Handbook for
ENDING VIOLENCE AGAINST CHILDREN
II- Overview of Laws
ACKNOWLEDGEMENTS

This Handbook finds its genesis on the dire need felt by watching many helpless children and families dealing with violence suffered by them. The first appreciation therefore rightly goes to all those children who despite adversities have shown great resilience in navigating through an unfriendly and alien system seeking redressal. Within the NCPCR, the process was led by the Chairperson, Ms.Stuti Kacker who steered from its conception to conclusion.

CREDITS:

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Assistants: Ms.Joshita Pai and Ms.Rajkumari Banju Advocates.

ChildFund Team: Mr.Thilakaratane Mudiyanselagae. Programme Director - Strategy and Impact Mr.Pankaj Mehta, Head - Child Protection

This document is a product of the National Commission for the Protection of Child Rights (NCPCR) and ChildFund India with contributions from Ms.Aparna Bhat, Advocate, Supreme Court of India.

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Handbook for
ENDING VIOLENCE
AGAINST CHILDREN
II- Overview of Laws
The official data on crimes against children and the corresponding data on effective and successful prosecution, reflects the enormous failure of the existing system in adequately responding to, ending and preventing violence against children. Multiple factors come to play when a case of violence emerges, and an efficient response would be one where the concerned stakeholder is in a position to understand the nuances of the law and its application.

It is therefore important that legislations relating to children are completely understood and updated by the law enforcement officers through regular orientation and training. Unfortunately, the large number of cases that get reported and need action do not leave much space and avenues for regular training. Manuals and handbooks which de-mystify the laws and make it available at one place instead of requiring the stakeholder to refer to multiple documents should be able to aid and assist in the learning process.

This initiative of the National Commission for Protection of Child Rights in compiling these statutes concerning violence against children along with a suggested SOP for each stakeholder spread across diverse legislations is perhaps the most exhaustive document on this subject in recent times. I congratulate the Chairperson, Ms. Stuti Kacker and her entire team for taking this initiative.

I also congratulate the Childfund Team and the consultant Ms. Aparna Bhat, an advocate practicing in the Supreme Court in preparing this Manual and further disseminating it. I also congratulate Ms. Ramya Subrahmanian on her document on the preventive aspects of violence. It is noteworthy that a simultaneous digital launch of the document has been contemplated which will ensure a wider outreach.

My best wishes to all those who were involved in putting these documents together and continuing their good work on the subject.

NEW DELHI
11th September, 2018

(Madan B. Lokur)
FOREWORD

Mapping of NCRB data of crimes against children indicated that from 2009 onwards, crime against children had increased rapidly. Now in 2016, the number of instances reported were 1,06,958 reaffirming this increasing trend, which indicates that besides the stark instances of abuse and violence, the society is not valuing its children.

I realized that addressing violence is the most critical part of addressing issues relating to protection of rights of children. Children tend to seek support from unknown places when conventional structures fail them or turn to crime when they can. Abusing a child leaves a permanent mark on the child hampering the development of the child’s potential. The cycle of abuse creates a web leading to children getting more disturbed or in many cases becoming perpetrators of violence towards themselves, their peers, younger children and at times adults. Research indicates that childhood violence leads to significant social and economic loss to the Nation.

The present document prepared in three volumes is an attempt to addressing violence in childhood holistically.

In this effort, I am grateful for the support the Commission received, from Childfund India, particularly from Ms. Neelam Makhijani, Country Director who was a wonderful collaborator in ensuring this document is prepared. I also congratulate Ms. Ramya Subrahmanian, for her elaborate account on prevention of violence despite the complete lack of information on prevention initiatives in India. I am also happy to have got the support from Ms. Aparna Bhat, Advocate in the preparation of the legal aspects of prevention of violence against children.

Within the Commission, besides my Members, I am grateful for the continued support I received from our Advisor (JJ and POCSO) Mr. Kulbir Krishan and Sr. Consultant (JJ and POCSO) Mr. Dhaniram and for the effort they made in bringing these documents to a logical conclusion.

(Stuti Kacker)
10.09.2018
Foreword

The issues related to exploitation of children and violence against them is quite prevalent in India as well as worldwide. ChildFund resolutely believes that all children have an inherent and universal right to a life free from violence, abuse, exploitation and neglect to survival and development, and is committed to foster an enabling environment where children can grow to their fullest potential. ChildFund India has been making persistent efforts to achieve the Sustainable Development Goals with special focus on Sub Goal 16.2 - towards ending all forms of abuse, exploitation and violence against children by integrating Child Protection in all its programs.

To strengthen the rights of children in India, ChildFund India in association with the National Commission for Protection of Child Rights (NCPCR), has developed an overarching framework to prevent violence against children. This includes operating procedures for key stakeholders under various legislations related to protection of our children.

In this endeavor, ChildFund worked with the team at NCPCR, child protection specialists and legal experts. The work comprises of 3 volumes: 1) Situational analysis of childhood violence in India; 2) Demystification and unpacking of laws related to protection of children; and 3) User handbook of procedures related to key stakeholders mandated for protecting and combating childhood violence.

I am grateful to Ms. Stuf Kacker, Chairperson, NCPCR, for her leadership, passion and believing in ChildFund India, the team at NCPCR for extending their support for framing a robust and holistic framework - setting our steps towards a global mandate on ending violence against children.

It has been an insightful and a learning experience to work with Advocate Aparna Bhat of the Supreme Court of India, and her team to help us delve in deeper and look at legal frameworks and stakeholder portfolios for enhancing the scope of programming around child protection.

I hope that this knowledge will be used by duty-bearers to protect and safeguard our vulnerable children so that they can realize their full potential and achieve their dreams!

Date: 11/09/2018

Neelam Mehta
CEO and Country Director
ChildFund India

Program States:
Andhra Pradesh, Telangana, Bihar, Chhattisgarh, Delhi, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Puducherry, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal

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<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Content</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>How to Use the Handbook</td>
<td>15</td>
</tr>
<tr>
<td>3</td>
<td>Table of offences</td>
<td>17</td>
</tr>
<tr>
<td>4</td>
<td>The Constitution of India, 1950</td>
<td>45</td>
</tr>
<tr>
<td>5</td>
<td>Juvenile Justice (care and protection of children) Act, 2015</td>
<td>47</td>
</tr>
<tr>
<td>6</td>
<td>The Protection of Children from Sexual Offences Act, 2012</td>
<td>65</td>
</tr>
<tr>
<td>7</td>
<td>The Prohibition of Child Marriage Act, 2006</td>
<td>75</td>
</tr>
<tr>
<td>8</td>
<td>The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986</td>
<td>79</td>
</tr>
<tr>
<td>9</td>
<td>Rights of Children to Free and Compulsory Education Act, 2009</td>
<td>83</td>
</tr>
<tr>
<td>10</td>
<td>The Immoral Traffic (Prevention) Act, 1956</td>
<td>89</td>
</tr>
<tr>
<td>11</td>
<td>The Information Technology Act, 2000</td>
<td>97</td>
</tr>
<tr>
<td>12</td>
<td>The Rights of Persons With Disabilities Act, 2016</td>
<td>101</td>
</tr>
<tr>
<td>13</td>
<td>The Mental Healthcare Act, 2017</td>
<td>109</td>
</tr>
<tr>
<td>14</td>
<td>Medical Termination of Pregnancy Act, 1971</td>
<td>115</td>
</tr>
<tr>
<td>15</td>
<td>The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989</td>
<td>117</td>
</tr>
<tr>
<td>16</td>
<td>Guardians and Wards Act, 1890</td>
<td>119</td>
</tr>
</tbody>
</table>
INTRODUCTION
Every child today has the potential of being a child subjected to violence given certain regressive human behavior in the progressive manner. In 2006, the then UN Secretary General, Kofi Annan had said “States bear primary responsibility for preventing and responding to violence against children and for upholding the Convention on the rights of the child and other treaties which guarantees girls and boys everywhere the right to live their lives free from violence. There must be action from all sectors, from health and education to labour and justice”. While prevention of violence is a preferred intervention, law enforcement response becomes inevitable post violence. Despite documentation that there is poor reporting on violence against children, the reported figures are startling. As technology and innovation progresses, the nature of violence perpetrated on children is also taking newer dimensions overwhelming all the stakeholders.

State responses to violence more often than not, culminate in the introduction of new legislations and creating new agencies to implement the same while struggling to meet the institutional demands each such legislation warrants. Consequently, the same law enforcement is faced with the mammoth challenge of having to implement the new laws with their old training and support services. The new cadres created with each legislation also navigate through these processes and the stark contradictions between the paper and reality. Meanwhile, the number of children facing violence and the nature of violence continue to increase.

Laws addressing violence against children are meant to enhance their protection. However, studies do not indicate any significant advantage or benefit that the children have got post these legislations. Anecdotal reports post interactions with law enforcement officers indicate that the laws have progressed but the training has not and hence they fail in matching the manner in which the perpetrators manage to manipulate the very same law that is meant to protect the children. Application of the law does not necessarily involve a single legislation in a given case. A combination of multiple statutes would have to be used to understand which is best suited to the peculiar facts of each case. This application requires besides experience, a thorough understanding of the law and the institutions created under it, the role played by each institute/stake holder and the appropriate manner in which they can be engaged.

A desk review of a wide range of literature on the subject indicated that there are some excellent pieces of work on various laws. However, a comprehensive single document dealing with multiple laws targeted at all stakeholders was not available.

The present handbook is an attempt to fill that deficit.
HOW TO USE THIS HANDBOOK
Law enforcement is key in dealing with violence against children. There are diverse laws trying to address various aspects of violence with the overarching Penal Code. In certain instances there are laws in different statutes addressing the same category of violence, more often than not, without not making any reference to each other. Any member of law enforcement would be intrigued and overwhelmed with the legal provisions overlapping and dealt with divergent authorities. Consequently, children, despite best efforts, end up losing the advantages that was designed in the statutes and the rules to benefit them and support them positively. The present endeavour is to assist all the stake holders to understand the law, their roles in it and the roles played by other stake holders. It is designed in a way to facilitate optimum utilisation by multiple stake holders. The handbook is also written with the understanding that the police is the key law enforcement agency even for children with their role modified to suit the sensitive nature of the beneficiary. The underlying theme being violence against children, the aspects relating to civil remedies, though mentioned, have not been deliberated upon. They are introduced for the purposes of context and in some instances for highlighting the rights of the children.

The handbook is divided into three Volumes. Volume I presents the situational analysis of violence against children. Volume II of the handbook is demystifying certain statutes by explaining the framework of the statute, key provisions, key authorities created in the statute, offences and penalties and other beneficial provisions. In addition to that, there is a comprehensive table listing out all the offences against the children, the nature of the offence and the punishment that can be imposed.

Volume III of the handbook is the actual SOP targeting at the following stakeholders.

a. Police/SJPU/CWPO
b. Child Welfare Committee;
c. State Child Protection Society;
d. District Child Protection Unit;
e. Social workers/Probation officers
f. Medical Professionals
g. Special provisions for Prosecutors;
h. Special Provisions for Juvenile Justice Board, Children’s Court and Special Court.

