in any CCI and direct the police, DCPU or Labour Department or Childline**, as the case may be.[70]
- The JJ Model Rules, 2016, have also instituted a **Management Committee** for the management of the institution, and for monitoring the progress of every child.[71] A member of the CWC shall also be a part of the Management Committee.[72]
- Ensuring smooth functioning of **Children's Committees.**[73]

MAINTAIN RECORDS AND SUBMIT REPORTS



- Maintain **case records of children** for at least 5 years.[74]
- Submit **quarterly reports to the District Magistrate** with all details relating to the nature of disposal of cases, pending cases and the reasons for such pendency.[75]
- Upload information on the Central Government **online portal regarding children separated from their guardians.**[76]

ACCOUNTABILITY



Maintain a suggestion box, or grievance redressal box, at a prominent place in the premises of the CWC, which shall be operated by the District Magistrate or their nominee.[77]

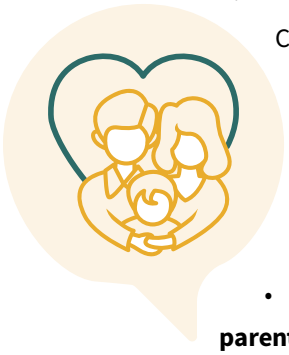
66 JJ Act, 2015, s 30(viii).
67 JJ Model Rules 2016, rule 17(iii)(a).
68 JJ Model Rules 2016, rule 17(iv).
69 JJ Model Rules 2016, rule 17(iv).
70 JJ Act 2015, s 30(xvi).
71 JJ Model Rules 2016, rule 39(1).
72 JJ Model Rules 2016, rule 39(1).
73 JJ Model Rules 2016, rule 17(iii).
74 JJ Model Rules 2016, rule 17(viii a).
75 JJ Model Rules 2016, rule 17(v).
76 JJ Model Rules 2016, rule 18(10).
77 JJ Model Rules 2016, rule 17(ii).

POCSO ACT RELATED FUNCTIONS



- **Assign a Support Person** to a child victim under the POCSO Act, 2012, with the consent of the child or their family/guardian, to assist the child and their family through the investigation and trial processes.[78]
- **Seek monthly reports from the Support Person** regarding the condition and care of the child till the completion of the trial.[79]
- **Terminate the services of a Support Person upon request** from the child, their family, or guardian. The child is not required to provide a reason for such a request. The Special Court or JJB must be informed of the termination of the Support Person in writing.[80]
- **Determine within 3 days,** either on their own or with the assistance of a social worker, as to whether a child victim under the POCSO Act, 2012 needs to be taken out of the custody of the family or shared household and placed in a Children's Home or a Shelter Home.[81]
- **Recommend payment of special relief** by the DCPU or District Legal Services Authority (DLSA) for contingencies such as food, clothes, transport and other essential needs for child victims under the POCSO Rules, 2020 and ensure the payment is made within a week of its recommendation.[82]
- **Coordinate with the DLSA** to ensure that fines ordered to be paid to the victim by the Special Court are paid to them.[83]
- **Facilitate procedures such as opening bank accounts, arranging identity proofs,** etc., with the help of the DCPU and the Support Person for child victims.[84]
- Recommend to DLSA for **legal aid assistance** to victims in POCSO cases.[85]

ADOPTION-RELATED FUNCTIONS



- Ensure production before CWC of **an orphaned or abandoned child admitted** directly into a CCI, including a Specialised Adoption Agency (SAA), within 24 hours.[86]
- To **trace the biological parents or legal guardians,** considering the risk factors and the best interest of the child, and if necessary, direct the DCPU to publish the child's details and photograph in a national newspaper with wide circulation in the area where the child was found.[87] This must be done within three days of receiving the child.[88]
- Ensure the entry of the child's information onto the **Track Child portal or Khoya Paya** by the CCI or SAA.[89] If the child is from another state, the publication must be made in the child's known place of origin, using the local language.[90]

78 POCSO Rules 2020, rule 4(8)).
79 POCSO Rules 2020, rule 4(12).
80 POCSO Rules 2020, rule 4(11).
81 POCSO Rules 2020, rule 4(5).
82 POCSO Rules 2020, rule 8.
83 POCSO Rules 2020, rule 10(1).
84 POCSO Rules 2020, rule 10(2) and NCPCR Model Guidelines with Respect to Support Persons under Section 39 of POCSO Act, para 3.3(cc). The latter states: "Support person shall facilitate the family or the minor victim to obtain identity documents like Aadhar, PAN card, ration card, BPL card, and open bank accounts in coordination with and assistance from the CWC/ DCPU/CCI."
85 POCSO Rules 2020, rule 7(1).
86 Adoption Regulations 2022, Para 6(2).
87 Adoption Regulations 2022, Para 6(7).
88 Adoption Regulations 2022, Para 6(7).
89 Adoption Regulations 2022, Para 6(7).
90 Adoption Regulations 2022, Para 6(8).

- Use the Track Child Portal or Khoya Paya to **determine if the abandoned or orphaned child is a missing child.**[91] If the child's identity is established, the child shall be reunited with their biological parents or legal guardians.[92]
- Declare **orphan, abandoned or surrendered** children as legally free for adoption, after due inquiry.[93]
- Obtain **a certificate from the Medical Board by the Central or State Government,** in accordance with the laws declaring a child of parents with mental illness or intellectual disability legally free for adoption,[94] while **ensuring compliance with the Mental Healthcare Act, 2017 and the Rights of Persons with Disabilities Act, 2016 (RPD Act).**
- **Certify the execution of the surrender deed** by the parents and ensure that they are given time to reconsider their decision, making all efforts to keep the family together.[95] Ensure that a copy of the surrender deed is provided to the parents or the person surrendering the child.[96]
- Ensure that **children without legal guardians,**[97] irrespective of their age, are expeditiously declared legally free for adoption.[98]
- **In the case of siblings or twins,** the CWC shall recognise and specify their status as siblings or twins and issue a single order declaring them legally free for adoption.[99]
- Interact with **older children** in CCIs with no guardians, or not in contact with their guardians for several years, to **counsel them about the benefits of family-based care, including foster care and adoption.**[100]
- Make **efforts to explore the possibility of parents keeping the child.**[101] This will include providing counselling or connecting them with a counselling centre identified by the State Government, encouraging them to keep the child, and explaining that the surrender process will become irrevocable 60 days after signing the Surrender Deed, in order to discourage biological parents from surrendering the child.[102]
- Give due regard to the **privacy of both the surrendering parents and the surrendered child.**[103]
- In cases where a child is willingly surrendered by the biological mother, or where the child is born as a result of non-consensual sexual relations, or where cases have been registered under the POCSO Act, 2012 or the IPC, 1860, **the CWC should pass the order for declaring the child legally free for adoption within the timeframe during which the DNA sample collection** should be completed, to avoid undue harassment to the families adopting the child in such cases.[104]

91 Adoption Regulations 2022, Para 6(12).
92 Adoption Regulations 2022, Para 6(12).
93 JJ Act 2015, s 30(xi); JJ Model Rules 2016, rule 19(29).
94 Adoption Regulations, 2022, Para 6(18).
95 JJ Act 2015, s 30(ix) and JJ Model Rules 2016, rule 19(23).
96 Adoption Regulations 2022, Para 7(9).
97 Section 2(31), JJ Act 2015 "guardian" in relation to a child, as "his natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings."
98 JJ Model Rules 2016, rule 17(ix).
99 Adoption Regulations 2022, Para 6(18).
100 JJ Model Rules 2016, rule 17(ix).
101 Adoption Regulations 2022, Para 7(11).
102 ibid.
103 Adoption Regulations 2022, Para 7(13).
104 Adoption Regulations 2022, Explanation to Para 39.



Role of Support Persons under the POCSO Act, 2012

In ***We The Women of India v Union of India,***[105] the Supreme Court emphasised the role of a Support Person for victims under the POCSO Act, 2012:

> "12. In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; **that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the state and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial.** The support and care provided through state institutions and offices is vital during this period. **Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored.** Without this, justice is an empty phrase, an illusion. The POCSO Rules 2020, offer an effective framework in this regard, it is now left to the State as the biggest stakeholder in it – to ensure its strict implementation, in letter and spirit."

105 Writ Petition (Civil) No. 427 of 2022, decided by the Supreme Court on 18.08.2023.



It must be noted that the CWC cannot direct the Police on the manner of conduct of investigation.

1.9 CAN THE CWC GIVE DIRECTIONS TO THE POLICE TO REGISTER A CASE CONCERNING A CNCP WHO IS A VICTIM OF AN OFFENCE?

In case of a complaint of abuse of a child in any CCI, the CWC can give directions to the police or the DCPU or labour department, or Childline services, as the case may be.[106] In other cases of abuse of a CNCP, the CWC can make a written complaint to the JJB, with a request to direct the police to register an FIR.[107]

1.10 CAN THE CWC RELEASE A CHILD TO THE PARENT OR GUARDIAN WITHOUT DOING AN SIR?

The context in which a child is produced before the CWC and what emerges from a conversation with the child, the person producing the child, and the family or guardian of the child, can help the CWC *prima facie* decide whether the child is a CNCP. For instance, a child got separated from her family during a public procession. The police got her admitted to the Children's Home as it was late at night. She was produced before the CWC the very next day, and her parents also arrived to take her back. Based on independent conversations with the child and the parents, if it appears that it is a genuine case of accidental separation, the CWC can hand the child back to the parents after verifying their identity. In such a case, no SIR may be ordered if the CWC has reasons to believe that the child does not come under the purview of Section 2(14), JJ Act, 2015. The CWC can close the matter by recording its reasons in writing.

On the other hand, if it appears that the child has left home multiple times due to abuse or neglect, and the interactions with the child and the family reveal a hostile relationship, the CWC may *prima facie* consider the child to be a CNCP under Section 2(14)(iii) or (v) and initiate inquiry into the matter. An SIR will have to be ordered in such a case, even if the child is restored to the parent on first production, so as to enable an assessment of the child and the child's circumstances, including understanding why the child keeps running away from home.

106 JJ Act 2015, s 30(xvi).

107 JJ Act 2015, s 8(3)(l).

1.11 WHAT ARE THE RIGHTS AVAILABLE TO A CNCP AND WHAT CAN THE CWC DO TO ENSURE THAT CHILDREN'S RIGHTS ARE RESPECTED, PROTECTED AND FULFILLED?

Children in India are entitled to all the fundamental rights provided for in the Constitution of India, as well as special rights stipulated in various central legislations enacted by the Parliament such as the Right of Children to Free and Compulsory Education Act, 2019 (RTE Act, 2009), the POCSO Act, 2012, Prohibition of Child Marriage Act, 2006 (PCMA, 2006), JJ Act, 2015, among others. Children residing in a particular State may have additional rights under legislation enacted by that State Government.

The term "child rights" has been defined under Section 2(b), Commissions for Protection of Child Rights Act, 2005 (CPCR Act, 2005), which states that it "includes the children's rights adopted in the United Nations Convention on the Rights of the Child on 20th November, 1989 and ratified by the Government of India on the 11th December, 1992." India acceded to the UNCRC on 11 December, 1992. Children in India are therefore entitled to rights enshrined in the UNCRC, which have been incorporated in Indian laws. The rights enshrined in the UNCRC can be applied to children in India in situations where there is a gap in domestic law, as long as they are not inconsistent with Indian laws. This is based on the Supreme Court's decision in ***Vishakha v State of Rajasthan***,[108] wherein it laid down guidelines on sexual harassment at the workplace based on the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[109]

Various domestic legislations such as the POCSO Act, 2012, and the JJ Act, 2015, have also referred to the UNCRC in their Preambles, recognizing India's legal obligations to adhere to the minimum standards enshrined in the UNCRC. For example, the Preamble of the JJ Act, 2015 states:

> "...AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;
>
> AND WHEREAS, it is expedient to re-enact the JJ Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments."

According to the JJ Act, 2015, **in order to ensure fulfilment of basic rights of a child, the decisions taken should have their basis in the child's 'best interests'.**[110]

108 *Vishaka v State of Rajasthan*, AIR 1997 SC 3011.

109 ibid.

110 JJ Act 2015, s 2(9).

Pointers for Ensuring Children's Basic Rights

- CWCs should take into account the full range of rights a child is entitled to under the Constitution of India, domestic laws, UNCRC, and other international human rights law standards applicable in India.

- While direct implementation of some rights may not be the responsibility of the CWC, steps need to be taken to connect the child to the concerned authorities for their access to specific rights. For instance, if a CNCP who is also a child victim under the POCSO Act, 2012 is expelled from school, the CWC can instruct the Support Person to engage with the school authorities to ensure resumption of education in accordance with Section 30(vi), JJ Act, 2015 and Rule 4(12), POCSO Rules, 2020.


Name:
Date of Birth:
Nationality:
Handle with care
BEST INTEREST OF THE CHILD

CHAPTER 2

Unpacking the Best Interest Principle and Application of Key Elements

2.1 WHAT IS MEANT BY "BEST INTERESTS OF THE CHILD"?

While the UNCRC uses the term "best interests", which signifies that the interests can be multiple, under the JJ Act, 2015, the reference is to "best interest", as if to suggest that there is one singular interest that will override other interests. However, the definition of "best interest of child" in Section 2(9), JJ Act, 2015 emphasises that a holistic approach is required while taking decisions that impact children and multiple interests have to therefore be considered. The definition is thus in line with the understanding of best "interests" under international human rights law standards. The definition states:

> "the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development."

More importantly, it implies that decision-making authorities must proactively identify deprivations or violations of a child's rights and take appropriate steps to fulfill them, as they have a positive obligation to advance the basic rights of the child.

"I see it as a situation where a child's rights, safety, interests and wishes are balanced adequately to arrive at suitable outcomes for the child that are favourable to the child not just in the present circumstance but in the long run as well."

- Former CWC Member

2.2 WHY IS ENGAGEMENT WITH THE RIGHTS OF A CHILD INTEGRAL TO THE CWC'S ASSESSMENT AND DETERMINATION OF THE BIC?

Children's rights are universal, and cannot be taken away from a child or waived.[111] Further, all rights are interconnected. While dealing with a CNCP, the CWC has the responsibility to ensure fulfilment of all basic rights,[112] while making decisions for children's immediate and long-term care and protection. **Best interests cannot be an argument for the deprivation**

111 JJ Act 2015, s 3(ix).

112 JJ Act 2015, s 2(9).

or violation of any child's rights either. For example, under Article 19 of the Constitution, a child who is a citizen of India has the right to freedom of speech and expression, freedom of movement, freedom to assemble peacefully in India, and the freedom to reside and settle in any part of the territory of India. Children who migrate within the country with their parents or by themselves for the purpose of education, work, or better opportunities are exercising their freedom of movement and the freedom to reside and settle in any part of India. CWCs will thus have to bear in mind this right of children and families, while making a BID on whether a child should be transferred to their home district or State.

CWCs have to conduct a diligent inquiry into the circumstances of every child produced before them, and also address deprivations or violations of a child's rights while passing interim and final orders. If there is an apparent conflict between rights, the BIP must be applied to determine what decision or action is in the best interests of that child in those circumstances. There have been instances where District Courts have set aside CWC orders because they did not adequately consider the child's best interests. In ***Gurbari @ Tinky v Child Welfare Committee- II***,[113] a 12 year old girl had been trafficked from Odisha and was being taken care of by a Trust in Bangalore. The CWC ordered the Trust to coordinate the transfer of the child to Odisha. On behalf of the Trust, it was argued that the CWC's order shows no application of mind and that they had not considered any of the relevant materials. The District Court noted that the girl was sad when she came to know that she would have to return to Odisha, and that she liked her stay at the Trust. Despite this, the CWC passed its order without enquiring about the child's interests and considering them. The CWC also did not state the purpose of transferring the child to Odisha. A perusal of the order also showed that the CWC had not mentioned what the child's best interests are. The Court held that the CWC had erred in reaching its conclusion that the child be transferred, and set aside the CWC's order.

2.3 WHAT DOES THE UNCRC STATE ABOUT THE BIC?

Under the UNCRC, the best interests principle is one of the four general principles.[114] Article 3(1), UNCRC, places a specific obligation on States Parties to ensure that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the BIC is given primary consideration." It is only in the context of adoption, in Article 21, that the UNCRC calls for the BIC to be the paramount consideration."Primary consideration" means that the child's best interest should be a key factor to consider in all decisions affecting them, but not necessarily the only factor, while "paramount consideration" signifies that the child's best interest must be the overriding and most important factor in decision-making, taking precedence over all other considerations; essentially, "primary" means "first and foremost" while "paramount" means "above all else."

While the UNCRC does not define best interests, the CRC[115] recognises that the **"concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights** recognised in the Convention, and the holistic development of the child."[116]

113 Crl.A.No.1721/2019, decided by the Bangalore District Court on 12.03.2020.

114 The four general principles are enshrined in Articles, 2,3,6 and 12 of the UNCRC, 1989.

115 Established under Article 43 of the UNCRC, 1989.

116 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 4.

In its General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, the CRC offers the following framework for understanding the child's best interests concept:[117]

(a) **A substantive right:** The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) **A fundamental, interpretative legal principle:** If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) **A rule of procedure:** Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the BIC require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases."[118]

2.4 WHAT ARE THE IMPLICATIONS OF THE BIC AS A SUBSTANTIVE RIGHT FOR CWCS?

CWCs have to adhere to Section 3(iv), JJ Act, 2015, which requires that while making a decision affecting a child, the BIC must be given primary consideration, and to help the child develop their full potential. The term 'best interests' defined under Section 2(9), JJ Act, 2015, clarifies that the purpose of determining best interests is 'to ensure fulfilment of his basic rights'. This means that while making any decisions, whether interim or final, regarding a CNCP, the CWC is obligated to give primacy to the BIC, as a means to fulfil the basic rights of the child. The application of the principle is

117 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 6.
118 ibid.

mandatory and does not depend on the discretion of the CWC. While parents, guardians or those likely to be affected by the CWC's decision have to be heard, along with the child in question, the focus of the CWC has to be on the BIC. The interests, rights or convenience of other stakeholders cannot override the BIC. For instance, a child victim of sexual abuse must not be unnecessarily detained in the Children's Home for the convenience of the police in facilitating the recording of the statement under Section 164 CrPC, 1973/Section 183, BNSS, 2023, if the child can stay safely with a non-offending family member with whom the child is comfortable.

The application of the principle is mandatory and does not depend on the discretion of the CWC. While parents, guardians or those likely to be affected by the CWC's decision have to be heard, along with the child in question, the focus of the CWC has to be on the BIC. The interests, rights or convenience of other stakeholders cannot override the BIC.

2.5 WHAT ARE THE IMPLICATIONS OF THE BIC AS A FUNDAMENTAL, INTERPRETATIVE LEGAL PRINCIPLE FOR CWCS?

The CWC must ensure that if multiple interpretations of a legal provision are possible, the interpretation that advances the child's best interests, especially the child's rights, must be preferred. For instance, in a case of a person who is a victim of sex trafficking and has not been to school, does not have a birth certificate and it is unclear whether they are a child or an adult , the CWC will have to order for a medical test to determine the age of the child. If the ossification test states that the child is above 17 years and below 19 years, and the margin of error is plus or minus two years, the CWC has to decide which age is to be considered. In this scenario, the CWC will have to weigh the implications of treating the person as a 17-year-old, vis-a-vis treating them as a 19-year-old, and accordingly prefer an interpretation that advances the rights of the person.

2.6 WHAT ARE THE IMPLICATIONS OF THE BIC AS A RULE OF PROCEDURE FOR CWCS?

The CWCs have to adhere to the procedures for inquiry stipulated under the JJ Act, 2015 and Model Rules, 2016, or relevant State Rules, and other relevant legislations applicable to a child given the child's circumstances. In particular, the CWCs have to ensure that they pass "speaking orders" in every case, stating the reasons for their decision and clearly articulating how each element of the BIC was considered to arrive at their final decision. CWCs however need to consider and apply the BIP even while making interim orders, and orders passed by individual members, before whom a child may be produced.[119]

Child-friendly procedures also have to be adhered to by the CWCs.

- The CWC should ensure that no person unconnected to the case is present when the CWC's session is in progress, and only those people, in whose presence the child feels comfortable, are present during the sitting.[120]
- Child-friendly techniques for communication should be used. Care should be taken to ensure that the premises do not resemble a courtroom, and the sitting arrangements should enable face-to-face interaction with the child.[121]

119 JJ Model Rules 2016, rule 19(13).

120 JJ Model Rules 2016, rules 16(4) and 16(5).

121 JJ Model Rules 2016, rules 16(9) and 16(10).

CHILD FRIENDLY ENVIRONMENT IN CHILD WELFARE COMMITTEES



The sitting arrangements should enable face to face interaction with the child



Use of child friendly language



NO raised platform



NO witness box



NO persons unconnected to the case should be present



NO formal courtroom setting

CHILD FRIENDLY CORNER

could have separate seating, sensory toys like stress balls, art material etc. for one on one conversation

As a part of ensuring the BIC for the purpose of restoration or release, the CWC has to satisfy itself through documents and verification reports.[122] For instance, requisite identification documents of the parents or guardians should be collected. Where the families do not have such documentation, in case of migrants, for example, they may be asked to submit a letter from the Panchayat or local authorities in whose jurisdiction they reside. Before the child is released or restored, the CWC may refer both the child and their parents/guardians to the Counsellor.[123]

CWCs also have to ensure that inquiries are conducted in a timely manner. Delays in the decision-making process have an adverse impact on the child. Therefore, processes that pertain to children, or impact them, must be prioritised, and must be completed in the shortest possible time,[124] without compromising on due diligence, as focusing solely on reducing pendency can also impede BID. The CWC should pass the final order within four months of the first production of the child.[125] Declaration of a child legally free for

122 JJ Model Rules 2016, rule 19(7).

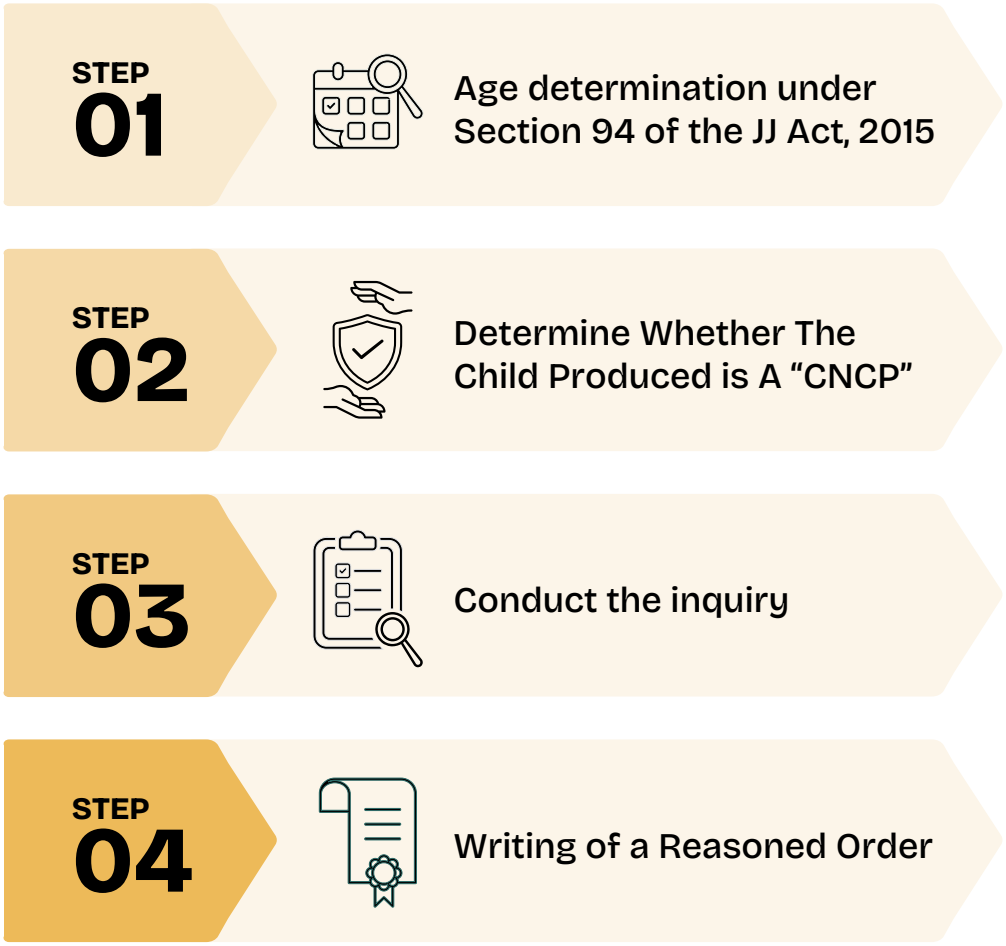
123 JJ Model Rules 2016, rule 19(9).

124 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 93.

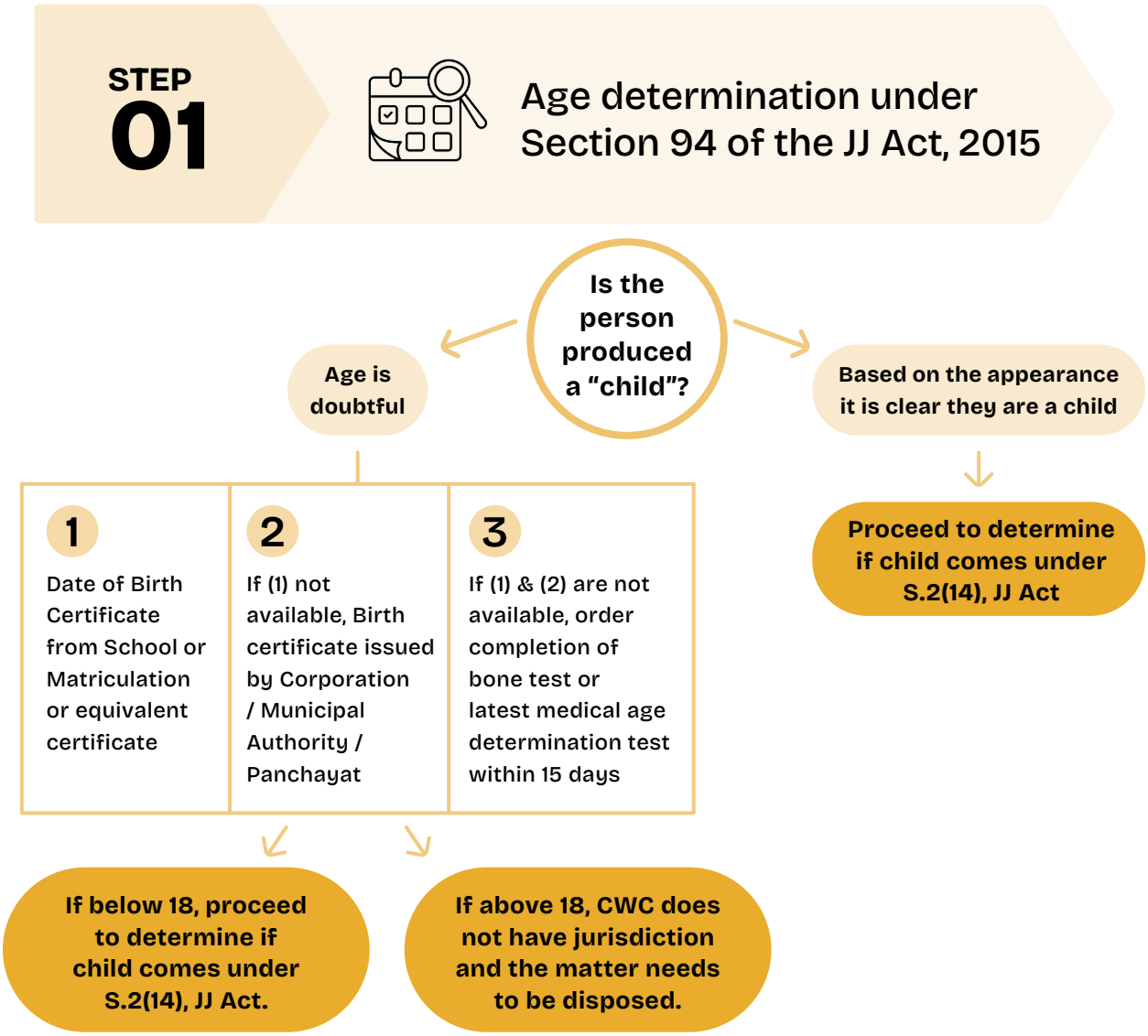
125 JJ Act 2015, s 36(2).

adoption should be made within two months from the date of production of children up to two years of age, and within four months for children above two years of age.[126] In all cases, CWC hearings should be scheduled within 15 days from the previous date. [127] **The CWC should also seek periodic status reports on each such date from the Social Worker, Child Welfare Officer, or Case Worker who is dealing with the care, protection and rehabilitation of children.[128] Even after the passing of final orders, CWCs must follow up on the progress and status of the child,[129] and can consider amending their order to modify the institution to which a child is sent or the person under whose care a child is placed.[130]**

2.7 WHAT ARE THE STEPS OF INQUIRY THAT THE CWC HAS TO ADHERE TO AS PART OF THE BID PROCESS ?



126 JJ Act 2015, s 38(1) proviso.
127 JJ Model Rules 2016, rule 19(11).
128 JJ Model Rules 2016, rule 19(11).
129 JJ Model Rules 2016, rule 19(18).
130 JJ Act 2015, s 104(1).



