READY RECKONER

on

The Juvenile Justice
(Care and Protection of Children) Act, 2015
and Model Juvenile Justice Rules, 2016

National Commission for Protection of Child Rights (NCPCR)
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I. Objectives of the Act.

The Act creates a robust legal framework for the protection of the rights of all children whether alleged or found to be in conflict with law or children in need of care and protection. Child is defined as a person who has not completed 18 years of age (Section 2 (12)). The Act also recognizes Rights of the child such as of:

i. Participation and to be heard in all processes and decisions affecting his interest with privacy & confidentiality and having an interpreter/translator;

ii. Non-discrimination, equality and access to free legal aid; legal representation. (Sections 3, 8 and Rule 7)

II. Offences against Child under the Act
(Sections 74 to 85 read with Rules 56, 57, 58, 59, 60)

1. Disclosure of identity;
2. Cruelty;
3. Employment of child for begging and illegal activities;
4. Giving of intoxicating liquor or narcotic drugs or psychotropic substance to child;
5. Using of child for vending, peddling, carrying, supplying or smuggling of Intoxicating liquor, narcotic drug or psychotropic substance;
6. Exploitation of child employee;
7. Adoption without following prescribed procedure;
8. Sale and procurement of children;
9. Corporal punishment;
10. Use of child by militant groups;
11. Kidnapping and abduction;

III. Important Definitions —

1. “abandoned child” means a child deserted by biological/adoptive parents/guardians, as declared by CWC;
2. “child in conflict with law” (CCL) means a child who is alleged/found to have committed an offence;
3. “child in need of care and protection” means a child who is—
   i. homeless/without any means of subsistence/living on the street; or
   ii. working in contravention of labour laws or begging, or used for illegal activities; or
   iii. resides with a person (guardian) who has injured/exploited/abused/neglected/threatened to kill the child; or abused for unconscionable gains; or
   iv. mentally ill/mentally/physically challenged/suffering from terminal or incurable disease, with no support or look after/having parents or guardians unfit to take care; or
   v. missing/run away child, or whose parents cannot be found after inquiry; or
   vi. has been/is being/likely to be sexually abused, tortured or exploited; or
   vii. vulnerable and likely to be inducted into drug abuse or trafficking; or
   viii. victim of/affected by any armed conflict/civil unrest or natural calamity; or
   ix. at imminent risk of marriage before attaining the age of marriage;
4. “Child Welfare Officer” is an officer attached to a Children’s Home;
5. “Child Welfare Police Officer” is an officer thus designated under Section 107 (1);
6. “Children’s Home” is established, maintained and registered, by State Government;
(7) Children's Court/Special Court is established under POCSO Act 2012.

(8) “Child Care Institution” means Children’s Home, Open Shelter, Observation Home, Special Home, Place of Safety, Specialized Adoption Agency and Fit Facility;

(9) “Court” means a civil court, with jurisdiction in matters of adoption and guardianship;

(10) Corporal punishment means physical punishment for purpose of disciplining child.

(11) "Childline services" is a 24×7 emergency outreach service for children in crisis;

(12) "District Child Protection Unit" (DCPU) ensures implementation of this Act;

(13) "Fit Facility" is a registered organization to temporarily keep a particular child;

(14) "Fit Person" is a person who owns the responsibility of a child, for a specific purpose;

(15) “Foster Care” is placement of a child, by CWC in alternate care;

(16) "Heinous Offences" for which minimum punishment is imprisonment for 7 years or more;

(17) "Observation Home" is established and registered by State Government;

(18) "Open Shelter" is established and maintained by State Government;

(19) "Orphan" is a child without biological or adoptive parents or legal guardian.

(20) "Petty Offences" for which maximum punishment is imprisonment of up to 3 years;

(21) "Place of Safety" means any place or institution, not being a police lockup or jail, established separately to take care of the children alleged or found to be in conflict with law;

(22) "Probation Officer" is appointed under Probation of Offenders Act, 1958 or under DCPU;

(23) "Prospective Adoptive Parents” (PAP) means a person or persons eligible to adopt a child;

(24) "Serious Offences" for which punishment is imprisonment between 3 to 7 years;

(25) "Special Juvenile Police Unit” (SJPU) is a unit designated for handling children;

(26) "Special Home” is an institution established for housing of children, who are found to have committed an offence;

(27) "Specialized Adoption Agency” is an institution registered and established for housing orphan, abandoned and surrendered children, for adoption;

(28) "Surrendered Child” is relinquished by the parent or guardian to CWC;

(29) Juvenile Justice Board (JJB).
   (i) is constituted for every district for exercising powers relating to children in conflict with law.
   (ii) JJB shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class (Principal Magistrate) and two social workers of whom at least one shall be a woman.

(30) Child Welfare Committee (CWC):
   (i) is constituted for every district for exercising the powers in relation to children in need of care and protection.
   (ii) CWC shall consist of a Chairperson, and four other members of whom at least one shall be a woman and another, an expert on the matters concerning children.