Convergence of roles and services is another key link for providing better services especially to the vulnerable group amongst the children. It is hence important for each stakeholder to know the simultaneous role of others. This handbook puts all the roles together for easy reference of everyone.
TABLE OF OFFENCES
<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OFFENCES UNDER THE INDIAN PENAL CODE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abetment of suicide of a child or an insane person:</td>
<td>whoever abets the commission of such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.</td>
<td>Cognizable, non-bailable; Triable by Court of Session and non-compoundable</td>
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<tr>
<td><strong>Section 305:</strong> Abatement of suicide of a child or an insane person:</td>
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<tr>
<td>If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide</td>
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<tr>
<td><strong>Offence of being a thug:</strong></td>
<td>Whoever is a thug, shall be punished with imprisonment for life, and shall also be liable to fine.</td>
<td>Cognizable and non-bailable; Triable by Court of Session; Non-compoundable</td>
</tr>
<tr>
<td><strong>Section 310:</strong> Offence of being a thug:</td>
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<tr>
<td>Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.</td>
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<tr>
<td><strong>Exposure and abandonment of child under twelve years, by parent or person having care of it:</strong></td>
<td>Shall be punished with imprisonment of either description for a term, which may extend to seven years, or with fine, or with both. If as a result of such abandonment or exposure, the child dies, then this section will not prevent the legal charges of culpable homicide or murder</td>
<td>Cognizable and Bailable; Triable by Magistrate of the first class; Non-compoundable</td>
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<tr>
<td><strong>Section 317:</strong> Exposure and abandonment of child under twelve years, by parent or person having care of it:</td>
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<tr>
<td>Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child</td>
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</tr>
<tr>
<td><strong>Concealment of the birth of the child by secret disposal of the dead body:</strong></td>
<td>With imprisonment of either description for a term, which may extend to two years, or with fine, or with both.</td>
<td>Cognizable and Bailable; Triable by Magistrate of the first class; Non-compoundable</td>
</tr>
<tr>
<td><strong>Section 318:</strong> Concealment of the birth of the child by secret disposal of the dead body:</td>
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<tr>
<td>Whoever, by secretly burying or otherwise disposing of the death body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child</td>
<td></td>
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<tr>
<td><strong>Offences pertaining to Kidnapping:</strong></td>
<td></td>
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<tr>
<td>Offence of kidnapping a child from lawful guardianship:</td>
<td>Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.</td>
<td>Cognizable and Bailable; triable by the Magistrate first Class;</td>
</tr>
<tr>
<td><strong>Section 361:</strong> Offence of kidnapping a child from lawful guardianship:</td>
<td>(For this section, a minor is a boy aged below 16 years of age or a girl below 18 years of age)</td>
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<tr>
<td>Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.</td>
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<tr>
<td><strong>Section 364:</strong> Kidnapping or abducting in order to murder:</td>
<td>Shall be punishable with imprisonment for life or rigorous imprisonment for a term, which may extend to ten years, and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Triable by Court of Session; Non-compoundable</td>
</tr>
<tr>
<td>Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered:</td>
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</tbody>
</table>

1 The offence of kidnapping under the Juvenile Justice Act is non-bailable by the virtue of section 86 of the Act; 
2 The offence under of kidnapping in order to murder under JJ Act shall be triable by the Children’s Court;
<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offence of kidnapping or maiming a minor for purposes of begging:</td>
<td></td>
<td>Cognizable and Non-Bailable; Triable by Magistrate of the first class and Sessions Court; Non-compoundable</td>
</tr>
<tr>
<td><strong>Section 363A, IPC</strong></td>
<td></td>
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<td>In this section:</td>
<td></td>
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<td>(a) &quot;begging&quot; means—</td>
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<tr>
<td>(i) soliciting or receiving alms in a public place, whether under the pretense of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;</td>
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<td>(ii) entering on any private premises for the purpose of soliciting or receiving alms;</td>
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<tr>
<td>(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;</td>
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<tr>
<td>(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;</td>
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<tr>
<td>(b) 'minor' means—</td>
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<tr>
<td>(i) in the case of a male, a person under sixteen years of age; and</td>
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<tr>
<td>(ii) in the case of a female, a person under eighteen years of age.</td>
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<tr>
<td>Kidnapping for ransom, etc.: <strong>Section 364A</strong></td>
<td>Punishable with death, or imprisonment for life, and shall also be liable to fine.</td>
<td>Cognizable and non-bailable; Triable by Court of Session; Non-compoundable</td>
</tr>
<tr>
<td>Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay:</td>
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<td>Kidnapping or abducting with intent secretly and wrongfully to confine person: <strong>Section 365</strong></td>
<td>Shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.</td>
<td>Cognizable; Non-bailable; triable by a magistrate of the 1st Class; Non-compoundable</td>
</tr>
<tr>
<td>Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined</td>
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<tr>
<td>Kidnapping/abducting or inducing woman to compel her marriage: <strong>Section 366</strong></td>
<td>Imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;</td>
<td>Cognizable and non-bailable; triable by Court of Session; Non-compoundable</td>
</tr>
<tr>
<td>Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse</td>
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1. Under the JJ Act, the offence shall be triable by the Children’s Court;
2. Under JJ Act, triable by the Children’s Court;
3. Triable by Children’s court under JJ Act;
4. Under the JJ Act, the offence shall be triable by the Children’s Court;
<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Kidnapping or abducting in order to subject person to grievous hurt, slavery:</strong> <em>Section 367</em></td>
<td>Punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Non-compoundable;</td>
</tr>
<tr>
<td>Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of</td>
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<tr>
<td><strong>Section 368:</strong> Wrongfully concealing or keeping in confinement, kidnapped or abducted person —</td>
<td>Shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.</td>
<td>Cognizable; Non-bailable;</td>
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<tr>
<td>Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person,</td>
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<tr>
<td><strong>Kidnapping or abducting a child to steal her/his belongings:</strong> <em>Section 369:</em></td>
<td>Shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Triable by a magistrate;</td>
</tr>
<tr>
<td>Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child</td>
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</tr>
<tr>
<td><strong>Disclosure of identity of the victims of certain offences:</strong> <em>Section 228A:</em></td>
<td>Imprisonment of either description for a term, which may extend to two years and shall also be liable to fine.</td>
<td>Cognizable and bailable</td>
</tr>
<tr>
<td>(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed</td>
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<tr>
<td><strong>Section 228A (3) provides:</strong></td>
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<tr>
<td>Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.</td>
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<tr>
<td>Exception:</td>
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<td><strong>Section 228A(2):</strong></td>
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<tr>
<td>Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—</td>
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<tr>
<td>(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or</td>
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<td>(b) by, or with the authorisation in writing of, the victim; or</td>
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<tr>
<td>(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim: Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation, Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.</td>
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</table>

* Triable by Children’s Court under JJ Act.
<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procuration of a minor girl (under eighteen years of age): <strong>Section 366A</strong></td>
<td>Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment, which may extend to ten years, and shall also be liable to fine.</td>
<td>Cognizable, non-bailable; Triable by Court of Session; Non-compoundable:</td>
</tr>
<tr>
<td>Importation of a girl from foreign country: <strong>Section 366B:</strong></td>
<td>Whoever imports into any country outside India (or from the State of Jammu and Kashmir) any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.</td>
<td>Cognizable, non-bailable</td>
</tr>
</tbody>
</table>

### Offences Pertaining to Trafficking:

| Offence of trafficking: **Section 370 of the IPC** | Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine. **[Section 370(2)]** | Cognizable, non-bailable |
|                                                | Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine. **[Section 370(3)]** |                                |
|                                                | **[Section 370(7):]** When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine. |                                |

| The offence of trafficking a Minor: **Section 370 (4)** | Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. **[Section 370(4)]** | Cognizable, non-bailable |

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2 Triable by the Children’s Court under the JJ Act
<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
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<tbody>
<tr>
<td><strong>Section 370A: Exploitation of a trafficked person:</strong></td>
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<tr>
<td>Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner [Section 370A (1)]</td>
<td>Shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.</td>
<td>Cognizable, non-bailable</td>
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<tr>
<td><strong>Section 370A (2): Sexual exploitation of a trafficked person:</strong></td>
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<tr>
<td>Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner (Section 370A [2])</td>
<td>Shall be punished with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine.</td>
<td>Cognizable, non-bailable; Triable by Court of Session;</td>
</tr>
<tr>
<td><strong>Offence of selling a minor for the purpose of prostitution: Section 372</strong></td>
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<tr>
<td>Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose</td>
<td>Shall be punished with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine.</td>
<td>Cognizable, non-bailable; Triable by Court of Session; Non-compoundable;</td>
</tr>
<tr>
<td><strong>Offence of buying a minor for the purpose of prostitution: section 373</strong></td>
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<tr>
<td>Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any such purpose</td>
<td>Such a person shall be punished with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine.</td>
<td>Cognizable, non-bailable; Triable by Court of Session and non-compoundable;</td>
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<td><strong>Section 375: Rape:</strong></td>
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<td>A man is said to commit “rape” if he—</td>
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<td>a. penetrated his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or</td>
<td>(Section 376). Whoever, except in the cases provided for in subsection (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.</td>
<td>Cognizable and non-bailable</td>
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<tr>
<td>b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or</td>
<td>376(2) provides that Whoever,—</td>
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<tr>
<td>c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any — of body of such woman or makes her to do so with him or any other person; or</td>
<td>a. being a police officer, commits rape—</td>
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<tr>
<td>d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person; or</td>
<td>i. within the limits of the police station to which such police officer is appointed; or</td>
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<td>ii. in the premises of any station house; or</td>
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<td>iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or</td>
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<td>b. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or</td>
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<td>c. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or</td>
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<td></td>
<td>d. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or</td>
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<tr>
<td>Nature of Offence</td>
<td>Offence</td>
<td>Punishment</td>
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<tr>
<td>Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.</td>
<td>e. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or g. commits rape during communal or sectarian violence; or h. commits rape on a woman knowing her to be pregnant; or i. commits rape on a woman when she is under sixteen years of age; or j. commits rape, on a woman incapable of giving consent; or k. being in a position of control or dominance over a woman, commits rape on such woman; or l. commits rape on a woman suffering from mental or physical disability; or m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.</td>
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<tr>
<td>Sixthly.—With or without her consent, when she is under eighteen years of age.</td>
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<td>Seventhly.—When she is unable to communicate consent.</td>
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<tr>
<td>Exception I— A medical procedure or intervention shall not constitute rape.</td>
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<tr>
<td>Exception II—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.</td>
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</table>

**Offences Against Unborn Child:**

**Causing miscarriage: Section 312**

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman Punishable with imprisonment of either description for a term extending to three years or fine or with both.

If the woman is quick with child, i.e., she can sense the movement of the foetus, then she shall be punishable with imprisonment [of either description] for a term extending up to 7 years and shall be liable to fine.

This section applies to a woman who causes herself to miscarry.