2.7.1. STEP 1: DETERMINE WHETHER THE PERSON PRODUCED IS A "CHILD"

The CWC needs to ascertain if the person produced before them is indeed below 18 years of age. For this purpose, CWC must:

- *Prima facie* determine the child's age, pending inquiry under Section 94, JJ Act, 2015, as per Rule 19(2), JJ Model Rules, 2016.
- If based on appearance, the person appears to be a child, proceed with the inquiry as the minority of the child may be obvious.
- In the case of older adolescents, if the age is doubtful, undertake an inquiry under Section 94(2), JJ Act, 2015. For this purpose, consider the birth certificate from school or matriculation or equivalent certificate from the concerned examination Board.[131] If that is not available, a birth certificate issued by the corporation, municipal authority or panchayat may be considered.[132] If such a certificate is not available, the CWC has to order an ossification test or the latest medical age determination test.[133]

131 JJ Act 2015, s 94(2)(i).

132 JJ Act 2015, s 94(2)(ii).

133 JJ Act 2015, s 94(2)(iii).



CWC's obligation to conduct an age-determination inquiry and release an adult

In ***Deepika v State Of Rajasthan & Ors.,***[134] the Rajasthan High Court ordered the Chairperson and Member of a CWC to pay compensation of Rs. 50,000 each for illegally confining a girl in a government children's home for a year after she had attained the age of majority. The High Court criticised the CWC for its incompetence and possible foul motive in failing to take appropriate action. It noted that the CWC's actions were violative of the JJ Act, 2015.

> **"After a careful perusal of the record, we are of the opinion that the delay occasioned in concluding the age related enquiry of the girl was not bonafide, but was clothed with foul motive and was intentionally deferred on more than one occasion.** We have more than one reasons to hold so. The father of the girl [] clearly mentioned in the FIR that Mst. 'D' was 19 years of age. The girl had clearly conveyed to the CWC as early as on the first date of her production before it that she was not desirous to go with her parents and that the date of birth certificate submitted by her parents was fabricated. In spite thereof, rather than immediately summoning the original school record for concluding the age related enquiry expeditiously, the CWC intentionally kept on calling the parents of the girl in the proceedings even though they had expressly conveyed their unwillingness to take the girl back with them. In any event, in the month of April 2019, all relevant documents pertaining to the age of the girl had been placed before the CWC and there was no cause to defer the proceedings any further. The girl was brought to the CWC from Balika Gruh, Jodhpur on number of occasions and she persistently pleaded that she should be released from the Balika Gruh. However, her pleas fell on deaf ears. The CWC, Pali concluded the age related enquiry only after receiving a strong direction issued by this court vide order dated 08.08.2019. Therefore, we have no hesitation in holding that the entire endeavour of …. the Ex-Chairperson, CWC, Pali in **not concluding the age related enquiry was malafide and tainted with foul motive and resulted into the illegal confinement of the corpus Mst. 'D' at the Balika Gruh for a period of almost 11 months. The action of the CWC runs totally contrary to the mandate of the Juvenile Justice Act. Therefore, the conduct of the Ex-Chairperson, CWC, Pali deserves to be deprecated. …."**

134 D.B. Habeas Corpus Petition No. 164/2019 decided by the Rajasthan High Court on 7.04.2020.

STEP 02



Determine Whether The Child Produced is A "CNCP"

Does the child produced fall under the category of "Child in need of care and protection" under Section 2(14) of the JJ Act, 2015?

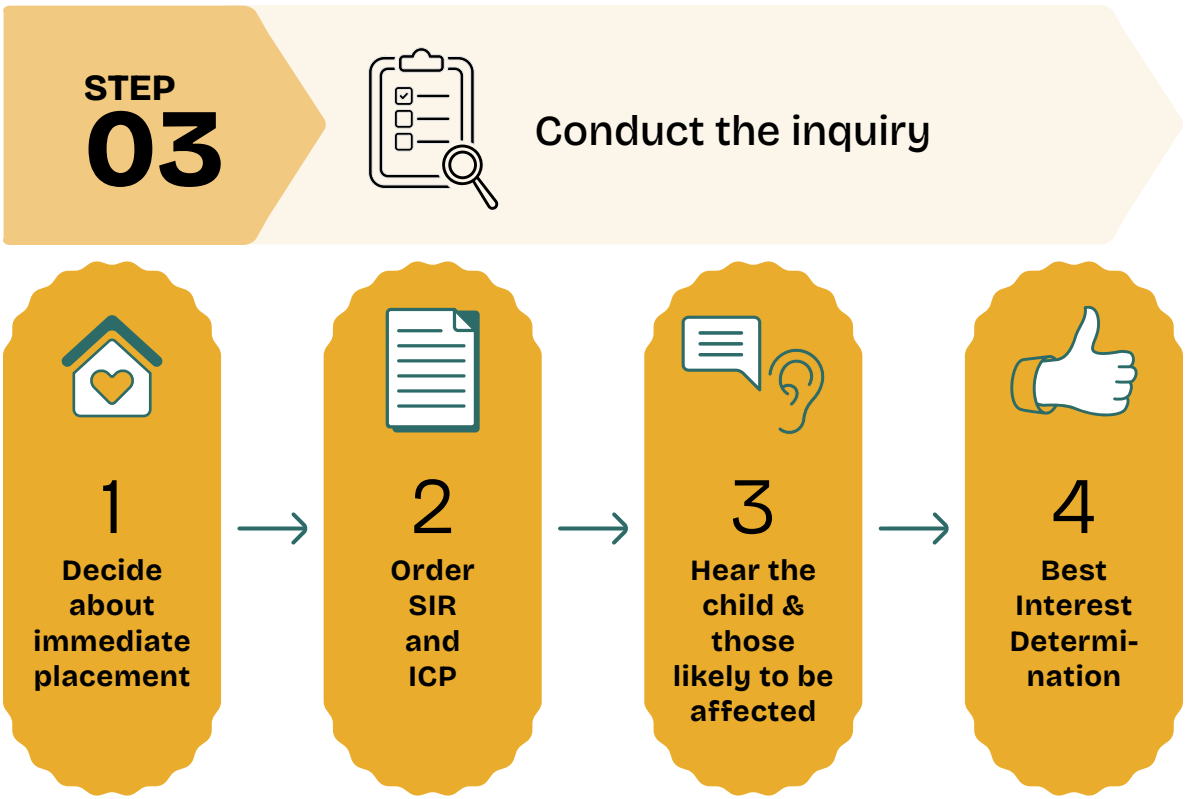
If yes, then proceed with the inquiry

If not, then dispose the case.

2.7.2 STEP 2: DETERMINE WHETHER THE CHILD PRODUCED IS A "CNCP"

The CWC's jurisdiction pertains to CNCP as defined in Section 2(14), JJ Act, 2015. **A child who does not fall within the ambit of a CNCP or does not require State care and protection should therefore not unnecessarily be subjected to proceedings under the JJ Act, 2015 or detained in a CCI, as this would amount to illegal deprivation of liberty.** For this purpose, the CWC needs to:

- Inquire into the circumstances of production before CWC (Rule 19(1), JJ Model Rules, 2016; Form 17).
- **Assess whether the child comes under any of the categories mentioned in Section 2(14),** JJ Act, 2015.
- Assess **whether a child victim under the POCSO Act, 2012, falls under the category of cases mentioned in Rule 4(4), POCSO Rules, 2020** - whether a sexual offence has been committed, or attempted, or is likely to be committed by:
  1. a person living in the same or shared household with the child, or
  2. the child is living in a CCI and is without parental support, or
  3. The child is found to be without any home and parental support.
- **Make a reasoned written order declaring a child a CNCP,** referring to the relevant clause(s) under Section 2(14), JJ Act, 2015 and the objectives of the law.



2.7.3 STEP 3: CONDUCT THE INQUIRY

A. Decision about immediate placement

When a person is produced before the CWC, and *prima facie*, it appears that the person is a child and is a CNCP, the CWC may have to make an immediate decision about the placement of the child. For instance, Railway Childline may have found a child looking confused and lost at a railway station and produced the child before the CWC. The child may belong to a different State, and may have gotten down to drink water and missed the train. Children may have been rescued from situations of labour or from exploitative circumstances. In such a situation, the child or children will need to be placed in a Children's Home, or fit facility, or in the care of a fit person,[135] till such time that the family is traced, or more information is obtained through an SIR about the family background and circumstances in which the child(ren) travelled. If the child is below 6 years, and appears to be orphaned, abandoned, or surrendered, the CWC will have to place the child in a Specialised Adoption Agency.[136]

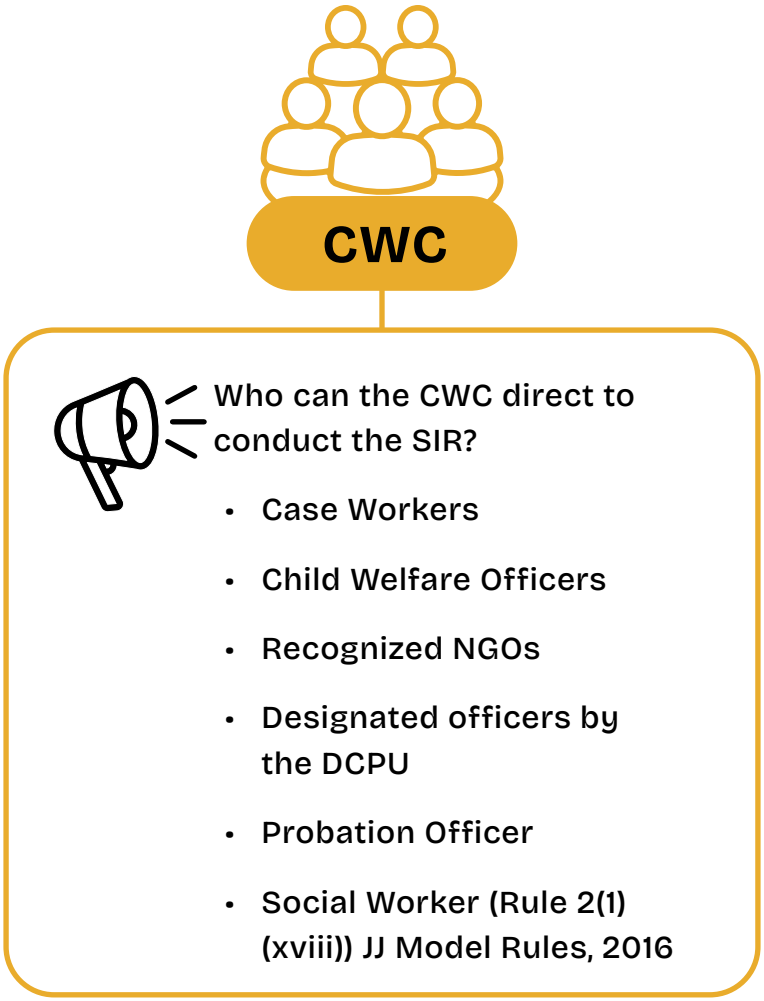
This decision can be based on:

- CWC's interaction with the child;
- Report submitted by the person producing the child,[137] e.g., Childline, Railway Childline, Police/SJPU, any recognised NGO.

135 JJ Act 2015, s 36(1).

136 JJ Act 2015, s 36(1) proviso.

137 JJ Act 2015, s 36(1).



B. Ordering of a SIR and Preparation of ICP

- CWC must direct the Case Workers,[138] Child Welfare Officers;[139] Social Workers (as defined under Rule 2(1)(xviii), JJ Model Rules, 2016);[140] recognised NGOs;[141] DCPUs or designated officers by the DCPU;[142] and Probation Officers[143] to prepare a SIR.
- The SIR must be done within 15 days of the child being produced before the CWC, to enable the CWC to pass the final order within 4 months.[144]
- **CWC is required to consider the SIR before passing final orders.**[145]

138 JJ Model Rules 2016, rules 62(4), 19(3), 19(8) & 19(17).
139 JJ Model Rules 2016, rule 19(17).
140 JJ Act 2015, s 36(1) and JJ Model Rules 2016, rules 2(1) (xviii), 19(3) & 19(8).
141 JJ Act 2015, s 30(iii) and JJ Model Rules 2016, rules 19(3),19(8) & 19(17).
142 JJ Act 2015, s 30(iii) and JJ Model Rules 2016, rule 19(3).
143 JJ Act 2015, s 30(iii).
144 JJ Act 2015, s 36(2).
145 JJ Act 2015, s 37(1).

- The CWC should ensure that the SIR, prepared in Form 22, provides complete information and supporting documentation, particularly:
  - Information of the child's past history, including education, social emotional factors, family, financial information and past instances of abuse, or offences against the child;
  - Views and recommendations of the child, if the child has the maturity to form views;
  - Views of the child's parent/s or legal guardians, extended family, teachers, and experts
  - Assessment of the child and the child's family situation;
  - **Opinion on whether it would be in the child's best interests to restore them to their family or not, along with recommendations**[146] regarding psychological support, rehabilitation and suggested intervention which could include institutionalisation or non-institutional care such as foster care, sponsorship, placement with a fit person, placement with a relative under supervision orders, etc.

- **While Form 22, JJ Model Rules, 2016, does not contain a specific heading or question asking the person preparing the SIR to elicit and record the child's view of the situation, or of the rehabilitation or placement plan, it is important that the child's views are sought and reflected in the SIR.** This is in furtherance of the principle of participation under Section 3(iii), JJ Act, 2015. For example, the child's views and suggestions on what needs to be further improved in their life and how it can be captured on the following aspects:
  - ***Observations of Inquiry*** (In the last section of the SIR)
    - » Emotional factors (30)
    - » Social and economic factors (32)
    - » Suggestive causes of the problem (33)
    - » Reasons for the child's need for care and protection (35)
    - » Recommendation of Child Welfare Officer/ Case Worker/Social Worker regarding psychological support, rehabilitation and reintegration of the child and suggested plan (40)
  - An illustrative list of headings which emphasise that the views of the child must be obtained is as follows:

While Form 22, JJ Model Rules, 2016, does not contain a specific heading or question asking the person preparing the SIR to elicit and record the child's view of the situation, or of the rehabilitation or placement plan, it is important that the child's views are sought and reflected in the SIR

146 JJ Model Rules 2016, rule 19(8).

- » Attitude of the child towards friends (20)
- » Reasons for leaving family (26C(ii))
- » Types of abuse and ill-treatment faced by the child (27)
- » Whether the child has been used by adults, "gangs for begging" ,etc or has been bought, sold or procured or trafficked for any purpose, including by a parent (26G, 26H, 26I, 26J)
- » Options stating "Any other remarks/ observations"

- Following the amendment to the JJ Model Rules in 2022, it is clarified that **an ICP has to be prepared both for a child in institutional care as well as a child in non-institutional care, except those placed in adoption.**[147]
- In the case of a child placed in non-institutional care, the CWC has to direct the DCPU to prepare the ICP using the newly introduced Form 7,[148] and in case of institutional care, the management of the CCI concerned has to develop the ICP, which includes a rehabilitation plan.[149] The ICP has to be developed based on the case history, circumstances and individual needs of the child.
- **CWCs' directions related to the child's care, protection, rehabilitation and restoration have to be based on the ICP.**[150]

C. Ensuring the child's right to be heard and adherence to principles of natural justice

Article 12, UNCRC and Section 3(iii), JJ Act, 2015, emphasise children's right to participate in processes and decisions affecting them, and require that their views be considered with due regard for their age and maturity. For this purpose, CWC should:

- Consider the wishes of the child if the child has sufficient maturity to take a view, when passing an order after an inquiry under Section 37(1).
- Consider the preference or opinion of a child victim under the POCSO Act, 2012, while determining whether a child should be taken out of the custody of the family or shared household, as per Rule 4(6), POCSO Rules, 2020.
- Grant a hearing to persons who are likely to be affected by the CWC's decision, as per the principle of natural justice under Section 3(xvi), JJ Act, 2015.[151] For instance, while deciding whether a child should be separated from the family and placed in a CCI or the care of a fit person, the CWC will have to hear from the parents of the child. In cases of incest, the non-offending parent has a right to be heard.

147 JJ Model Rules 2016, rule 19(4A).

148 Please refer to the 2022 amendment of the JJ Model Rules 2016.

149 JJ Model Rules 2016, rule 19(4) and (4A).

150 JJ Act 2015, s 30(vi).

151 JJ Model Rules 2016, rule 19(5).

Principles of Natural Justice[152]

The rules of natural justice are not codified, nor are they unvarying in all situations, rather, they are flexible. The question to be asked in every case to determine whether the rules of natural justice have been violated is: Have the authorities acted fairly? In ***State of Orissa v Dr. (Miss) Binapani Dei***,[153] it was held that even an administrative order or decision in matters involving civil consequences has to be made consistent with the rules of natural justice.

Natural justice has two main limbs:

(i) Right to a fair hearing, also known as the *audi alteram partem* rule, which means that no one is to be condemned unheard. This doctrine has three essentials. Firstly, a person against whom an order is required to be passed, or whose rights are likely to be affected adversely, must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure. Lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. Speaking order ensures transparency and fairness in decision-making. The person who is adversely affected comes to know why his application has been rejected. Recording of reasons is also important when the order is appealed, as it helps a higher court or authority to understand the rationale of the decision.

(ii) Rule against bias, or, *nemo judex in causa sua*, i.e., no one may be a judge in his own cause. Bias may take several forms, including personal bias, i.e., arising from a personal relationship between the decision-making authority and the party involved in a cause, pecuniary bias, i.e., involvement of any financial interests, etc.[154]

152 Edited excerpts from MP Jain & SN Jain, *Principles of Administrative Law* (7th edn, Lexis Nexis 2013).

153 1967 AIR 1269.

154 National Institute of Open Schooling (NIOS), 'Module on Principles of Natural Justice', <https://nios.ac.in/media/documents/SrSec338New/338_Introduction_To_Law_Eng/338_Introduction_To_Law_Eng_L6.pdf> accessed 27 January 2025.

CASE LAW

CWC's obligation to ensure right to be heard and natural justice

In ***X v State of Kerala,***[155] the petitioner, a young lactating mother, challenged the order passed by a CWC, which granted custody of her daughter to her husband. The petitioner had left her marital home with her child after facing mental and physical harassment from her husband and moved in with her mother. Subsequently, the petitioner eloped with a man, after which her husband filed an FIR, under Section 57, Kerala Police Act, 2011[156]. During the investigation, she was produced before a Magistrate and set her at liberty, noting that she was 23 years old and had chosen to live with the man she eloped with. The Magistrate also directed the police to produce the child before the CWC for further orders, as it was believed the child might be a CNCP. The CWC granted the custody of the child to the petitioner's husband.

At the time of the petition's admission, the petitioner's counsel argued that the baby was still being breastfed, and the order by the CWC deprived the child of her mother's milk. Consequently, the HC issued an interim order directing that the custody of the child be given to the petitioner for half an hour every day, at the Police Station, with the presence of a woman police constable and ensuring privacy for breastfeeding.

155 WP(C) No. 35211 of 2024, decided by the Kerala High Court on 25.10.2024.

156 Section 57, Kerala Police Act states as follows:

"Police to attempt to locate missing persons.–

(1) Whenever a Station House Officer receives any information from which he reasonably suspects that any person is missing and there are circumstances to believe that,- (a) such person is in danger or not under the protection of lawful guardianship; or (b) such person may be subjected to some dangerous offence; or (c) such person is absconding himself to prevent someone from implementing a lawful right declared by any court, such officer shall register the information in a manner similar to the procedure prescribed for a cognizable offence and take immediate action to locate the missing person.

(2) During such enquiries such officer or any officer deputed by him may examine and record the statement of any witness and search any place.

(3) All persons shall answer truthfully to any question by a Police Officer enquiring this matter and a copy of such statement recorded by that officer shall be given to the witness and after getting such copy, the witness shall sign and acknowledge that such copy has been received.

(4) All searches under this section shall be done in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The missing person if found on enquiry shall forthwith be handed over to the responsible guardian or produced before the Magistrate having jurisdiction.

(6) Where the person so produced is a woman or a child the Magistrate shall take such steps as are needed to safeguard the privacy and interest of that person."

In response to the above order, the petitioner's husband filed a counter-affidavit along with a copy of the CWC's order. In the order, the CWC had expressed concerns regarding the petitioner's decision to elope with a person who was the step-grandfather of her child, and her stated unwillingness to return to her husband. The CWC was apprehensive about the safety of the child and entrusted the child's care to the father.

The Kerala High Court noted that for Section 2(14)(v), JJ Act, 2015 to be attracted, the parent or guardian should be found unfit or incapacitated. It referred to ***Shaiju S and others v Child Welfare Committee, Kollam and others***[157] to highlight that CWC's role can arise in a case only when both parents are not in a position to take care of or protect the child. The High Court noted that the CWC's concern should only be BIC and that the petitioner's decision to live with another person of her choice is not the CWC's concern. It highlighted that the personal morals of the CWC Members resulted in a biased decision and was observed as follows:

> "Judged by moral standards of the members, the petitioner may not be a good person, but that does not make her a bad mother. **Personal moral values always result in biased judgments. Unfortunately, the order reflects nothing other than the moral bias of the Committee members."**

The HC also pointed out that the CWC's decision violated the mother's right to breastfeed her baby and the baby's right to be breastfed under Article 21 of the Constitution. It noted the following in this regard:

> "14. Surprisingly, the fact that the child was being breastfed is not seen to have been taken into account by the Committee, while hastily granting custody of the child to the 3rd respondent. The counsel for the petitioner is correct in her submission that, severance of a one-year-and-four-month-old baby from its mother violates her right to breastfeed the baby and that of the baby to be breastfed, such right being a facet of the right to life under Article 21 of the Constitution. Our Constitution also imposes a duty on the State to raise the level of nutrition, which implicitly supports breastfeeding."

157 2021 6 KHC 573.

Based on the abovementioned considerations, the HC quashed the order by the CWC as it was violative of the principles of natural justice and fundamental rights of the petitioner and her child. It also granted the child's custody to the petitioner.

In ***Sheeja Navas v Child Welfare Committee and Ors.,***[158] the petitioner challenged the order passed by the CWC regarding the placement of her 15-year-old daughter in a shelter home. The petitioner's daughter was sexually assaulted by an Imam, their family friend, who was a frequent visitor to their house. The High Court directed the release of the child to the mother as the CWC did not follow proper procedures and principles under the JJ Act, 2015. Principles under Section 3, JJ Act, 2015, were not followed while deciding on the custody application under Section 40, JJ Act, 2015. Further, no enquiry was conducted under Section 36, JJ Act, 2015 and the child's wish to stay with her family was not considered. The main argument of the child not being safe at home, as the accused was a frequent visitor in their home, was rejected by the High Court. The High Court noted:

> **"28. The ground stated that there is a possibility of access of the accused to the victim. But it is not a ground to station the juvenile in the children's home. It has come out that the victim is stationed at a shelter home against her wishes. The committee should have given prime importance to the wishes of the child.**
>
> **29. The impugned order does not show that the opinion and wishes of the victim child were considered by the Committee in this case. At present, her opinion/desire is to go along with the petitioner, and we have considered the matter in detail based on the fundamental principles as envisaged in Section 3 of the Act.** Moreover, the petitioner was staying with her mother with the company of the other family members before she was removed to the Children's Home. Hence, the victim child is at present undergoing mental stress and she was suddenly removed from her family atmosphere."

158 RPJJ No. 3 of 2019 decided by the Kerala High Court on 08.03.2019.

- **When considering the views of those close to the child, give more emphasis to the views of those people who are closer to the child and have a more meaningful relationship with the child.[159] The CWC must be mindful of potential conflicts of interest, such as where there are indications that the relationship may be abusive, controlling or exploitative.**
- Act impartially and without bias, particularly if a conflict of interest arises in the context of the placement of a child, inspection of a CCI, or any case of abuse of a child in a CCI and a CWC Member is associated with the CCI in question, directly or indirectly. They should not be a part of any decision-making process about that CCI.
- The CWC should collect **information** from the child and seek their **views**, and help them to **understand the reasons** for why the orders of the CWC may have differed from these views in their best interests.
- **The CWC should inform children in a language that they understand:**
  - about the process,
  - its role and functions,
  - the child protection services that the child is entitled to, and
  - possible outcomes

CASE LAW

CWC's obligation to conduct its proceedings in a sensitive manner and in a language known to the child

Ajay v State (NCT of Delhi),[160] notes improper handling of the case by the CWC. The facts of the case are not mentioned in the judgment. The Delhi High Court only mentioned that the case concerns a consensual relationship between the applicant and a minor girl, and the girl gave birth to a child. The High Court noted that the CWC conducted proceedings in English, despite the victim being illiterate and only understanding Urdu. The CWC failed to explain the proceedings, including the surrender and adoption of the child, in a language known to the victim and her guardian. The High Court emphasised that the CWC members should have shown more sensitivity and not conducted the proceedings in a "business-like manner."

159 UNHCR Best Interests Procedure Guidelines (n 4).

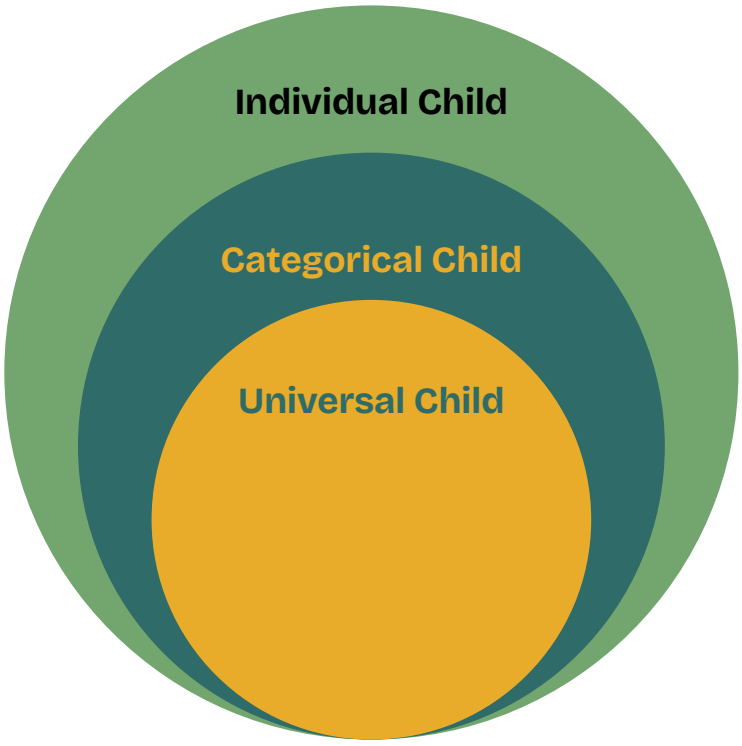
160 Bail Appln. 3194/2023 decided by the Delhi High Court on 6.11.2023.

D. Best Interests Determination (BID)

CWCs must recognise that three essential elements are arising out of the BIP, viz. 'the child's 'best interests', 'a primary consideration' and 'the child'. To fulfil the requirement of the third element, the CWCs must adopt a **child-centred and child-specific approach** while assessing the child's circumstances as well as the child's individual needs, characteristics, and qualities. Though the SIR does provide some information, the CWC needs to **avoid generalisations**, especially in cases where they are dealing with siblings and children rescued from the same situation of vulnerability.

A theoretical model represented in the diagram below provides a framework to enable a child-centred approach.[161] The first sphere contains the core characteristics of **children as a class of human beings**. The second sphere covers **characteristics** that are specific to the **specific category/ group of children** that the child hails from - for example, children with disabilities, a child living with or affected by HIV/AIDs, a pregnant child, a *Dalit* child, or a child belonging to a minority community, etc. Children with these additional characteristics would present with vulnerabilities that are common among children who share this identity, therefore requiring the adoption of an intersectionality perspective. The CWC must examine the categories the child may fall under, or the identity that the child carries, which aggravates vulnerability, or

THE MODEL OF THE INDIVIDUAL CHILD (MIC)



The CWC should adopt a child-centred approach while assessing the child's circumstances as well as the child's individual needs, characteristics, and qualities.

Source: Krutzinna, J. (2022). Who is "The Child"? Best Interests and Individuality of Children in Discretionary Decision-Making, The International Journal of Children's Rights, 30(1), 120-145.

161 Jenny Krutzinna, 'Who is "The Child"? Best Interests and Individuality of Children in Discretionary Decision-Making' (2022) 30(1) The International Journal of Children's Rights 120-145.

deserves additional protection. In addition, the CWC should make an assessment vis-à-vis the third sphere, which comprises the **unique characteristics of the specific child**, including the child's preferences and interests, enabling a deeper understanding of 'who' the child is. This individualised approach helps to ensure that groups of children from the same psycho-socio-economic or other background, hailing from the same situation of vulnerability, are not dealt with through a monolithic lens.

This **Model of the Individual Child (MIC)** is "a useful tool in best interests decision-making by explicitly shifting attention from "a child," to "the child" who is at the heart of a decision to be made."[162]

This Model of the Individual Child (MIC) is "a useful tool in best interests decision-making by explicitly shifting attention from "a child," to "the child" who is at the heart of a decision to be made."

While applying the MIC model, the CWC would need to integrate three steps into the best interests decision-making:

1. Keep the focus on the individual child and understand the child's views and needs. To do this, the CWCs can apply the seven elements identified by the CRC that have to be taken into account when determining an individual child's best interests.[163] They are as follows:
   a) the child's views;
   b) the child's identity;
   c) preservation of the family environment and maintaining relations;
   d) care, protection and safety of the child;
   e) situation of vulnerability;
   f) the child's right to health; and
   g) the child's right to education.

