



A Guide
for District Administration
for Implementation of
Juvenile Justice Act, 2015
and
POCSO Act, 2012

REMEMBER: Children of India in difficult circumstances depend upon us to protect them.

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

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Note: Please visit NCPCR's website www.ncpcr.gov.in for full text of the Juvenile Justice (Care and Protection of Children) Act, 2015, Juvenile Justice Model Rules, 2016 and the Protection of Children from Sexual Offences Act, 2012.

THE JUVENILE JUSTICE ACT, 2015

I. Introduction

Children are the most valuable asset of any nation. They are 39% of India's population. Our Constitution guarantees Fundamental Rights to all children, covering their Rights to Survival, Protection, Development and Participation. **The child is a person of below 18-years of age.** Important legislations have been enacted to give effect to these Rights. These inter alia include: **Juvenile Justice Act, 2015; POCSO Act, 2012; Right to Children to Free and Compulsory Education Act, 2009; Child Labour (Prohibition and Regulation) Amendment Act, 2016; and Prohibition of Child Marriage Act, 2006** etc. Children need to be provided with timely justice and support to ensure that they feel reassured of justice to them.

2.1. The Juvenile Justice Act, 2015 (JJ Act) provides a comprehensive legal framework for protection of children whether in need of care and protection (CNCP) or in conflict with law (CCL). The following are offences against children which are punishable with **imprisonment and/or fine under JJ Act, 2015:**

- (i) **Disclosure of identity of children** – imprisonment upto 6 months or fine upto Rs 2.00 lakh or both (Section 74).
- (ii) **Cruelty** – imprisonment upto 3 years or with fine of Rs 1.00 lakh or with both. Greater punishment with rigorous imprisonment upto 10 years and fine of Rs 5.00 lakh if cruelty is done to child who is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb (Section 75 read with Rule 55).
- (iii) **Employment for begging** – imprisonment upto 5 years and fine of Rs 1.00 lakh. In certain circumstances, it is punishable with rigorous imprisonment upto 10 years and fine of Rs 5.00 lakh (Section 76).
- (iv) **Giving intoxicating liquor or narcotics drugs or psychotropic substance-** imprisonment upto 7 years and fine upto Rs 1.00 lakh (Section 77 read with Rule 56).
- (v) **Using for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance** - rigorous imprisonment upto 7 years and fine upto Rs 1.00 lakh (Section 78 read with Rule 57).
- (vi) **Exploitation of child employee** - rigorous imprisonment upto 5 years and fine of Rs 1.00 lakh (Section 79).
- (vii) **Adoption without following prescribed procedure** - imprisonment upto 3 years or with fine of Rs 1.00 lakh or with both (Section 80)
- (viii) **Sale and procurement of children for any purpose** - Rigorous imprisonment upto 5 years and fine of Rs 1.00 lakh. In certain circumstances, the punishment is imprisonment upto 7 years (Section 81 read with Rule 59).
- (ix) **Corporal punishment** in **CCIs**—first conviction with a fine of Rs 10,000/- and for every subsequent offence with imprisonment upto 3 months or fine or with both. In certain circumstances, it is punishable with imprisonment upto 3 years and fine of Rs 1.00 lakh (Section 82 read with Rule 60).
- (x) **Use by militant groups or other adults** Rigorous imprisonment upto 7 years and fine Rs 5.00 lakh. (Section 83).
- (xi) **Kidnapping and abduction** – Sections 359 to 369 of the Indian Penal Code shall *mutatis mutandis* apply (Section 84).
- (xii) **Offences committed on disabled children** – are punishable with twice the penalty provided for such offence (Section 85).
- (xiii) **Abetment** –Whoever abets any offence and if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence