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<thead>
<tr>
<th>Nature of Offence</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Causing miscarriage: Section 312</td>
<td></td>
<td>Non-cognizable and bailable; Triable by the Magistrate of the first class;</td>
</tr>
<tr>
<td>If the offence under section 312 is committed without the consent of the woman: Section 313</td>
<td>With imprisonment for life or with imprisonment of either description extending up to 10 years and will be liable to fine.</td>
<td>Cognizable and non-bailable; Triable by a Court of Session;</td>
</tr>
<tr>
<td>Death caused by act done with intent to cause miscarriage: Section 314</td>
<td>Shall be liable to be punished with imprisonment of either description for a term may extend to ten years, and shall also be liable to fine; It is not necessary for the purpose of this offence, that this offence that the offender should know that the act is likely to cause death. The section further provides that if the act is done without the consent of the woman, then the person shall be punished with imprisonment for life or with the punishment mentioned above.</td>
<td>Cognizable and non-bailable; Triable by Court of Session;</td>
</tr>
<tr>
<td>Offence</td>
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<td>Nature of Offence</td>
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<tr>
<td>Act done with intent to prevent child being born alive or to cause it to die after birth: Section 315</td>
<td>Shall be punished with imprisonment of either description for a term, which may extend to ten years, or with fine, or with both.</td>
<td>Cognizable and non-bailable; Non-compoundable;</td>
</tr>
<tr>
<td>Causing death of quick unborn child by act amounting to culpable homicide — Section 316</td>
<td>Shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;</td>
<td>Cognizable; non-bailable and triable by Court of Session; Non-compoundable;</td>
</tr>
<tr>
<td>Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment [Section 511]:</td>
<td>Shall be punished with 2[imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.</td>
<td>Cognizable and non-bailable</td>
</tr>
</tbody>
</table>

### OFFENCES UNDER THE JUVENILE JUSTICE ACT, 2015:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
<th>Procedure Prescribed in the Law and Rules</th>
</tr>
</thead>
</table>
| Section 80: Adoption without following the prescribed procedures: | Section 80: With imprisonment of either description for a term which may extend up to three years, or with fine of one lakh rupees, or with both; Provided in case where the offence is committed by a recognised adoption agency, in addition to the above punishment awarded to the persons in-charge of, and responsible for the conduct of the day-to-day affairs of the adoption agency, the registration of such agency under section 41 and its recognition under section 65 shall also be withdrawn for a minimum period of one year | Non-cognizable, bailable and triable by any magistrate | Rule 58, JJ Model Rules, 2016:  
(1) Where any orphan, abandoned or surrendered child, is offered or given or received for the purpose of adoption without following the procedures as provided in the Act and the rules, the police shall, suomotu, or on receipt of information in that regard register an FIR forthwith.  
(2) A child who has been so offered, given or received for the purpose of adoption shall be produced before the Committee forthwith which shall pass appropriate directions for rehabilitation of the child, including placing such child in a Specialised Adoption Agency.  
(3) Wherever any offence under section 80 of the Act is committed by a recognised Specialised Adoption Agency or by a person associated with such an agency, the Committee may also pass appropriate orders for placing the other children placed with the Specialised Adoption Agency in any other Child Care Institution or Specialised Adoption Agency. |
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Prohibition of disclosure of identity of children: Section 74:</td>
<td>Any person contravening the provisions of section 74 (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakhs rupees or both. [Section 74(3)]</td>
<td>Non-cognizable, bailable and triable by any magistrate</td>
<td>Rule 55, Model Rules, 2016:</td>
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<tr>
<td>Cruelty to Child [Section 75]</td>
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<td></td>
<td>[1] For the purposes of section 75 of the Act and this rule, giving a child in marriage shall be considered as cruelty to the child. On receipt of information of risk of a child being given in marriage, the police or any officer authorised under the Act or under the Prohibition of Child Marriage Act, 2006 (6 of 2007), shall produce the child before the Committee for appropriate directions and rehabilitative measures.</td>
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<td>(2) Where an act of cruelty to a child takes place in a Child Care Institution, or a school, or in any other place of care and protection to the child, considering the best interest of the child, the Board or the Committee or the Children’s Court after consultation with the child and or parents or guardians shall provide alternative rehabilitation for the child.</td>
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<td>(3) A child covered under the Act requiring immediate medical attention shall be provided with required medical care and treatment by a hospital or clinic or facility upon a direction of the Board or the Committee made in this regard, free of cost. A failure to respond immediately resulting in serious injury, irreversible damage or threat to life or death shall be deemed to be wilful neglect of the child and shall tantamount to cruelty under section 75 of the Act on the direction of the Board or the Committee after a detailed inquiry.</td>
</tr>
</tbody>
</table>

No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published: [Section 74(1)]

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of [Section 74(2)]

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or willfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering.

(The section shall not apply if it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control)

For the purposes of section 75 of the Act and this rule, giving a child in marriage shall be considered as cruelty to the child [Rule 55 (1)]
**Employment/Use of child for begging:**

Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable [Section 76(1)]

Shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to a fine of 1 lakh rupees. [Section 76(1)]

If, for the purpose of begging, the person amputates or maims the child, she/he shall be punishable with rigorous imprisonment for a term not less than seven years, which may extend up to ten years, and shall also be liable to fine of five lakh rupees.

**Section 76(2):** Whoever, having the actual charge of, or control over the child, abets the commission of an offence under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2:

Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td>Employment/Use of child for begging:</td>
<td>Shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to a fine of 1 lakh rupees.</td>
<td>Cognizable, non-bailable and triable by a Magistrate of the first Class</td>
<td>The ‘procedure in cases of offences against children’ listed out in Rule 54 of the Model Rules is applicable:</td>
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<td></td>
<td>If, for the purpose of begging, the person amputates or maims the child, she/he shall be punishable with rigorous imprisonment for a term not less than seven years, which may extend up to ten years, and shall also be liable to fine of five lakh rupees.</td>
<td>Cognizable, non-bailable and triable by the Children’s Court</td>
<td>(1) A complaint of an offence against a child may be made by child, family, guardian, friend or teacher of the child, child line services or any other individual or institutions or organisation concerned.</td>
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<td>(2) On receipt of information in respect of a cognizable offence against a child, the police shall register a First Information Report (FIR) forthwith.</td>
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<td>(3) On receipt of information of a non-cognizable offence against a child, the police shall make an entry in the Daily Diary which shall be transmitted to the Magistrate concerned forthwith who shall direct appropriate action under sub-section (2) of section 155 of the Code of Criminal Procedure, 1973.</td>
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<td>(4) In all cases of offences against children, the investigation shall be conducted by the Child Welfare Police Officer.</td>
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<td>(5) Where any offence under the Act is committed by a Child Care Institution including a Specialised Adoption Agency, the Committee or the Board as the case may be, may pass appropriate orders for placing the children already placed with the Child Care Institution or the Specialised Adoption Agency in any other Child Care Institution or Specialised Adoption Agency and recommending the cancellation of the registration and withdrawal of recognition of such institution or agency.</td>
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<td>(6) Where an FIR is registered against a person working with a Child Care Institution including Specialised Adoption Agency for any offence under the Act and the rules, such a person shall be debarred from working directly with the children during the pendency of the criminal case.</td>
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<td>(7) Where a person has been dismissed from service or is convicted of an offence under the Act and the rules, he shall stand disqualified from any further appointment.</td>
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<td>(8) In no case a child shall be placed in a police lock-up or lodged in a jail.</td>
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<td>(9) The child and his family shall be provided access to paralegal volunteers under the District Legal Service Authority.</td>
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<td>Offence</td>
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<td>(10) An immediate need assessment of the child will be conducted in terms of the need for food, clothing, emergency medical care, counselling, psychological support and the same shall be immediately extended to the child at the police station.</td>
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<td>(11) Where a child has been subjected to sexual abuse, the child may be referred to the nearest District Hospital or One-Stop Crisis Centre, as the case may be, if locally available.</td>
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<td>(12) Special children’s rooms may be designated in every Court Complex with facility for separate space for children waiting and children who are giving their statement or interview; separate entrances, wherever feasible; video-conferencing facilities for interacting with children, wherever possible; provision for entertainment for children such as books, games, etc. Statements and interviews, other than during trial of children, who are, victims, or witnesses, shall be recorded through child friendly procedure in a children’s room.</td>
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<td>(13) The statement or the interview of the victim/witness child shall be conducted while ensuring the following conditions:</td>
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<td>(i) The Magistrate shall record the statement of the child under section 164 of the Code of Criminal Procedure, 1973 in the Children’s room or, if possible in the child’s place of residence including, home or institution where he or she is residing.</td>
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<td>(ii) The statement shall be recorded verbatim as spoken by the child.</td>
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<td>(iii) The statement may also be recorded by audio-visual means as per the provisions of sub-section (1) of section 164 of the Code of Criminal Procedure, 1973.</td>
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<td>(iv) The child may be accompanied by parent or guardian or social worker.</td>
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<td>(14) The Legal Services Authority may provide a support person or para legal volunteer for pre-trial counselling and to accompany the child for recording of the statement who shall also familiarize the child with the Court and Court environment in advance, and where the child is found to have been disturbed by the experience of coming to the Court, orders for video-conferencing may be passed by the Court, on an application moved by the support person or para-legal volunteer or by the Legal Services Authority, on behalf of the child.</td>
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<tr>
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</table>
| (15) If the child victim or witness does not belong to the District or State or Country, the statement or interview or deposition of the child may also be recorded through video conferencing.  
(16) Where video-conferencing is not possible, all necessary accommodation, travel expenses for the child and a guardian accompanying the child will be provided as per actuals by the State Government or Union Territory Administration.  
(17) Separate rooms for vulnerable witnesses may be designated in every Court Complex to record the evidence of child witnesses.  
(18) During a trial involving children, as far as possible, the following norms may be followed to ensure a child-friendly atmosphere:  
(i) Parents or guardian(s) shall accompany the child at all times (only if it is in the best interest of the child). If the said person has a conflict of interest, another person of the child’s choice, or fit person, or representative of the fit institution identified, or psychologist appointed by the Committee or Court, shall accompany the child at all times, on approval of the Court.  
(ii) Psychological counselling may also be provided to the child wherever necessary.  
(iii) In a situation where parents or guardians may have been involved in the commission of the crime, or where the child is living in a place where the child is at risk of further trauma, and the same is brought to the notice of the Court, or the Court on its own motion shall direct the child to be taken out of the custody or care, or out of such situation and the child should be immediately produced before the Committee.  
(iv) For the age determination of the victim, in relation to offences against children under the Act, the same procedures mandated for the Board and the Committee under section 94 of the Act to be followed.  
(v) The language(s) used to be familiar to the child and if needed translators and special educators to be made available.  
(vi) Before the statement of the child is recorded, the Court to ensure that the child is capable of making a voluntary statement. |
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</table>
| Giving intoxicating liquor or narcotic drug or psychotropic substance to a child. [Section 77] | Punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine, which may extend up to one lakh rupees. [Section 77] | Cognizable and non-bailable and triable by a Magistrate of the First Class | Rule 56, model Rules, 2016:  
(1) The police shall inquire as to how the child came under the influence of, or possession of such intoxicating liquor or narcotic drugs or psychotropic substances or tobacco products including for the purpose of sale shall register an FIR forthwith;  
(2) The child who has been administered narcotic drugs or psychotropic substances or is found under the influence of the same may be produced either before the Board or the Committee as the case may be, and the Board or the Committee shall pass appropriate orders regarding rehabilitation and de-addiction of the child.  
(3) In case of a child found to be addicted to intoxicating liquor or tobacco products, the child shall be produced before the Committee which shall pass directions for rehabilitation including de-addiction of the child and transfer the child to a fit facility identified for the purpose. |