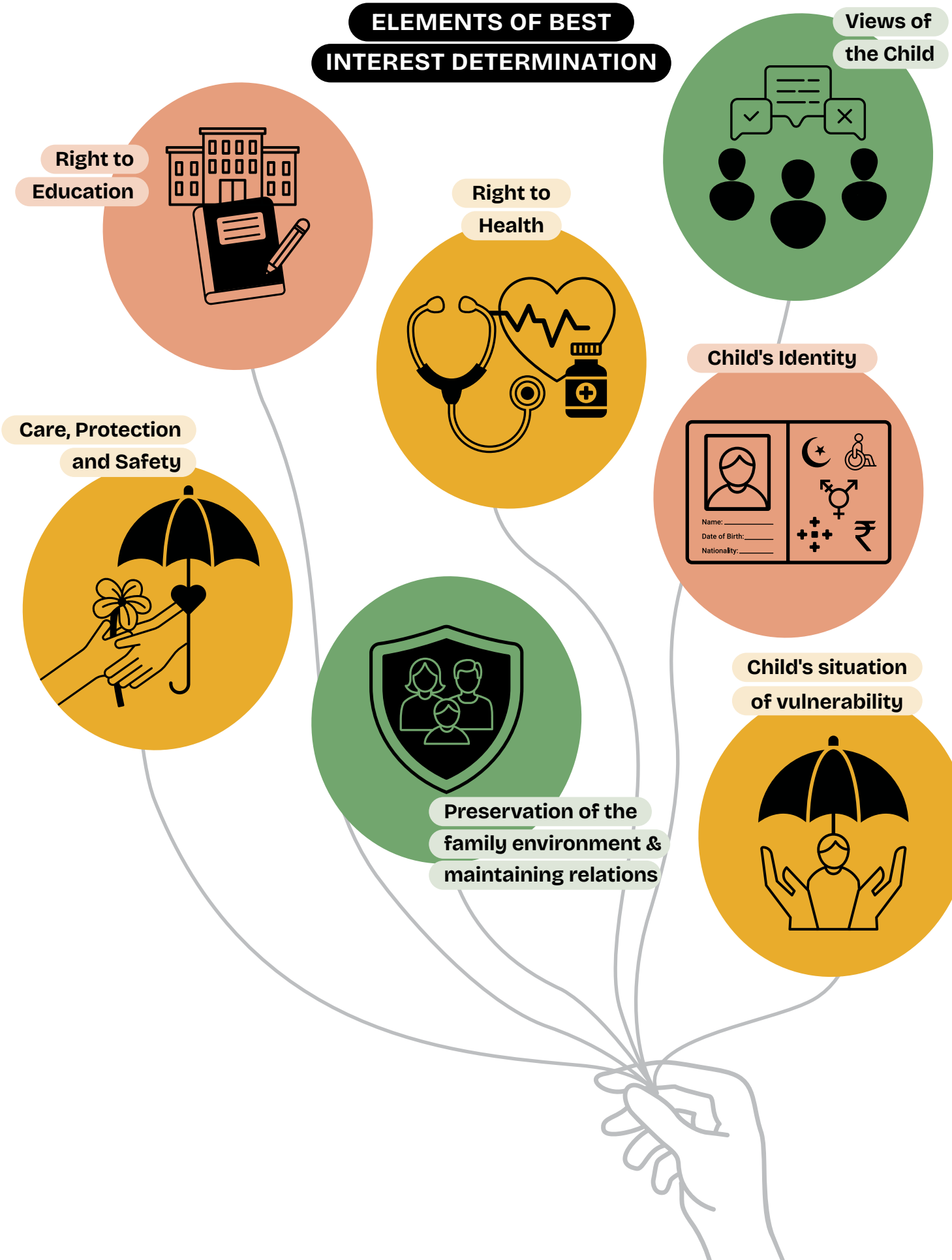
2. Balance the various needs of the child with the child's rights and interests. These elements have to be weighed and elements that best guarantee the child's prospects for a safe, healthy (holistic) childhood, and development with dignity, considering the full and effective enjoyment of all the child's rights, (both in the short and long term), are to be assigned the most weight.

The CWC also has to apply relevant principles enshrined in Section 3, JJ Act, 2015, when taking any action or making decisions concerning a CNCP in their jurisdiction.

162 ibid 128.

163 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 52-79.

ELEMENTS OF BEST INTEREST DETERMINATION



STEP
04



Writing of a Reasoned Order

2.7.4 STEP 4: WRITE A REASONED ORDER

The principle of natural justice requires that when a decision is taken with regard to a child, it must be justified and explained. The JJ Model Rules, 2016, state that the order must be in writing.[164] The decision must be based on a determination of the child's best interests and adequately explain how best interests have been taken as a primary consideration.[165]

The JJ Model Rules, 2016, state that the order must be in writing. The decision must be based on a determination of the child's best interests and adequately explain how best interests have been taken as a primary consideration.

Several decisions of CWCs have been successfully challenged in appeal on the ground that no reasons or application of principles are apparent for their final orders. For instance, in ***Krishnakumar v State of Kerala,***[166] the Kerala High Court held:

> "When a child is found in need of care and protection, before putting the child in the Children's Home, there should be application of mind by the Committee; Committee shall take into account the investigation report by the Child Welfare Officer as well as the child's wishes. This aspect is crystal clear from Section 37 of the Act viewed in the light of Section 3 of the Act. While considering a custody/restoration application when the girl is stationed in Children's Home, which will come under Section 40 of the Act, the Committee shall evaluate the suitability of the person to whom custody is to be given, guided by the fundamental principles envisaged in Section 3 of the Act."

In ***M/s. Kranti Associates Pvt Ltd v Masood Ahmed Khan***,[167] the Supreme Court has held that quasi-judicial authorities have to record the reasons for a particular decision, if such decisions affect someone prejudicially. While this judgment is not in the context of CWCs, the principles laid down are relevant for them. The Supreme Court held, "Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, it must also appear to be done as well." Quasi-judicial authorities must record reasons so as to support the conclusion reached in their decision. Doing so "operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power." The apex court emphasised upon the recording of reasons as "[r]easons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding

164 JJ Model Rules 2016, rule 19(5).

165 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 97.

166 [2018] 3 KHC 485.

167 [2010] 9 SCC 496.

extraneous considerations." It would also facilitate the process of judicial review by superior courts. Lastly, the court held that, "Insistence on reason is a requirement for both **judicial accountability and transparency. ....Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process."**

Writing a reasoned order

The final order of the CWC should contain the following:

1. The factual circumstances in which the child was produced before the CWC;
2. Steps taken for age determination and the age verification documents used to establish the child's age;
3. Rationale for classifying the child as a CNCP under Section 2(14), JJ Act, 2015;
4. Relevant information from the SIR and ICP that were considered;
5. Elements which were found relevant for BID, and how the different elements were weighed to determine the child's best interests;
6. Child's views and how it has been considered, bearing in mind the child's age and maturity; and, if the decision varied from the child's views, the reasons for the same;
7. Principles and other considerations, in addition to the best interests that were considered;
8. Views of parent/guardian/siblings and the Case Worker/CCI Staff/NGO/staff working on the child's case that were considered;
9. Different rehabilitative dispositions considered and its implications on the child's best interest;
10. Consideration of the ICP - the CWC has to consider the ICP of the child while passing directions to ensure a child's care, protection, appropriate rehabilitation or restoration.[168] The ICP is meant to complement the final order of the CWC, by providing a comprehensive and concrete development plan for the child, prepared in consultation with the child;
11. Basis on which the final disposition was arrived; and
12. Follow-up plan. Follow up hearings must be conducted within one month of the disposal of the case and subsequently on a monthly basis for six months, after which it should be once in three months for a minimum of one year or till such time as the CWC thinks fit.[169]

The above aspects must not simply be mentioned in general terms. All the relevant considerations must be explicitly stated, and the reason why a particular consideration carried greater weight must be explained.[170]

168 JJ Act 2015, s 30(vi).

169 JJ Model Rules 2016, rule 19(18).

170 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 97.

2.8 ELEMENTS OF BEST INTEREST

2.8.1 WHAT IS MEANT BY A CHILD'S VIEWS AND HOW CAN IT BE ASCERTAINED?

LEGAL STANDARD	SUMMARY
Section 3(iii), JJ Act, 2015	Every child has the right to participate in processes and decisions affecting their interest, and their views should be considered with due regard to their age and maturity.
Rule 4(6), POCSO Rules, 2020	The CWC has to consider the preference or opinion of the child victim who may have been abused or is at risk of abuse by a person living with the child, when deciding on whether the child should be taken out of the custody of the family or shared household and placed in a CCI or a shelter home.
Section 4(2), RPD Act, 2016	Government and local authorities have to "ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability." Further, the appropriate government has to take steps to "make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication."[171] Suitable support measures also need to be put in place for persons with disabilities living outside the family and those who need high support for exercising their legal rights.[172]
CRC, GC 12, (2009): The right of the child to be heard	Children with disabilities should be equipped with any mode of communication necessary to facilitate the expression of their views.[173]

171 RPD Act 2016, s 12(4)(c).

172 RPD Act 2016, s 12(2).

173 UN Committee on the Rights of the Child, 'General comment No. 12 (2009): The right of the child to be heard' (20 July 2009) CRC/C/GC/12, para 21, <https://www.refworld.org/docid/4ae562c52.html> accessed 27 January 2025.

The child's views are one of the several elements that need to be balanced while making decisions regarding children. There may be instances where the child's views/wishes may be in contradiction to the safety or well-being of the child, and in that case, depending on the circumstances, the safety of the child may need to be prioritised by the CWC. The child must be given an explanation as to why a different decision is being taken in contradiction to the child's wishes or views. The CWC must substantiate its decision and provide adequate and reasonable grounds to support its conclusion that the child's safety is at risk and adherence to the child's views is not in the child's best interests.

CASE LAW

CWC decision set aside because child's views disregarded

A case where the CWC did not consider the views of either the persons connected to the child, or the child, is that of ***Selvi Michel v Child Welfare Committee***.[174] In this case, the parents had adopted an abandoned child without completing the legal formalities. Years later, when the child was 5 years old, she was sexually abused by the tenant who stayed in her house. Given this fact, and that the "parents" had not legally adopted the child, the CWC declared that the "mother" was an unfit person and directed that the child be placed in a CCI. The CWC passed this order despite the fact that the child wanted to stay with her "mother" and the "mother" wanted the child back too. **The Kerala High Court held that since the views of the child were not considered, and the inquiry was conducted in the absence of the parents, the CWC had violated Section 3, JJ Act, 2015.** The CWC's order directing the child to stay in the Children's Home was set aside and petitioner was granted custody as "fit person."

174 RPJJ No. 2 of 2019, decided by the Kerala High Court on 28.03.2019.

To operationalise children's right to be heard in the context of a BID, CWCs need to bear in mind the following aspects:

1. **Consider age, ability and maturity of the child:**

   - **Give greater weightage to the views of older children.**[175]
   - For young children and those unable to express their views due to a disability, or any other reason, take the help of counselors, or other professionals experienced in working with such children.
   - **Depending upon the age and abilities of the child, use art, games, music, visual mediums, etc., to interact with children, gather information, and solicit their views.**
   - Take the **assistance of special educators and other experts or persons familiar with the manner of communication of children with disabilities.**
   - Take the assistance of **interpreters and translators** with support from the DCPU,[176] to **enable children who hail from different districts, States or countries, who do not speak the majority language,** to express their views.
   - With hearing-impaired children, keep pen and paper handy, and seek the assistance of sign language experts available in the district, or online. Picture-based questionnaires can be used to get information regarding the child's family and home, as well as to ascertain their views and feelings.



2. **Creation of an enabling and inclusive environment where the child feels respected and secure**[177] **and can express their views freely.**

   ""Freely" means that the child can express her or his views without pressure…"

   "Freely" also means that the child must not be manipulated or subjected to undue influence or



175 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 44.

176 General comment No. 12 (2009) (n 173) 7.

177 General comment No. 12 (2009) (n 173) para 23.

pressure. "Freely" is further intrinsically related to the child's "own" perspective: the child has the right to express her or his own views and not the views of others."[178]

- Proactively take steps to assure the child's safety and comfort, especially when any sensitive information is disclosed.
- Address fears and concerns about potential retaliation or punishment.[179]
- **Designate a separate room/corner where a quiet and private conversation can be had by an individual CWC Member with a child who may be agitated.**
- Ensuring the presence of only those with whom the child feels comfortable during sittings.[180]
- Ensure that the child is seated in a manner that enables direct face-to-face communication.
- **Avoid sitting on a raised platform or using witness boxes** while interacting with the child.[181]
- Hear the child **directly**, and if the child wishes to be heard through another adult, or feels more comfortable interacting with only one or two members of the CWC, then their preference may be considered. For instance, a child victim of a sexual offence may not feel comfortable speaking in the presence of male members, or more than one or two persons at a time. In such cases, the interaction can be with one or two female Members of the CWC, who can later update the other Members.

"Freely" also means that the child must not be manipulated or subjected to undue influence or pressure. "Freely" is further intrinsically related to the child's "own" perspective: the child has the right to express her or his own views and not the views of others."

- **Technology-facilitated interactions between the child and the CWC** must also be explored, especially if the child is placed in a CCI or fit facility that is at a distance from the CWC, or in a different district..
- **Avoid simultaneous questioning of a child by multiple members at the same time. Plan in advance who will take the lead in the conversation with a particular child.**

3. **Enable informed and meaningful participation**
   - Provide **age-appropriate information** about the CWC, its procedures, rehabilitation options, and what the possible outcomes may be and their consequences.
   - **Ensure the child is provided with updates about the case** at regular intervals, through the Case Worker/DCPU/Social Worker.

178 General comment No. 12 (2009) (n 173) para 22.

179 Pacific Judicial Strengthening Initiative, 'Checklist 2: When Children/Juveniles Come to Court- For Chief Justice Judge' (October 2020) 10 <https://www.fedcourt.gov.au/__data/assets/pdf_file/0006/81663/Human-Rights-Checklist-2.pdf> accessed 27 January 2025.

180 JJ Model Rules 2016, rule 16(5).

181 JJ Model Rules 2016, rules 16(11).

- **Explain the possible options and outcomes, so as to enable the child to form their own opinion/views and express them.**[182]
- **Inform the child about the manner in which their views have been considered by the CWC before arriving at its decision.**[183]
- Make efforts to **explore and understand the reasons for the child's hesitation or reluctance to go back to the family.**[184]
- **Do not coerce, or force, or shame the child into going back home against their will,**[185] as it may prompt the child to take risky steps if the child senses the possibility of rejection, punishment, isolation or other kinds of harm at home, or from the neighbouring community.





182 UNHCR Best Interests Procedure Guidelines (n 4).

183 General comment No. 12 (2009) (n 173) para 45.

184 UNHCR Best Interests Procedure Guidelines (n 4).

185 JJ Model Rules 2016, rule 82B (3); Bihar JJ Rules, 2017, rule 82(8) and West Bengal JJ Rules 2017, rule 76(8).

Communicating with the child - Do not coerce the child to go back home

"Girl allegedly killed for inter-caste relationship in Mysuru", The Hindu, 7 June 2022[186]

"The girl agreed to accompany her parents after they promised not to harm her and facilitate her education.

A 17-year-old girl was allegedly strangled to death by her father in Kaggundi village of Periyapatna taluk in Karnataka.

The girl, a student of II PUC in a college in Periyapatna and belonging to the Vokkaliga community, was in a relationship with a boy, Manju, from the Dalit community residing in the neighbouring Mellahalli village. However, the girl's family was strongly opposed to the alliance, and counselled her against having any relationship with the boy, police said. The girl had been sent to the Government Girls' Home in Mysuru by the Periyapatna police about a month ago after she complained against her parents.

The parents, however, brought her back home after a fortnight after giving an undertaking to the Mysuru District Child Welfare Committee (CWC) that they would not harm her and facilitate her education.

After bringing her back home, the family members, including her father Suresh, 45, and mother Baby, tried to convince the girl against having any relationship with the boy.

But, when she tried to contact the boy again, a confrontation ensued between the girl and her father in the early hours of Tuesday, leading to her strangulation around 2.30-3.00 a.m., police said. Her mother, who was present on the occasion, tried to revive her by sprinkling water on her, but to little avail. Later, the parents kept her body on a two-wheeler and rode to the neighbouring Mellahalli village, abandoned the body by the roadside, and returned to their house. Later, Suresh went to Periyapatna police station and surrendered before the police. The police arrested Suresh and his wife Baby and are continuing the investigation.



186 'Girl allegedly killed for inter-caste relationship in Mysuru' (*The Hindu*, 8 June 2022) <https://www.thehindu.com/news/national/karnataka/17-year-old-girl-found-dead-in-suspected-case-of-honour-killing-in-karnataka/article65502906.ece> accessed 27 January 2025.

Meanwhile, sources in Mysuru District CWC said the girl was initially reluctant to go with her parents. But, later she agreed to return home with her parents after they gave her an assurance. The girl was allowed to go home only after the officials conducted a social investigation and submitted a report, the sources added."

For consideration

In cases involving threats to the life and security of a child, the decision to restore a child to their family requires careful consideration. The case demonstrates that the BIC in the instant case was not in restoration to the family and that convincing a child to return to their parents against their will is counterproductive. The CWC should have borne in mind Rule 82B(3) of the JJ Model Rules, 2016 and interacted with the child to understand her reluctance to go home, her relationship with parents, and assessed the risk associated with sending her back home.

The CWC is mandated to apply the various principles enumerated in Section 3, JJ Act, 2015 while performing their functions. In the present case, the CWC had to make a difficult choice between prioritising the principles of safety, family responsibility, and institutionalisation as a measure of last resort. Considering the gravity of allegations against the parents, the CWC should have considered the various alternatives to sending her back home. Alternatives such as placement with extended family, or temporary care with a fit person such as a trusted adult could have been considered. The CWC could have also ordered family counselling by a trained professional.

Article 12, UNCRC and Section 3(iii), JJ Act, 2015 stress on children's right to participation, including consideration of their views in processes and decisions affecting them. The CWC must consider the wishes of the child, if the child has sufficient maturity to take a view, when passing orders. It should also consider the views of all significant persons in the child's life. It must ensure that the child is supported to understand the roles and functions of the CWC, the procedures it is required to follow, and possible solutions to any problem that the child is facing, in a language they understand. The CWC must also look out for potential conflicts of interest between the child and her parents, for example, indications that the familial relationship may be abusive, controlling or exploitative. In the instant case, the CWC should have paid closer attention to the child's relationship with her parents after hearing her and other persons closely connected with her, to decide upon her placement, in her best interests.



2.8.2 WHAT IS MEANT BY THE CHILD'S IDENTITY AND HOW CAN IT BE FACTORED WHILE MAKING A BEST INTERESTS DETERMINATION?

CWCs need to bear in mind that:

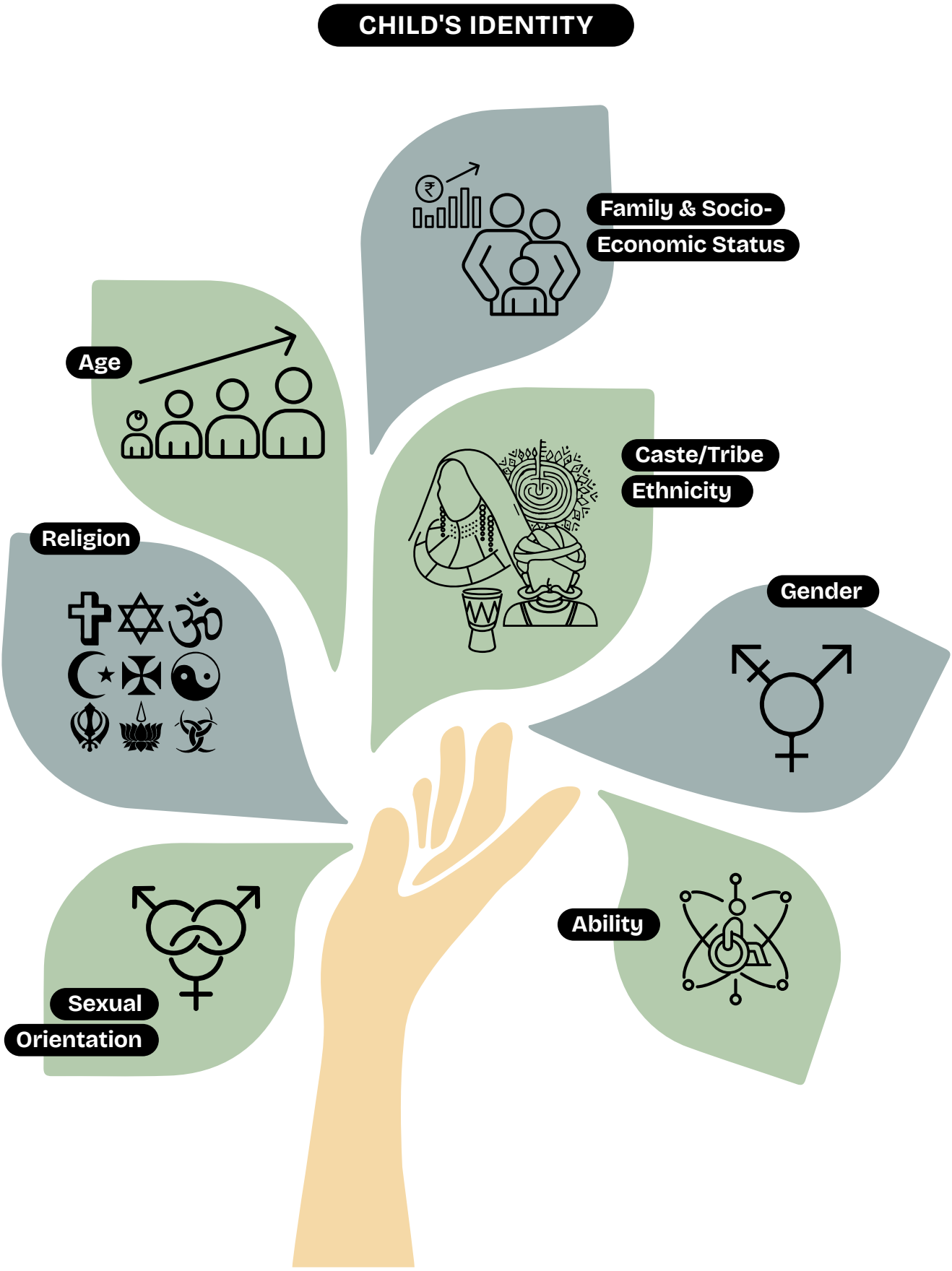
- The definition of 'best interest' in Section 2(9), JJ Act, 2015, includes a reference to the identity of the child as an aspect that needs to be 'fulfilled'.
- **Children are not homogenous entities and carry several identities** such as gender, caste, tribe, religion and beliefs, nationality, place of birth, sexual orientation, disability, health status, financial status, and cultural identities, among several others.[187]
- **Several children experience discrimination, violence, and hostility, based on one or more of these identities.** CWCs have to be conscious of this while dealing with them and their cases.
- No stigmatising language or adverse assumptions are made about children or their families based on their identity. General assumptions that a child lacks capacity or understanding because of their disability, illiteracy, tribe, or caste, should be avoided. Such assumptions not only undermine the fundamental principles of dignity and worth, and of equality and non-discrimination, but also affect the objectivity needed to make a BID in accordance with the principle of natural justice, which requires an unbiased hearing.
- Reasonable accommodations[188] need to be made for a child with disability, to ensure that the CWC room is accessible to the child, assistance of special educators or experts is arranged, and access to educational materials and health services that may be needed are ensured in the CCI in which the child may be placed.
- Preservation of religious, cultural values, and traditions that are a part of the child's identity.
- The child's identity is only one among the elements of best interests, and must be balanced with the others..
- Traditional and cultural values cannot be used as a justification for practices that infringe on the rights of the child.[189] For example, practices such as discontinuation of a girl child's education after she starts menstruating, or arrangement of her marriage are contrary to their rights enshrined in the Indian Constitutions, as well as legislations such as the RTE Act, 2009 and the PCMA, 2006, and cannot be sanctioned by CWCs under the pretext of respecting promoting or safeguarding their cultural identity.

No stigmatising language or adverse assumptions are made about children or their families based on their identity. General assumptions that a child lacks capacity or understanding because of their disability, illiteracy, tribe, or caste, should be avoided. Such assumptions not only undermine the fundamental principles of dignity and worth, and of equality and non-discrimination, but also affect the objectivity needed to make a BID in accordance with the principle of natural justice, which requires an unbiased hearing.

187 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 55.

188 RPD Act 2016, s 2(y). It defines reasonable accommodation to mean "necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others."

189 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 57.


CHILD'S IDENTITY
Family & Socio-
Economic Status
Age
Caste/Tribe
Ethnicity
Religion
Gender
Ability
Sexual
Orientation



PROMISING PRACTICES

An Example of a Sensitive Approach towards Gender Identity

An 11 year old child was produced before the CWC, and from their appearance, the CWC could not ascertain the child's gender. Instead of asking a pointed question about this or subjecting the child to an intrusive medical examination, the CWC shared with the child information about the various CCIs in the district and their admission criteria. They explained that both boys and girls below 10 years are placed together in one Home, and that there were separate CCIs for boys and girls between 10-14 years. The child then shared that she would like to live in the Children's Home for Girls. She also explained that she had cut her hair short for her safety, as she worked in a hotel and stayed there only.



2.8.3 WHAT HAS TO BE CONSIDERED WHILE TAKING INTO ACCOUNT THE PRESERVATION OF FAMILY RELATIONSHIPS AND MAINTAINING RELATIONSHIPS?

LEGAL STANDARD	SUMMARY
Section 3(v), JJ Act, 2015 and CRC[190]	Biological/adoptive/foster family has the primary responsibility for the care, nurturing, and protection of the child. The child has a right to be in the family environment and to maintain relationships with family members and extended family as well.

190 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 58-70.

LEGAL STANDARD	SUMMARY
Section 3(xiii), JJ Act, 2015	The principle of repatriation and restoration, which recognises the child's right to be restored back to their family at the earliest and to the same socio-economic and cultural status that they were in before, unless it is not in their best interest. The child should only be separated from their parents if it is in their best interest.[191] Separation from parents should be the last resort, - "when the child is in danger of experiencing imminent harm or when otherwise necessary."[192]
Rule 4(6)(ii), POCSO Rules, 2020	Where the accused is a family member, or living in the shared household with the child, the CWC has to also consider the need for the child to remain in the care of the non-offending members of the family, and/or maintain a connection with them.
Rule 82 B (3), (6) and (5), JJ Model Rules, 2016	"When a child expresses his unwillingness to be restored back to the family, the Board or the Committee or the Children's Court shall interact with the child to find out the reasons for the same and record the same and the child **shall not be coerced or persuaded to go back to the family."** "The child may also not be restored back to the family where the social investigation report prepared by the Probation Officer, Child Welfare Officer or the Social Worker or the Case Worker or the NGO establishes that restoration to the family may not be in the interest of the child." "The child would also not be restored back to the family where the parents or guardians refuse to accept the child back. In all such cases, the Board or the Committee or the Children's Court may provide alternative means for rehabilitation."
Section 35, JJ Act, 2015	Parents or guardians surrendering a child for physical, emotional and social factors beyond their control, need to be counselled and given two months' time to reconsider their decision. Only after an inquiry and counselling, if the CWC is satisfied, they may be asked to execute a surrender deed.

191 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 60.

192 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 61.

193 JJ Act 2015, s 37(1)(f) read with s 45(2).

LEGAL STANDARD	SUMMARY
Regulation 7(11), Adoption Regulations, 2022	Specialised Adoption Agencies, DCPUs, and CWCs have to make efforts "for exploring the possibility of parents retaining the child, which shall include counselling or linking them to the counselling centre identified by the State Government, encouraging them to retain the child and explaining that the process of surrender shall become irrevocable after expiry of sixty days from the date of signing the Surrender Deed to discourage surrender by biological parents."
Section 37(1)(f) read with Section 45(2), JJ Act, 2015	Sponsorship can be considered by CWCs for children of families that are headed by a single mother or children who are orphaned and are living with the extended family, or where the parents are victims of life threatening diseases, or are incapacitated due to an accident and are unable to take financial and physical care of the children.[193]
Section 9, RPD Act, 2016	Separation of a child with disability from their parents is prohibited on the ground of disability "except on an order of competent court, if required, in the BIC." Section 9(2) states that "where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate Government or non-governmental organisation, as may be required."
Section 21(2), Mental Healthcare Act, 2017	**Right to stay with mother in a mental health establishment:** In the context of a woman receiving care, treatment or rehabilitation at a mental health establishment, if her child is under three years, the child "shall ordinarily not be separated from her during her stay in such establishment."[194] However, if the treating psychiatrist, based on an examination of the woman and information provided by others, is of the opinion "that there is risk of harm to the child from the woman due to her mental illness or it is in the interest and safety of the child, the child shall be temporarily separated from the woman during her stay at the mental health establishment."[195] Nevertheless, the woman should "continue to have access to the child under such supervision of the staff of the establishment or her family, as may be appropriate, during the period of separation."[196]

194 Mental Healthcare Act 2017, s 21(2).

195 Mental Healthcare Act 2017, s 21(2) first proviso.

196 Mental Healthcare Act 2017, s 21(2) second proviso.

While preserving the child's family environment and maintaining relationships, the CWC should bear in mind that:

- **The meaning of family relationships is broad** and includes the wider ties the child has with their extended family, grandparents, relatives, and school, etc.[197] The definition of "family" in Section 2(1)(h), Mental Healthcare Act, 2017, which means "a group of persons related by blood, adoption or marriage." may be considered.
- **Economic reasons** cannot be a reason for separating a child from their family,[198] and rather should be seen as an indication that the family requires additional support.[199]
- **Necessary support such as counselling, sponsorship, and linkage to available schemes should be provided to parents,** before separating a child from them, to enable them to discharge their parental responsibilities "and restore or enhance the capacity of the family to take care of the child."[200]
- The principle of institutionalisation as a measure of last resort,[201] must be applied and first consider non-institutional placement options such as placement in foster care, kinship care, placement under the care of a fit person, sponsorship and adoption.[202] In the context of adoption, children with no visitation from their parent, guardian, or relative for more than one year can be declared legally free for adoption. However, given that adoption results in permanent separation from the biological parents, an application of the best interests principle will require the CWC to first ensure that all efforts have been made to trace the family, and facilitate family strengthening, providing them information about the potential termination of parental rights. When such efforts fail, the CWC may then declare the child an orphan and proceed to identify the suitable placement for the child, while applying the principle of best interests. The child's wishes based on age and maturity, importance of connection with the family, culture, and identity also need to be factored in before declaring such a child legally free for adoption.
- While considering separating a child from their parents, the child and the family should be **assessed by a well-trained multidisciplinary team of professionals.**[203]
- Any separation from the family should be a **measure of last resort and for the shortest possible period of time,** and should be **reviewed periodically. Additionally,** "the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the child's best interest."[204]

197 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 70.