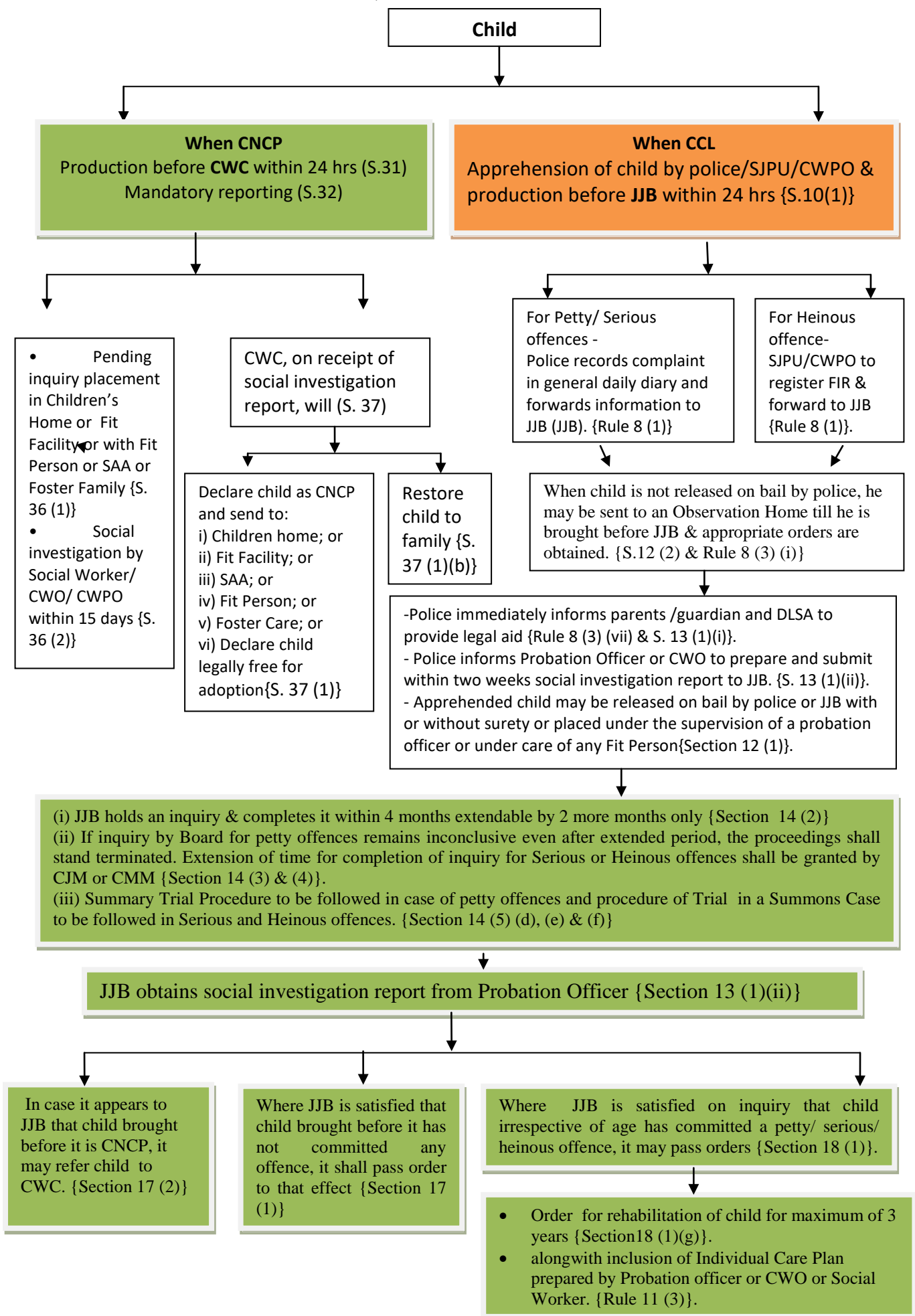
(Section 87).

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

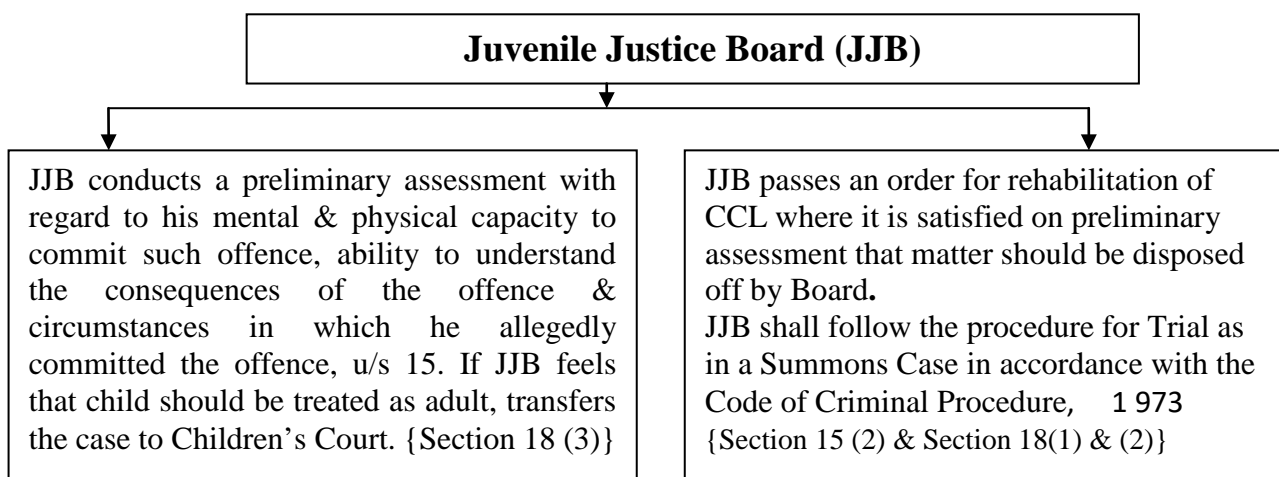
3.0. Organizations under the JJ Act, 2015.