(viii) Images or statements admissible in the interview of the child not to be detrimental to the mental or physical well-being of the child.  
(ix) Length and questions admissible at the interview not to be taxing and to be suitable to the attention span of the child.  
(x) In case of young children, or otherwise incapacitated child, alternative methods of interaction and evidence collection that is less intimidating to be adopted.  
(xi) The Court to ensure that at no stage during trial, the child comes face to face with the accused.  
(xii) Special permission from school and arrangement for remedial classes for days lost to be ensured by the school authorities.  
(19) The child may be represented, as the case may be, by:  
(i) a lawyer of his choice, or,  
(ii) public prosecutor, or,  
(iii) a lawyer designated or empanelled by the Legal Services Authority.  
(20) All functionaries of the Court and others concerned may be sensitised on the special needs of children and child rights.  
(21) After the process of trial:  
(i) The child or guardian should be informed of the decision of the judicial proceeding and its implication.  
(ii) The child or guardian should be made aware of his legal options.
<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
<th>Procedure Prescribed in the Law and Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using a child for vending, peddling, carrying, supplying or smuggling</td>
<td>Rigourous Imprisonment for</td>
<td>Cognizable and non-bailable</td>
<td>(4) In case any child is found to have been administered intoxicating liquor or narcotic drugs or psychotropic substances or tobacco products in a Child Care Institution, the child shall be</td>
</tr>
<tr>
<td>any intoxicating liquor, narcotic drug or psychotropic substance.</td>
<td>a term, which may extend</td>
<td>and triable by a Magistrate</td>
<td>produced immediately before the Board or the Committee, except in such cases where the child is not in a position to be produced before the Board or the Committee and requires immediate medical attention.</td>
</tr>
<tr>
<td>Section 78</td>
<td>up to 7 years and a fine of</td>
<td>of the first Class</td>
<td>(5) The Board, shall on its own or on complaint received from the Committee, issue directions to the police to register an FIR immediately.</td>
</tr>
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<td></td>
<td>up to One Lakh Rupees.</td>
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<td>(6) The Board or the Committee shall also issue appropriate directions for inquiry as to the circumstances in which such product entered the Child Care Institution and reached the child and shall recommend appropriate action against the erring officials and the Child Care Institution.</td>
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<td>(7) The Board or the Committee may also issue directions for transfer of the child to another Child Care Institution as the case may be.</td>
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<td>(8) Any shop selling intoxicating liquor, tobacco products, must display a message at a prominent place on their shop that giving or selling intoxicating liquor or tobacco products to a child is a punishable crime with up to seven years of rigorous imprisonment and a fine of up to one lakh rupees.</td>
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<td>(9) All tobacco products and intoxicating liquor must display a message that giving or selling intoxicating liquor or tobacco products to a child is a punishable crime with up to seven years of rigorous imprisonment and a fine of up to one lakh rupees.</td>
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<td>(10) Giving or selling of intoxicating liquor, narcotic drugs or psychotropic substances or tobacco products within 200 meters of a Child Care Institution or any other home registered or recognised under the Act, or the office of a Committee or a Board shall be deemed to be an offence under section 77 of the Act.</td>
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<td>Rule 57, Model Rules, 2016:</td>
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<td>(1) The police shall enquire how and from whom the child came into possession of the intoxicating liquor, narcotic drug, or psychotropic substance and shall register an FIR forthwith.</td>
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<td>(2) A child who is alleged to have committed an offence under section 78 of the Act shall be produced before the Board, which may transfer the child to the Committee, if the child is also in need of care and protection</td>
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<tr>
<td>Offence</td>
<td>Punishment</td>
<td>Nature of Offence</td>
<td>Procedure Prescribed in the Law and Rules</td>
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<td>Exploitation of child employee: [Section 79]</td>
<td>Rigorous imprisonment for a term, which may extend to five years and shall also, be liable to fine of one lakh rupees.</td>
<td>Cognizable and non-bailable and triable by a Magistrate of First class</td>
<td>Procedure as prescribed in the Rule 54, Model Rules</td>
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<tr>
<td>Any person who sells or buys a child for any purpose [Section 81]:</td>
<td>Punishable with rigorous imprisonment for a term, which may extend to five years and fine of One Lakh Rupees. Provided that where such offence is committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home, the term of imprisonment shall not be less than three years and may extend up to seven years. [Section 81 proviso]</td>
<td>Cognizable and non-bailable; Triable by Magistrate of first Class</td>
<td>Rule 59, Model Rules, 2016: (1) On receipt of information about the selling or buying of a child, the police shall register an FIR forthwith. (2) Giving or agreeing to give, receiving or agreeing to receive any payment or reward in consideration of adoption, except as permitted under the adoption regulations framed by the Authority, towards the adoption fees or service charge or child care corpus by any prospective adoptive parent(s) or parent or guardian of the child or the Specialised Adoption Agency shall amount to an offence under section 81 of the Act and this rule. (3) A child, who has been subjected to buying or selling, shall be produced before the Committee forthwith which shall pass appropriate orders for the rehabilitation of the child. (4) Where any offence under section 81 of the Act is committed by a parent or a guardian of the child or any other person having actual charge or custody of the child, the Committee shall pass appropriate orders for placing the child in a Child Care Institution or fit institution or with a fit person, as the case may be. (5) Where any offence under section 81 of the Act is committed by a Child Care Institution including Specialised Adoption Agency or by a hospital or nursing home or maternity home, or a person associated with such an institution or agency, the Committee may also pass appropriate orders for placing the other children placed with such Child Care Institution or Specialised Adoption Agency or hospital or nursing home or maternity home in any other Child Care Institution or Specialised Adoption Agency or hospital or nursing home or maternity home, as the case may be. (6) The Committee shall recommend to the State Government that the registration or recognition of such agency or institution or the registration or license of such a hospital or nursing home or maternity home or such associated person under any law for the time being in force shall also be withdrawn.</td>
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<tr>
<td>Corporal punishment:</td>
<td>Punishable with:</td>
<td>Non cognizable and bailable; Triable by any Magistrate:</td>
<td>Rule 60 of Model Rules, 2016</td>
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</tbody>
</table>
| Any person in-charge of or employed in a Child Care institution, who subjects a child to corporal punishment with the aim of disciplining the child. [Section 82(1)] | On the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment, which may extend to three months or fine or with both. The person convicted shall be liable to dismissal from service and shall also be debarred from working directly with children thereafter. | Cognizable, non bailable; Triable by Magistrate of First Class | (1) A complaint of subjecting a child to corporal punishment under section 82 of the Act may be made by the child or any one on his behalf.  
(2) Every Child Care Institution shall have a complaint box at a prominent place in the building to receive complaints of corporal punishment.  
(3) The complaint box will be opened in the presence of a representative of the District Child Protection Unit once a month.  
(4) All such complaints shall be forthwith presented before the Judicial Magistrate of First Class nearest to the Child Care Institution and copies thereof shall be forwarded to the Board or the Committee.  
(5) The Judicial Magistrate shall get the case investigated by the Child Welfare Police Officer concerned and take appropriate measures on receipt of a complaint.  
(6) The Board or the Committee may consider transferring the child to another Child Care Institution in the best interest of the child who has made the complaint or who has been subjected to corporal punishment.  
(7) Where the Judicial Magistrate First Class finds that the management of the institution is not cooperating with the inquiry or complying with the orders of the court under sub-section (3) of section 82 of the Act, the Judicial Magistrate First Class will either take cognizance of the offence himself or direct the registration of FIR and proceed against the person in-charge of the management of the institution.  
(8) Where the Board or the Committee or the State Government issues any directions to the management of the institution in respect of any incident of corporal punishment in the child care institution, the management shall comply with the same.  
(9) In the event of non-compliance, the Board on its own or on the complaint of the Committee or the State Government shall direct the registration of an FIR under sub-section (3) of section 82 of the Act.  
(10) Where a person has been dismissed from service or debarred from working directly with children or is convicted of an offence of subjecting a child to corporal punishment under sub-section (2) of section 82 of the Act, he shall stand disqualified from any further appointment under the Act and the rules. |
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</table>
| **Use of child by militant groups or other adults:**  
**Section 83:**  
(1) Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose.  
[Section 83(1)]  
(2) Any adult or an adult group uses children for illegal activities either individually or as a gang.  
[Section 83(2)] | Punishable with, rigorous imprisonment for a term, which may extend to seven years and shall also be liable to fine of five lakh rupees.  
[Section 83(1) and 83(2)] | Cognizable and non-bailable;  
Triable by Magistrate of first Class; | Rule 9(3), Model Rules provides that:  
Where the child produced before the Board is covered under section 83 of the Act, including a child who has surrendered, the Board may, after due inquiry and being satisfied of the circumstances of the child, transfer the child to the Committee as a child in need of care and protection for necessary action, and or pass appropriate directions for rehabilitation, including orders for safe custody and protection of the child and transfer to a fit facility recognised for the purpose which shall have the capacity to provide appropriate protection, and consider transferring the child out of the district or out of the State to another State for the protection and safety of the child. |
| **Offence of kidnapping**  
**[Section 84]** | As provided in sections 359 to 369 of the IPC shall apply.  
[S. 84] | Cognizable and non-bailable (As per IPC); | |
| Whoever commits any of the offences referred to in this Chapter on any child who is disabled as so certified by a medical practitioner.  
[Section 85] | The offender shall be punishable with twice the punishment provided for the offence. | AS applicable under the respective provision | |
| **Section 86 classifies the offences and states that offences whose punishment is with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children’s Court. If it is for a term of three years and above, but not more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Magistrate of First Class.** | | | |

### OFFENCES UNDER THE CHILD AND ADOLESCENT LABOUR ACT, 1986:

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<tr>
<th>Offence</th>
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</table>
| Employment of a child or permitting a child to work in any occupation or process in contravention to Section 3\(^a\)  
[Section 14(1)] | Imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.  
Exception: Parents or guardians of such children shall not be punished unless they permit the child for commercial purposes to work in contravention to section 3 | Cognizable | |

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\(^a\) Section 3: Prohibition of employment of children in any occupation and process.