198 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 61.

199 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 62.

200 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 61.

201 JJ Act 2015, s 3(xii).

202 CARA, Office Memorandum dated 28.03.24, <https://cara.wcd.gov.in/PDF/Circular/OM%2028-3-2024%20Registration%20of%20Children.pdf> accessed 27 January 2025.

203 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 64.

204 'UN Guidelines for the Alternative Care of Children' (2009) para 13 <https://digitallibrary.un.org/record/673583?ln=en#record-files-collapse-header> accessed 27 January 2025.

CASE STUDY 3

Considerations while Transferring a Child

14-year-old Bindu lived with her 22-year-old sister and her family in Barrackpore, West Bengal, while her parents lived in a village in Chhattisgarh. Bindu had three other siblings who were older than her and all were married. She had been living with her sister since she was 8 years old. She has a very poor relationship with her parents, who constantly threaten to arrange her marriage. Owing to poverty, she had to drop out of school after class IV. During the pandemic, fed-up with the restrictions being put on her by her sister, and constant fights at home, she boarded a train to Mumbai. A woman found her sitting near a bus stand and took her to the police station. She was produced before a CWC in Mumbai. Bindu told the Counsellor that she was keen on pursuing her education in a Bengali medium school and becoming a police officer. She did not want to return to her parents, as she had very little bonding with them and felt that they did not understand her at all. She also expressed that she would run away from home if she is sent either to her parents, or her sister, and wanted to live in a hostel. Her sister was also very angry with her as Bindu had taken money and jewellery from her house before she left. The CWC is contemplating whether Bindu should be transferred to her parents in Chhattisgarh or to her sister in Barrackpore.

Consider:

- **Under Section 3 of the JJ Act, 2015 the CWC should keep in mind the principles of participation, best interests, principle of safety, and principle of natural justice, in this case.**
- **It should abide by the principle of participation so that the child is heard and her views regarding her reluctance to go back to Chhattisgarh or Barrackpore and her own dreams for herself, are taken into consideration.**
- **The principle of safety is important given that any decision that is taken must be such that it would not subject the child to harm or maltreatment. This is especially important given that her parents constantly threatened to marry her away. SIR must be ordered for both her sister's home and her parents'.**
- **With respect to her right to education, the CWC should also consider the medium of instruction that Bindu is comfortable with as she may have studied in a Bengali medium school and may find it difficult to shift to a Hindi medium or English medium school.**

- Lack of capacity or facilities in a Children's Home, high pendency of cases and the pressure to deinstitutionalise children cannot be the basis of restoration to families without consideration of individual circumstances. For instance, a CWC restored a 16 year old girl to her mother who was accused of forcing the child into prostitution. A Delhi court said that this was a failure on the part of the CWC and steps should be taken to ensure that the child is not placed in an unsafe or unfamiliar environment.[205]
- **Contact with the family,** siblings, relatives and other persons who have a strong personal relationship with the child **should be ensured even when the child is placed in a CCI or foster care,** except when it is not in the child's best interest.[206]

Contact with the family, siblings, relatives and other persons who have a strong personal relationship with the child should be ensured even when the child is placed in a CCI or foster care, except when it is not in the child's best interest.

Sibling relationships must be considered while making placement decisions and efforts should be made to ensure that siblings are placed together in a CCI, in foster care or in the care of a fit person, or fit facility, unless it is not in their best interest to be kept together.

- **Sibling relationships must be considered** while making placement decisions and efforts should be made to ensure that siblings are placed together in a CCI, in foster care or in the care of a fit person, or fit facility, unless it is not in their best interest to be kept together.[207]
- To prepare the child and the family for restoration, the CWC should assess the situation with the assistance of social workers, DCPU, or NGOs and consult the child, the family, and the alternate caregiver, "so as to decide whether the reintegration of the child in the family is possible and in the BIC, which steps this would involve and under whose supervision."[208]

205 Priyangi Agarwal, 'Mom who forced girl into sex trade gets custody, Delhi court fumes' (*Times of India*, 9 October 2022) <https://timesofindia.indiatimes.com/city/delhi/cwc-gives-girl-to-mom-who-forced-her-into-sex-trade/articleshow/94732525.cms> accessed 27 January 2025.

206 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 60.

207 JJ Act 2015, s 39(1) proviso.

208 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 48.

- Where either the **parents or children are with persons with disabilities,** separation should be considered only when "assistance provided to the family to preserve the family unit is not effective, to avoid the risk of neglect or risk to the child's safety."[209]
- **A child below three years should ordinarily not be separated from the mother during the mother's treatment at a mental health establishment.**[210] Temporary separation may take place if the treating psychiatrist is of the opinion that there is risk of harm to the child from the woman due to her mental illness or it is in the interest and safety of the child."[211] The woman should "continue to have access to the child under such supervision of the staff of the establishment or her family, as may be appropriate, during the period of separation."[212]
- **Where parent is in prison:** In ***RD Upadhyay v State of Andhra Pradesh,***[213] the Supreme Court noted that female prisoners may keep their children with them in jail, till the child turns six years of age. It emphasised that a child should not be treated like an undertrial/ convict, and that such a child is entitled to food, clothing, shelter, medical care, educational, and recreational facilities as a matter of right. Children above the age of six years may be sent to a suitable surrogate, or placed in a suitable institution, as per the wishes of the mother. If the child is placed in a home belonging to the Department of Social Welfare, they should be permitted to meet their mother at least once a week.

PROMISING PRACTICES

Example of Non-institutional Care by the CWC

A three and a half-year old child was placed with her father in jail. Her father had allegedly murdered her mother. Her grandparents were also arrested for the same offence. The Magistrate before whom the accused was produced directed the child to be produced before the CWC. The CWC placed the child in a SAA, and directed the DCPU to submit an SIR. CWC Members also visited the father in jail themselves, to gather his views on where the child could be placed. He suggested his sister's home. An SIR was sought to assess the situation of his sister's home, and the attitude of the sister and her family members towards the child. The SIR indicated that the child's aunt's home was safe and the family was open to receiving the child. Thereafter, a no-objection was obtained from the child's father, following which the child was placed in the aunt's family by the CWC.

209 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 63.

210 Mental Healthcare Act 2017, s 21(2).

211 Mental Healthcare Act 2017, s 21(2) first proviso.

212 Mental Healthcare Act 2017, s 21(2) second proviso.

213 AIR (2006) SC 1946.

PROMISING PRACTICES

Example of Ensuring Preservation of Family Ties

Three siblings ranging from 8 years to 12 years, were produced before the CWC by their maternal aunt. The children's father had been charged with murder and was absconding. Their mother had passed away in an accident. The CWC placed all the children in a CCI close to their maternal aunt's home. When the older child attained puberty, her aunt requested that she be released for a few days so that the family can celebrate her coming-of-age, as was the practice in their community. The girl was also excited about the function and urged the CWC to release her. The CWC released the girl and she was able to participate in the ceremony and strengthen her ties with her aunt.

2.8.4 HOW CAN THE CWCS CONSIDER THE CARE, PROTECTION AND SAFETY OF THE CHILD, INCLUDING THE CHILD'S WELL-BEING AND DEVELOPMENT, WHILE DETERMINING BEST INTEREST?

LEGAL STANDARD	SUMMARY
Rules 4(5), 4(6) and 4(7), POCSO Rules, 2020	Determination on whether a child victim under the POCSO Act, 2012, must be taken out of the child's family or shared household and placed in a Children's Home should be done by the CWC within 3 days, without causing any injury to the victim. The CWC has to take into account the child's preferences and their best interests, along with factors such as: 1. the capacity of the parents to provide for the immediate care and protection needs of the child; 2. whether the child needs to remain in the family's care to maintain a connection with them; 3. the child's age and level of maturity, gender, and social and economic background; 4. if the child has any disability or suffers from any chronic illness; 5. any history of family violence the child may have been involved in; and 6. any other factors that may be relevant with respect to the child's best interests.

LEGAL STANDARD	SUMMARY
Model Guidelines under Section 39 of the POCSO Act, 2012[214]	Support Persons should prepare a Child Protection Plan (CPP), "to safeguard the interests of the child, to support the child's wider family and to care for the child and promote his/her welfare." The CPP can supplement the ICP and its basic components are:[215] 7. Identification of current and potential sources of risk to the child, including the position of the abuser; 8. Identification of strategies to protect the child and reduce the risks over the pre-trial and trial period; 9. Identification of protective aspects of the child's situation, which may need to be strengthened and developed; 10. Consultation and negotiation with the child and his/her parents/ guardians/caregivers on the content and feasibility of the plan; 11. Communication of information between all the parties involved; 12. Identification of resources necessary to carry out the plan, including family support and treatment services where required; 13. Consideration of the position of the abuser alleged offender and potential risks to the child from this front; and, 14. Need for counselling the child and his/her parents / guardians/ caregivers; and 15. Need for rehabilitation and compensation.
Rule 7, POCSO Rules, 2020	The CWC has to make a recommendation to DLSA for legal aid and assistance in POCSO cases.
Rule 8, POCSO Rules, 2020	The CWC can recommend that special relief in the form of immediate payment be made by the DLSA, or DCPU, or from the Juvenile Justice Fund for contingencies such as food, clothes, transport, and other essential needs of a child victim under the POCSO Act, 2012. The amount has to be paid within a week of receipt of the CWCs recommendation. The police or SJPU should provide the CWC with the Preliminary Assessment Report in Form B, provided in the POCSO Rules, 2020 within 24 hours of registration of the FIR.

214 Ministry of Women and Child Development, Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012, 53.

215 ibid 53-54.

While considering the care, protection, and safety of the child, CWCs should bear in mind:

- Care and protection of the child includes protection of the child from harm, violence, or injury; ensuring the child's well-being and development; and taking care of the child's basic material, physical, educational, and emotional needs.[216]
- Assess the **immediate and long-term safety** of the child and consider the CPP prepared by the Support Person and the ICP while making a decision.
- Take steps to **ensure that the child is not subjected to any harm, abuse, or maltreatment when they are within the child protection system.**
- Take the steps necessary to mitigate risks during the pre-trial and trial period in cases of a sensitive nature.
- Consider the immediate needs of the child pertaining to travel, food, and other essential needs, after an FIR is registered under the POCSO Act, 2012.
- Ask the police for the Preliminary Assessment Report in Form B, and **make immediate recommendation for special relief.**
- Facilitate provision of **legal services** to child victims in need of care and protection, to ensure their access to interim and final compensation and representation during bail hearings in cases under the POCSO Act, 2012.
- Ensure that a **bank account** is opened for a child where they are entitled for **compensation**, and that the compensation is deposited in the bank account.
- Take the assistance of DLSA, DCPU, and Support Person to ensure that a child victims' concerns during investigation and trial are communicated to the concerned authorities, and if necessary, applications are moved for **witness protection.**
- Monitor the **impact of family reunification** on the child's safety and well-being through regular follow-up.
- Coordinate with the Labour Department for ascertaining the **back wages, penalty, and fine of a child rescued from child labour.**
- Coordinate with the District Nodal Officer and the District Magistrate to ensure that children and adolescents rescued from labour have access to their **wages and compensation.**
- Ensure **CWC are present while the victim of trafficking is recording their statement,** so that the victim does not have to give her statement again and again.[217]
- Coordinate with a community social worker to provide counselling to a victim of trafficking.[218]
- Direct a social worker or Case Worker or Child Welfare Officer of the institution or a designated officer of the DCPU, or any non-governmental organisation to **prepare an ICP**[219] and ensure periodic monitoring of the child through the ICP.[220]
- Make **legal assistance** available to a child who may wish to file a petition before the District Court to nullify the marriage under Section 3, PCMA, 2006 or to access any of the other reliefs provided under the PCMA, 2006.

216 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (n 3) para 71.

217 National Human Rights Commission, Standard Operating Procedure for Combating Trafficking of Persons in India (2017) 15.

218 ibid 17.

219 JJ Model Rules 2016, rule 19(17).

220 (n 218) 23.



2.8.5 HOW CAN THE CWC CONSIDER THE CHILD'S SITUATIONS OF VULNERABILITY AS PART OF THE BID?

CWCs should bear in mind that:

- Children in situations of vulnerability may include those who have a disability, or are living with HIV/AIDS, pregnant, a victim of violence, a child living in a street situation with no parental support or means of survival, rescued from trafficking or child labour, a refugee child, etc.
- Rights of children contained in other relevant laws such as the Rights of Persons with Disabilities Act, 2016 (RPD Act, 2016), HIV/AIDS Act, 2017, Mental Healthcare Act, 2017, Medical Termination of Pregnancy Act, 1971 (MTP Act, 1971), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (CALPRA, 1986), among others, have to be considered. For instance, under Section 9(1), RPD Act, 2016 a child with disability should not be separated from their parents on the ground of disability except on an order of the competent court in the best interests of the child.
- The **safekeeping and deposit of documents related to the property rights of a child affected by HIV/AIDS** must be ensured. CWCs must look into complaints relating to such a child being at the risk of being dispossessed, or actual dispossession, or trespass into such a child's house.[221]
- While inspecting CCIs where children with disabilities reside, availability of equipment such as wheelchairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances, must be checked.[222]

Rights of children contained in other relevant laws such as the Rights of Persons with Disabilities Act, 2016 (RPD Act, 2016), HIV/AIDS Act, 2017, Mental Healthcare Act, 2017, Medical Termination of Pregnancy Act, 1971 (MTP Act, 1971), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (CALPRA, 1986), among others, have to be considered. For instance, under Section 9(1), RPD Act, 2016 a child with disability should not be separated from their parents on the ground of disability except on an order of the competent court in the best interests of the child.

221 HIV/AIDS (PC) Act 2007, s 16(2).

222 JJ Act 2015, s 53(1)(ii).



2.8.6 HOW SHOULD THE CWC CONSIDER THE CHILD'S RIGHT TO HEALTH WHILE DETERMINING BEST INTEREST?

LEGAL STANDARD	SUMMARY
Section 37, JJ Act, 2015	CWC may pass orders directing the person/institution/facility where the child is placed, to provide medical services and psychiatric and psychological support, including need-based counselling, to the child.[223]
Section 53, JJ Act, 2015	CCIs may provide medical services to the child (as per the prescribed standards) and mental health interventions, including counselling.[224]
Section 92, JJ Act, 2015 & Rule 80(1), JJ Model Rules, 2016	When a child is brought before the CWC and is found to be suffering from a disease requiring prolonged medical treatment, the CWC may send the child to any place recognised as a fit facility, as prescribed, for such a period as it may think necessary for the required treatment.
Rules 34 & 35, JJ Model Rules, 2016	These provisions enumerate various medical and mental health services that have to be provided by CCIs. Rule 34 also requires CCIs to make a medical officer available whenever necessary, for regular check-ups or medical treatments of children.
Rule 55(3), JJ Model Rules, 2016	In case an offence has been committed against a child, where the child requires medical attention, the CWC may direct that immediate medical care be given to the child free of cost.[225]

223 JJ Act 2015, s 37(1)(g).

224 JJ Act 2015, ss 53(1)(i) and 53(1)(vi).

225 JJ Model Rules 2016, rule 55(3).

CASE STUDY 4

Balancing the Right to Health with Speedy Repatriation

16-year-old Jhima lived in a district in Assam, and came from a very poor family. She became acquainted with Joseph, a 20-year-old man on Facebook. Fearing that her parents may arrange her marriage against her will, Jhima convinced Joseph to elope with her. He sent her money and booked tickets for her to reach a district in Karnataka. Upon reaching Karnataka, they started living there as a married couple. When Jhima fell sick, they visited a clinic and a blood test revealed that she was 14 weeks pregnant. The doctor informed the police and a case was registered against Joseph. Jhima was produced before the CWC. Jhima wanted to terminate her pregnancy. She also could speak only a tribal dialect, which the CWC could not understand. Since Jhima was from Assam, the CWC instructed the DCPU to obtain her SIR from her district. Once the SIR was received, the CWC directed her to be transferred as per Section 95, JJ Act, 2015 and for the termination of pregnancy to be done in her home district. However, owing to the unavailability of escorts, Jhima's transfer was delayed and impacted the termination of her pregnancy.

Consider:

- **Section 95(1) of the JJ Act, 2015 states that the CWC should first conduct an inquiry and satisfy itself that it would be in the child's best interests to transfer them to their home district/State. Only once it is satisfied that transferring would be in the child's best interests and after consulting the CWC from the child's home district, should the CWC make a transfer order.**
- **Examining the child's best interests would mean considering the child's wishes, her identity, her safety and protection, her health, her education, preservation of family relations, and her situation of vulnerability. In the present case, it is stated that Jhima spoke a tribal dialect, which the CWC did not understand. The CWC should have arranged for a translator with the help of the DCPU, to seek Jhima's views, to ensure her participation. Given that Jhima is 16 years old with adequate maturity, her views must be considered unless any of the other elements of best interests would seem more crucial.**
- **The CWC should have taken into consideration that the child left her home for fear of being forcibly married, and her elopement and pregnancy may cast stigma over her if she were to return home.**
- **The impact of the delay in restoration on her current state of vulnerability and the right to timely termination of pregnancy should also be factored.**

CWCs should bear in mind that:

- Health includes **physical and mental** health.
- Children should be provided with adequate and age-appropriate information to better understand their health situation and when possible, to give **informed consent** in matters concerning their health.[226]
- In the **context of a pregnant child**, the child's health and well-being and timely access to check-ups and treatment has to be prioritised.
- No child above 12 years[227] should be subjected to a medical examination without their consent.
- If the child desires a **termination of pregnancy** while in a Children's Home, the child's wishes have to be considered and timely action has to be taken to **ensure there is no delay in access to health services.**
- Ensure that the **personal beliefs about abortion do not guide their actions** and they refrain from giving advice about what the child should do. However, CWCs must ensure that all the options available to the child such as termination of pregnancy, surrender of the baby, or the option to keep the baby are explained to the child in a timely and accurate manner.
- Timely **access to mental health services** is ensured for children in distress, or children who share suicidal ideation, or are attempting to cause self-harm.
- The **treatment plan of children with chronic or terminal illness** has to be considered while making a decision about their immediate and long-term rehabilitation. For instance, if the CWC needs to decide about the placement of a child living with HIV/AIDS, it needs to consider the child's uninterrupted and smooth access to medicines and health services. Children may need prolonged medical treatment and this should be ensured through follow-up.

2.8.7 HOW SHOULD THE CWC CONSIDER THE CHILD'S RIGHT TO EDUCATION WHILE DETERMINING BEST INTEREST?

LEGAL STANDARD	SUMMARY
Article 21A, Constitution of India	The State is mandated to provide free and compulsory education to all children in the age group of six to fourteen years.
Right of Children to Free and Compulsory Education Act, 2009	Section 8 and 9 place a duty on the appropriate government and local authority to provide free elementary education to every child of the age of six to fourteen years, and to ensure their compulsory admission, attendance, and completion of elementary education.

226 ibid.

227 IPC 1860, s 90/BNS 2023, s 28; CrPC 1973, s 164-A(7)/BNSS 2023, s 184(7).

LEGAL STANDARD	SUMMARY
Section 53(1)(iii) and (ix), JJ Act, 2015	Education is recognised as an integral part of a child's reintegration and rehabilitation process. All the children in the JJ system, between the age of 6-14 years, are entitled to educational facilities under the RTE Act, 2009. CCIs are also required to ensure access to education as well as facilities for supplementary education, special education, and appropriate education for children with special needs, along with referral services for education and vocational training.

CWC should bear in mind that:

- **Access to education** for school-going children is not disrupted.
- If institutionalisation is necessary, steps need to be taken to ensure that the child is admitted to school, or is given the necessary support such as **tutions, permissions and escorts to appear for classes and exams.**
- Delays in this regard could cause a loss of an entire academic year, and must be avoided.
- **Vocational training** should be provided to children who are not accessing formal education with assistance from DCPU.



PROMISING PRACTICES

Example of a child giving exams with support from their dance teacher

A 14-year-old girl left her paternal uncle's home with an auto-driver. She was found after a missing complaint was filed and then produced before the CWC. The girl was placed in a Children's Home of a different district as there was no Children's Home available in her district. The CWC got an SIR done and also sent the child for counselling. Since her exams were approaching, the CWC encouraged the child to write her exams and then discuss the next steps. The child was able to identify her dance teacher as a person she trusted. Her dance teacher agreed to take responsibility for escorting her for the exams. Her dance teacher was declared 'a fit person' by the CWC in whose care and protection the child was entrusted temporarily. The child completed her exams and in this way, the CWC was able to ensure that the child's education was not disrupted during the inquiry.

CASE LAW

CWC's obligation to ensure continuation of child's education and judicial application of mind while making a decision on placement

In ***Pooja Rajput and another v State of Uttar Pradesh,***[228] a 15-year-old girl was placed in a Government Children's Home by the CWC and resided there for three months. She lost an academic year as she could not appear for her Class 7 examination. The girl had been residing with her father for 5-6 years and he had been taking care of her despite his disability and paying for her education. The High Court took a stern view of the placement of the child in a Children' Home by the CWC despite the fact that her father was capable of caring for her and had her custody for many years. In her interaction with the High Court, she was consistent that she wanted to live with her father even after she met her mother. The High Court noted that the mother had previously taken custody of the girl, but had ignored her education and involved her husband in a false case. The court reprimanded the CWC for non-application of judicial mind and not specifying reasons for sending the girl to the Children's Home.

> "6. The most surprising and shocking part is the manner in which, the Nari Niketan/Child Welfare Committee, …. has kept the minor child in Government Children Home (Women) which is a place where normally such type of children whose parents are eager to claim the custody of her child, are not kept as the father admittedly is capable of taking care of the minor daughter as he has custody for last many years.
>
> **9. Surprisingly, neither there is any application of judicial mind nor any reasoning is assigned as to why the child is being sent to the Government Children Home (Women) and in a casual manner, the child has been sent there and she is staying there since 20.1.2024 and as noticed above she has lost one academic year.**
>
> 11. Considering the **seriousness of the case about the manner in which the committee has conducted the life liberty of a minor girl,** we take strong exception to the action taken by the committee."

The High Court awarded a cost of Rs 5 lacs to the father of the girl to be paid by the CWC for their conduct.

228 Habeas Corpus Writ Petition No. 228 of 2024 decided by Allahabad High Court on 22.4.2024.

2.8.8 HOW CAN THE CWC BALANCE THE INTERESTS OF THE CHILD WHEN THERE IS A CONFLICT BETWEEN THE ELEMENTS OR THERE ARE OTHER CONSIDERATIONS?

The CWC may be faced with a situation where the child's safety may be in conflict with the need for preservation of family. In cases under the POCSO Act, 2012, there may also be a pressure to institutionalise the child till the time that the statement under Section 164, CrPC, 1973 is recorded or till the accused is arrested. However, in such circumstances, it needs to be examined whether the interest of the child and *justice to the child* necessarily coincides with ensuring justice in the criminal justice system. The CWC has the option of placing the child with the extended family, fit person, foster family/ group foster care (after ensuring the safety and security of that person/family, and respecting the wish of the child concerned). It needs fine balancing where the child may be counselled about the need for such placement keeping their best interest in mind.

However, in such circumstances, it needs to be examined whether the interest of the child and justice to the child necessarily coincides with ensuring justice in the criminal justice system.

In ***Krishnakumar v State of Kerala,***[229] a 13-year-old girl was living with her father, stepmother, and sister and later moved to her maternal grandmother's house. Her biological mother had passed away when she was 10 years old. In 2017, the girl went missing and after being found, a case was registered under the POCSO Act, 2012 against one person. The girl was produced before the CWC which placed her in a Women's Shelter Home from which she tried escaping twice. The girl's father and maternal grandmother (the petitioners) filed applications with the CWC for her release, which were dismissed. She wanted to return to her grandmother or father, and they wanted her back too, but the CWC declined to restore the child, as they were of the view that the grandmother and father were negligent and incapable of looking after the child. A revision petition was filed in the High Court against the order of the CWC dismissing the petitioners' applications for custody. After perusing the records, the Kerala High Court noted that, for all practical purposes, the CWC conducted no inquiry, prepared no SIR, and did not seek and consider the child's views. The High Court interacted with the girl. She stated that she wanted to live with her grandmother or her father and that her grandmother is financially capable to look after her. **The High Court noted that the CWC failed to conduct a proper inquiry, did not record statements of the petitioners, failed to consider the child's wishes and passed an order without sufficient investigation or reasoning. The High Court thus set aside the CWC order, and directed that the child be released to her grandmother. The Kerala High Court held:**

> "A victim/juvenile cannot be stationed in a Children's Home or in any other such shelter on the ground that there is possibility of access of the accused to the victim. It is the duty of the investigating agency or the prosecution, as the case may be, to take steps to see that such a situation is not therein. The victim shall not be the sufferer."

229 Krishnakumar (n 166).

The CWC may also be faced with a situation where an offence has been committed against a child hailing from a different State or country, and there is pressure that the child is not transferred till the evidence is completed. This is particularly seen in cases of inter-State, or inter-country child labour, or child trafficking, wherein the child is detained in the Children's Home for months or even years till the completion of the trial. The CWC must take into account the Supreme Court's decision in ***In Re children in street situations,***[230] in which it directed that the SOP for recording of evidence of children through video-conference in cases of inter-State or inter-district child trafficking be followed "in all criminal trials where child witnesses, not residing near Court Points, are examined and not physically in the courts where the trial is conducted." **With assistance from the DLSA and DCPU, the CWC can urge that the evidence of the child be recorded through video-conferencing, to avoid their unnecessary and prolonged detention in a Children's Home.** In this instance the Support person may play a vital role in coordinating and liaising between the Court; child and family/ CWC. If the courts insist on physical presence of the child, the child and the escort are entitled to travel reimbursement. The court can also be requested to provide for their stay when they come to testify.

It is the role of the CWC appointed Support Persons to apprise the court of such facts and circumstances of the children concerned, and to inform the children and their families about their rights and entitlements. At the same time, whether the testimony is recorded through video conferencing, or otherwise, a home study is necessary in the children's home district/State to know what is best suited to each individual child, and also to ensure that updated contact details of each child is available for follow-up. It is equally imperative to ensure that the child's case does not become public in her village and district. Therefore, what measures of sensitivity are taken for follow-up become important and must form part of the CWC's directions in the restoration order.



230 in Re: Exploitation of Children in Orphanages (n 13).

CASE STUDY 5

Adherence to Principles of Natural Justice

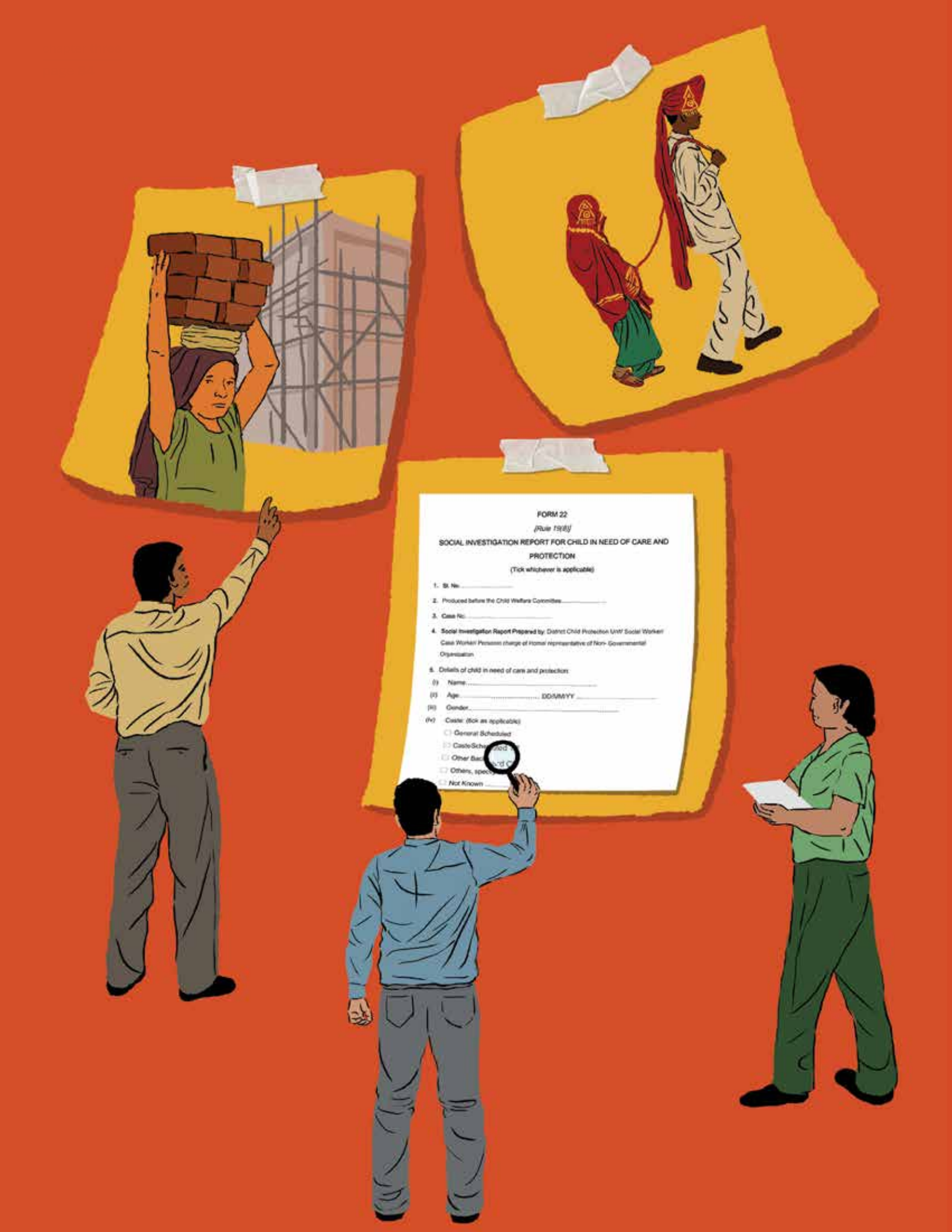
15-year-old Lata lives with her mother and two younger siblings. Her father abandoned the family when she was 8 years old. Renu, Lata's mother works as a domestic help and returns home late in the night. Lata develops a relationship with Akshay, her 22-year-old neighbour. When Renu finds out about the relationship, she tells Lata to stop meeting him. After a few days, Lata and Akshay elope with the intention to marry. Renu lodges an FIR, after which the police trace Lata and Akshay. Since Lata refuses to stay with Renu, the CWC places her in the Children's Home. Lata tells the CWC that she would like to stay with Maya Devi, her maternal grandmother. The CWC calls Maya Devi and since she was willing, they hand Lata over to her. A few days later, when Renu visits the Children's Home, she is informed that Lata has been released. Upset with this news, she approaches the CWC angrily and tells them that Maya Devi is not her mother, but an elderly woman who lives in their same locality and Akshay is known to Maya Devi. Upon attempting to call Maya Devi and Lata, the CWC finds that their numbers are unreachable. Renu also informs them that Maya Devi has relocated and not shared her address. A few months later, it is learned that Lata had eloped with Akshay after he was released on bail. They were living together and Lata had given birth to their child.