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

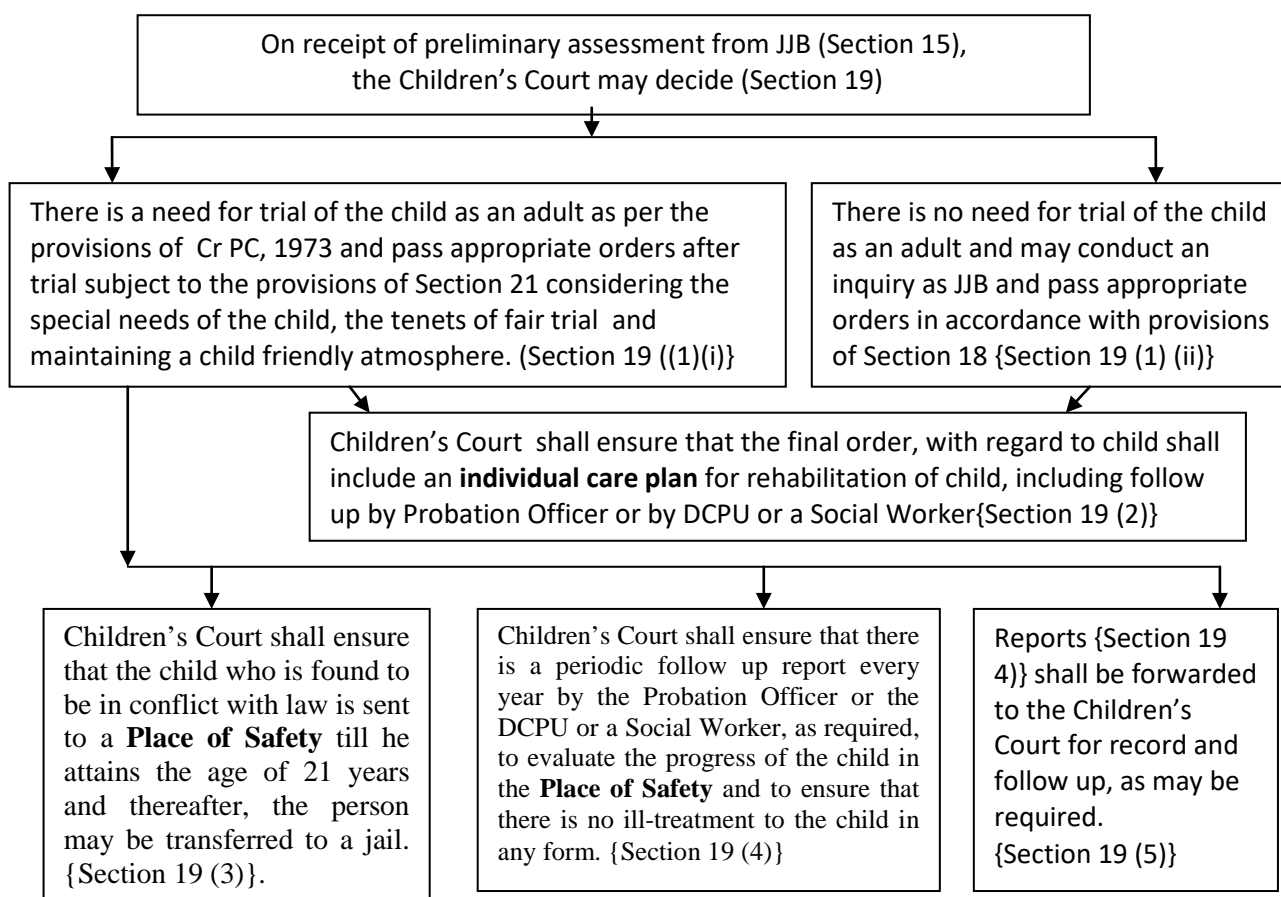
3.1. Brief Flow Chart of JJ Act, 2015



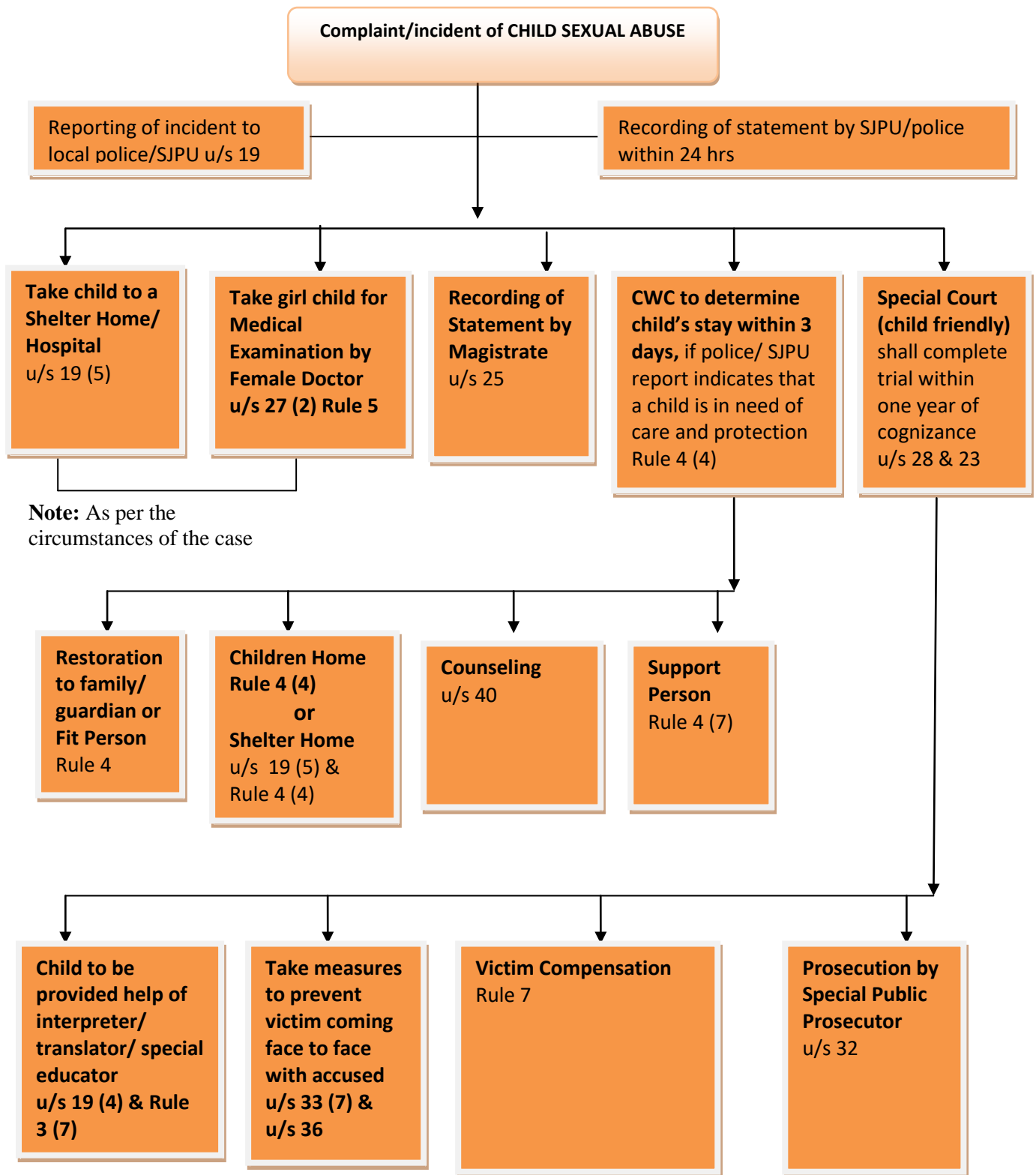
3.2. Flow chart in JJB for CCL between 16-18 years who allegedly commits a Heinous Offence



B (e). Procedures to be followed by CHILDREN’S COURT when a CCL between 16-18 years allegedly commits HEINOUS OFFENCE.