\(^1\) No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child,—

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.
<table>
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<tr>
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</table>
| Employment of an adolescent or permitting an adolescent to work in hazardous occupations or processes in contravention of Section 3A[^1](#)  
[Section 14(1A)] | Imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both  
Exception: Parents or guardians of such children shall not be punished unless they permit the adolescent to work in contravention to section 3A | Cognizable | |
| Second or subsequent offence: Section 14(2)  
Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards | He shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years | Cognizable | |
| Fails to comply provisions under this Act: Section 14(3):  
fails to comply with or contravenes any other provisions of this Act or the rules made thereunder | Shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both | Cognizable | |
| Punishment for parents/guardians:  
For offences under sections 14 (1A) and 14 (1B): | Notwithstanding anything contained in sub-sections (1) and (1A) [of section 14], the parents or guardians of any child or adolescent referred to in section 3 or section 3A, shall not be liable for punishment, in case of the first offence, [Section 14(1B)]  
In case of a second and subsequent offence, the penalty prescribed is a maximum fine of Rs. 10,000. [Section 14(2A)] | Cognizable offence  
Any offence committed by an employer, which is punishable under Section 3 and 3A is a cognizable offence. | |
| For subsequent offence Under Section 14 (2): |  
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Magistrate may, on the application of the accused person, compound any offence committed for the first time by him, under sub-section (3) of section 14 or any offence committed by an accused person being parent or a guardian, in such manner and on payment of such amount to the appropriate Government, as may be prescribed. |  |  |

[^1](#): Section 3A: Prohibition of employment of adolescents in certain hazardous occupations and processes: Children between 14-18 years shall not be employed or permitted to work in hazardous occupation and processes as specified in the Schedule of the Act. [Section 3A]
### Offences Under the Information Technology Act:

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form: Section 67B</td>
<td>Shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.</td>
<td>Cognizable and non-bailable in both first and second conviction</td>
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<tr>
<td>a) Publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or</td>
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<tr>
<td>b) Creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or</td>
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<td>c) Cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or</td>
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<td>d) Facilitates abusing children online or</td>
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<td>e) Records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,</td>
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<td>Publication or transmission of obscene material in electronic form: Section 67</td>
<td>Shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees</td>
<td>Cognizable and bailable in case of first conviction only. Second or subsequent conviction shall be non bailable</td>
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<tr>
<td>Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it</td>
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<td>Punishment for violation of privacy: Section 66E</td>
<td>Punishable with imprisonment, which may extend to three years or with fine not exceeding two lakh rupees, or with both.</td>
<td>Cognizable and bailable;</td>
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<tr>
<td>Publishing or transmitting of material containing sexually explicit act, etc., in electronic form: Section 67A</td>
<td>Shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees</td>
<td>Cognizable and Non-bailable in both first and second conviction</td>
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**OFFENCES UNDER IMMORAL TRAFFIC (PREVENTION) ACT, 1956:**

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<th>Nature of Offence</th>
<th>Procedure Prescribed in the Law and Rules</th>
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</thead>
<tbody>
<tr>
<td>Punishment for keeping a brothel or allowing premises to be used as brothel: Section 3</td>
<td>shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.</td>
<td>Cognizable</td>
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<td>Section 3(2) – any person who keeps or manages, or acts or assists in the keeping or management of, a brothel:</td>
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<tr>
<td>(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or</td>
<td>shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.</td>
<td>Cognizable</td>
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<tr>
<td>(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel:</td>
<td>Clarification:</td>
<td>Subsection (3) of Section 3 provides that notwithstanding any thing contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.</td>
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<td>Living on the earnings of prostitution: Section 4(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person:</td>
<td>shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years. Section 4(2):- Where any person over the age of eighteen years is proved,— (a) to be living with, or to be habitually in the company of, a prostitute; or (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or (c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).</td>
<td>Cognizable</td>
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<tr>
<td>Procuring or inducing or taking a person for the sake of prostitution. Section 5. Subsection (1) - Any person who— (a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or (b) induces a person to go from any place, with the intent that he/she may become the inmate of, or frequent, a brothel; or (c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or (d) causes or induces a person to carry on prostitution:</td>
<td>shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this subsection, is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life.</td>
<td>Cognizable</td>
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<tr>
<td>Detaining a person in premises where prostitution is carried out: Section 6. (1) Any person who detains any other person, whether with or without his consent,— (a) in any brothel, or (b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person: (2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under subsection (1)</td>
<td>Shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees: Provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term, which may be less than seven years.</td>
<td>Cognizable and non bailable</td>
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<td>Prostitution in public places or in the vicinity of public places: Section 7(1)</td>
<td>Shall be punishable with imprisonment for a term which may extend to three months.</td>
<td>Cognizable</td>
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<td>(a) which are within the area or areas, notified under sub-section (3), or</td>
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<td>(b) which are within a distance of two hundred meters of any place of public religious worship, educational institution, hotel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed.</td>
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Where an offence committed under sub-section (1) is in respect of a child, the person committing the offence [Section 7(1A)]

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<tr>
<td>Section 7(2) - Any person who:</td>
<td>Shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine, which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:</td>
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<tr>
<td>(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or</td>
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<tr>
<td>(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or</td>
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<tr>
<td>(c) being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is willfully a party to such use.</td>
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Seduction of a person in custody: Section 9

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<tr>
<th>Offence</th>
<th>Punishment</th>
<th>Nature of Offence</th>
<th>Procedure Prescribed in the Law and Rules</th>
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<tbody>
<tr>
<td>Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution of that person</td>
<td>Shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:</td>
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<td>Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.</td>
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- Cognizable
- Non-bailable
### OFFENCES UNDER THE POCSO ACT 2012:

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<tr>
<th>Offence</th>
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<th>Nature of Offence</th>
<th>Procedure Prescribed in the Law and Rules</th>
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<tbody>
<tr>
<td><strong>Punishment for Penetrative Sexual Assault: Section 4</strong>&lt;br&gt;Whoever commits penetrative sexual assault shall</td>
<td>be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Trial by Special Court or Children’s Court;</td>
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<tr>
<td><strong>Punishment for aggravated penetrative Sexual Assault: Section 6</strong>&lt;br&gt;Whoever commits aggravated penetrative Sexual Assault:</td>
<td>Shall be punished with rigorous imprisonment of either description for a term not less than ten years but may extend to imprisonment for life and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Trial by Special Court or Children’s Court;</td>
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<tr>
<td><strong>Punishment for sexual assault: Section 8</strong>&lt;br&gt;Whoever commits sexual assault</td>
<td>Shall be punished with rigorous imprisonment of either description for a term not less than three years but may extend to five years and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Trial by Special Court or Children’s Court;</td>
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<tr>
<td><strong>Punishment for Aggravated sexual assault: Section 10</strong></td>
<td>Imprisonment of either description for a term not less than 5 years and can go up to 7 years and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Trial by Special Court or Children’s Court;</td>
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<tr>
<td><strong>Punishment for Sexual Harassment: Section 12</strong>&lt;br&gt;Whoever commits sexual harassment upon a child</td>
<td>shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.</td>
<td>Cognizable and Non-bailable; Trial by Special Court or Children’s Court;</td>
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### Using a child for pornographic Purpose: Section 14:

<p>| Sub section (1) of Section 14: Whoever, uses a child or children for pornographic purpose: | Shall be imprisonment of either description, which may extend to five years and shall also be liable for fine and in the event of second or subsequent conviction with imprisonment of either description to seven years and also be liable to fine. | Cognizable and Non-bailable; Trial by Special Court or Children’s Court; | |
| Sub section (2) of Section 14: If the person using the child for pornographic purposes commits an offence referred to in Section 3 by directly participating in pornographic acts, he | Shall be punished with imprisonment of either description for a term which shall not be not less than ten years which may extend to imprisonment for life, and shall also be liable to fine. | Cognizable and Non-bailable; Trial by Special Court or Children’s Court; | |
| <strong>Sub section (3) of Section 14:</strong> If the person using the child for pornographic purposes commits an offence referred to in Section 5 by directly participating in pornographic acts, he | Shall be punished with Rigorous imprisonment for life and shall also be liable to fine. | Cognizable and Non-bailable; Trial by Special Court or Children’s Court; | |
| <strong>Sub section (4) of Section 14:</strong> If the person using the child for pornographic purposes commits an offence referred to in Section 7 by directly participating in pornographic acts, he | Shall be punished with imprisonment of either description for a term which shall not be not less than six years but which may extend to eight years, and shall also be liable to fine. | Cognizable and Non-bailable; Trial by Special Court or Children’s Court; | |
| Section 14(5): If the person using the child for pornographic purposes commits an offence referred to in Section 9 by directly participating in pornographic acts, he | Shall be punished with imprisonment of either description for a term, which shall not be not less than eight years but which may extend to ten years, and shall also be liable to fine, | Cognizable and Non-bailable; Trial by Special Court or Children’s Court; | |
| <strong>Punishment for Abetment: Section 17</strong>&lt;br&gt;Whoever abets any offence under this act, if the act abetted is committed in consequence of the abetment, | Shall be punished with punishment provided for that offence. An attempt to commit the offence attracts half of the punishment prescribed for the offence. | Cognizable and Non-bailable; Trial by Special Court or Children’s Court; | |
| <strong>Punishment for attempt to commit an offence: Section 18</strong>&lt;br&gt;Whoever attempts to commit any offence punishable under this act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, | Shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of the punishment provided for that offence or with fine or with both | As per provisions of the Act; Trial by Special Court or Children’s Court; |</p>
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<tr>
<th>Offence</th>
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<tr>
<td>Punishment for failure to report or record a case: Section 21</td>
<td>(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>(3) The revisions of sub-section (1) shall not apply to a child under this Act</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<tr>
<td>Punishment for false complaint or false information: Section 22-</td>
<td>(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>(3) Whoever not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<tr>
<td>Procedure for media: Section 23-</td>
<td>(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy. shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child: Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child. shall be jointly and severally liable for the acts and omissions of his employee.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee. shall be jointly and severally liable for the acts and omissions of his employee.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2):</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court</td>
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<td>Any person who contravenes any of the provisions of this Act, or of any rule made thereunder: <strong>Section 89</strong> — Any person who contravenes any of the provisions of this Act, or of any rule made thereunder:</td>
<td>Shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court;</td>
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<td><strong>Section 90</strong> — <em>(1)</em> Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company: <em>(2)</em> Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company: <em>(Explanation.—)</em> For the purposes of this section,— *(a) “company” means any body corporate and includes a firm or other association of individuals; and <em>(b) “director”, in relation to a firm, means a partner in the firm)</em></td>
<td>Shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</td>
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<td><strong>Section 91</strong> — Whoever, fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities:</td>
<td>Shall be punishable with imprisonment for a term which may extend to one lakh rupees or with both.</td>
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<td><strong>Section 92</strong> — Whoever:— *(a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view; *(b) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability; *(c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her; *(d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;</td>
<td>Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.</td>
<td>Cognizable and Bailable</td>
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<td>Nature of Offence</td>
<td>Procedure Prescribed in the Law and Rules</td>
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<td>{e} voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;</td>
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<td>{f} performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, a woman or child with disability;</td>
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<td><strong>OFFENCES UNDER THE MENTAL HEALTHCARE ACT, 2017:</strong></td>
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<td><strong>Section 107-</strong></td>
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<td>(1) Whoever carries on a mental health establishment without registration:</td>
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<td>(2) Whoever knowingly serves in the capacity as a mental health professional in a mental health establishment which is not registered under this Act,</td>
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<td>(3) Save as otherwise provided in this Act, the penalty under this section shall be adjudicated by the State Authority.</td>
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<td>(4) Whoever fails to pay the amount of penalty, the State Authority may forward the order to the Collector of the district in which such person owns any property or resides or carries on his business or profession or where the mental health establishment is situated, and the Collector shall recover from such persons or mental health establishment the amount specified thereunder, as if it were an arrear of land revenue.</td>
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<td>(5) All sums realised by way of penalties under this Chapter shall be credited to the Consolidated Fund of India.</td>
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<td><strong>Section 108-</strong></td>
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<td>Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder</td>
<td>Shall for first contravention be punishable with imprisonment for a term which may extend to ten thousand rupees or with both, and for any subsequent contravention with imprisonment for a term which may extend to two years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.</td>
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### OFFENCES UNDER THE GUARDIANS AND WARDS ACT, 1890

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<tr>
<td><strong>Section 44.</strong> Penalty for removal of ward from jurisdiction – If, for the purpose or with the effect of preventing the court from exercising its authority with respect to a ward, a guardian appointed or declared by the court removes the ward from the limits of the jurisdiction of the court in contravention of the provisions of section 26.</td>
<td>He shall be liable, by order of the court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.</td>
<td>Cognizable and Non-bailable; Triable by Special Court or Children’s Court.</td>
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### PROHIBITION OF CHILD MARRIAGE ACT, 2006

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<th>Procedure Prescribed in the Law and Rules</th>
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<tr>
<td>Punishment for promoting or permitting solemnization of child marriages: <strong>SECTION 11</strong> – (1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage,</td>
<td>shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees: Provided that no woman shall be punishable with imprisonment.</td>
<td>Cognizable and non-bailable</td>
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<td>(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.</td>
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<td>Punishment for male adult marrying a child: <strong>SECTION 9</strong> – Whoever, being a male adult above eighteen years of age, contracts a child marriage</td>
<td>Shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.</td>
<td>Cognizable and non-bailable</td>
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<tr>
<td>Punishment for solemnising a child marriage: <strong>SECTION 10</strong> – Whoever performs, conducts, directs or abets any child marriage</td>
<td>Shall be punishable with rigorous imprisonment, which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.</td>
<td>Cognizable and non-bailable</td>
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THE CONSTITUTION OF INDIA, 1950
The Constitution of India is the doctrine of Governance of the Country. The statutory framework and the policies of the government must meet the Constitutional requirement and follow the guiding principles enshrined therein. Each provision of the law would have to meet the test of Constitutionality by advancing the objects of the Constitution. They would be held valid and operational only if they pass the tests laid out in the Constitution. Even though the Constitution is a generic document applying to all persons, there are some articles specific to children, which are laid out here.