IV. Presumption and determination of Age by CWC/JJB:

(a) Based on the obvious appearance of the person, the CWC/JJB shall record age of child as nearly as may be and proceed with the inquiry (Section 19 (1)).

(b) In case of reasonable doubt, CWC/JJB, shall undertake process of age determination, by seeking -
   (i) date of birth certificate from school, or matriculation or equivalent certificate; or
   (ii) certificate given by a corporation/municipal authority/panchayat;  
   (iii) only in absence of (i) and (ii) above, age shall be determined by an ossification test etc. within 15 days.

(c) Age recorded by CWC/JJB to be the age of such person shall be deemed to be the true age of person[Section 94 (3)].
Flow Chart of Processes for Child in Need of Care and Protection (CNCP)

1. Mandatory reporting (Section 32)
   - Production before CWC within 24 hours (Section 31)
   - Inquiry to be conducted by CWC (Section 36)
   - During pendency of inquiry Child is placed in Children’s Home or in Fit Facility or with Fit Person or Specialized Adoption Agency or Foster Family (Section 36 (1))
   - Social investigation by Social Worker/ CWO/ CWPO within 15 days (Section 36 (2))

2. CWC, on receipt of social investigation report, will (Section 37)
   - Declare child as CNCP (Section 37 (1)(a))
   - Restore child to family (Section 37 (1)(b))
   - Send child to Children's Home or Fit Facility or SAA for long term or temporary care (Section 37 (1)(d))
   - Place child with Fit Person for long term or temporary care (Section 37 (1)(e))
   - Declare child legally free for adoption (Section 37 (1)(h) & Section 38)

3. Situation of child to be reviewed by CWC (Section 36 (3))
   - Child on attaining the age of 18 years may be provided financial help for re-integration in mainstream society (Section 46)
   - Specialized Adoption Agency (SAA) to put up child on CARINGS

4. • Surrendered child may be declared legally free for adoption.
   • Abandoned/ Orphaned Child below 2 years is to be declared legally free for adoption in 2 months time;
     Child above 2 years is to be declared legally free for adoption in 4 months time.
     (Section 37 (1)(f), (g) & Section 45)
Overview of Adoption Process (Sections 56 to 70 and Rules 32 to 49)
(under New Adoption Guidelines 2015)

Pre-Adoption Process

CWC declares child legally free for adoption
(Section 38 & Rule 43)

Specialized Adoption Agency (SAA) (Section 65)

Child Registration on CARINGS (www.carings.nic.in)

Flow Chart of Adoption Process Within Country

Step-1: Prospective Adoptive Parent (PAP) to register on CARINGS for selection of preferred SAA for Home Study Report (HSR) and indicate from where they wish to adopt.

Step-2: User ID and Password generated (Acknowledgement letter). PAP to upload documents within 30 days of registration.

Step-3: Registration number generated. SAA conducts HSR of the PAP and uploads it on CARINGS (online).

Step-4: Suitability of PAP is examined (if not suitable, PAP informed of rejection and reasons for rejection are recorded). PAP reserves 1 child, as per their preference.

Step-5: PAP visits SAA within 15 days from the date of reservation and finalizes child.

If child is not finalized within stipulated time, PAP will lose seniority.

Step-6: On acceptance of child by PAP, SAA completes referral and adoption process (in CARINGS). PAP takes child in pre-adoption Foster Care and SAA files petition in the Adoption Court.

Step-7: Adoption Court order issued. Post-adoption follow up is conducted for a period of 2 years.

Flow Chart of Adoption Process (Inter Country)

Step-1: Prospective Adoptive Parent (PAP) residing in foreign country may contact the nearest Authorized Foreign Adoption Agency (AFAA) or Central Authority (CA) for registration, to adopt a child from India. In case of foreign citizen residing in India, they have to register online on CARINGS.

Step-2: Home Study Report (HSR) and documents are uploaded online CARINGS by AFAA/CA. HSR is approved by CARA.

Step-3: AFAA reserves child, as per the preference of PAP, within a period of one month. If the case is not finalized within stipulated time, the PAP will lose seniority.

Step-4: SAA completes the referral and adoption process (in CARINGS). Original dossier sent by AFAA/CA to SAA.

Step-5: On receipt of the acceptance of the child from the PAP, the SAA shall file an application in the court for obtaining the adoption order.

Step-6: Dossier received at SAA and then Conformity is issued. Departure of Child.

Step-7: Citizenship given to child in country of adoption.

Step-8: Post-adoption follow up is conducted for a period of 2 years.