3.3. Brief Flow Chart of POCSO Act, 2012



Note: Mandatory reporting and recording of child sexual abuse case u/s 19 & 20.

4.0. Role of Specialized Juvenile Police Unit (SJPU) under JJ and PCCSO Acts

(a) **Under Section 107 and Rule 86:** State Government shall constitute SJPU in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above, consisting of all police officers and 2 social workers of whom one shall be a woman. Central Government shall constitute a SJPU for the RPF or GRP or a CPWO. SJPU also includes Railway police for dealing with children.

(i) Each police station to have one officer, not below the rank of assistant sub-inspector, designated as child welfare police officer (CWPO) exclusively for children.

(ii) Police officer interacting with children shall be in plain clothes and not in uniform and for dealing with girl child, women police personnel shall be engaged.

(iii) Copy of FIR, copy of investigation report and other relevant documents shall be handover over to the complainant or any person authorized on child's behalf.

(iv) **No accused or suspected accused shall be brought in contact with the child.**

(v) **Where victim and person in conflict with law are both children, they shall not be brought in contact with each other.**

(vi) The names and contact details of the Principal Magistrates, SJPU and CWPO, CCIs, CWCs, JJBs and the Children's Courts shall be available and displayed at police stations. Please check for Model Guidelines of Child Friendly Police Station on www.ncpcr.gov.in

(b) **Section 19 of POCSO Act provides** that when SJPU/local police is satisfied that the child victim is in need of care and protection, it shall:

(i) After recording the reasons in writing, make immediate arrangements to provide him care and protection (including admitting the child into Shelter Home or to the nearest hospital) within 24 hours of the report.

(ii) U/s 19 (6) of POCSO Act, the local police or the SJPU should report to the CWC within 24 hours of receiving information and should also indicate if the child is in need of care and protection; and steps taken by them in this regard.

(iii) Rule 4 (3) of POCSO Rules, 2012 specifies 3 situations in which a child must be produced before a CWC –

(1) there is a reasonable apprehension that the offence has been committed or attempted is likely to be committed by a person living in the same or shared household;

(2) is without parental support;

(3) the child is found to be without any home and parental support.

(c) **SJPU or local police, under POCSO Act,** on receiving information relating to an offence that has been or likely to be committed, should take following steps:

(i) Record the complaint; {Section 19 (2) (a)}

(ii) Assess whether the child is in need of care and protection; {Section 19 (5)}

(iii) Facilitate Emergency Medical Care; {Rule 5 & Section 19 (5)}

(iv) Facilitate Medical Examination; {Rule 4 (2) (c) & Section 19 (5)}

(v) Facilitate Recording of Statement by Magistrate (Section 25)

(vi) Report to the Special Court and Child Welfare Committee; {Section 19 (6)}-

(vii) Provide information to the informant and victim.

5.0. Role of the Child Welfare Committee (CWC) under JJ Act, 2015 & POCSO Act, 2012

(a) **Constitution of CWC – U/s 27** CWC shall be constituted for every district for exercising its powers in relation to CNCP by State Government. It consists of a Chairperson, and 4 other Members of whom atleast one shall be a woman and another, an expert on the matters concerning children. No person shall be appointed for a period of more than 3 years. The appointment of

Member of CWC shall be terminated by the State Government after making an inquiry on any ground mentioned in the Act.

(b) Section 27 provides that **D.M. shall quarterly review functioning of the Committee including by Inspection. The D.M. is the grievances redressal authority for CWC** and anyone connected with the child, may file a petition before the D.M., who shall consider and pass appropriate orders.

(c) Rule 20 of JJ Model Rules, 2016 provides that D.M. shall review the functioning of the CWC including by inspection once every 3 months and also appraise the performance of the Chairperson and the Members of the Committee and submit a report to the Selection Committee constituted under **Rule 87** (Retired Judge of High Court as Chairperson, to be appointed in consultation with Chief Justice of High Court, one representative from Department not below the rank of Director, as ex-officio Member Secretary, 2 representatives from NGOs who has worked for 7 years in area of child development or child protection, 2 representatives from academic bodies or Universities, and a representative of SCPCR).