- **Generic Rights:**
  - Article 14 promotes equality;
  - Article 15 provides that the State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. These rights place children at par with any adult.
  - Article 21 ensures personal liberty to everyone and this has been expanded to include right to life, right to food, right to water and right to livelihood;

- **ARTICLES EXCLUSIVE TO CHILDREN:**
  - Right to Free and Compulsory Education: Article 21A, the Constitution mandates the State to provide free and compulsory education to children between 6 and 14 years of age;
  - Article 23 casts an embargo on trafficking of humans and begar and any other form of forced labour and specifies that the same shall be punishable in accordance to the provisions of the law in force.
  - Prohibition from employment of children: Article 24 prohibits the employment of children below the age of 14 years in factories or mines or other places of hazardous employment.

The above principles are in Part III of the Constitution which are the fundamental rights guaranteed to every citizen. Article 21, which is right to life, extends to even foreign nationals when they are on Indian soil. Part IV of the Constitution is the Directive Principles. These, while not enforceable as fundamental rights, reflect the object of the State to achieve these over a period of time. Certain key directive principles which are relevant to children are:

- The State shall formulate policies towards safeguarding the tender age of children and ensure that they are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; [Article 39(e)];
- Article 39(e) provides that the State shall formulate policies ensuring that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. (Article 45).
- Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015.
The jurisprudence for dealing with children’s cases is set out in the Juvenile Justice (care and protection of children) Act, 2015. This act repeals the 2000 Act and makes certain significant departures from the previous version. However, the premise of the Act remains the same and addresses children in two broad categories, children in conflict with the law and children who need care and protection. To a significant extent the Act is self contained and many other legislations are dependent on the institutions created under this Act and almost every aspect of the child protection crosses paths with the Juvenile Justice system. In view of its overarching applicability, the Act and the rules have been discussed in a detailed manner. The framework identifies effective and child-friendly forums to attend to or adjudicate upon issues concerning the rehabilitation, integration and the best interests of these children.

**KEY BENEFICIARIES:** Children upto the age of 18;

**KEY AUTHORITIES/Functionaries:** Child Welfare Committee, Juvenile Justice Board, District Child Protection Unit, Special Juvenile Police Unit, Sessions Court/Children’s Court, Specialised Adoption Agencies; District Magistrate, Probation Officers

**Material Terminologies/Concepts Employed in the Statute:**

The Act classifies children into two broad categories.

1. Children who are alleged or found to be in conflict with law and have not completed 18 years of age on the date of such offence [Section 2(13)]; and
2. Children in need of care and protection [Section 2(14)]

The Act broadly covers:

1. Facilities/institutions which are meant for children;
3. Classification of offences depending on the gravity of the offence committed or alleged to be committed by a ‘child in conflict with law’
4. Offences committed against children;
5. Three adjudicatory authorities, the Child Welfare Committee, the Juvenile Justice Board and the Children’s Court;

**The Principles Underlying The Administration Of The Act [Section 3]:**

1. **Principle of presumption of innocence:** Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
2. **Principle of dignity and worth:** All human beings shall be treated with equal dignity and rights.
3. **Principle of participation:** Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child’s views shall be taken into consideration with due regard to the age and maturity of the child.
iv. **Principle of best interest:** All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

v. **Principle of family responsibility:** The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

vi. **Principle of safety:** All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

vii. **Positive measures:** All resources are to be mobilized including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

viii. **Principle of non-stigmatising semantics:** Adversarial or accusatory words are not to be used in the processes pertaining to a child.

ix. **Principle of non-waiver of rights:** No waiver of any of the rights of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

x. **Principle of equality and non-discrimination:** There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

xi. **Principle of right to privacy and confidentiality:** Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

xii. **Principle of institutionalisation as a measure of last resort:** A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

xiii. **Principle of repatriation and restoration:** Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

xiv. **Principle of fresh start:** All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

xv. **Principle of diversion:** Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

xvi. **Principles of natural justice:** Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

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10 In May 2017, the Supreme Court in the case of *Re: Exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India & Ors.* (2017) 7 SCC 578 expanded the definition of ‘child in need of care and protection’. As per this judgment, “the definition of the expression “child in need of care and protection” under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. 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 care and protection.”
A. According to the Act, a Child in need of care and protection\textsuperscript{10} [section 2(14)] is a child:

i. who is found without any home or settled place of abode and without any ostensible means of subsistence; or

ii. who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

iii. who resides with a person (whether a guardian of the child or not) and such person—
   a. 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
   b. has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
   c. 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

iv. 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

v. 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

vi. who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

vii. 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

viii. 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

ix. who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

x. who is being or is likely to be abused for unconscionable gains; or

xi. who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

xii. 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 solemnization of such marriage;

B. According to Section 2(13), a Child in Conflict with Law means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

C. Facilities/Institutions, which are recognized or established to enable child protection.

a. Juvenile Justice Board;

b. Child Welfare Committee;

c. Child Care Institutions;

d. State Child Protection Society;

e. District Child Protection Unit;

f. Special Juvenile Police Unit;

g. The Children’s Court
I. A Child In Conflict With Law and the Juvenile Justice Board: 
Implementing Agencies, Procedure, Reliefs, Rehabilitation

Chapters III and IV of the Act, 2015 (Sections 4 to 26) introduce and provide the mechanism/procedure to deal with ‘Children in Conflict with Law’.

In case a Magistrate who is not empowered under this Act to exercise the functions assigned under this Act to the Board, finds that a person brought before him/her for an alleged commission of an offence is a child, the Magistrate shall at once, record such opinion and forward the child and the record of such proceeding to the Board. [Section 9].

A child in conflict with law, as discussed earlier is a child (a person below the age of 18 years) is alleged or found to have committed an offence.

Accordingly, the Juvenile Justice Board has been instituted with the powers and duties to function as a corresponding forum to address the child in conflict with law.

The Juvenile Justice Board comprises of:

1. Principal Magistrate (A Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate) and

2. 2 social workers (at least one shall be a woman),

- Child who has crossed the age of 18 years during the pendency of inquiry: When a child in respect of whom an inquiry is underway, completes the age of 18 years, the statute provides that the inquiry may be continued by the Board and orders may be issued as if such person in question continues to be a child. (Section 5)

- If a person committed an offence when she/he was below 18 years of age, the person apprehended, shall be treated as a child during the process of inquiry, in accordance with the procedure laid down under this Act. Further, the provision, the Act provides that if the Board does not release the person on bail, she/he shall be placed in a place of safety during the process of inquiry. (Section 6)

* Powers/Functions/Responsibilities conferred on the Board (Section 8):

- Except in cases which are determined under section 19, the Juvenile Justice Board shall have exclusive power to deal with all cases with respect to children in conflict with law.

- The functions/responsibilities of the Board include: - [Section 8(3)]:
  a. ensuring the informed participation of the child and the parent or guardian, in every step of the process;
  b. ensuring that the child’s rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;
  c. ensuring availability of legal aid for the child through the legal services institutions;
  d. wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;
e. directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

f. adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

g. transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law 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;

h. disposing of the matter and passing a final order that includes an individual care plan for the child’s rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;

i. conducting inquiry for declaring fit persons regarding care of children in conflict with law;

j. conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

k. order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;

l. order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

m. conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and

n. any other function as may be prescribed.

● Inquiry by the Board with regard to children in Conflict with Law:

The nature and duration of the inquiry and subsequent categorization of nature of offence committed (petty, serious, heinous), by the Board is provided for under Section 14 of the Act.

○ Duration of the inquiry [Section 14(2)]: The inquiry by the Board shall be completed within a period of four months from the first time the child alleged to be in conflict with law was produced before the Board. However, keeping in view the circumstances of the case, the Board may extend the period of inquiry to a maximum of two months, after recording the reasons in writing for such extension. The Board shall dispose off preliminary assessment in case of heinous offences within three months from the date of first production of child. [Section 14(3)] In case of petty offences, the inquiry by the Board, shall stand terminated if the inquiry remains inconclusive even after extended period. However, if the offence is heinous or serious and the Board requires further extension for completing the inquiry, the Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall grant the same, after recording the reasons in writing. [Section 14(4)]
On Pendency of inquiry:

Section 16 provides that the number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or non-governmental organization to be nominated by the Chairperson.

The Board shall inform the Chief Judicial Magistrate or the Chief Metropolitan Magistrate of such pendency and the State Government may prescribe the District Magistrate on quarterly basis in such form as.

The section empowers the Chief Judicial Magistrate or the Chief Metropolitan Magistrate to review the pendency of cases of the Board, every 3 months. The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall accordingly direct the Board to increase the frequency of the sittings or recommend establishing/constituting additional Boards.

- Inquiry by the Board of a heinous offence:  If the child who is alleged to have committed an offence, was at the time of commission of the offence, below 16 years of age, then the inquiry shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure. [Section 14(5)(f)(i)]

- Inquiry of a heinous offence by a child who is above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15. [Section 14(5)(f)(ii)]

Orders after Inquiry by the Board:

I. A Child Not Found To Be In Conflict With Law [Section 17]: If the Board is satisfied after the inquiry that the child brought before the Board, has not committed any offence, then the Board shall pass an order to that effect, irrespective of any law in force.

The Board may, upon finding that the child in question is a ‘child in need of care and protection’, refer the child to the Child Welfare Committee with appropriate directions.