Source: Central Adoption Resource Agency (www.cara.nic.in)
VI. Flow chart for dealing with CHILD IN CONFLICT WITH LAW (CCL)
A. PROCESS AT POLICE STATION [Sections 10 & 13]

**Child alleged to be in Conflict with Law**

For Petty/Serious offences
- Police records the complaint in general daily diary, releases child on undertaking and forwards the information to Juvenile Justice Board (JJB). Police will also forward Social Background Report to JJB. (Rule 8 (1))

For Heinous offences
- SJPU/CWPO to register FIR & forward to JJB (Rule 8 (1)). Child may be apprehended.

Police immediately informs parents/guardian and DLSA to provide legal aid (Rule 8 (3) (vii) & Section 13 (1)(i))

Police informs Probation Officer or CWO to prepare and submit within two weeks social investigation report to JJB. (Section 13 (1)(ii))

Apprehended child to be brought before JJB within 24 hours. He may be released on bail by police or JJB with or without surety or placed under supervision of a probation officer or under care of any Fit Person (Section 12 (1)).

When such apprehended CCL is not released on bail by police, he may be sent to an Observation Home till he is brought before JJB and in any case within 24 hours of his being apprehended. (Section 12 (2) & Rule 8 (3) (i))

CCL produced before the JJB will be accompanied with CWPO or Case Worker (Section 10 (1)&Rule 8 (2)(iii))

**A (a). Procedure at Police Station**

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<tr>
<th>DOs (Section 10 &amp; Rule 8)</th>
<th>Don’t (Section 10 &amp; Rule 8)</th>
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<tr>
<td>• Child to be taken to Child Friendly Corner/room.</td>
<td>• No FIR is to be registered against a CCL except in a Heinous offence or offence committed jointly with adult.</td>
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<tr>
<td>• Child should be produced before JJB within 24 hours.</td>
<td>• Child should not to be kept in Police Station or lock up or an adult Jail.</td>
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<td>• CWPO should be in plain clothes and not in uniform.</td>
<td>• Child will not be hand cuffed/chained/fettered.</td>
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<td>• Use of any coercion or force on the child is prohibited.</td>
<td>• Child shall not be asked to sign any statement.</td>
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<tr>
<td>• Inform the child promptly and directly of the charges levelled against him through his parent or guardian.</td>
<td>• Child shall not be compelled to accept his guilt.</td>
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<tr>
<td>• Copy of FIR should be provided to child or copy of the police report should be given to the parent or guardian.</td>
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<tr>
<td>• Provide appropriate medical assistance, assistance of interpreter or a special educator, or any other assistance which the child may require.</td>
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<tr>
<td>• Inform the District Legal Services Authority (DLSA) for providing free legal aid to the child.</td>
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B. PROCESSES IN JUVENILE JUSTICE BOARD

B. (a) FLOW CHART IN CASES OF PETTY OR SERIOUS OFFENCES BY ALL CHILDREN AND HEINOUS OFFENCES BY CHILDREN UPTO 16 YEARS OF AGE [Sections 13, 14, 17, 18 and Rules 9, 10 and 11]

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

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

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

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

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

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

B (b) INQUIRY IS TO BE COMPLETED WITHIN 4 MONTHS, EXTENDABLE BY 2 MORE MONTHS ONLY.

B (c) PROCESSES IN A HEINOUS OFFENCE BY CCL BETWEEN 16-18 YEARS

Juvenile Justice Board (JJB) (Sections 14, 15, 19 and Rule 10A)

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

JJB passes an order for rehabilitation of CCL where it is satisfied on preliminary assessment that matter should be disposed off by Board. JJB shall follow the procedure for Trial as in a Summons Case in accordance with the Code of Criminal Procedure, 1 973 (Section 15 (2) & Section 18(1) & (2))
On receipt of preliminary assessment from JJB (Section 15) the Children’s Court may decide (Section 19)

There is a need for trial of the child as an adult as per the provisions of Cr PC, 1973 and pass appropriate orders after trial subject to the provisions of Section 21 considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere. (Section 19 ((1)(i)))

There is no need for trial of the 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))

Children’s Court shall ensure that the final order, with regard to child shall include an individual care plan for rehabilitation of child, including follow up by Probation Officer or by DCPU or a Social Worker (Section 19 (2))

Children’s Court shall ensure that the 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, the person may be transferred to a jail. (Section 19 (3)).

Children’s Court shall ensure that there is a 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 and to ensure that there is no ill-treatment to the child in any form. (Section 19 (4))

Reports (Section 19 4)) shall be forwarded to the Children’s Court for record and follow up, as may be required. (Section 19 (5))

B (d). Destruction of records: The records of conviction of a child in conflict with law shall be kept in safe custody till the expiry of the period of appeal or a reasonable period, and thereafter destroyed by the Person-in-charge or Board or Children’s Court, as the case may be.

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of Section 19 (1) of the Act, the relevant records of conviction of such child shall be retained by the Children’s Court. (Section 24)

VII. Appeals and Revisions under the Act

Provisions for appeals and revisions against an order of CWC/JJB/Children’s Court have been provided under Sections 101 and 102 of the JJ Act, 2015.