(d) Support Person to Child Victims under the POCSO Act to be provided by the CWC:

(i) Based on the report of local police/SJPU or on its assessment, u/Rule 4 (7), POCSO Rule, CWC can provide a Support Person to assist the child and family during investigation and trial.

(ii) The SJPU or local police should inform the Special Court (in writing) within 24 hours of the assignment of Support Person, provided by the CWC. {Section 19 (6)}

(iii) Under Rule 4 (8), the Support Person is required to maintain confidentiality and keep the child and the parent/guardian or other person whom the child trusts informed about the proceedings of the case, including available assistance, judicial procedures and potential outcomes and such other support necessary for the child.

(iv) The CWC can terminate the services of Support Person based on request of child/his parent/guardian etc and no reasons need to be assigned. {Rule 4 (10)}

(v) **Child victims under the POCSO Act can also be CNCP:** Section 30 (xiii) of JJ Act requires CWCs to take action for rehabilitation of sexually abused children who are reported as CNCP to it by SJPU or local police.

(e) Upon production, under Rule 4 (4), POCSO Rules, CWC should determine within 3 days whether the child needs to be taken out of the custody of the family or shared household and placed in a Children's Home or Shelter Home. CWC can take the assistance of a social worker to make this determination. Further, **Rule 4 (5), POCSO Rules** specifies 7 factors that should be considered by the CWC whether or not the child should be removed from the custody of its family or shared household. CWC should ensure that the child is not inconvenienced or exposed to injury during this inquiry.

6.0. Role of the Juvenile Justice Board (JJB) under JJ Act, 2015

(a) Chief Judicial Magistrate (CJM) or Chief Metropolitan Magistrate (CMM), u/s 16 shall review pendency of cases of JJB, once in every 3 months, and shall direct the Board to increase frequency of its sittings or may recommend constitution of additional Boards. Information of pendency shall also be furnished by JJB to CJM or CMM and District Magistrate (D.M.).

(b) District Judge shall inspect JJB once every quarter under Rule 12 and appraise the performance of the Members of the Board and submit a report to the Selection Committee.

(c) JJBs should adhere to the child-friendly procedures as under POCSO Act:

Section 34 (1), POCSO Act states that JJ Act would apply if a child commits any offence under the POCSO Act. Proceedings of the JJBs should be held *in-camera*, the child victim should not be exposed to the child alleged to be in conflict with law during the inquiry and procedures laid down in POCSO Act for child victim should be followed, ensuring protection of the child victim.

7.0. Role of Child Friendly Children’s Court under JJ Act, 2015

- (a) On receipt of preliminary assessment from JJB u/s 15, the Children’s Court may decide u/s 19:
 - (i) Need for trial of child as an adult as per provisions of Cr PC, 1973 and pass appropriate orders after trial subject to the provisions of u/s 19 and u/s 21. (Section 19 ((1)(i))
 - (ii) There is no need for trial of child as an adult and may conduct an inquiry as JJB and pass appropriate orders in accordance with provisions of Section 18 {Section 19 (1) (ii)}
- (b) Children’s Court shall ensure:
 - (1) Final order, shall include an **individual care plan** for rehabilitation of child, including follow up by Probation Officer or by DCPU or a Social Worker {u/s 19 (2)}
 - (2) Child who is found to be in conflict with law is sent to a **Place of Safety** till he attains the age of 21 years and thereafter, may be transferred to a jail. {u/s 19 (3)}.
 - (3) Periodic follow up report every year by the Probation Officer or the DCPU or a Social Worker, as required, to evaluate the progress of the child in the **Place of Safety**;
 - (4) No ill-treatment to the child in any form. {Section 19 (4)}
- (c) Reports {u/s 19 (4)} shall be forwarded to the Children’s Court for record and follow up, as may be required. {Section 19 (5)}