The Juvenile Justice Act, 2015 lays down that no child found to be in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code, 1860 or any other law for the time being in force. [Section 21]

II. Orders Regarding Child Found To Be In Conflict With Law [Section 18]:

Section 18 provides that if the Board is satisfied on inquiry that:

i. A child irrespective of age has committed a petty offence, or a serious offence; OR

ii. A child below the age of sixteen years has committed a heinous offence;

Then, on the basis of the nature of the offence and existence of a specific need for supervision or intervention and circumstances as brought out in the social investigation report (as prepared under section 13), and past conduct of the child, the Board is may, as it deems fit, direct the following:

a. allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
b. direct the child to participate in group counseling and similar activities;

c. order the child to perform community service under the supervision of an organization or institution, or a specified person, persons or group of persons identified by the Board;

d. order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

e. direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behavior and child’s well-being for any period not exceeding three years;

f. direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behavior and child’s well-being for any period not exceeding three years;

g. direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counseling, behavior modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child’s interest, or in the interest of other children to be housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1) of section 18, the Board may, in addition pass orders to—

i. attend school; or

ii. attend a vocational training centre; or

iii. attend a therapeutic centre; or

iv. prohibit the child from visiting, frequenting or appearing at a specified place; or

v. undergo a de-addiction programme.

“Children’s Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act; [Section 2(20)]

(3) Where the Board after preliminary assessment under section 15 passes an order that there is a need for trial of the said child as an adult, then the Board may order transfer for the trial of the case to the Children’s Court having jurisdiction to try such offences.

The process of inquiry or any other proceeding by the Board or the Children’s Court under this Act will not be jointly conducted/initiated for a child and a person who is not a child. [Section 23(1)]

Section 23(2) lays down that if during the inquiry by the Board or by the Children’s, it is found that the person alleged to be a child in conflict with law is not a child, then such a person shall not be tried alongwith a child.
Runaway Child in Conflict with Law [Section 26]:

Any police officer may take charge in case a child in conflict with law who has run away from the observation home or a special home or place of safety or from the care of a person or institution under which the child was placed under this Act, The child shall be produced within 24 hours before the nearest Board or preferably to the Board that had passed the original order and dealt with the child. On production before the Board, the Board shall ascertain the reasons behind the child running away from the institution, and pass appropriate orders directing the child to be sent back to the institution or person or a similar place or person, and has the discretion to pass additional directions. No additional proceedings shall be instituted.

II. A Child in Need of Care and Protection and the Child Welfare Committee: Procedure, rehabilitation, mechanism and implementing authorities

Child Welfare Committee:

Chapters V & VI (Sections 27 to 38) of the Act of 2015 lay down the procedure to be followed for dealing with children in need of care and protection. Child Welfare Committee (CWC) is set up as per the provisions of section 27. It consists of a chairperson and four other members out of which at least one shall be a woman and another shall be an expert on matters concerning children. [Section 27 (2)]. The appointment shall be made on the basis of the recommendation of the Selection Committee under Rule 87 of the Model Rules, 2016.

- As per Rule 15 (2) of the Model Rules, 2016, the Chairperson and the Members of the CWC shall be above the age of 35 years and will have a minimum experience of seven years of working in the field of education, health or welfare activities, should be a practicing professional with a degree in child psychiatry or psychology or social work or human development, or in the field of law or a retired judicial officer.

- As per Section 27 (9) of the Act, the CWC’s are to function as a Bench. The powers of the CWC are equivalent to the powers held by a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class as conferred by the Code of Criminal Procedure, 1973.

- The District Magistrate has been empowered under the act to conduct quarterly reviews of the functioning of the Committee as per section 27(8). The DM shall be the grievance redressal authority for the CWC and anyone connected with the child may file a petition before the District Magistrate who shall consider and pass appropriate orders. [Section 27 (10)].
PROCEDURE TO BE FOLLOWED

Section 28 lays down procedures in relation to Child Welfare Committees

A child in need of care and protection may be produced before the Committee and, the child may also be produced before an individual member of the Committee for being placed in Children’s Home or with a Fit Person when the Committee is not in Session. [Section 28(3)].

Section 2(28) defines “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 for the said purpose, by the Committee or, as the case may be, the Board, to receive and take care of the child;

Section 2 (19) “Children’s Home” means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50;

The Act mandates that at least one member of the Committee shall always be available or accessible to take cognizance of any matter of emergency and issue necessary directions to the Special Juvenile Police Unit or local police of the district. For this purpose the Chairperson of the Committee shall draw up a monthly duty roster of the Committee members who shall be available and accessible every day, including on Sundays and holidays. The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Board, the District Child Protection Unit and the Special Juvenile Police Unit. [Rule 16(6), Model Rules, 2016]

The opinion of the majority members of the Committee shall prevail in the event of any difference of opinion and in case there is no majority, then the opinion of the Chairperson shall prevail. [Section 28(4)]. No order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding. However, at the time of final disposal of the case, at least three members should be present. [Section 28(5)].

Section 29 lays down that a Child Welfare Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children in need of care and protection as well as to provide for their basic needs and protection.

The Committee shall have the power to dispose off the cases under the Act unless the Act explicitly and categorically provides otherwise, in relation to children in need of care and protection.

Functions and Responsibilities of the Committee [Section 30]

The following functions are prescribed for the CWC under the Act.11

i. taking cognizance of and receiving the children produced before it;

ii. conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;

iii. directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organizations to conduct social investigation and submit a report before the Committee;

iv. conducting inquiry for declaring fit persons for care of children in need of care and protection;

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11 Additional functions are prescribed in the Model Rules (Rule 17)
v. directing placement of a child in foster care;

vi. 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;

vii. selecting registered institution for placement of each child requiring institutional support, based on the child’s age, gender, disability and needs and keeping in mind the available capacity of the institution;

viii. conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

ix. certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

x. ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;

xi. declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

xii. taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

xiii. taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection 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;

xiv. dealing with cases referred by the Board under sub-section (2) of Section 17;

xv. co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

xvi. in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;

xvii. Accessing appropriate legal services for children;

Sections 31, 36, 37 of the Act lay down the procedure to be adopted by the Child Welfare Committee from the first time a child in need of care and protection is produced before the Committee. For detailed procedure, please refer to the SOP for the Child Welfare Committee in Volume III of the Handbook.

Mandatory reporting: The reporting of a child found separated from a guardian is mandatory as per section 32 of the Act. The Section provides that an individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the
child to a child care institution registered under this Act. The section further mandates that the information regarding such a child shall be mandatorily uploaded on a portal as specified. ([Section 32(2)]). [Section 33] makes it an offence if the information regarding the child has not been given within the stipulated time, as required under Section 32, then such an act shall be regarded as an offence and it attracts a punishment of imprisonment up to six months or a fine of Rs. Ten thousand or both. (Section 34)

**Surrender of children:** Under [Section 35], a parent/guardian who for physical, emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee. If the Committee is satisfied, after prescribed process of inquiry and counselling on this aspect, then the parent or guardian shall execute a surrender deed, before the Committee.

- The parents or guardian who surrendered the child, shall be given two months time to reconsider their decision and in the intervening period the Committee shall either allow, after due inquiry, the child to be with the parents or guardian under supervision, or place the child in a Specialized Adoption Agency if he or she is below six years of age, or a children’s home if he is above six years.

**III. Rehabilitation and Social Re-integration of Children: Child Care Institutions**

Child Care Institutions contemplate, within its fold, seven categories of homes or facilities to serve various purposes under the Juvenile Justice Act, 2015 and they are detailed in the chart below. 

**CHART 1 (CCI’S-JUVENILE JUSTICE ACT, 2015)**

<table>
<thead>
<tr>
<th>Child Care Institutions (CCI’s) [S. 2(21)]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Children’s Home</strong> (Est. / maintained by State Govt. or through a voluntary or NGO) [S. 2(19)]</td>
</tr>
<tr>
<td><strong>Open Shelter</strong> (Est. / maintained by State Govt. or through a voluntary or NGO) [S. 2(41)]</td>
</tr>
<tr>
<td><strong>Observation Home:</strong> Temporary reception / care and rehabilitation of children during pendency of inquiry of a child alleged to be in conflict with law [S. 2(40)]</td>
</tr>
<tr>
<td><strong>Special Home:</strong> Provides rehabilitative services to children in conflict with law [S. 2(56)]</td>
</tr>
<tr>
<td><strong>Place of Safety</strong> where the person-in-charge is willing to receive and take care of children, allegedly 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 [S. 2(46)]</td>
</tr>
<tr>
<td><strong>Specialized Adoption Agency</strong> Place for housing surrendered, abandoned or orphan children [S. 2(57)]</td>
</tr>
<tr>
<td><strong>Fit Facility</strong> Temporary housing for specific purpose recognized as fit by CWC or JJB [S. 2(27)]</td>
</tr>
</tbody>
</table>

- Chapter VII (Sections 39-55) provide for rehabilitation of the children covered under the Act. The entire design around the manner in which a child has to be cared for should be a process focused on the child and should be prepared in consultation with the child. The procedure for the rehabilitation and social re-integration of children is built on the Individual Care Plan12 as provided in the Act. It is mandatory for this form to be filled for every child as soon as they come in contact with the child protection system and it should be developed gradually. Since family is considered the primary space for the growth and upbringing of the child, familial connections have been statutorily recommended to be retained even when the child is away from the family. It is therefore emphasized that efforts have to be made to keep siblings placed in institutional or non-institutional care, together, unless it is in their best interest not to be kept together.

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12 Child care plan has to be as per the form provided for in the Appendix at Form 7
Rule 2(ix) of the Model Rules, 2016 defines an “individual care plan” as a comprehensive development plan for a child based on age and gender specific needs and case history of the child, prepared in consultation with the child, in order to restore the child’s self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following, including but not limited to, needs of a child, namely:

- a. Health and nutrition needs, including any special needs;
- b. emotional and psychological needs;
- c. educational and training needs;
- d. leisure, creativity and play;
- e. protection from all kinds of abuse, neglect and maltreatment;
- f. restoration and follow up;
- g. social mainstreaming;
- h. life skill training.

○ The process of rehabilitation and social integration of children in conflict with Law is undertaken in [Section 39(2)]:

1. Observation Homes if the child is not released on Bail; OR
2. Special Homes OR Place of safety OR Fit Facility OR with a Fit Person if the child is placed there by the order of the Board.

The process of rehabilitation and social integration for children in need of care and protection, who are not placed in families for any reason, may be placed with a fit person or in a fit facility, for a temporary or long-term basis. [Section 39(3)]

After Care: Section 39(4) provides that Children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support, to help them to re-integrate into the mainstream of the society.

Section 46 provides Any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child’s re-integration into the mainstream of the society in the manner as may be prescribed.

○ Section 40 provides for restoration of child in need of care and protection. It lays down the provisions for restoration of children in need of care and protection. It states that the prime objective of any Children’s Home or Shelter Home or Specialized Adoption Agency is restoration of and providing protection to a child and these Homes shall take such steps as is considered necessary for the same. The Committee is vested with powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions. The explanation appended to section 40 describes ‘restoration and protection of a child’ to mean restoration to:

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13 Also refer to Rule 25 of the Model Rules, 2016
14 Refer to Rule 83 (4)(v) provide for creation of Juvenile Justice Fund and Section 105 provides for creation of Juvenile Justice Fund for welfare and rehabilitation of the children dealt with under this Act.
a. parents;
b. adoptive parents;
c. foster parents;
d. guardian; or
e. fit person;

○ **Section 53** provides that services provided by the CCI’s registered in the process of rehabilitation and re-integration of children shall include basic requirements (food, water, shelter, medical attention), equipment (wheel chairs, hearing aids), appropriate education, including supplementary education; It mandates that every institution shall have a management committee, that the officer in charge of the institution housing children above 6 year olds shall facilitate Children’s Committees for safety and well being of children, etc.