Consider:

- T**he CWC needs to follow due process in considering and weighing all the six elements of best interest to arrive at a decision on best interests in her case.**
- **Though the CWC did apply the principle of participation, they did not provide the child's biological mother an opportunity to be heard, and this was a serious violation of the principle of natural justice.**
- **The CWC should have ordered for an SIR with specific instructions to do a home visit to Lata's home as well as to Maya Devi's home, and also taken necessary measures to verify the credentials of the Maya Devi who was claiming to be Lata's grandmother.**

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- **The CWC should have spoken to Lata and her mother separately and sought both of their opinions. It should have referred Lata for counseling to help her understand her situation, her developmental needs as an adolescent and to help her identify goals for her life, and support her to make more informed decisions which could impact her life, both in the present and the future. The CWC should have also informed Lata of all the placement options available before her, and the consequences of each of these options.**
- **Since Lata said that she would like to stay with Maya Devi, the CWC should have called Maya Devi , spoken to her, and conducted an inquiry to ascertain her identity. They should also have sought help from the police to verify Maya Devi's credentials if a doubt was raised and accordingly directed the functionaries to conduct an SIR to determine if staying with Maya Devi would have been suitable for Lata. If the SIR deemed Maya Devi to be suitable and if staying with Maya Devi is also what Lata desired, then the CWC should have sought Lata's mother's views on the same. The CWC should also have considered other factors while taking a decision- such as Lata's safety, care and protection, Lata's health, her education, whether she would leave home again if placed with Maya Devi or back with her mother, and also how to ensure the preservation of family ties with her mother.**

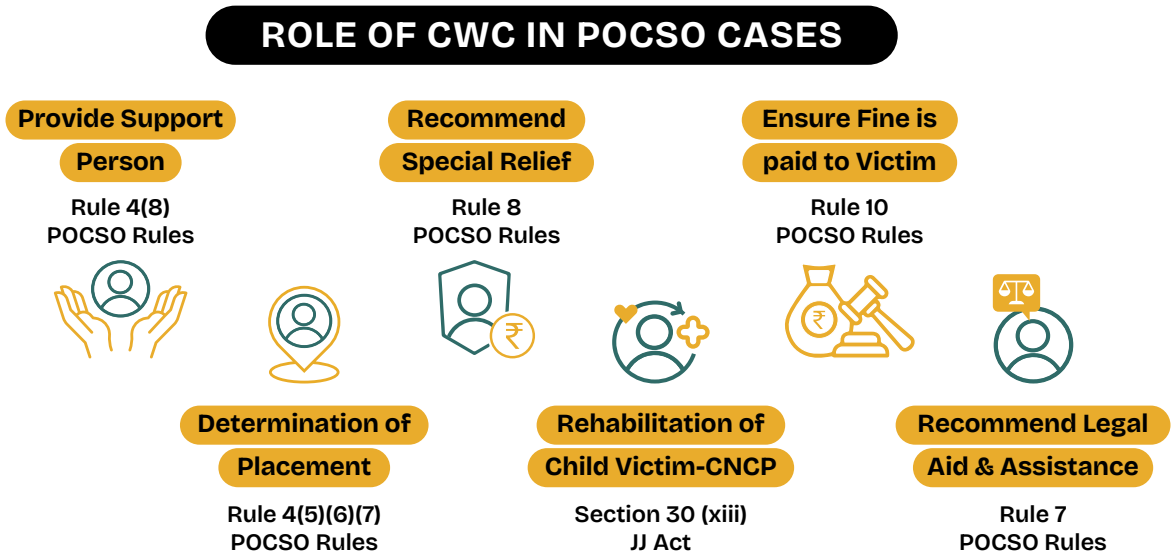

FORM 22
[Rule 19(8)]
SOCIAL INVESTIGATION REPORT FOR CHILD IN NEED OF CARE AND PROTECTION
(Tick whichever is applicable)
1. Sl. No.
2. Produced before the Child Welfare Committee
3. Case No.
4. Social Investigation Report Prepared by: District Child Protection Unit/ Social Worker/ Case Worker/ Person in charge of Home/ representative of Non- Governmental Organisation
5. Details of child in need of care and protection
(i) Name
(ii) Age DD/MM/YY
(iii) Gender
(iv) Caste: (tick as applicable)
General Scheduled
Other Back
Others, spec
Not Known

CHAPTER 3

Advancing Children's Best Interests in Specific Situations

3.1 ROLE OF THE CWC IN POCSO CASES

Under Section 2(14)(viii) a child "who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts"is a CNCP. However, CWCs also need to bear in mind Section 30(xiii), JJ Act, 2015, as per which their functions entail "taking action for rehabilitation of sexually abused children who are reported as CNCP to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012." Rule 4(4), POCSO Rules, 2020 specify the three situations in which a child should be produced before the CWC - (1) where the offence has been committed, attempted, likely to be committed in the same or shared household with the child, or (2) the child is living in a CCI and is without parental support, or (3) the child is found to be without any home and parental support. **All child victims under the POCSO Act, 2012 thus do not need to be produced before the CWC.** The services of a Support Person may be made available to the child and special relief can be recommended based on the Preliminary Assessment Report under Form B.



CASE STUDY 6

CWC's Role in POCSO Cases

Shivli, a 10-year-old girl, lived with her parents and paternal grandmother in an urban slum. Shivli's father worked as a driver, her mother as a domestic help, and her grandmother as a tailor in a garment factory. Shivli was studying in the local school in Grade 5. She was subjected to penetrative sexual assault by Rajesh, who was her paternal grandmother's supervisor. Rajesh also lived in the same locality as Shivli and her family. Police informed the CWC about the sexual assault and the CWC, concerned about Shivli's safety, security, and the trauma that she had to deal with, asked that she be produced before them. The CWC decided to place her in the Children's Home because the accused had not yet been arrested. Shivli's mother pleaded with the CWC to take the girl back home. Shivli was also very upset and kept crying when she was being taken to the Children's Home. The CWC explained to her mother that since Rajesh lived in the same locality as them and had not yet been arrested, sending Shivli back home may pose a threat to her safety. Shivli's mother shared that she can send Shivli to her maternal grandparent's house, which was in another district. The CWC then told her mother that Shivli would have to stay in the Children's Home till her statement under Section 164, CrPC, 1973 is recorded by the Magistrate. Thereafter, Shivli will be released to her mother.

Consider:

- **The CWC will first have to decide whether Shivli is a CNCP and if her case falls under the three situations described in Rule 4(4), POCSO Rules, 2020. As the accused in this case is not residing with the victim and although he is in the same neighbourhood as her, Shivli need not be produced before the CWC. Even if Shivli is produced before the CWC, it should not mean that she should be sent to the Children's Home.**

↘

- **The CWC needs to consider the principles of institutionalisation as a measure of last resort, best interest, and the principle of family responsibility.**
- **The CWC has to consider her views, the need for her to be in connection with her family immediately after the abuse, and the impact of such institutionalisation on her health and education. Keeping her in the Children's Home till her statement under Section 164, CrPC, 1973/183, BNSS, 2023 is recorded may not necessarily be in her best interest, if all these elements are considered.**
- **To ensure her safety, alternatives such as placement with extended family could have been considered. Further, an immediate SIR could have been sought to assess the suitability of her home situation and a decision would have to be made within three days. The CWC could also urge the police to move an application for witness protection before the appropriate authorities as per the Witness Protection Scheme, 2018 approved by the Supreme Court in *Mahender Chawla & Ors. v Union of India & Ors.*[231]**
- **As per Rule 4(8) of the POCSO Rules, 2020, the CWC may provide a Support Person to the child, with her consent, and that of her parent. As per Rule 7(1), POCSO Rules, 2020, the CWC can also make a recommendation to the DLSA to provide legal aid and assistance to the child and recommend to the DCPU or DLSA for special relief under Rule 8 for immediate contingencies such as transport, clothes, food and essential needs.**

231 Writ Petition (Criminal) No. 156 of 2016, decided by the Supreme Court of India on 5.12.2018.

3.2 ROLE OF THE CWC WHERE A CHILD IS PREGNANT

While dealing with cases of pregnant children, the CWC will have to bear in mind the framework under the MTP Act, 1971 as amended in 2021 regarding the length of the pregnancy and the procedure for termination, as well as relevant judgments of the High Courts and Supreme Court. According to Rule 6(7), POCSO Rules, 2020 if a child is found to be pregnant, then the Registered Medical Practitioner shall provide the child, her parents, guardian, or Support Person, the various legal options for termination, or continuation of the pregnancy that are available to the child.

Timeliness of decision-making and clarity about the law is crucial as each day of delay can impact the child's health as well as the possibility of termination. The CWC could ensure that the child is provided counselling, institutional care (if required), sponsorship, and support to arrive at a decision, as well as appoint a Support Person to assist the child during the pre-trial and trial process of the criminal case.

Timeliness of decision-making and clarity about the law is crucial as each day of delay can impact the child's health as well as the possibility of termination. The CWC could ensure that the child is provided counselling, institutional care (if required), sponsorship, and support to arrive at a decision, as well as appoint a Support Person to assist the child during the pre-trial and trial process of the criminal case.

MEDICAL TERMINATION OF PREGNANCY ACT, 1971

NOTE: If the pregnancy is under 24 weeks, no CWC or Court order is required for the termination of pregnancy. If it exceeds 24 weeks, the High Court or Supreme Court can be approached.

Gestation Period	Requirement of medical opinion	Applicable category of pregnant woman	Conditions
UPTO 20 WEEKS [Section 3(2)(a)]	**ONE** medical practitioner	**All pregnant women**	1. Risk of life to the pregnant woman 2. Risk of grave injury to her physical/mental health 3. Substantial risk of serious physical or mental abnormality in the child **"where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.** [Explanation 2, Section 3(2)]
20 TO 24 WEEKS [Section 3(2)(b)]	**TWO** medical practitioner	**1. survivors of sexual assault/rape/incest** **2. minors** 3. change of marital status during pregnancy 4. women with major physical disabilities/ mental illness 5. foetal malformation - substantial risk to life of child/ substantial abnormalities 6. pregnant women in emergency/disaster/ crisis [Rule 3B, MTP Rules, 2003]	
BEYOND 24 WEEKS [Section 3(2b)]	**DIAGNOSIS OF A MEDICAL BOARD**[232] (unless in emergency where one RMP is enough)	**All pregnant women**	Termination is **necessary** to save the life of the pregnant woman, or **termination is necessitated by the diagnosis of any of the substantial foetal abnormalities.** [s.5(1) & s.2B]

232 Medical Boards comprising (i) a gynaecologist, (ii) a paediatrician, (iii) a radiologist or sonologist, and (iv) other members, as may be specified.

CASE STUDY 7

Considerations in a Case of "Consensual" Relationship under the POCSO Act, 2012

17-year-old Anita met 20-year-old Rajendra at a computer class center. They fell in love with each other and started a relationship. They were both from different castes and they knew their families would not agree to the romantic relationship, and thus kept the relationship a secret. When they had been together for a year, Anita's family found out about the relationship and started restricting her movement and beat her up for not focusing on her studies. They threatened that if she didn't end the relationship that there would be consequences. One day after Anita's father saw Anita and Rajendra talking outside the computer class, he threatened to arrange her marriage. Fearing for her safety, Anita on her own will eloped with Rajendra and they married in a temple. Anita's parents filed a complaint with the police, under kidnapping and POCSO Act, 2012 and child marriage, leading to Anita's production before the CWC and placement in a Children's Home. Anita is 8 weeks pregnant and her parents refuse to take her home. They also state that they will not give consent for termination of the pregnancy unless Anita breaks her ties with Rajendra. Anita, however, insists that she wants to marry Rajesh, and also that she wants to terminate the pregnancy.

Consider:

- **The POCSO Act, 2012 does not recognise the possibility of consensual relationships involving adolescents. In this scenario, Rajendra will be seen as an accused under the POCSO Act, 2012 and may also be charged for kidnapping and rape under the IPC, 1860/BNS, 2023.**
- **Age-determination should be carried out to ascertain if Anita is below 18 years of age.**

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- **If Anita is found to be below 18 years, since she does not wish to return to her family, she can be treated as a CNCP by the CWC under Section 2(14)(xii) and/or (viii)**
- **As Anita's pregnancy is under 24 weeks and she wants to terminate, the CWC should respect her views and extend the necessary support without any delay. If her parents are unwilling to give consent, the CWC can recognise the Superintendent of the Children's Home as a guardian for the purposes of consent for termination of the pregnancy.[233] The Superintendent is duty-bound to comply with the orders of the CWC[234] and will have to thus adhere to the order requiring them to provide consent on behalf of the child as per the MTP Act, 1971. If the pregnancy is above 24 weeks, the CWC should immediately facilitate legal aid so that the High Court or Supreme Court can be approached.**
- **With respect to her placement, the CWC can explore non-institutional options such as placement with extended family, or a trusted adult who can be recognised as a "fit person". An SIR should be ordered to understand her family situation, strengths, and risks of facing violence.**
- **A trauma-informed approach should be adopted to ensure that Anita is not shamed or humiliated for her situation. Care should be taken to understand the circumstances in which Anita left her home.**

233 JJ Act 2015, ss 30(vi) & 2(31). *Lavanya Anirudh Verma v State of NCT of Delhi*, Crl. M.C. 301/2017 decided by Delhi High Court on 08.02.17.

234 JJ Model Rules 2016, rule 61(3)(ii).

CASE LAW

Consideration of child's wishes regarding their welfare and future

In ***Shivani and Ors. v State of U.P. and Ors.,***[235] petitioner no. 1 left her home after being scolded by her mother. Her mother filed an FIR alleging that her daughter had absconded with petitioner no. 2. The girl was later recovered by the police. In her statement under Section 164, CrPC, 1973, she claimed to be 19 years old and stated she had married petitioner no. 2 willingly. They had also registered their marriage. Upon investigation, it was found that the girl was 16 years old based on her Class X mark sheet. The girl was presented before the CWC. As her parents refused custody, she was sent to a Children's Home by the CWC. Petitioners sought the custody of the minor wife to be given to the husband in the present case.

The division bench of the Allahabad High Court left the option of raising the issue of validity of marriage by the parties before a competent court in the future. It noted that the present petition only concerns release of minor-wife's custody by the husband. The High Court decided to release the minor wife (petitioner no. 1) to live with her husband (petitioner no. 2) based on her statement under Section 164, CrPC, 1973 wherein she expressed her desire to stay with her husband. The High Court also noted that "a minor capable of making conscious decisions about her welfare and future life and voluntarily entering into a marital relationship should be considered." It observed as follows:

> "**14.** Concerning the custody of the minor-wife, her statement under Section 164 CrPC, 1973 asserts that she is 19 years old, married to petitioner no.2 through Hindu rites and customs, and has been living as husband and wife since the date of marriage, and subsequently registered at the Marriage Registration Office-III, Ghaziabad, U.P. **She further expresses her desire to live with her husband and requests to be handed over to him.**

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235 Criminal Misc. Writ Petition No. 14348 of 2023 decided by the Allahabad High Court on 15.12.2023.

15. The court opines that a minor possesses the capacity to form an intelligent preference about the choice of living arrangements. The paramount consideration in deciding the return of a minor to the custody of a guardian or husband is the welfare of the minor.

16. The co-ordinate Bench of this Court consistently holds the view that a minor capable of making conscious decisions about her welfare and future life and voluntarily entering into a marital relationship should be considered. It is noteworthy that the mother of petitioner no.1 has declined the custody of the minor wife. Consequently, the court concludes that petitioner no.1 is no longer required to be retained and is free to go with her husband. She is at liberty to live with the man of her choice."

FOR CONSIDERATION

The case above illustrates one of the most complex and sensitive decisions faced by CWCs and relevant authorities. While dealing with such cases, the CWCs will have to respect the child's right to be heard while also ensuring that the child is not being subjected to pressure or coercion. The reasons why a child may have left home, eloped, or married will also have to be considered while making decisions related to their placement and restoration. In such cases, the CWCs should prioritise the best interests of the child and remain child-centered and substantiate their decision with adequate reasons.

3.2.1. IS AN ORDER OF THE CWC REQUIRED FOR TERMINATION OF PREGNANCY?

The MTP Act, 1971 does not require any order of a CWC or court for termination of pregnancy of a minor, if the pregnancy is under 24 weeks. The CWC has no role to play in the decision where the child and the child's parents or guardian are available. If the child is an orphan or if the child's parents are unfit to provide care and protection, the CWC can appoint a guardian.[236] In such cases, the CWC could ensure that the child is provided counselling, institutional care (if required), sponsorship, and support to arrive at a decision, as well as appoint a Support Person to assist the child during the pre-trial and trial process of the criminal case. The CWC cannot decide on behalf of the child as to whether she should continue or terminate the pregnancy. Under the MTP Act, 1971, this decision can only be taken by registered medical practitioner/s depending on the length of the pregnancy.

Government of Rajasthan's Procedure to be adopted by various stakeholders in the child protection system for Medical Termination of Pregnancy for girl victims of POCSO Crimes

No. F31(01)(02) B.A.V/POCSO/Part - II/2014/EAP-00140/26421 dated 01.02.2024

Procedure to be followed by CWC:

1. If during the inquiry by the CWC, information is received about the pregnancy of a girl through medical examination or any other means and a case is not registered under the POCSO Act, 2012, then legal action should be initiated through the police within 24 hours.
2. On receiving information about the pregnancy of a girl child who is a victim of sexual crime, necessary counselling should be immediately provided to the victim girl, her family/guardian and support person within a maximum period of 48 hours.
3. The required psychological counselling should be provided to the victim girl through the DCPU.
4. The victim girl and her family/guardian may be made aware of the various options available under Rule 6(7), POCSO Rules, 2020.
5. In case the victim girl is residing in a CCI/Fit Facility, the DCPU should be directed to take necessary action in respect of abortion of the girl as per Rule 34(5), JJ Model Rules, 2016.
6. If the pregnancy period of the victim girl is more than 24 weeks, the DCPU should be directed to provide the required assistance immediately to the girl and her family/guardian in applying for permission for abortion before the High Court through free legal aid

↘

236 JJ Act 2015, Section 30(vi) read with Section 2(31); *Lavanya Anirudh Verma v State of NCT of Delhi*, Crl. M.C. 301/2017 decided by the Delhi High Court on 08.02.17.

7. In case the parent/legal guardian of the victim girl is not available, a guardian may be appointed by the CWC under Section 2(31), JJ Act, 2015.
8. The concerned police Station Officer should be directed to ensure the presence of the concerned Police Investigation Officer at the registered hospital at the time of abortion or delivery of the victim girl and to take action to preserve the forensic evidence.
9. In case the abortion is not done due to medical reasons or in case of birth of a newborn child after delivery of the victim girl, it should be ensured that the victim girl is made aware of the various options available to her under the JJ Act, 2015.
10. The DLSA should be informed regarding the actual situation of pregnancy/abortion of the victim girl.
11. In case of non-availability of required identity documents for medical purposes related to the victim girl, the documents should be sought from the family/guardian of the girl through police.
12. In case the victim girl is physically/mentally disabled or does not know the local language, the services of a special educator/interpreter/translator authorized by the DCPU should be taken.
13. Necessary consideration should be given to issuing special relief under Rule 8, POCSO Rules, 2020 in cases of pregnancy of the victim girl.
14. Appropriate action should be taken to provide interim or final compensation to the victim girl to meet her medical treatment and other needs during pregnancy.
15. The privacy and confidentiality of the victim girl should be protected at every level.

3.2.2. WHAT IS THE CWC'S ROLE IN CASES WHERE THE MINOR'S WISHES CONFLICT WITH THAT OF THE PARENTS?

For the termination of pregnancy of a minor, written consent is needed from the parent or guardian. Even if the child is placed in a CCI, if she has a parent/guardian, their consent and hers is sufficient. In the absence of the parent's consent where a pregnant girl wishes to have a MTP, the CWC can recognise the Superintendent of the CCI as a guardian and they can sign on behalf of the child's parents.[237]

The CWC may be faced with a situation wherein the child may want to retain the pregnancy, while her parents may prefer termination. Although the MTP Act, 1971, is silent about the requirement of consent of a girl below 18 years, the Madras High Court in ***Marimuthu v Inspector of Police,***[238] held that based on the rights available to children under the UN Convention on the Rights of the Child, 1989 and the objectives of the MTP Act, 1971, **"it can never be interpreted as dispensing with the consent of the minor in case the minor wants to retain the pregnancy."** Further, it held:

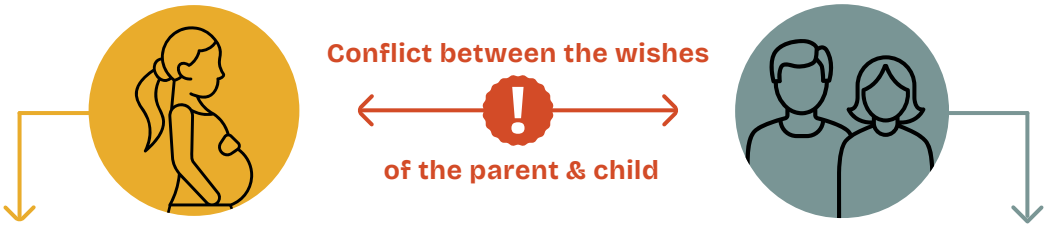
237 JJ Act 2015, ss 30(vi) & 2(31).

238 *Marimuthu v The Inspector of Police*, WP (MD) No. 12212 of 2016, decided by the Madras High Court on 19.09.2016.

The right to autonomy to the woman and to decide what to do with their own bodies, including whether or not to get pregnant, and if pregnant whether to retain the pregnancy and to deliver the child, i.e. the right to motherhood is towards their empowerment and it is in accordance with the International Covenant on Human Rights. Considering the right to life, which includes the right to beget a life and the right to dignity, the right to autonomy and bodily integrity, the foetus cannot be ordered to be aborted against the wishes of the victim girl.

Children are entitled to an increasing level of responsibility, agency, and autonomy in the exercise of their rights, as highlighted in a recent statement by

For the termination of pregnancy of a minor, written consent is needed from the parent or guardian. Even if the child is placed in a CCI, if she has a parent/guardian, their consent and hers is sufficient. In the absence of the parent's consent where a pregnant girl wishes to have a MTP, the CWC can recognise the Superintendent of the CCI as a guardian and they can sign on behalf of the child's parents.



Where child does not want MTP but parents want the MTP performed

MTP cannot be done in the absence of the consent of the pregnant woman including a pregnant child.

"Sub-section (4)(a) can never be understood as dispensing with the consent of the pregnant woman if she is below 18 years of age." – ***V. Krishnan v. G. Rajan,*** H.C.P. No. 1450 of 1993, decided by Madras High Court on 2 December 1993

IF THE PARENTS OR NATURAL GUARDIANS OF THE CHILD ARE AVAILABLE, AND BOTH CONSENT, THE CWC HAS NO ROLE IN ABORTION.

Where child wants MTP and parents do not give consent

The Child Welfare Committee can appoint a guardian for the child for the purpose of giving consent for MTP.

Lavanya Anirudh Verma v. State Of NCT Of Delhi, CRL.M.C. 301/2017, decided by Delhi HC on 8 February, 2017

- Guardian as defined under Section 2(31) of the JJ Act, 2015 includes guardians "recognised by the Committee"
- Section 30(vi), JJ Act, 2015 functions of CWC is "ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard."

the UN Committee on the Rights of the Child on Article 5 of the UNCRC.[239] The Committee also "reaffirms that the concept of children's evolving capacities is central to the recognition of children's status as rights-holders independently from their parents, and contributes to protecting the child from arbitrary family control."[240] The statement further asserts that -"where parents exercise their responsibilities, duties or rights in a manner that is contrary to the rights of the child under the Convention, the State's obligation shifts from support for the responsibilities, rights and duties of parents towards a greater focus on the obligation to protect or uphold children's rights"[241] which in this case is the child's right to terminate her pregnancy.

Notably, the Committee on the Rights of the Child has also emphasised the barrier free access of adolescent girls to sexual and reproductive health services including abortion and urged States to ensure that their views are always heard and respected in abortion-related decisions.[242] The recent case of ***X v Principal Secretary, Health and Family Welfare Department, Govt of NCT,***[243] also notes that under the MTP Amendment Act, 2021, all women are entitled to the benefit of safe and legal abortions. Additionally, it observed that while under the POCSO Act, 2012, factual consent in a relationship between minors is immaterial, the truth is that sexual activity continues to take place between adolescents and results in pregnancy. The legislature was alive to this fact, and therefore included adolescents under the ambit of Rule 3B of the MTP Rules, 2021.

Where the pregnancy exceeds 24 weeks, the High Court or Supreme Court can be approached for permission to terminate it if there is no substantial foetal abnormality. The CWC may seek the assistance of the DLSA and DCPU to arrange legal support for this. The court will ordinarily refer the matter to the Medical Board (comprising a gynaecologist, paediatrician, radiologist or sonologist, and other members notified in the Official Gazette by the State Government or Union Territory) for its opinion on termination.

3.3 ROLE OF THE CWC IN CHILD MARRIAGE

The PCMA, 2006 defines "child marriage" as "a marriage to which either of the contracting parties is a child"[244] and defines "child" as "a person, who if a male, has not completed 21 years of age, and if female, has not completed 18 years of age".[245]

Section 2(14)(xii), JJ Act, 2015 states that a child who is at an imminent risk of marriage, before the age of marriage, and whose parents and family members are likely to be responsible for the solemnization of such marriage, would fall under the ambit of 'CNCP'.[247] Further, Rule 55, JJ Model Rules, 2016, states that giving a child in marriage shall be considered cruelty to the child as per Section 75 of the JJ Act, 2015. In such a case, the police or any officer authorized under the JJ Act, 2015, or the PCMA, 2006, has to produce the child before the CWC for appropriate directions or rehabilitative measures.[248] For example,

239 CRC, Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child (2023).

240 ibid, para 10.

241 (n 240) para 12.

242 UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, para 60.

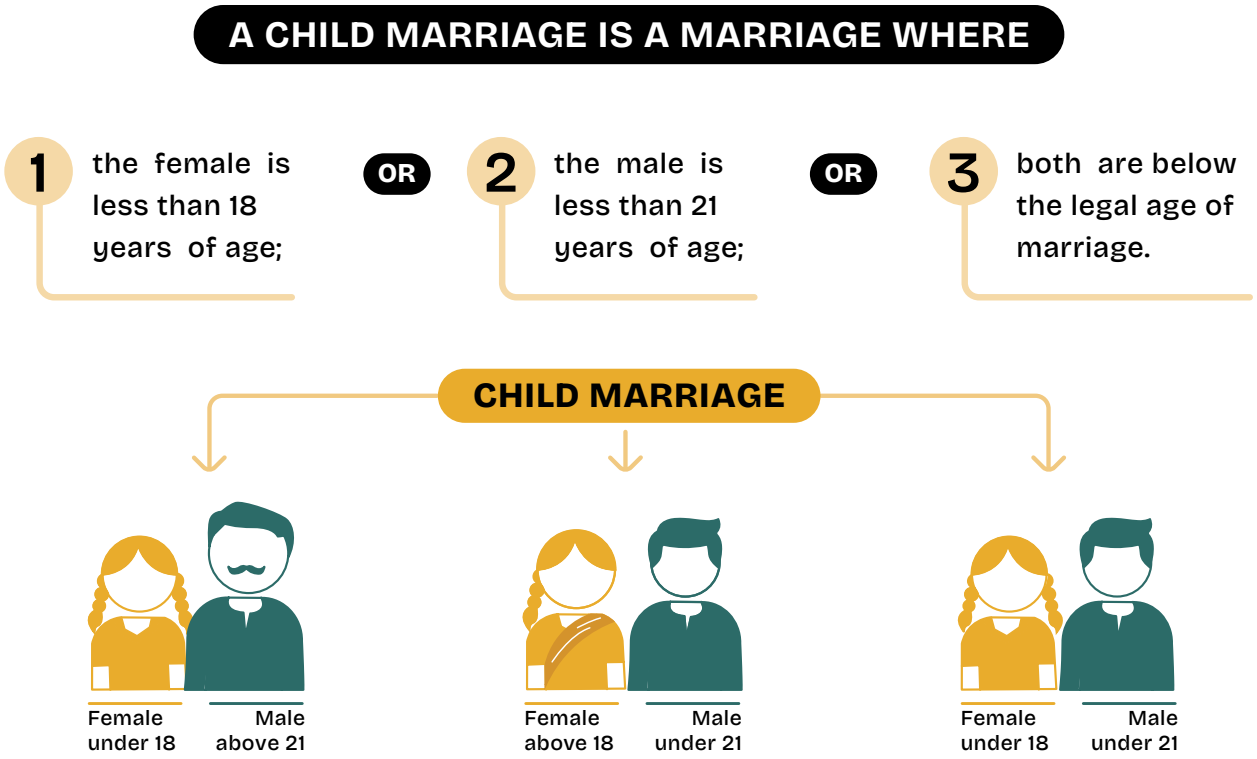
243 Civil Appeal No 5802 of 2022, decided by the Supreme Court of India on 29.09.2022.