8.0. Role of Special Court under POCSO Act, 2012

- (a) Special Court u/s 33 shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court. It shall ensure that child is not called repeatedly to testify in the court. The Special Court shall not permit aggressive questioning or character assassination of child and ensure that the dignity of the child is maintained. It shall also ensure that the identity of child is not disclosed.
- (b) Section 34 provides grant of interim compensation to be paid to the victim during pendency of the case.
- (c) JJ Act, 2015 will apply if the sexual offence has been committed by a person who was below the age of 18 years at the time of alleged offence.
- (d) Section 35 provides that Special Court shall ensure that child’s evidence will be recorded within 30 days of the court taking cognizance of the offence and in the presence of parents of child or any other person in whom child has trust or confidence and trial shall be completed as far as possible within one year.
- (e) Special Court u/s 36 shall ensure that the child does not see the accused at the time of testifying.
- (f) Special Court u/s 37 shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- (g) The services of professionals and experts can be taken u/s 38 in pre-trial and trial stage to assist the child in recording of evidence.
- (h) Special Court to determine (u/s 34 of POCSO Act) whether a person is a child or not.

Special Court should satisfy itself about the age of the person and record its reasons in writing. **Section 94 of JJ Act, 2015** prescribes the process of age determination.

9.0. Role of District Child Protection Unit (DCPU) under JJ Act, 2015

(a) **Under Section 106** State Government shall constitute a Child Protection Society for the State and Child Protection Unit for every district, to ensure the implementation of this Act, including the establishment and maintenance of institutions under this Act.

(b) **Functions of DCPU (Rule 85)** include-

- (i) maintain quarterly information sent by the JJB and CWC;
- (ii) arrange for individual or group counselling and community service for children;
- (iii) conduct follow up of the individual care plan as per direction of the Children’s Court for CCL in the age group of 16 to 18;
- (iv) maintain record of run- away children from CCIs;
- (v) identify families at risk and children in need of care and protection;
- (vi) assess the number of children in difficult circumstances and create district-specific databases to monitor trends and patterns of children in difficult circumstances;
- (vii) facilitate implementation of non-institutional programmes including sponsorship, foster care and after care as per the orders of the Board or the Committee or the Children’s Court;
- (viii) notify the State Government about vacancy in the Board/Committee 6 months before such vacancy arises;
- (ix) provide secretarial staff to the Committees/Boards; and
- (x) maintain register containing contact details of interpreters, translators and special educators in their district under Rule 3 (1), POCSO Rules and should share the same with SJPU, local police, magistrate and Special Court to enable them to make available such services as and when required.

10.0. Medical examination of child victim under POCSO Act/Rules, 2012 (u/s 27)

Medical examination of a child shall notwithstanding whether FIR/complaint has been registered for offences , is conducted in accordance with Section 164A of the Cr.PC. In case the victim is a girl child, the medical examination shall be conducted by a women doctor. Medical examination shall be conducted in the presence of the parents of child or any other person in whom the child reposes trust or confidence. Where, in case, the parent of the child or other person cannot be present, during the medical examination of the child, the medical examination shall be conducted in the presence of a women nominated by the head of medical institution. Please refer to Guidelines & Protocols Medico-legal care for Survivors/victims of Sexual Violence, issued by Ministry of Health and Family Welfare, Government of India: <http://mohfw.gov.in>

11.0. Organizations involved in Rehabilitation of CCL under JJ Act, 2015

(a) **For Short Term Stay**

(a) Observation Home (Section 47)
(b)
‘Observation Home’ is established and maintained in every district o group of districts and is registered for the purpose of temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act. {Section 2 (47) & Section 47}
(ii) <u>Fit Facility (Section 51)</u>

(iii)
'Fit Facility' is run by a governmental organization or NGO, which is prepared to temporarily take the responsibility of a child for a specific purpose as directed by the JJB or the CWC. {Section 2 (27) & Section 51 }
(iv) <u>Fit Person</u> (Section 52)
'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 recognized as fit, by the CWC or, the JJB, to temporarily receive a child for care, protection and treatment of such child for a specified period. {Sections 2 (28) & Section 52 }
(b) <u>For Long Term Stay</u>
(i) <u>Special Home</u> (Section 48)
'Special Home' is established by State Government or by a voluntary or NGO registered under section 48, for housing and providing rehabilitative services to CCL, who are sent to such institution by an order of the Board. {Section 2 (56) & Section 48)}
(ii) <u>Place of Safety</u> (Section 49)
Place of Safety means any place or institution, not being a police lockup or jail, established separately or attached to an Observation Home/Special Home, person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order. {u/s 2 (46) & 49}.

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

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

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

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



*Complaints can also be sent in person,
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