244 PCMA 2006, s 2(b).

245 PCMA 2006, s 2(a).

246 Enfold Proactive Health Trust-UNFPA, Annulment of Child Marriage under the Prohibition of Child Marriage Act: A Primer, 2006 (2024) 26, available at <https://enfoldindia.org/wp-content/uploads/2024/10/UNFPA_Enfold-Annulment-of-Child-Marriage_English_Web.pdf>.

247 JJ Act 2015, s 2(14)(xii).



the Child Marriage Prohibition Officer may produce the child before the CWC (before, during, or after the solemnization of the marriage), or a person can make a report regarding an incident of child marriage (before or after it has been solemnized) to the CWC.[249]

On receiving a complaint of child marriage, the police is also required to produce the child before the CWC within 24 hours.[250] After the child is produced before it, the CWC has to hold an inquiry to ascertain whether the child is in need of care and protection.[251] Once this is determined, the CWC may pass an order for the child's placement and rehabilitation, taking into account the child's views.[252] The CWC can also make legal assistance[253] available to a child who may wish to file a petition before the District Court to nullify the marriage under Section 3, PCMA, 2006 or to access any of the other reliefs provided under the said Act.

3.3.1. WHAT IS THE ROLE OF THE CWC IN THE CONTEXT OF NULLIFICATION OF A CHILD MARRIAGE?[254]

The CWC can play a vital role in supporting a child who wishes to nullify their marriage and does not have any parental or family support. **Specifically, the CWC can enable the child's access to legal services for the filing of a nullity petition.**[255] If the child does not have a safe shelter and the natal family is unwilling to support the decision to opt out of the marriage, the CWC can provide immediate shelter in a CCI, or **a fit facility,**

248 JJ Model Rules 2016, rule 55.

249 HAQ, 'Handbook on the Prohibition of Child Marriage Act 2006' 12, 19, 20, 21 <https://www.childlineindia.org/pdf/Child-Marriage-handbook.pdf> accessed 27 January, 2025.

250 ibid 24.

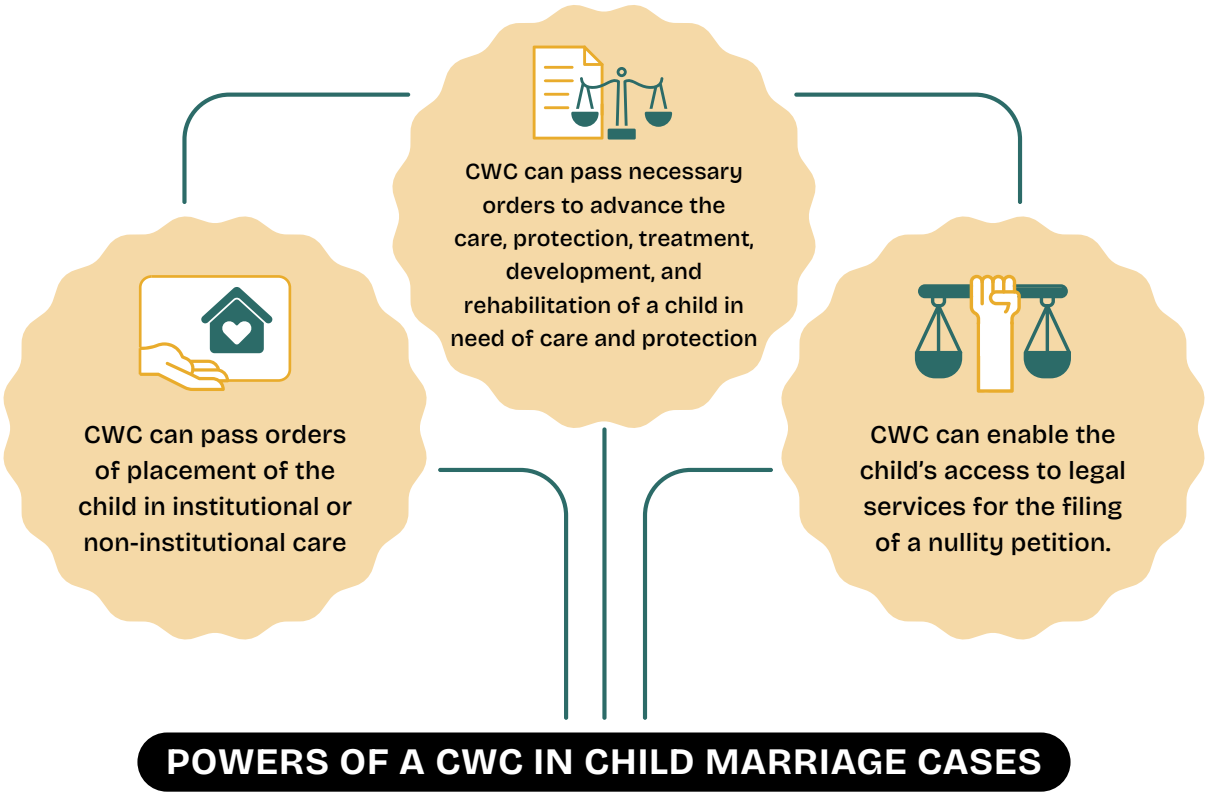
251 JJ Act 2015, s 36.

252 JJ Act 2015, s 37.

253 JJ Act 2015, s 30(xvii).

254 (n 247) 67-68.

255 JJ Act 2015, s 30(xvii).



Source: Enfold Proactive Health Trust-UNFPA, Annulment of Child Marriage under the Prohibition of Child Marriage Act: A Primer, 2006 (2024) 68, available at <https://enfoldindia.org/wp-content/uploads/2024/10/UNFPA_Enfold-Annulment-of-Child-Marriage_English_Web.pdf>.

or place the child with a fit person.[256] Following the conduct of an inquiry, and upon consideration of the SIR and the child's wishes, the CWC can pass orders of placement of the child in institutional or non-institutional care.[257] In the event that a child party is placed in institutional care against their will, or is not satisfied with the order passed by the CWC, an appeal can be filed against such order within 30 days before the Children's Court.[258] An application can also be filed before the CWC to amend the order with respect to the institution, or the person in whose care or supervision the child is placed.[259]

256 JJ Act 2015, s 36(1).
257 JJ Act 2015, s 37(1).
258 JJ Act 2015, s 101(1).
259 JJ Act 2015, s 104(1).

3.4 ROLE OF THE CWC IN CASES OF CHILD AND ADOLESCENT LABOUR

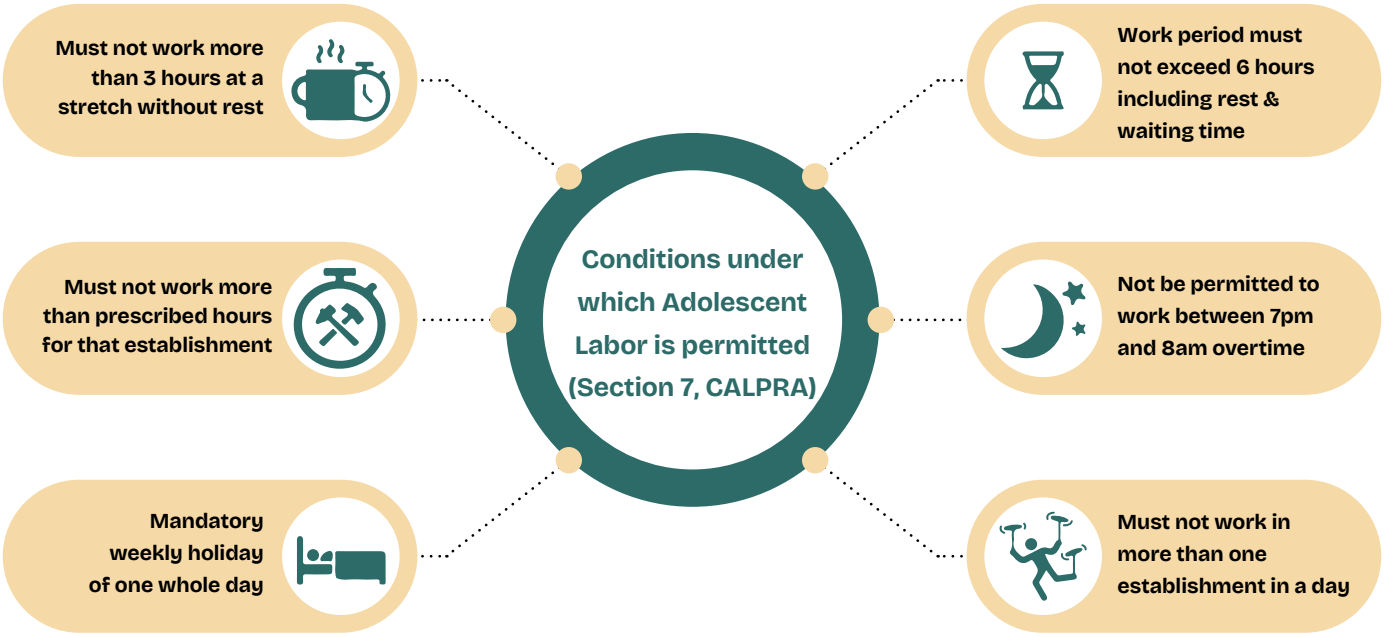
In the context of child labour, as per the JJ Act, 2015 a child, i.e., a person below 18 years found working in contravention of the provisions of JJ Act or the labour laws in force, would be a CNCP under Section 2(14)(ii).

It is important to note that under the CALPRA, 1986, a child is defined to mean a person who has not completed 14 years and an adolescent is a person who has completed 14 years, but not 18 years. Children below 14 are prohibited from working,

except when helping family or working in the audio-visual industry.[260] Children can help their family or their family enterprise while doing non-hazardous work, after school hours or during vacations,[261] which includes occupations and processes other than those mentioned in Part A and B of the schedule listed in the 2017 Amendment of the CALPRA, 1986. Children can also work as artists in the audio-visual entertainment industry provided that the relevant safety measures and conditions are complied with.[262] When a child works, the child's education and development must not be hampered, and the child should be allowed to rest adequately.[263] Engaging a child and keeping the child in bondage for the purpose of employment, or withholding earnings of the child, or using the earnings for one's own purpose, is punishable under Section 79, JJ Act, 2015 with rigorous imprisonment for a term which may extend to 5 years, and a fine of Rs 1 lakh.

Provisions of the Bonded Labour System (Abolition) Act, 1976 are also applicable and a person who compels a child to render bonded labour shall be punishable with imprisonment for a term of up to 3 years, and/or with a fine that may extend to two thousand rupees.[264] Any person who enforces "any custom, tradition, contract, agreement or other instrument" that compels a person, or any member of their family or dependents, to render service under the bonded labour system, shall be punishable with imprisonment for a term of up to 3 years, and/or a fine of up to two thousand rupees.[265]

Adolescents who are between the ages of 14 and 18 can be engaged in non-hazardous work, which includes occupations other than those mentioned in Part A of the schedule, listed in the 2017 amendment of the CALPRA, 1986. Details of the legal framework, including guidelines for engaging children and adolescents are in **Annexure 2.**



260 CALPRA 1986, s 3(2).
261 CALPRA 1986, ss 3 and 3A.
262 Child Labour (Prohibition and Regulation) Amendment Rules 2017, rule 2C.
263 CALPRA 1986, ss 3 and 3A.
264 Bonded Labour System (Abolition) Act 1976, s 16.
265 Bonded Labour System (Abolition) Act 1976, s 18.

CASE STUDY 8

Role of the CWC in Child and Adolescent Labour Matters

Three boys, Montu age 11 years, Sonu age 13 years, and Rohit age 15 years were rescued from a tailoring shop, where they were found working and living in a room without any ventilation. The children were produced before the CWC. They shared that an acquaintance in their village had brought them to the city and secured this job for them. They had been working for the last three months. They were paid Rs 1000 per month and given two meals. They lived in the shop and worked for 12-14 hours every day. They had all dropped out of school due to poverty and financial constraints. CWC ordered his placement in the Children's Home and asked the DCPU to ensure that their family members come before the CWC at the next hearing. Their parents arrive and urge the CWC to hand the boys back to them The CWC confirms their identity and takes an undertaking that they will admit the boys into school and not send them to work. The parents agree to this and the boys are released. A few weeks later, the boys return to the city and take employment in another tailoring shop.

Consider:

- **Age-related inquiry and findings should be recorded by the CWC based on available documents. Based on appearance, if it is apparent that all three boys are below 18 years, the CWC should proceed with its inquiries. In respect of Sonu and Rohit, it may be important for the CWC to ascertain if they are above 14 years, for the purposes of the applicability of CALPRA, 1986. Age-related documents such as a school certificate or a birth certificate may be considered. If these are not available, the CWC can order a medical age determination test for Sonu and Rohit.**
- **All three boys are CNCP under Section 2(14)(ii), as they are working in contravention of labour laws and in exploitative conditions. Although tailoring work is not hazardous, the conditions in which Rohit was being made to work are in absolute breach of the conditions of work under CALPRA, 1986 thus bringing him under the ambit of a CNCP.**
- **The CWC should attempt to ensure that the relevant offences including Section 79, JJ Act, 2015 are mentioned in the FIR.**

- **With respect to best interests, the CWC should first and foremost have listened to each child individually and sought their views about where they wish to stay and what they wish to pursue. For instance, Montu may be interested in going back to school, whereas Sonu and Rohit may have clearly expressed that they do not have any interest in education. A further assessment could reveal that they have learning difficulties and prefer vocational courses. The CWC should give the child complete information about the options available to them and the potential consequences of each of these options. The best interest elements that would be relevant here include the child's care and protection, right to health, right to education, and any characteristic of the child's identity which may be relevant - i.e. if the child has any disability, or belongs to a marginalised community.**
- **The CWC should have sought an individual SIR for each of the boys to understand the family background, social and financial circumstances, vulnerabilities, and risks.**
- **Both institutional and non-institutional care options should have been evaluated based on the children's needs and circumstances. If staying with family or a relative would mean that the best interest elements would be fulfilled, the child may be placed there (provided the SIR also recommends the same). If not, the child may be placed in a Child Care Institution, or a residential facility for vocational training or in foster care (if available).**
- **Based on the SIR and the best interests determination, a reasoned order should have been passed with clear directions to connect the families to relevant schemes available for the economically weak and socially marginalised and individualised recommendations for linkage to education or vocational courses. A communication should have also been sent to the jurisdictional CWC and DCPU for regular follow-up.**
- **As per the procedure laid down in the NCPCR's Standard Operating Procedure for Rescue and Post Rescue of Child Labour, 2020[266], the CWC should have also sent a requisition to the Labour Department to ascertain the back wages, penalty and fine in relation to the rescued child.**

266 National Commission for Protection of Child Rights, Standard Operating Procedure for Rescue and Post Rescue of Child Labour (27 January 2020) 18 <https://lc.kerala.gov.in/images/pdf/Latest/sop.pdf> accessed 27 January 2025.

The CWC has to bear in mind its responsibilities and that of other stakeholders under the JJ Act, 2015, Model/State Rules, as well as the SOP for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 by the Ministry of Labour and Employment. Sponsorship, linkage to relevant schemes, and placement in fit facilities where the children can access vocational training or education needs to be considered. According to the SOP:[267]

> "All persons below 18 years who have been rescued have to be produced in front of the CWC who must conduct an inquiry, which includes a home verification process and an SIR. Based on the same the CWC may pass orders for:
>
> - **If home verification is approved:** the child victim should be sent back to their community/home and the CWC may pass an order for repatriation. The CWC can order and provide for the necessary monetary support required for repatriation. For safe repatriation within the State and between States the CWC will inform the concerned authorities in the receiving area, such as the local CWC. The CWC may also order an NGO or the SJPU to accompany the child.
> - **If home verification is not approved:** If home verification is not approved: arrangement should be made for the victim in long term rehabilitation. A child in need of rehabilitation support may be send by the CWC to,
>   - Children's home
>   - Fit facility
>   - Fit person
>   - Foster Care

  till he/she attains 18 years of age, with periodic monitoring of the CWC through the individual care plan.
- The CWC will issue rehabilitation card for each child to monitor the progress made on their individual care plan. CWC to make an individual care plan (with information on health and nutrition needs, special needs, educational, training, emotional, psychological, restoration, follow up, social mainstreaming, life skills, protection from all kinds of exploitation and abuse). This has to be reviewed after three months and modified as per progress."

The SOP also details the following roles for the CWC:

- A CWC Member must form part of the rescue teams for child and adolescent labour.[268]
- The CWC has to **order an inquiry which may include a medical examination, age determination procedure, intermediary care and protection, or tracing of parents.** The CWC may direct a home verification if it deems fit to send the child to their parents. The CWC may also recommend the inclusion of additional sections in the FIR through the JJB, as per the JJ Act 2015.[269]
- The counsellor should assess the mental trauma caused to the child and must determine the support that the child requires. This information must then be provided to the CWC and the CWC must pass orders accordingly.[270]
- The CWC must participate in **monthly District Task Force meetings** and aid in the implementation of the action plan developed

267 Ministry of Labour and Employment, Standard Operating Procedure for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act 1986 (September 2017) 26 <https://haqcrc.org/wp-content/uploads/2018/04/standard-operting-procedure-for-enforcement-of-the-child-and-adolescent-labour-prohibition-and-regulation-act-1986.pdf> accessed 27 January 2025.

268 ibid 17, 41.

269 (n 268) 23.

270 ibid.

to eliminate child labour and adolescent labour in hazardous employment.[271]

- The CWC must **share information with the District Nodal Officer on rehabilitation** provided to all victims of child labour and adolescent labour in hazardous employment.[272]

3.4.1. CAN THE CWC IMPOSE A FINE ON EMPLOYERS IN CHILD LABOUR MATTERS, OR DIRECT PAYMENT OF BACK WAGES?

The JJ Act, 2015 does not expressly empower the CWC to impose any fine or direct payment of back wages in the context of child labour cases. However, in the context of Delhi, the Delhi High Court in the case of ***Bachpan Bachao v Union of India,***[273] **passed directions on the regulation of employment of private agencies providing domestic help and to ensure recovery of wages of women and children.** Following this decision, the Labour Department, Government of National Capital Territory of Delhi passed Delhi Private Placement Agencies (Regulation) Order, 2014[274] and as per Order 10, the CWCs in Delhi and the Delhi Commission for Women were empowered to:

1. **Summon the private placement agencies or employers** as the case may be on a complaint made by the domestic worker or her guardian or any person employing her;
2. Direct **payment of wages** not less than the Minimum Wages notified by the Labour Department, GNCT of Delhi from time to time as per agreed terms, and in appropriate cases impose fines;
3. Direct **payment of compensation** in cases where severe injuries are caused to the domestic workers during the course of the work;
4. Direct **medical assistance**;
5. Direct **the private placement agency to comply with the agreement with the employer or return the commission** where the terms are not complied with;
6. Impose **fines** on the private placement agencies where it is found that the terms of the agreement are not followed;
7. Direct **legal aid** to the child/woman where a criminal offence has been committed;
8. Direct employers to inform the local police or the Committee in cases where the domestic worker is missing within 24 hours; and
9. In cases where a domestic worker has been placed in a home against her wishes, **enable her to leave her employment** and direct the agency to return the commission paid by the employer back to the employer.

In the absence of similar legal recognition of powers by other High Courts, CWCs in other States may not be able to impose compensation, or direct payment of wages to children and adolescents involved in labour. A Standard Operating Procedure (SOP) brought out by the National Commission for Protection of Child Rights, in 2020[275] envisages the role of the CWC in facilitating payment of wages and compensation to the child, after the child has been placed in an institution, or has been restored to their parents. The CWC under whose jurisdiction the child is restored, has to ensure that a bank account is opened for the child and the Demand Draft received from the child's employer is deposited in the child's bank account.[276] However, in an earlier SOP on the Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act 1986, by the Ministry

271 (n 268) 41.

272 ibid.

273 [2010] SCC OnLine Del 4613.

274 Delhi Private Placement Agencies (Regulation) Order, 2014 <https://thc.nic.in/Central%20Governmental%20Ordinances/Delhi%20Private%20Placement%20Agencies%20(Regulation)%20Order,%202014.pdf> accessed 27 January 2025.

275 (n 267).

276 ibid.

of Labour and Employment, issued in 2017, the responsibility for creating a bank account for each child and adolescent is vested upon the District Nodal Officer (DNO) appointed by the Labour Department. The DNO has to ensure the transfer of interest accrued on the amount collected in the name of the child to such a bank account once in every six months, and the transfer of the principal amount to the bank account, when the child or adolescent attains 18 years.[277] The District Magistrate must monitor the receipt of rehabilitation services, including the receipt of economic compensation for the victim.[278] The State Resource Centre of the State Labour Department must ensure the creation of a Child and Adolescent Labour Fund in every district or group of districts. They must also monitor the receipt of all economic schemes and compensation provided under labour laws, as well as the applicable central/state laws and schemes.[279] CWCs may have to coordinate with the DNO, DM, and State Resource Centres to enable the access of children and adolescents rescued from labour to their wages and compensation.

The SOP by the Ministry of Labour also enumerates the procedures to be followed by the various functionaries in the child protection system.[280] With respect to payment of wages and compensation, the SOP stipulates compensation for child and adolescent labourers that have been listed in the form of a table below.

COMPENSATION FOR CHILD AND ADOLESCENT LABOURERS

Scheme / Legal Provision	Responsible Authority	Amount	Beneficiaries
Standard Operating Procedure for Enforcement of The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986[281]	Concerned Trial Court	Back wages at a rate not less than minimum wages for their period of employment.	Child and adolescent labourers

277 (n 268) 33.
278 (n 268) 36.
279 (n 268) 39.
280 (n 268) 27-28.
281 ibid.

COMPENSATION FOR CHILD AND ADOLESCENT LABOURERS

Scheme / Legal Provision	Responsible Authority	Amount	Beneficiaries
District Bonded Labour Rehabilitation Fund under the Central Sector Scheme for Rehabilitation of Bonded Labour - 2021[282]	District Magistrate	Immediate financial assistance of Rs. 30,000	Bonded or forced child and adolescent labourers
		Relief assistance of Rs. 2,00,000, [out of which at least Rs. 1.25 lakh shall be deposited in an annuity scheme in the name of each beneficiary and the balance amount shall be transferred to the beneficiary account through Direct Benefit Transfer (DBT)]	Children and adolescents, including orphans, or those rescued from organized and forced begging rings, or other forms of forced child labour
		Relief assistance of Rs. 3,00,000, [out of which at least Rs. 2 lakhs shall be deposited in an annuity scheme in the name of each beneficiary and Rs. one lakh shall be transferred to the beneficiary account through Direct Benefit Transfer (DBT).]	Bonded or forced child and adolescent labourers rescued from ostensible sexual exploitation, such as brothels, massage parlours, placement agencies, etc., or trafficking, or differently abled persons, or in situations where the District Magistrate deems fit
Section 357A CrPC, 1973/Section 396 BNSS, 2023	DLSA or SLSA on recommendation of compensation made by the court	Quantum of compensation to be decided by DLSA or SLSA	Child and adolescent labourers, including children trafficked for labour
Section 14(B) CALPRA, 1986 (as amended in 2016) and Rule 16A CALPR Rules, 2017	By the Central/State Government	Rs. 15,000 to be credited to the Child and Adolescent Labour Rehabilitation Fund	Rescued child and adolescent labourers
Section 14 read with Section 14(B), CALPRA, 1986 (as amended in 2016)	By the Central/State Government	Rs. 20,000 to 50,000 fine imposed by Court on the employer to be credited to the Child and Adolescent Labour Rehabilitation Fund	Rescued child and adolescent labourers

282 Central Sector Scheme for Rehabilitation of Bonded Labourer - 2021. <https://labour.gov.in/sites/default/files/20220208154105_compressed.pdf> accessed 19 January 2025.

Excerpt from NCPCR, Standard Operating Procedure for Rescue and Post Rescue of Child Labour, 2020[283]

Annexure- A

The statement is to be recorded by CWC after ensuring that the child giving statement has understanding/maturity to provide the reasonable answers to the following questions:

Questions to be asked while recording the statement of a rescued child:

A. GENERAL INFORMATION

Child's name, age, nationality, family, address and such other information required for identification of the child

B. RECRUITMENT

1. What is the child's native place?
2. What location was the child last residing in?
3. How long was the child residing at that location?
4. How old was the child when he/ she left the native place?
5. Do members of the family know the child's whereabouts?
6. Was the child forcibly transported to another location in his/her native place? If yes, how?
7. Who recruited the child?
8. What was the purpose of the recruitment?
9. Was initial contact with the recruiter voluntary or not?
10. When did the child start receiving salary/wages?
11. Was there any advance given to the child before commencement of work?

C. USE OF FORCE OR THREAT

If force was used in the recruitment, please ask the following questions:

1. Was the child abducted or kidnapped?
2. Was the child threatened with harm to his or her self or family?
3. Was the child sold? By whom?
4. What were the circumstances of the forcible removal?
5. Who initiated the contact? How?
6. What was the method of recruitment (e.g. by advertising, acquaintance, family, relative, agency, study, training, etc.)

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283 (n 267) 18.

D. EMPLOYMENT

If the recruitment was for employment, please ask the following questions: Was the child abducted or kidnapped?

1. What activities did the child believe she/he would be engaged in following arrival at the new location?
2. What kind of work was offered to the child?
3. How much money was promised to the child and by whom?
4. Did the child sign a contract? (e.g. an employment contract) If so, what are the terms of the contract?
5. Does the child know them (e.g. was the contract in a language the child understood)?
6. Does the child possess a copy of the contract?
7. Was the child coerced into signing the contract? How?
8. Was anyone paid a fee for recruiting the child for work?

E. IDENTITY DOCUMENTS

1. Does the person have any identity proof? If so, is it his own legitimate document or is it a fraudulent one?
2. ii. How did he acquire this document?
3. iii. What kind of employment authorization was promised to the child and by whom?

F. WORKING CONDITIONS (EXPLOITATION)

1. Does the child believe that she/ he is subject to some form of debt bondage?
2. Does the child believe that she/ he owes money to recruiters/ transporters/exploiters?
3. Was the child paid and at what rate?
4. Who has the possession of these earnings now?
5. How many hours a day did the child work?
6. Was the child allowed any time off? Allowed to rest if sick?

G. RESTRICTION OF FREEDOM

1. Was the child unable to quit working for the employer and get a job somewhere else?
2. Was the child's movement restricted? How? (e.g. did the child have a key of the house)
3. Was the child living and working at the same place?
4. Was the child allowed to communicate with other workers and family members, if the child is not living with his/her family?

H. LIVING CONDITIONS

1. What were the living conditions of the child? (e.g. no. of rooms, no. of people living together)
2. Did the child have friends?
3. Did the child have money?
4. Could the child buy his/ her own belongings?
5. Was the child given proper food, clothing, shelter etc.?

I. PHYSICAL COERCION

1. Was the child subject to physical assaults or torture? (pinching, hitting, slapping, punching, kicking, shaking, burning, branding, chained, etc.)
2. ii. Was the child subject to sexual assaults as defined under section 7 of POCSO Act, 2012 (forced sexual contact, rape, forced prostitution etc.) or Sexual Harassment as defined under Section 11 of POCSO Act, 2012?
3. iii. Was the child forcibly confined or isolated?
4. iv. Was the child denied essential medical care?
5. v. Was the child denied food/ clothes and other basic necessities including ability to maintain basic hygiene?

J. PSYCHOLOGICAL COERCION:

1. Was the child threatened with violence, harm or retaliation against the child or the child's family members (or friends)?
2. ii. Were there threats to report the child to authorities?
3. iii. Did the child view or hear others being physically or sexually assaulted/ harassed?
4. iv. Was the child deceived regarding the employment, activities or basic conditions of his or her employment?
5. v. Was the child subject to verbal abuse, name calling, degrading remarks about child's ethnicity/social group?
6. vi. Was the child photographed and filmed while being physically or sexually assaulted, humiliated or degraded?



CHAPTER 4

Checklist for CWCs for Application of the Principle of Best Interest

This checklist is based on the provisions of the JJ Act, 2015, JJ Model Rules, 2016, and the United Nations Committee on Rights of the Child's General Comment No.14 on best interests. CWCs may consider using this checklist during the inquiry process, as it will help ensure compliance with the legal procedures and the best interest principle. The checklist will help CWCs to consider all the relevant elements, reports, experts' views, and other persons likely to be affected by the decision, in order to determine the best interests of each individual child, which must inform its interim and final orders. Refer to Annexure 1 for an example of an SIR and final order reflective of the best interests determination based on an application of this checklist.



CWC CHECKLIST

Age Determination

1. **Is the person produced a "child" based on appearance?**
   a. Yes, proceed to Q.4.
   b. No, age is doubtful

2. **If the age of the child is doubtful:**
   - ❑ a. Has evidence of date of birth certificate from school or matriculation or equivalent certificate been sought?
   - ❑ b. If such a certificate is not available, is a birth certificate given by a corporation, municipal authority or panchayat available?
   - ❑ c. If the above certificate is not available, has an ossification test or latest medical age determination test been ordered to be completed within 15 days.

3. **Based on 2, if the person is a child, proceed to Q4. If not, dispose of the matter.**

Whether child is in need of care and protection

4. **Is the child a CNCP?**
   - ❑ a. Yes, under Section 2(14), JJ Act, 2015 specify the sub-clause and, proceed to Q.5.
   - ❑ b. No, then dispose of the matter.

Steps of Inquiry

5. **Does the child require immediate placement?**
   - ❑ a. Yes, based on consideration of
     i. Form 17
     ii. Interaction with and consideration of views of the child
     iii. Interaction with the family/guardian
     iv. Medical report
     v. Other
   - ❑ b. No, child can remain in current setting

6. **If child requires immediate placement, which options have been considered:**
   - ❑ a. Parent/Guardian
   - ❑ b. Relatives
   - ❑ c. Fit Person
   - ❑ d. Fit Facility
   - ❑ e. Children's Home
   - ❑ f. Specialised Adoption Agency
   - ❑ g. Other (specify)

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7. **Has a Social Investigation Report (SIR) been ordered?**
   - ❑ a. Yes DCPU/Case Worker/PO/Staff of NGO/Social Worker/Childline/other has been asked to submit SIR.
   - ❑ b. No, because (specify reasons)

8. **Has the ICP been ordered?**
   - ❑ a. Yes, Case Worker/PO/DCPU has been directed to prepare ICP.
   - ❑ b. No, because (specify reasons)



Consideration of the Child's Views

(Note: Children's views have to be considered at all stages such as production, decision on immediate placement, preparation of SIRs and ICPs, rehabilitation measures for the child, during inquiry, preparation of the final order, and during follow-up)

9. **Is the child of an age and maturity that warrants their views to be heard and taken into account? If not, why not?**

10. **If yes, has the child been provided adequate and age-appropriate information to enable meaningful and informed participation?**

11. **Does the child need assistance from a translator/ interpreter/ special educator?**

12. **Has the child been heard:**
    - ❑ a. directly
    - ❑ b. through a representative (specify name and relation of representative)
    - ❑ c. If not, why not?

13. **Has the CWC explained to the child how their views have been considered?**

14. **What other measures were taken to ensure that the child's views are taken into consideration?**

15. **<u>What are the implications of the child's views on the final order?</u>**

Consideration of views of family members and opinion of functionaries

16. **What are the views of the parent/ guardian, sibling, other family member?**

17. **What is the opinion of the Case Worker, Probation Officer, Child Welfare Officer, CCI staff, Counsellor, NGO?**

18. **<u>What are the implications of the views of family members & functionaries on the final order?</u>**



Consideration of the Child's Identity and Situation of Vulnerability

19. **Does the child's gender, caste, tribe, religion, ethnicity, disability, nationality, and any other identity have a bearing on the decision for immediate or long-term rehabilitation?**

20. **Based on the SIR, is the child assessed to be in a situation of heightened or severe vulnerability? For example is the child orphaned/ pregnant/ living with HIV/ AIDs/ abandoned/ multiple disabilities/ surrendered/ victim of sexual abuse/domestic violence/child labour/trafficking/ used by gangs or adults to commit offences/ in a street situation and without any support/ repeated institutionalization/addicted to substances/other (specify). If yes, how are the child's rights and needs going to be factored into final order?**

21. **Based on the SIR, interaction with the child, counselling report, or any other material, has any offence been allegedly committed against the child? If yes, specify the offence.**

22. **Please tick the action taken where an offence has allegedly been committed against the child:**
    - ❑ a. Recommendation has been made to DCPU/CCI staff/Other for registration of FIR.
    - ❑ b. Complaint has been sent to JJB as per Section 8(3)(l), JJ Act, 2015, for registration of FIR
    - ❑ c. Recommendation has been to DLSA/SLSA for legal aid and representation for child
    - ❑ d. Support Person has been assigned under POCSO Rules, 2020 in offences under POCSO Act, 2012
    - ❑ e. Direction has been given to the police/DCPU/Labour Dept/Childline as per Section 30(xvi), JJ Act, 2015.

23. **Please tick the action taken to enable the child to access compensation or relief:**
    - ❑ a. Recommendation made to DCPU to facilitate compensation or access to schemes
    - ❑ b. Recommendation made to DLSA/DCPU for special relief under Rule 8, POCSO Rules, 2020
    - ❑ c. Facilitated the opening of a bank account under Rule 10(2), POCSO Rules, with assistance from DCPU and Support Person.
    - ❑ d. Necessary support provided to ensure that a bank account has been opened for the child rescued from child labour and the demand draft received from the employer is deposited in the account.
    - ❑ e. Directed DCPU to coordinate with District Nodal Officer, District Magistrate, and State Resource Centre to enable access to children rescued from child labour to their wages and compensation.
    - ❑ f. Other (specify)

24. **<u>What are the implications of the child's identity & situation of vulnerability for the final order?</u>**



Preservation of Family Environment and maintaining relations

25. **Based on the SIR, interaction with the child, or any other material has the child faced any abuse/ ill-treatment/neglect at the hands of the family, siblings, or guardian?**

26. **Do the parent(s)/ guardians/siblings offer emotional understanding and support to the child? Who does the child trust?**

27. **Based on the SIR, interaction with child, or any other material, are parents/guardians responsible through their actions/inactions for the circumstances in which the child has become a CNCP?**

28. **Is the child willing to be restored to the family? If not, record the reasons.**

29. **Is the child willing to be in contact with the family?If not, record the reasons. If yes, how will this be facilitated?**

30. **Is the family willing to assume the care and protection of the child? If not, record the reasons**

31. **Steps taken by the CWC where family is constrained due to financial problems:**
    - ❑ a. Sponsorship
    - ❑ b. Direction to DCPU to connect the family to available schemes
    - ❑ c. Other (To be specified)

32. **Is there a likelihood that the child may run away from the home due to the absence of supportive parenting or violence at home?**

33. **How will regular contact between the child and family be ensured if contact is in the interest of the child but the child is not placed with family/siblings?**

34. **What are the implications of preservation of family environment and relationships on the final order?**



Care, Protection and Safety

35. **Based on the SIR, interaction with the child, or any other material is the parent/guardian capable of caring for and protecting the child from harm or exploitation (especially when the child has been allegedly abused by another family member or a person in the same shared household)?**

36. **Are there any deprivations or violations of the child's rights under domestic laws?**

37. **Is the child at risk of any form of imminent abuse, harm, neglect, or retaliation in the community/ family/CCI (based on a report of Support Person, SIR, ICP, and other material)? Kindly specify.**

38. **Immediate steps taken by the CWC to address the risk of harm:**
    - ❑ a. Seek assistance of the police
    - ❑ b. Facilitate application for cancellation or modification of bail, if applicable
    - ❑ c. Representation of the child/informant during bail hearing (in POCSO cases)
    - ❑ d. Regular follow-up
    - ❑ e. Approach police to move Witness Protection Application
    - ❑ f. Placement in a fit facility/Children's Home/SAA/fit person
    - ❑ g. Placement in Foster Care / Kinship Care
    - ❑ h. Transfer to another CCI
    - ❑ i. Other (please specify)

39. **Based on the inquiry by the CWC, including through consideration of the ICP prepared for the child, what are the related actions/ services that must be made available to the child to enable rehabilitation and social reintegration? Is the ICP adequately responding to the child's needs and enabling the fulfilment of the child's rights? What modifications may be needed in the ICP?**

40. **What are the implications of care, protection, and safety needs on final order?**

Right to Health

41. **Based on the SIR, the CWC's assessment of the child's needs, the ICP, does the child require**
    - ❑ a. Medical care and treatment
    - ❑ b. Hospitalization
    - ❑ c. Medical Termination of Pregnancy
    - ❑ d. Mental health intervention
    - ❑ e. Treatment for chronic illness
    - ❑ f. Continuous access to life-saving drugs or therapy
    - ❑ g. Accommodation for any disability

42. **Is the child's parent/guardian capable of addressing the child's health needs? If not, can they be supported with sponsorship?**

43. **Has the CWC taken any steps to ensure access to medicines, treatment, health schemes and benefits, Ayushman Bharat Card, etc?**

44. **Will the setting in which the child's placement is being considered have any adverse impact on the child's physical or mental health?**

45. **What are the implications (if any) of the child's health needs on the final order?**

Right to Education

46. Based on the SIR, and the CWC's own assessment, what is the educational status of the child

- ❑ a. Never been to school
- ❑ b. Dropped out of school
- ❑ c. In school/junior college
- ❑ d. Requires special education

47. If there is any examination that the child needs to sit for, what measures has the CWC taken:

- ❑ a. access to educational resources
- ❑ b. access to a teacher/tuition
- ❑ c. necessary permissions/admit cards
- ❑ d. escort to enable the child to sit for the exam
- ❑ e. facilitating special assistance to write the exam on account of child's disability
- ❑ f. any other (to be specified).

48. Steps taken by CWC to ensure continued access to education

- ❑ a. access to bridge courses
- ❑ b. vocational training
- ❑ c. supplementary education
- ❑ d. special education
- ❑ e. other

49. <u>What are the implications (if any) of the child's education needs on the final order:</u>

50. Contents of Final Order

- Factual circumstances in which the child was produced before the CWC;
- Findings on age and whether the person produced is a CNCP;
- Relevant information from the SIR, counselling report, and ICP that were considered;
- Rights of the child that were identified and action taken to ensure they were respected, protected and/or fulfilled;
- Elements which were found relevant for best interests determination, and how the different elements were weighed and balanced to determine the child's best interests;
- Child's views and how they have been considered, bearing in mind the child's age and maturity; and if the decision varied from the child's views, the reasons for the same;
- Views of parent/guardian/siblings
- Views of the Case Worker/CCI Staff/NGO staff working on the child's case that were considered;
- Principles under Section 3, JJ Act, 2015 that were applied;
- Other considerations, in addition to best interests that were considered;
- Different rehabilitative dispositions considered and its implications on the child's best interest;
- Consideration and finalisation of the Individual Care Plan;
- Findings related to the situation of risk, abuse, neglect or exploitation and the basis on which the final disposition was arrived, including dissenting opinions (if any);
- Follow-up plan and dates for subsequent review of progress of the child.

ANNEXURE 1

Example of Best Interests Determination by a Child Welfare Committee for a Child in Need of Care and Protection

Annexure 1A: Case Study: Srija K

Facts: 9-year-old Srija was being sexually abused by her father, Shibu for the last two years. She shared this with her teacher in a private school, who informed Childline. The child was rescued by the police and produced before the CWC. The child has two younger siblings - Seema (6 years) and Deepak (3 years). Srija's mother Amita is a domestic worker, and Shibu works as a school bus driver. The family has a lot of debt and are dependent on the father's family for monthly rations. At the time of Srija's production, Amita pleads with the CWC to release Srija and assures them that she will take care of Srija and ensure that Shibu doesn't come anywhere near their house. Srija has autism. She is very attached to her mother. She is also fond of her maternal aunt Smita who is married with two children, and lives in a nearby urban slum. The CWC institutionalizes the girl in the CCI, as the father has not been arrested and orders an SIR to be conducted for the child within three days. During the next CWC hearing three days later, the CWC is given the SIR and is required to make the decision about what to do next, as the father has now been arrested.

Annexure 1B: Social Investigation Report

FORM 22

[Rule 19(8)]

SOCIAL INVESTIGATION REPORT FOR CNCP

(Tick whichever is applicable)

Case of Srija K

1. **Sl. No:** 3
2. **Produced before the Child Welfare Committee** XYZ District
3. **Case No.** 237/10/2022
4. **Social Investigation Report Prepared by:**

   District Child Protection Unit/ Social Worker/ Case Worker/ Person in charge of Home/ representative of Non- Governmental Organization -ABC ✓
5. **Details of CNCP:**
   - i. Name: Srija K.
   - ii. Age: 9 years DD/MM/YY 6.5.2013
   - iii. Gender: Female
   - iv. Caste: (tick as applicable) General Scheduled Caste Scheduled Tribe Other Backward Class Others, specify Not Known Kshatriya
   - v. Religion: Hindu
   - vi. Father's Name: Shibu Kumar
   - vii. Mother's Name: Amita
   - viii. Guardian's Name: NA
   - ix. Permanent Address: XXX
   - x. Landmark of the address:. ..... . XXX Google map location:
   - xi. Address of last residence: ..... . XXX Google map location
   - xii. Contact information father/mother/family member/guardian: Mobile number of Shibu - XXX; Mobile number of Amita - XXX
   - xiii. Whether the child needs an interpreter/translator: Yes/ ✓ No The child will benefit from a special needs interpreter who works with children with autism
   - xiv. Whether the child is: Orphan / Abandoned / Surrendered / Others ✓
   - xv. Previous institutional/case history and individual care plan, if any: NA

xvi. Family Details: (Yes / No) If yes, then:

S.N.	Name and Relationship	Age	Sex	Education	Occupation	Income	Health Status	History of Mental Illness	Addiction
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Shibu Kumar - father	35	M	10th standard	Bus driver	10,000	Good	NIL	NIL
2.	Amita - mother	28	F	7th standard	Domestic worker	3,500	Good	NIL	NIL
3.	Srija	9	F	4th standard	Student	-	Slightly malnour-ished	Diagnosed with autism	-
4.	Seema - younger sister	6	F	1st standard	Student	-	Slightly malnour-ished	NIL	-
5.	Deepak - younger brother	3	M			-	Slightly malnour-ished	NIL	-

xviii. Relationship among family members:

Father and mother	Cordial/**Non cordial**/Not known
Father and child	Cordial/**Non cordial**/Not known
Mother and child	**Cordial**/Non cordial/Not known
Father and siblings	Cordial/**Non cordial**/Not known
Mother and siblings	**Cordial**/Non cordial/Not known
Child and siblings	**Cordial**/Non cordial/Not known
Child and relative (with maternal Aunt Smita)	Cordial/Non cordial/Not known

Additional content written in extra sheets attached to the SIR

Father and Mother: The relationship between the father and mother is strained, primarily due to the father's abusive behaviour towards her and the children, and his inability to control his temper. Srija recalled an instance when her father broke the TV in anger during a fight, leaving her and her siblings frightened. The mother is the primary breadwinner as her father keeps losing jobs because of his temper.

Father and Child: The child is afraid of her father's temper and actions, but also expresses affection for him because he buys her chocolates. She is worried about being left alone with her father and shared that he scolds and hits her for small mistakes

Mother and Child: Srija reports that she shares a strong emotional bond with her mother, and expresses worry that her mother will be sad because she has revealed her father's abusive behavior. She shared that her mother works very hard, but always takes the time to cook Srija, her favourite lemon rice and payasam. Amita also shared that she gives extra attention to Srija because she cannot communicate like the others and that only she understands what Srija needs. She also said that she feels deep regret for not being able to protect Srija from Shibu.

Father and Siblings: According to Srija and Amita, the father's relationship with Srija's siblings is similar to his dynamic with Srija—characterized by verbal and physical aggression. He disciplines the children harshly, accusing them of causing financial stress and wasting money.

Mother and Siblings: As reported by Srija and based on observations made during the home visit, Amita shares a nurturing relationship with Srija's siblings, despite having to work long hours. She wants them to study well and insists that they do their homework and work hard. The siblings depend on their mother for emotional and financial stability.

Child and Siblings: Srija shares a close and loving relationship with her siblings, especially her younger sister, Seema, as they go to school and play together. Seema and Deepak, both kept asking about "Akka" and wanted her to come back home so that they could play together.

Child and Relative (Maternal Aunt Smita): As reported by Srija, she shares a deep emotional bond with her maternal aunt, Smita as she understands her needs and also encourages her to draw and paint. Srija likes visiting her aunt and spending time with her cousin sisters, who are much older. Smita also reported that she is very fond of her niece and will do anything to support her sister in looking after her.

Child and Relative (Maternal Aunt Smita): As reported by Srija, she shares a deep emotional bond with her maternal aunt, Smita as she understands her needs and also encourages her to draw and paint. Srija likes visiting her aunt and spending time with her cousin sisters, who are much older. Smita also reported that she is very fond of her niece and will do anything to support her sister in looking after her.

6. **With whom was the child staying prior to production before the Committee:** (tick as applicable)

   Parent(s) – Mother / Father / Both ✓

   Siblings / Blood relative

   Guardian(s) – Relationship

   Friends On the street

   Night shelter

   Orphanages / Hostels/ Similar Homes

   Child Care Institution:

   i. Children's home
   ii. Shelter home
   iii. Specialised Adoption Agency
   iv. Fit Facility
   v. Other (please specify) ……..

7. **In case of orphan and abandoned child:** NA

   i. Where was the child found?
   ii. What steps are being taken to trace the biological parents/relatives of the child? Please specify …… .
   iii. If the biological roots of the child are known, reasons for death of both parents of the child …… .

8. **Whether the child needs to be repatriated: Yes / No. If yes:** ✓

   Inter- district repatriation

   Inter- state repatriation

   Inter- country repatriation

9. **Whether child is eligible for the benefit of sponsorship: Yes / No** ✓ The family is heavily in debt, as the two elder children have been admitted into a private school and the parent's income is inadequate.

10. **Whether the child is eligible for any scheme or entitlement: Yes / No; if Yes, please specify** ✓

    - UP Free Education Scheme for girls, 2022
    - UP Mukhyamantri Kanya Sumangala Yojana, 2019
    - Compensation under Section 33(8), POCSO Act, 2012 and Rule 9, POCSO Rules, 2020
    - Special relief under Rule 8, POCSO Rules, 2020

11. **Whether child has received any kind of compensation in regard to the demise of any parent: Yes / No;** ✓ **Please Specify**…… .

12. **Whether child should get benefit under clause (c) of sub-section (1) of section of Section 12 of the Right to Education Act, 2009: Yes / No**

    The child can benefit from the RTE Act, 2009. However, she is currently admitted into a private school, where she is happy and studying very well. It would be in the child's best interest to continue studying in this school only.

13. **Financial support recommended for the child:**

    i. Whether the child's parents had any property/FD/Cash/Insurance/bank accounts prior to their sudden demise: Yes / No; Details thereof .....

    ii. Whether the child's parents have any loans, mortgages, financial liabilities?
    Yes / No; Details thereof: The family has taken a loan of Rs. 1,50,000 on interest to pay for the private school fees of two children, in August 2021. They are struggling to pay this back.

    iii. Whether the child's parents have any collateral against that mortgage?
    Yes / No; Details thereof: .....

    iv. Whether the child's parents have any family business? Yes / No; Details thereof: .....

    v. Whether the child has acquired any right/share in the property (self-acquired/ancestral) from the deceased parent: Yes/No; Details thereof NA

14. **Details of education of the child:**

    i. Whether the child has received education: Yes / No
    ii. If yes, specify education up to which class: Studying in 4th standard
    iii. If the child is enrolled in school, then name of the school: PQRS School
    iv. Whether the school of the child is registered on Unified District Information System for Education, if Yes, state Unified District Information System for Education Code Information not available
    v. Type of school: Government/ Private.

vi. Whether the child has been enrolled in special training centre. Yes / No. If yes specify duration of enrolment of child in Special Training center: The child was diagnosed as autistic, but is not receiving any special training.

vii. Whether the Special Training Center was Residential / Non-Residential NA

viii. The reason for leaving School (tick as applicable) NA

- Failure in the class last studied
- Lack of interest in the school activities
- Indifferent attitude of the teachers
- Peer group influence
- To earn and support the family
- Sudden demise of parents
- Bullying in school
- Rigid school atmosphere
- Absenteeism followed by running away from school
- There is no appropriate level of school nearby
- Abuse in school
- Humiliation in school
- Corporal punishment
- Medium of instruction
- Others (please specify) .....

ix. Attitude of classmates towards the child (If applicable): Srija shared that her classmates are friendly towards her. They help her with understanding what is taught and share the class notes. Srija also mentioned that her classmates were very happy when she won a drawing competition at school.

x. Attitude of teachers and classmates towards the child (If applicable): Srija's teachers are generally supportive and understanding of her needs. Her class teacher gives her extra time to finish her homework and asks other children to help her with class notes. They appreciate Srija's art work and encourage her by displaying it in the classroom. Srija is very close to the art teacher with who she shared about the sexual abuse.

xi. Vocational Training (if any): NA.

15. **Other factors of importance if any:** Srija is an average student but her performance dropped over the past five months, as reported by the teacher.

16. **Habits of the child: (tick as applicable)**

- ✓ Watching TV/movies
- ✓ Playing indoor/outdoor games
- Reading books
- Drawing/painting/acting/singing
- Religious activities
- Begging
- Gambling
- Alcohol consumption
- Smoking
- Drug use, if yes, specify: NA
- Any other, please specify:

17. **Extra-curricular interests:** Drawing, Painting

18. **Outstanding characteristics and personality traits:** As reported by Amita as well as the counselor in the CCI, Srija spends a lot of time on her own, as she is naturally quiet. Srija complains that other children bully and tease her in the CCI and so she withdraws from their company and likes to draw and paint instead. She is also teaching younger children to draw in the Girl's Home.

19. **Majority of the friends are** (tick as applicable)

- Educated
- The same age group Srija has one friend of her own age in school.
- Older in age
- Younger in age In the CCI, Srija has made friends with a few younger children.
- Male
- Female
- Addicts
- Children in conflict with law

20. **If child is friends with adults, please specify:** Srija is friends with the adults in her extended family as well as her neighbours.

21. **Attitude of the child towards friends:** Srija is very attached to her cousins and has one good friend in the school too. In the CCI she has not been able to make any friends with children her own age or older children, as they are always fighting and making too much noise.

22. **Attitude of friends towards the child:** Srija's cousins are very fond of her, as they love to play quiet games when they are together. The cousins know that Srija likes to also spend time on her own, and let her be, during these times, which is what makes Srija comfortable with them too.

23. **Observation about neighbourhood (to assess the influence of neighbourhood on the child):** The neighbourhood is a regular lower middle-class neighbourhood, comprising families who are daily wage labourers or those engaged in low-income employment.

24. **Whether the child has any addiction: Yes / No; If yes, specify**

.....

25. **In case the child is with disability or special needs or is terminally ill (If Yes, Specify):**

    A. **Health status of the child.** As reported by the mother the child does not have any major health issues.

        i. Respiratory disorders: Present / Not known / Absent
        ii. Hearing impairment: Present / Not known / Absent
        iii. Eye diseases: Present / Not known / Absent
        iv. Dental disease: Present / Not known / Absent
        v. Cardiac diseases: Present / Not known / Absent
        vi. Skin disease: Present / Not known / Absent
        vii. Sexually transmitted diseases: Present / Not known / Absent
        viii. Neurological disorders: Present / Not known / Absent
        ix. Mental handicap: Present / Not known / Absent
        x. Physical handicap: Present / Not known / Absent
        xi. Urinary tract infections: Present / Not known / Absent
        xii. Others (please specify): Srija was assessed to be autistic during a health camp in her school

    B. **Whether the child is differently abled: Yes / No; If yes, specify**

        i. Hearing Impairment
        ii. Speech Impairment
        iii. Physical disability
        iv. Mental disability:
        v. Locomotive disability
        vi. Others (please specify) Autism.

C. **Whether the child has a valid disability certificate. (If yes, provide details).** No

D. **Mental condition of the child: (Present and past):** The sexual abuse reported by the child has caused her to become even more quiet and reserved. She gets up with nightmares and her academic performance has declined drastically over the past 5 months

E. **Physical condition of the child: (Present and past):** The child is slightly malnourished

F. **Whether the child needs special education: Yes / No; if yes, specify:** For autism

G. **Special education already included in the current school curriculum: Yes / No / Not Applicable** The child does not have an inclusive education.

H. **Whether the Child requires or has been using any medical equipment. (If yes, please specify):** No

I. **Previous institutional/case history and individual care plan, if any:** NA

J. **Whether the child is receiving any pension under disability schemes. Yes / No; if yes, specify:**

K. **Any other remark/observation.** No

26. In case the child belongs to Children in Street Situations/Trafficked/Involved in Drug Peddling / Child Labour:

A. **Whether the child belongs to any of the category under Children in Street Situations: Yes / No; if yes, specify:**

i. Children without support living on the streets all alone
ii. Children stay on the streets in the day and are back home in the night with their families who reside in a nearby slum/hutments.
iii. Children living on the streets with their families:

B. **With whom was the child staying prior to production before the Committee:**

i. Parent – Mother / Father / Both
ii. Siblings / Blood relative
iii. Guardian – Relationship
iv. Friends
v. On the street
vi. Night shelter
vii. Orphanages / Hostels/ Similar Homes (viii) Other (please specify). ……..

C. **If there is history/ tendency of the child to run away from home. Yes/ No. If yes:**

i. What is the parents' attitude towards discipline in the home and child's reaction? The father is aggressive with the children, and beats them if they are not disciplined, accusing them of wasting his money and causing stress in the home because of the high debts for their education. The mother has big dreams for her children, and works extra hard to earn money to support the children's education in a private school.

The child shared with the counsellor of the CCI that her father would have extreme mood swings. On some days the father would be extremely kind to the child and get her sweets and play with her, but on some days he would get really upset at the smallest things and say mean things to her. He would raise his voice, hurl abuses and hit the girl and her siblings.

ii. Reasons for leaving the family: NA

a. Abuse by parent(s)/guardian(s)/step parents(s)
b. In search of employment
c. Peer group influence
d. Incapacitation of parents
e. Criminal record of parents
f. Separation of Parents
g. Demise of parents
h. Poverty
i. Others (please specify) .....

D. Where was the child found, please specify: NA

E. Whether the child has been used for begging: Yes / No

F. Whether the child has been involved in rag-picking: Yes / No

G. Whether the child is used by any gangs or adults or group of adults or has been used for drug peddling: Yes / No

H. Whether the child has been bought or sold or procured or trafficked for any purpose: Yes / No; if yes, specify .....

I. Whether the child was trafficked with knowledge of parents: Yes / No

J. Whether the child was sold by the parents/relatives: Yes / No If yes, then whether any action has been taken against the parents/relative: Yes / No

K. Whether the child was employed as a labour: Yes / No; if yes, specify:

i. Industry in which the child was employed.
ii. Whether the child has faced exploitation at work: Yes/No
a. Extracted work without payment
b. Little or low wages with longer duration of work
c. Others (Please specify).....
iii. Details of income utilisation.
iv. Any occupational hazard faced by the child: Yes/No. If yes, specify.
v. Whether case filed against employer: Yes/No. If yes, specify case detail: NA.

vi. Compensation provided to the child: NA

a. Interim

b. Final

c. Child Labour Rehabilitation cum Welfare Fund

L. Previous institutional/case history and individual care plan, if any: NA

M. Whether temporary shelter has been provided to child: Yes/No : NA

N. Has any plan been made for rehabilitation of the child, specify: NA

O. Any other remarks/observation: No

27. In case the child has faced any kind of abuse, including sexual abuse, or has been a victim of any offence:

A. Whether the child is a victim of any offence: Yes / No ✓

B. Types of abuse faced by the child:

i. Verbal abuse – parents/siblings/ employers/others (please specify): The father sometimes calls Srija 'crack' and criticizes her behaviour. He raises his voice sometimes and that makes Srija very afraid.

ii. Physical abuse- parents/siblings/ Employers/others (please specify): The father beats Srija on a regular basis.

iii. Sexual abuse by (tick as applicable)

✓ relatives through blood

relatives through adoption

relatives through marriage

relatives through guardianship

persons in foster care

✓ person living in the same or shared household any person in the ownership, or management, or staff, of any institution providing services to a child

any person in position of trust or authority

Others (please specify) .....

iv. Others– parents/siblings/ employers/others (please specify): NA

C. Types of ill- treatment met by the child:

i. Denial of food: parents/siblings employers/other (please specify) .....

ii. Beaten mercilessly: parents/ Siblings/employers/other (please specify) The child complained of being beaten by her father

iii. Causing injury: parents/ siblings/employers/other (please specify) There were injury marks on the child's inner thigh as per the medical report of the doctor attached to the Children's Home

iv. Detention: parents/ siblings/employers/other (please specify) .....

v. Any other (please specify) .....

D. In case of sexual abuse:

i. Relationship with the perpetrator: Father

ii. Gender of the perpetrator: Male

iii. Age of the perpetrator 35 years

iv. How the child came in contact with the perpetrator: At home

v. Any other child from the same place who is abused / harassed / taken / sent by the perpetrator: Not known, as yet

vi. Whether any other person/s were involved in the offence: No

vii. Whether any compensation has been recommended to the child under the Protection of Children from Sexual Offences Act, 2012: Yes / ~~No~~ ✓

If any other, please specify. .....

E. Case/FIR registered by the police: Yes/No. If yes, specify Case No./ FIR No. 354/2022.

F. Whether the child has been a victim of cyber-bullying: Yes / ~~No~~ ✓. If yes:

i. Cyber bullied while using internet system at home

ii. Cyber bullied while using internet system in school

iii. Cyber- bullied while attending school classes from home

G. Has the child been counselled: Yes / ~~No~~ ✓, if yes, provide details. Srija was counselled by the counselor of the Children's Home once.

H. Any other remarks/observations .....

I. Previous institutional/case history and individual care plan, if any: NA

28. In case the child is victim of child marriage or is married: NA

A. Name of the spouse.

B. Age of the spouse

C. Date of marriage (DD/MM/YY)

D. Place of marriage.

E. Reasons for conducting marriage of the child.

F. People who were involved in getting the marriage of the child conducted-

i. Parents

ii. Relatives

iii. Others.

G. If others, please specify. .....

H. **Whether any case has been registered by police: Yes / No. If yes, provide details** .....

I. **If any action taken, details thereof** .....

J. **Any other remarks/observation.** .....

29. **Whether the child needs to be repatriated: Yes / No. If yes: (tick as applicable)**
    i. Inter- district repatriation
    ii. Inter- state repatriation
    iii. Inter- country repatriation

OBSERVATIONS OF INQUIRY

30. **Emotional factors:** The child is traumatized and gets frequent nightmares. She is confused and fearful when her father is in the house. It appears that she would be more comfortable staying at home with her mother and her siblings, with whom she shares a strong emotional bond. She is aware that her father has been arrested, and says that if he gets released and comes back home, she would like to live in her Aunt's house and go to school from there as she has a deep emotional attachment with her. She loves her mother and siblings as well as her school and her teachers, and would not like to change her school or live in a CCI. The mother, her Aunt Smita, and her school teacher all state that other children in her school and in her neighbourhood understand and accept her condition. They fear that if she is admitted into a CCI- it will be an unfamiliar environment, where she is likely to be teased and bullied by people who do not understand her condition and special needs.
31. **Physical condition:** Srija is slightly malnourished and would benefit from additional nutritional support.
32. **Social and economic factors:** Since Srija is autistic, she does find it challenging to engage with other children her age. The parent's financial situation causes stress at home.
33. **Suggestive causes of the problems:** Srija's father's abusive behavior (sexual abuse and physical abuse), the lack of adequate psychological support in terms of inclusive education while at school; high debt of the family; and lack of financial independence of the mother.
34. **Analysis of the case, including reasons/contributing factors for the offence:** The father spends a lot of time with other bus drivers while waiting to take children back home from school, and they often watch pornography together. The mother works in three houses, and returns home late from work, while the children are alone at home. Srija's autism and quiet nature may also be a contributing factor.

35. **Reasons for child's need for care and protection:** Incest and physical abuse

36. **Opinion of experts consulted:** The child was assessed by a physician once the child reported sexual abuse, and she was diagnosed as being slightly malnourished.

37. **Mental Health Expert assessment:** The child has been seen by the Children's Home counsellor and she has stated that the child is unhappy in the Children's Home and wants to go back home. She is missing her mother and siblings and has also been repeatedly asking about whether she could return to school.

38. **Risk analysis for the child to be restored to the surviving parent/relatives/guardian.** The child may be restored to her mother, as long as the father is in jail, as this is found to be a safe physical environment and will provide her with a sense of stability in upbringing, familiarity and continuity, important for her mental well-being. However, if and when he may be released on bail, the child cannot continue to stay there. She may be placed in the care of her maternal aunt, who the child has a very strong bond with. This will be in her best interests, since this would enable the child to continue in the same school which will enable her to continue with a familiar routine, and also provide her with the needed psychological support for her mental health condition as well as the trauma she has experienced due to the incest. She will also be able to retain the positive relationships she enjoys with her mother, her maternal aunt, her cousins and her school teachers and friends, all of which are also protective factors. The trusted relationship she enjoys with her school teacher will also enable the child to restore her sense of trust by a known and loving caregiver. Separating Srija - a child in a very young developmental age who also has autism, from these positive relationships and familiar social environment and placing her in a CCI will not be in her best interests. Such separation and placement in a CCI may also make the child susceptible to discrimination by other children and caregivers who may not be able to understand or respect her as a child with special needs.

    The mother demonstrates outrage against her husband for having sexually abused Srija, and says that she will not let him step anywhere near their home. She explains that though she will find it difficult to manage financially, she will somehow manage, but will never accept him back home. The child's aunt -Smita also seconds this view.

39. **Previous institutional/case history and individual care plan, if any:** NIL.

40. **Recommendation** of District Child Protection Unit/Case Worker/Social Worker regarding psychological support, rehabilitation and reintegration of the child and suggested plan.
    a. Restoring the child into the care of her mother at the earliest, to enable her right to family and relationships with her siblings, extended family.

b. Assignment of a Support Person under the Protection of Children from Sexual Offences Rules, 2020, who may be directed to report to the CWC if and when the alleged perpetrator is released on bail, or released after completion of his sentence while the child is still a minor.
c. Ensuring the right to legal aid to the child and the mother, by facilitating access to free legal aid.
d. Ensure the child's safety and protection from subsequent sexual abuse by supporting the child to submit an application to the Special Court for the denial of bail of the child's father, so that the child can continue to live in a familiar, caring environment. Should the father be released on bail despite this submission, the CWC may consider reassessing the situation by passing an order for another SIR to be prepared, and to consider conducting an inquiry to consider whether the maternal aunt Smita could be appointed as a fit person, for temporary care of Srija, till other suitable alternatives are found.
e. Ensuring her right to health, (including mental health) by facilitating the mother's access to a nutritionist, who can guide her about healthy low-cost meals that would enhance the nutritional status of all three children; and directing the child's school to provide ongoing counseling by the trained school counselor.
f. Ensuring her right to education, by
    i. directing the child's school to consider her as a beneficiary under Section 12(1) of the Right of Children to Free and Compulsory Education Act, 2009
    ii. directing the school to take necessary steps under Section 16(iv)(vi) and (vii) of the Right of Persons with Disability Act, 2016 to meet her special needs; and
    iii. Pass an order granting the child sponsorship under the JJ Act, 2015 and UP State Rules, as this will also help allay the financial debt being faced by the mother, who will now be the sole breadwinner.
g. Ensuring access to the entitlements she has under the following two Government schemes ;
    i. UP Free Education Scheme, 2022, for girls
    ii. UP Mukhyamantri Kanya Sumangala Yojana, 2019
h. Granting compensation under Section 33(8), POCSO Act, 2012 and Rule 9, POCSO Rules, 2020
i. Providing special relief under Rule 8, POCSO Rules, 2020.

Sd/-
XXXXXXXXXXX
Signature
(of the person assigned)

Annexure 1C: Final Order passed by the Child Welfare Committee in the case of Srija K.

1. Srija, a 9-year-old-child was produced before the Child Welfare Committee (Urban), by Ms. Kusum, lady constable, XYX Police Station on 10.06.2022. As per the production report in Form 17, the child has allegedly been sexually abused by her father since 2020. She shared this with her English teacher in ABC school on 6.06.2022, who then called Childline. The childline team with assistance from the XYZ police station rescued the child from her home on 10.06.2022.
2. Prima facie she was found to be a CNCP under Sections 2(14)(iii)(a) and 2(14)(viii) of the JJ Act, 2015.
3. Since based on her appearance, Srija was below 18 years, the Committee treated her as a child and proceeded with its inquiry in accordance with Section 94(1) of the JJ Act, 2015.
4. On 10.06.2022, the Committee directed Srija to be placed in the Children's Home for Girls and ordered a Social Worker from PMN NGO to prepare the Social Investigation Report (SIR) and submit it to the Committee within two weeks.
5. The police were asked to present her school records or birth certificate within two weeks. On 24.06.2022, the police submitted her school admission record as per which her date of birth was 6.05.2013. The SIR also mentions the same date of birth. Based on this, Srija was determined to be 9 years old on the date of production.
6. Additional facts about the child include that she has autism. Her father is a school bus driver, while her mother is a domestic worker.
7. Her family is in debt and is dependent on the father's income.
8. As part of the proceedings, we heard stakeholders including the child, her mother, and the child's Aunt - Smita, and the Case Worker. The child shared that she is very attached to her mother and her maternal aunt. Her maternal aunt lives nearby and she often goes to her house to spend time and to play with the aunt's two young children, who are her age and who understand her condition well. The child is also friends with the adults in the extended family and with her neighbours. She is more comfortable staying at her home with her mother and siblings, with whom she shares an emotional bond. She said that if her father is released on bail, she will stay at her aunt's home and go to school from there. She is very emotionally attached to her mother and siblings and loves them, along with her school and her teachers, and would not like to change her school or live in a CCI. The child wishes to return home.
9. The child's mother deeply resents the child's father for perpetrating the offence. She is determined to not let him anywhere close to the house, or let him come in contact with the child. She said that she will manage her financial difficulties somehow, but will not accept the child's father back. The mother also works extra hard to earn money to support her children's education in a private school. The child's mother said that the other children in the child's school and neighbourhood understand her condition and are supportive of her. The mother feels that if the child is admitted to a CCI, it would be an unfamiliar environment for her and she may be bullied and teased by people who do not understand her condition and special needs. She wishes to have the child back home and assured us that she will take care of her.
10. The case worker who conducted the child's SIR said that the child was provided age-appropriate information in a manner that she understands and was informed about the legal procedures

relating to her case, with the help of her school teacher and a counsellor whom she trusts. The case worker recommends that the child be restored to her mother as long as her father is in jail. Her home was found to be a safe physical environment for her and would provide her with a sense of stability in upbringing, familiarity and continuity, important for her mental well-being. The case worker was of the opinion that the child may be placed in the care of her maternal aunt whenever her father is released on bail. The child should also continue studying in the same school where she studies currently. This would help her continue with her routine and would restore her sense of trust. The case worker also stated that placing the child in a CCI would not be in her best interests and would make her susceptible to discrimination.

11. The CCI counselling report provided us with an insight into the child and her experience at the CCI. The counsellor said that the child is naturally quiet and spends a lot of time on her own at the CCI. She has complained that the other children in the CCI bully and tease her. They noted that she has not been able to make any friends at the CCI, as they are always fighting and making too much noise. She spends most of her time drawing and does not speak much or play with the other children.
12. The counsellor revealed that the child was also upset as her performance in school had declined drastically over the past 5 months.. She is unhappy at the CCI and wants to go back home. The counsellor said that the child misses her mother and repeatedly asks about school. The counsellor feels that if the child is placed by the CWC in a CCI for the long term, it would be an unfamiliar environment for her, and she may be bullied and teased by people who do not understand her condition and special needs. The counsellor also recommends that the child be restored to the custody of her mother as long as the father is in jail.
13. The child's aunt, Smita, with whom the child is very close, also shares similar opinions as the child's mother and actively supports her stand that the child's father should not be accepted back. The aunt feels that if the child is admitted to a CCI, it would be an unfamiliar environment for her, that she would lose the emotional connections she enjoys with her siblings, cousins and relatives, and may be bullied and teased by people who do not understand her condition and special needs.
14. General Comment No. 14 of the UN Convention of the Rights of the Child lays down the elements which are to be considered when determining a child's best interests. The following is an assessment of the child's best interests, in the present case, based on these elements:
    i. **The child's views** The child's views must be taken into account in light of their age and maturity. The fact that the child may be very young or may be in a vulnerable situation does not reduce the weight that should be given to the child's views. In the present case, the child in question is 9 years old. She spoke at length of her close bond and emotional attachment to her mother, aunt, siblings and school friend. She was certain that she wanted to return home to stay with her mother and siblings. Despite being of a young age, she was aware of the possibility of being placed in a vulnerable situation should her father be released from prison. She suggested that in such a case, she would like to move in with her aunt and stay with her. Thus, going by the child's views, her best interests lie in her returning home.

ii. **The child's identity** The child's young age, her gender, and the fact that she has autism was factored in during the proceedings and taken into account while determining her best interests. The child is understood well by her mother and siblings, and she must be in the comfort of her home, school, and those who understand her.

iii. **Preservation of the family environment and maintaining relations** In keeping with the principles of family responsibility, and institutionalization as a measure of last resort, the CWC is of the opinion that the child shall not be separated from their parents against their will, except when such separation is in the child's best interests. In the present case, the child does not want to be separated from her mother, siblings, or aunt, and vice versa. The only potential danger to sending the child back home is that the child may be put in a vulnerable situation if her father is released on bail. However, the mother has submitted that she will not let the father come near the house and that she would move to her aunt's house if her father is released on bail. We have taken into account the risks, but believe that the child's desire to return home, her mother's desire to have the child back, and the resources available in the child's home environment - i.e. a good school, a supportive Aunt, and strong relationships with siblings and friends are mitigating factors. This is especially given that the child is not happy at the CCI and has grown withdrawn and quiet. The case worker and the CCI counselor are both of the opinion that staying at home would provide the child with a sense of stability, familiarity, and continuity, which is important for her well-being. Thus, given the wishes of the child, her mother, and her aunt, preservation of the family environment and maintaining family relations is in the child's best interests.

iv. **Care, protection, and safety of the child** This includes looking at a child's emotional care and their safety and integrity at home. As has been noted by the counsellor and the caseworker, it would be better to restore the child to her home, given that the CCI is an unfamiliar environment for her. This is exacerbated by the fact that the child is suffering from the impact of the sexual abuse, for which it would be better if the child stayed in an environment which she finds comforting and familiar. The child's safety and integrity at home can be ensured as long as the child's father is in prison. Therefore, considering the child's care and protection, it would be in her best interests to restore her home as long as her father is in prison.

v. **Situation of vulnerability** The CWC has considered the child's vulnerability. In the particular case, the child is a victim of sexual abuse by her father, and also has autism, a disability. There are also financial difficulties and domestic violence. Though institutionalisation may serve to prevent further sexual abuse if and when the child's father is released, the other elements also need to be considered. We are of the opinion that the child, the child's mother and siblings can be supported to take care of the child within their own home, or in the home of their aunt.

vi. **The child's right to health** The child's health condition is central to assessing and

determining the child's best interests. From what has been mentioned by the counsellor and the case worker, it is clear that the child still suffers from the trauma of the sexual abuse, in that she is fearful. The child has been unable to make friends at the CCI and is bullied and teased by the others. She is deeply unhappy at the CCI. Additionally, the child is also supposedly malnourished and has nutritional requirements that are to be met. It is doubtful whether these needs will be met while the child is at the CCI. Taking into account the child's mental and physical health, she would be better off at her home, where she would receive support from her family and would no longer be in an isolating environment. Therefore, taking into account the child's mental health too, it would be better to restore her home.

vii. **Right to education** The child said that she really liked her school and its teachers. The child's teacher also spoke of how the child was a good student despite her autism, although her academic performance had dropped over the past few months. The school is said to be very child-friendly, and the child even has good friends there. The counsellor also said that the child repeatedly asks about her school. Thus, the child clearly misses her school, which seemed to have provided a positive environment for her. The child's school understands her condition and her needs, and would be in the best position to provide the same. Therefore, it is clearly in the child's best interests that she continue her education at her previous school.

15. Srija's interests are as follows:
    a. To be reunited with her mother, rather than continuing to stay in the CC,I where she is currently placed temporarily.
    b. To live in her own home environment and maintain relationships with her mother, siblings, school friends, and her maternal aunt.
    c. To continue studying in the same school where she was faring very well, and also receiving special education
    d. To receive financial support from the State government
    e. To receive mental health services to heal from the trauma of sexual abuse, domestic violence and bullying; and health services from a nutritionist to help her recover from malnutrition.
16. The Committee has also reviewed and finalised the Individual Care Plan that was prepared for the child in Form 7, attached to this order.
17. The Committee has considered all the elements of the child's best interests and weighed each one of them. We have found that the stakeholders in the present case, except the child's father, are unanimous in their opinion that it is in the child's best interests that she be restored to her family and that she is unhappy at the CCI. The child herself desires to be restored to her mother. The Committee has therefore determined that Srija's best interests are in restoring the child to the custody of her mother who is found fit to provide her with a safe environment, where she will be able to continue her education, at her school which she is fond of, and will be surrounded by people whom she trusts and understands. The Committee is of the view that it is also in Srija's

best interests to be assigned a Support Person and be provided legal support for the trial before the Special Court.

18. Directions:

i. The Superintendent of the Children's Home is directed to make arrangements to restore the child to her mother immediately upon receipt of the order.

ii. Assigning of Support Persons: Under Rule 4(8) of the POCSO Rules, 2020, Ms Vimala is appointed as a Support Person with the consent of the mother and Srija.

iii. The Support Person, with support from the DCPU, shall help the child seek the benefit of the following schemes that she is eligible for:
- UP Free Education Scheme 2022 for girls
- UP Mukhyamantri Kanya Sumangala Yojana
- Compensation under Section 33(8), POCSO Act and Rule 9, POCSO Rules, 2020

iv. Ms. Amita, the child's mother, is directed to take custody of the child, provide necessary care and protection, make all efforts to prevent further abuse from her father and continue her education in the school where she is currently enrolled.

v. The District Legal Services Authority is requested to ensure the right to free legal aid to the child and her family.

vi. The District Child Protection Unit is directed to link the child to the State Sponsorship scheme under the JJ Act, 2015, provide all assistance to the Support Person, ensure follow-up through home visits every month to check on the well-being of the child, and submit reports to the CWC.

vii. The child's school is directed to
- Consider her as a beneficiary under Section 12(1) of the Right of Children to Free and Compulsory Education Act, 2009
- Take necessary steps under Section 16(iv), (vi), and (vii) of the Right of Persons with Disability Act, 2016 to meet her special needs. *

284 CALPRA 1986, s 2.

285 CALPRA 1986, s 2.

286 CALPRA 1986, s 3.

287 CALPRA 1986, s 3.

ANNEXURE 2

Legal Framework for Child Labour

	CHILD (below 14 years)	**ADOLESCENT** (completed 14, yet to complete 18)
Definition	A child is defined to mean a person who has not completed 14 years. [284]	An adolescent is a person who has completed 14 years, but not 18 years.[285]
Are they allowed to work?	Children are prohibited from working, except in the following situations, provided that such work shall not affect the school education of the child.[286] • Children can help their **family or family enterprise, in non-hazardous occupations** or processes **after their school hours or during vacations.** Here, family is defined as mother, father, brother, sister and father's sister and brother and mother's sister and brother.[287] • Children can work in the **audiovisual industry,** including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to certain conditions and safety measures.	Adolescents can be engaged in **non-hazardous** work.
Guidelines for employing Adolescents and letting Children help in family enterprises and work in the audio-visual industry.	Conditions for a Child helping in **Family and Family Enterprises**[288] • shall not be in any hazardous occupation or process listed in **Part A** and **Part B** of the Schedule to the Act. • shall not include work or occupation or process at any stage of the manufacturing, production, supply or retail chain that is remunerative for the child or his family or the family enterprise; • shall only be allowed to help in his family, or in a family enterprise, where his family is the occupier; • shall not perform any tasks during school hours and between 7 p.m. and 8 a.m.; • shall not be engaged in such tasks of helping which hinders or interferes with the right to education of the child, or his attendance in the school, or which may adversely affect his education including activities which are inseparably associated to completing education such as homework or any extracurricular activity assigned to him by the school;	**Conditions of work for Adolescents**[289] • cannot be employed in hazardous occupations and processes listed in **Part A** of the Schedule to the Act. • shall not work for more than three hours at a stretch without rest for at least one hour. • the period of work, including interval for rest and time spent waiting for work, should not be spread over more than six hours. • shall not be permitted or allowed to work between 7 pm - 8 am or overtime.

288 Child Labour (Prohibition and Regulation) Amendment Rules, 2017, rule 2B.

289 CALPRA 1986, s 7.

	CHILD (below 14 years)	ADOLESCENT (completed 14, yet to complete 18)
Guidelines for employing Adolescents and letting Children help in family enterprises and work in the audio-visual industry.	• shall not be engaged in any task continuously without rest, which may make him tired and shall be allowed to take rest to refresh his health and mind, and a child shall not help for more than three hours excluding the period of rest in a day; • shall not include in any way substitution of the child for an adult or adolescent while helping his family or family enterprise; and • shall not be in contravention of any other law for the time being in force; • The child shall aid or assist his family in such manner which is not incidental to any occupation, work, profession, manufacture or business, or for any payment or benefit to the child or any other person exercising control over the child, and which is not detrimental to the growth, education and overall development of the child. • Where a child receiving education in a school remains absent consecutively for thirty days without intimation to the Principal or Head Master of the school, then, the Principal or Head Master shall report such absence to the concerned nodal officer.	• shall not be required or permitted to work overtime, • cannot be required or permitted to work in more than one establishment in a day. • Adolescents should not be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments. • shall be allowed a weekly holiday of one whole day
	Audio Visual Industry[290] • no child shall be allowed to work for more than five hours in a day, and for not more than three hours without rest; • any producer of any audio –visual media production or any commercial event involving the participation of a child, shall involve a child in participation only after obtaining the permission from the District Magistrate of the district where the activity is to be performed, and shall furnish to the District Magistrate before starting the activity an undertaking in Form C and the list of child participants, consent of parents or guardian, as the case may be, name of the individual from the production or event who shall be responsible for the safety and security of the child, and ensure that all screening of his films and television programmes shall be made with a disclaimer specifying that if any child has been engaged in the shooting, then, all the measures were taken to ensure that there has been no abuse, neglect or exploitation of such child during the entire process of the shooting;	

290 Child Labour (Prohibition and Regulation) Amendment Rules, 2017, rule 2C.

	CHILD (below 14 years)	**ADOLESCENT** (completed 14, yet to complete 18)
Guidelines for employing Adolescents and letting Children help in family enterprises and work in the audio-visual industry.	• the undertaking referred to in above clause shall be valid for six months and shall clearly state the provisions for education, safety, security and reporting of child abuse in consonance with the guidelines and protection policies issued by the Central Government from time to time for such purpose including – i. ensuring facilities for physical and mental health of the child; ii. timely nutritional diet of the child; iii. safe, clean shelter with sufficient provisions for daily necessities; and iv. compliance with all laws applicable for the time being in force for the protection of children, including their right to education, care and protection, and against sexual offences; • Appropriate facilities for the education of the child are to be arranged to ensure that there is no discontinuity from his lessons in school, and no child shall be allowed to work consecutively for more than twenty-seven days. • One responsible person be appointed for maximum of five children for the production or event, so as to ensure the protection, care and best interest of the child • at least twenty per cent, of the income earned by the child from the production or event to be directly deposited in a fixed deposit account in a nationalised bank in the name of the child which may be credited to the child on attaining majority; and • no child shall be made to participate in any audiovisual and sports activity including informal entertainment activity against his will and consent.	

PART A Schedule

Hazardous occupations and processes in which children are prohibited to help and adolescents are prohibited to work[291]

1. Mines and Collieries (underground and underwater) and related work in,-
   i. stone quarries;
   ii. brick kilns;
   iii. preparatory and incidental processes thereof including extraction, grinding, cutting, splitting, polishing, collection, cobbling of stones or lime or slate or silica or mica or any other such element or mineral extracted from the earth; or
   iv. open pit mines.
2. Inflammable substances and explosives such as -
   i. production, storage or sale of fire crackers;
   ii. for manufacture, storage, sale, loading, unloading or transport of explosives as defined under the Explosives Act, 1884 (4 of 1884);
   iii. work relating to manufacturing, handling, grinding, glazing, cutting, polishing, welding, moulding, electro-plating, or any other process involving inflammable substances;
   iv. waste management of inflammable substances, explosives and their by-products; or
   v. natural gas and other related products. Hazardous processes(serial numbers (3) to (31) below are as specified in the First Schedule of the Factories Act, 1948 (63 of 1948))
3. Ferrous Metallurgical Industries
   i. Integrated Iron and Steel;
   ii. Ferro-alloys;
   iii. Special Steels.
4. Non-ferrous Metallurgical Industries: Primary Metallurgical Industries, namely zinc, lead, copper, manganese and aluminium.
5. Foundries (ferrous and non-ferrous) :Castings and forgings, including cleaning or smoothening or roughening by sand and shot blasting.
6. Coal (including coke) Industries:
   i. Coal, Lignite, Coke, similar other substances;
   ii. Fuel Cases (including Coal Gas, Producer Gas, Water Gas).
7. Power Generating Industries.
8. Pulp and paper (including paper products) Industries.
9. Fertiliser Industries:
   i. Nitrogenous;
   ii. Phosphatic;
   iii. Mixed.
10. Cement Industries: Portland Cement (including slag cement, pozzolana cement and their products).
11. Petroleum Industries:
    i. Oil Refining;
    ii. Lubricating Oils and Greases.
12. Petro-chemical Industries.
13. Drugs and Pharmaceutical Industries: Narcotics, Drugs and Pharmaceuticals.
14. Fermentation Industries (Distilleries and Breweries).
15. Rubber (Synthetic Industries).
16. Paints and Pigment Industries.

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17. Leather Tanning Industries.
18. Electro-plating Industries.
19. Chemical Industries:
    i. Coke Oven By-products and Coaltar Distillation products;
    ii. Industrial Gases (nitrogen, oxygen, acetylene, argon, carbon dioxide, hydrogen, sulphur dioxide, nitrous oxide, halogenated hydrocarbon, ozone, similar other gas);
    iii. Industrial Carbon;
    iv. Alkalies and Acids;
    v. Chromates and dichromates;
    vi. Lead and its compounds;
    vii. Electro chemicals (metallic sodium, potassium and magnesium, chlorates, per chlorates and peroxides);
    viii. Electro thermal produces (artificial abrasive, calcium carbide);
    ix. Nitrogenous compounds (cyanides, cyanamides, and other nitrogenous compounds);
    x. Phosphorus and its compounds;
    xi. Halogens and Halogenated compounds (chlorine, flourine, bromine and iodine);
    xii. Explosives (including industrial explosives and detonators and fuses).
20. Insecticides, Fungicides, Herbicides and other pesticides industries
21. Synthetic Resin and Plastics.
22. Man-made Fiber (Cellulosic and non-cellulosic) industry.
23. Manufacture and repair of electrical accumulators.
24. Glass and Ceramics.
25. Grinding or glazing of metals.
26. Manufacture, handling and processing of asbestos and its products.
27. Extraction of oils and fats from vegetable and animal sources.
28. Manufacture, handling and use of benzene and substances containing benzene.
29. Manufacturing processes and operations involving carbon disulphide.
30. Dyes and dyestuff including their intermediates.
31. Highly flammable liquids and gases.
32. Process involving handling and processing of hazardous and toxic chemicals as specified in Part-II of the Schedule Ito the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.
33. Work in slaughter houses and abattoirs including work with guillotines.
34. Work involving exposure to radioactive substances including electronic waste and incidental processes therein.
35. Ship breaking.
36. Salt Mining or Salt Pan Work.
37. Hazardous processes as specified in Schedule IX to the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998.
38. Work in beedi-making or processing of tobacco including manufacturing, pasting and handling tobacco or any drugs or psychotropic substance or alcohol in any form in food processing and beverage industry and at bars, pubs, parties or other similar occasions that serve alcoholic substances.

PART B Schedule

List of occupations and processes where children are prohibited to help in family or family enterprises in addition to those listed in Part A[292]

Occupations

Any occupation concerned with —

1. transport of passengers, goods or mails by railways;
2. cinder picking, clearing of an ash pit or building operation in the railway premises;
3. work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
4. work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway tracks;
5. a port authority within the limits of any port;
6. automobile workshops and garages;
7. handloom and powerloom industry;
8. plastic units and fiberglass workshops;
9. domestic workers or servants;
10. dhabas (roadside eateries), restaurants, hotels, motels, resorts;
11. diving;
12. circus;
13. caring of Elephant;
14. power driven bakery machine;
15. shoe making.

Processes

1. Carpet-weaving including preparatory and incidental process thereof;
2. Cement manufacture, including bagging of cement;
3. Cloth printing, dyeing and weaving including processes, preparatory and incidental thereto;
4. Shellac manufacture;
5. Soap manufacture;
6. Wool-cleaning;
7. Building and construction industry including processing and polishing of granite stones; hauling and stacking materials; carpentry; masonry;
8. Manufacture of slate pencils (including packing);
9. Manufacture of products from agate;
10. Cashew and cashew nut descaling and processing;
11. Metal cleaning, photo engraving and soldering processes in electronic industries;
12. Aggarbatti manufacturing;

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13. Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting;
14. Roof tiles units;
15. Cotton ginning and processing and production of hosiery goods;
16. Detergent manufacturing;
17. Fabrication workshops (ferrous and non-ferrous);
18. Gem cutting and polishing;
19. Handling of chromite and manganese ores;
20. Jute textile manufacture and coir making;
21. Lime kilns and manufacture of lime;
22. Lock making;
23. Manufacturing processes having exposure to lead such as primary and secondary smelting,welding and cutting of lead-painted metal constructions, welding of galvanized or zincsilicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of leadpaint, burning of lead in enamelling workshops, lead mining, plumbing, cable making, wirepatenting, lead casting, type founding in printing shops. shot making and lead glass blowing;
24. Manufacture of cement pipes, cement products and other related work;
25. Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products;
26. Manufacturing or handling of pesticides and insecticides;
27. Manufacturing or processing and handling of corrosive and toxic substances;
28. Manufacturing of burning coal and coal briquettes;
29. Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather;
30. Oil expelling and refinery;
31. Paper making;
32. Potteries and ceramic industry;
33. Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms;
34. Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting;
35. Saw mill – all processes;
36. Sericulture processing;
37. Skinning, dyeing and processes for manufacturing of leather and leather products;
38. Tyre making, repairing, re-treading and graphite beneficiation;
39. Utensils making, polishing and metal buffing;
40. 'Zari' making and processes involving the use of zari (all processes);

41. Graphite powdering and incidental processing;
42. Grinding or glazing of metals;
43. Diamond cutting and polishing;
44. Rag picking and scavenging;
45. Mechanized fishing;
46. Food processing;
47. Beverage industry;
48. Cultivating, sorting, drying and packaging in spice industry;
49. Timber handling and loading;
50. Mechanical lumbering;
51. Warehousing;
52. Massage parlours, gymnasiums, or other recreational centres, or in medical facilities;
53. Operations involving the following dangerous machines:-
    i. hoists and lifts;
    ii. lifting machines, chains, ropes and lifting tackles;
    iii. revolving machinery;
    iv. power presses;
    v. machine tools used in the metal trades;
54. Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding, as specified in sub-clause (iv) of clause (k) of section 2 of the Factories Act, 1948.

ABOUT THE HANDBOOK

This Handbook supports Child Welfare Committees (CWCs) in India to apply the best interests of the child principle under the Juvenile Justice Act, 2015. While the term “best interests” is widely used in child protection, its application can be complex, with different meanings depending on a child’s unique experiences and needs.

Drawing from General Comment No. 14 of the UN Committee on the Rights of the Child, (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Handbook places this guidance in the Indian context. It provides CWCs with a practical framework and checklist to support informed, child-centered decisions that ensure care, protection, development, treatment, rehabilitation, and social reintegration of Children in Need of Care and Protection provided for under the Juvenile Justice (Care and Protection of Children) Act, 2015.