**Mandatory Registration of Child Care Institutions:**

**Section 41** of the Act mandates institutions established/maintained by a State Government or by the voluntary or non-governmental organizations, housing children in need of care protection and children in conflict with law to be registered under the Act of 2015 (unless they are already registered under the 2000 Act). At the time of registration under this section, the State Government will determine and record the capacity and purpose of the institution and shall register the institution as a Children’s Home or Open Shelter or Specialised Adoption Agency or Observation Home or Special Home or Place of Safety, as the case may be. **[Section 41(2)]**;

○ The period of registration of a CCI is five years and shall be subject to renewal every five years. **[Section 41(6)]**.

○ The State Government may, cancel or withhold registration, of such institutions, which fail to provide rehabilitation, and reintegration services as specified in **Section 53** and till such time that the registration of an institution is renewed or granted, the State Government shall manage the institution.

Any child care institution registered under section 41 is bound to admit children, subject to the capacity of the institution, as directed by the Committee, whether they are receiving grants from the Central Government or, the State Government or not. **[Section 41(8)]**

○ **Section 42** provides for penalty for non-registration of CCI’s which is imprisonment which may extend to one year or a fine of not less than one lakh rupees or both. The section adds that every thirty days delay in applying for registration shall be considered as a separate offence.

○ **Section 96** provides for transfer of children from one home to the other on the recommendation of a Committee or Board, as the case may be, keeping the best interest of the child in mind, order the child’s transfer from any Children’s Home or special home or fit facility or fit person, to a home or facility, within the State with prior intimation to the concerned Committee or the Board. The proviso to the section clarifies that if the transfer of a child is between similar home or facility or person within the same district, the Committee or Board, as the case may be, of the said district shall be competent to issue such an order.

○ **The Inspection Committee**15 is empowered to inspect any institution housing children, even if not registered under this Act to determine whether such institution is housing children in need of care and protection. **[Section 41(9)]**

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15 Appointed under Section 54 of the Juvenile Justice Act, 2015
Sponsorship [Section 45]:

Over and above the operation of the child care institutions and their necessary compliances to achieve the object of rehabilitation/reintegration, sponsorship as described under section 45 provides for an avenue to enable and equip a child. Section 45 provides that the State government shall make rules for enabling individual and group sponsorship. The sponsorship programme may provide supplementary support to families, to Children’s Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life.

Section 45(2) provides for criteria for sponsorship shall include: —

i. where mother is a widow or divorced or abandoned by family;

ii. where children are orphan and are living with the extended family;

iii. where parents are victims of life threatening disease;

iv. where parents are incapacitated due to accident and unable to take care of children both financially and physically.

IV. Adoption:

Chapter VIII of the Act provides for adoption. Adoption is resorted to for providing orphan, abandoned and surrendered children a right to family. The Authority will carry out adoption as per the provisions of the Act and according to the Adoption regulations framed. The Child Welfare Committee after exhaustion of attempts to trace the parents/guardians of the child and on the completion of the inquiry, if it is established that the child before it is an orphan or has no one to take care/abandoned, declare the child legally free for adoption.

- The declaration should be made within two months from the date of first production of the child, for children who are up to two years of age and within four months for children above two years of age:

- There is a bar against registration of a FIR against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act. [Section 38].

- In case of a surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately on completion of the period specified in section 35, for declaring the child legally free for adoption. [Section 38(2)]

- A child of a mentally retarded parents or a child of victim of sexual assault who does not want to care for the child, may be declared free for adoption by the Committee [Section 38(3)].

- The decision to declare an orphan abandoned or surrendered child as legally free for adoption shall be taken by at least three members of the Committee. [Section 38(4)].

- The Committee shall inform the designated State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed every month. [Section 38(5)]

- Section 56(2) provides that adoption of a child can be made as per the provisions of this Act and the adoption regulations framed by the Authority from a relative by another relative, irrespective of their religion.

- Adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 shall not be affected by the provisions of this Act.

- All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Central Adoption Resource Agency (CARA).
○ Section 56(5) bars a person from taking/sending a child to a foreign country or taking part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, and the same is be punishable as per the provisions of section 80.

V. Other Offences Against Children:

Chapter IX (Sections 74 to 89) provides for penal provisions for offences against children as described under this Chapter.

The offences against children and the punishment and procedure for them are provided at the table of offences against children at page 17.

VI. Misc. Provisions (Chapter X):

Presumption and Determination of age is a crucial exercise, which is mandated under Section 94 of the Act in cases wherein the JJB or the Committee has reasonable grounds for doubt with regard to age of the person brought before it.

The detailed procedure for determination of test is given under the SOP for the Child Welfare Committee in Volume III of the Handbook.

● Section 97 provides for manner of release of a child from a Children’s Home or a Special Home. It provides that on the basis of a report of a probation officer or social worker or of Government or a voluntary or non-governmental organisation, the Committee or the Board may consider the surrounding factors etc., and direct the release of the child.

● Section 98 provides for leave of absence to any child, wherein the Board/Committee may allow the child to attend examination/marriage/death etc. or any emergency of like nature, under supervision, for a period generally not exceeding seven days in one instance, excluding the time taken in journey.

○ This period shall be treated to be part of the time for which he is liable to be kept in the Children’s Home or special home.

○ If the child does not return, the Board may cause him to be taken charge of and to be taken back to the concerned home.

○ When a child in conflict with law fails to return to the special home on the leave period being exhausted or on permission being revoked or forfeited, the time for which he is still liable to be kept in the institution shall be extended by the Board for a period equivalent to the time which lapses due to such failure.

● Section 99 provides that all reports of the Committee and the Board shall be confidential unless the Committee or the Board deems it fit to communicate the substance thereof to another Committee or Board or to the child or to the child’s parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.

● Section 99(2) further emphasizes that that the victim shall not be denied access to their case record, orders and relevant papers.

● Section 101 provides for appeals:

♦ Except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate, any person aggrieved by an order made by the CWC or the JJB, may appeal against the Board/Committee within thirty days from the date of such order, prefer an appeal to the Children’s Court.
The Court of Sessions, or the District Magistrate, as the case may be. The appeal may be entertained after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

♦ An appeal can be filed against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section. [Section 101(2)]

♦ However, no appeal shall lie in two situations [Section 101(3)]:

a. From any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

b. From any order made by a Committee in respect of finding that a person is not a child in need of care and protection;

♦ No second appeal shall lie from any order of the Court of Session, passed in appeal under section 105. [Section 101(4)]

♦ Appeal against the order by the Children’s Court: Any person aggrieved by an order of the Children’s Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 [Section 101(5)]

● Section 102 empowers the High Court for revision of an order. It may call for the record of any proceeding in which any Committee or Board or Children’s Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit.

● Section 106 provides for the establishment of the Child Protection Society for the State and Child Protection Unit for every District by the State Government.

● Section 107 provides for establishment and designation of Special Juvenile Police Units and appointment of Child Welfare Police Officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.

● Section 109 vests the responsibility of monitoring the implementation of the Act upon the NCPCR or as the case may be, upon the SCPCR, in addition to the functions assigned to them under the Act. The provision further provides:

a. The National Commission or, as the case may be, the State Commission, shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in the National Commission or the State Commission under the Commissions for Protection of Child Rights Act, 2005. [S. 109(2)]

b. The National Commission or, as the case may be, the State Commission, shall also include its activities under this section, in the annual report referred to in Section 16 of the Commissions for Protection of Child Rights Act, 2005. [S. 109(3)]
THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012
From the time the Indian Penal Code came into force, there was no special law dealing with cases of child sexual abuse. There were three sections under the Penal Code, sections 375/6, 377 and section 354 which would be applied to the cases depending on the nature of the offence. These sections,\textsuperscript{16} were general in nature and in many cases did not really address the complex cases of child sexual abuse that were getting reported. There was also a big challenge with respect to procedure since children needed a support system through the criminal justice process which the existing system was not providing. This Central Legislation was brought into force with the object of protecting children from offences of sexual nature ranging from sexual assault, sexual harassment and pornography. It provides for the establishment of Special Courts for speedy trial of such offences.

**KEY BENEFICIARIES:** Children upto 18 years of age.

**KEY ENFORCEMENT AGENCIES:** Central and State governments, National Commission for Protection of Child Rights, State Commission for Protection of Child Rights, Police/ Special Juvenile Police Unit, District Child Protection Unit, CWC, Special Public Prosecutor, Children’s Court/Special Court/Judge, Support Person/Juvenile Justice Board.

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### Sexual Offences Against Children: Classification and Punishment

- Any person can be prosecuted under the Act for indulging in a sexual act with a child irrespective of whether the latter had consented to or not.
- Chapter II classifies sexual offences against children and prescribes punishment accordingly and Chapter III provides for punishment for using a child for pornographic purpose.

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\textsuperscript{16} As they existed before the Criminal Law Amendment Act 2013.
Penetrative Sexual Assault [Section 3]:

Section 3 of the Act deals with Penetrative sexual assault: A person is said to commit ‘penetrative sexual assault’ if

a. He penetrates his penis,
   ♦ to any extent
   ♦ into the vagina, mouth, urethra or anus of a child or
   ♦ makes the child to do so with him or any other person

b. He inserts any object or a part of the body other than the penis
   ♦ to any extent,
   ♦ into the vagina, the urethra or anus of the child or
   ♦ makes the child to do so with him or any other person;

c. He manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or
   ♦ makes the child to do so with him or any other person;

d. He applies his mouth to the penis, vagina, anus, urethra of the child or
   ♦ makes the child to do so to such person or
   ♦ any other person

The punishment for penetrative sexual assault is imprisonment for not less than seven years and may extend to life and a fine may also be imposed. (section 4);

Section 5 envisages aggravated penetrative sexual assault which is punishable under section 6 with more stringent punishment.

Offence of Sexual Assault [Section 7]:

Cases of sexual contact without penetration is covered under the offence of sexual assault. According to Section 7, if any person:

♦ touches the vagina, penis, anus or breast of the child or
♦ makes the child touch the vagina, penis, anus or breast of such person or any other person or
♦ does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

♦ The offence of sexual assault is punishable under Section 8 with imprisonment of either description for a term not less than 3 years but may extend to five years and shall also be liable to fine.

♦ Section 9 envisages aggravated sexual assault which is punishable under section 10 with more stringent punishment.

For offences listed in both these Sections [Sections 3 (penetrative sexual assault) and 7 (sexual assault)], the law recognises its aggravated form and prescribes a more stringent punishment for the commission of the same.
The offence is considered aggravated if:

i. committed by a police officer or

ii. member of the armed forces or security forces or

iii. public servant or

iv. a member of the management or on staff of any custodial home like a prison on a child in their custody or

v. staff or management of a hospital on a child in their facility, staff or management of an educational institution or religious institution or

vi. by two or more persons; or

vii. by using deadly weapons, fire, heated substance or corrosive substance; or

viii. by causing grievous hurt, bodily harm and injury or injury to sexual organs of the child; or

ix. the assault physically incapacitates the child; or

x. causes her to become mentally ill by virtue of the assault; or

xi. disables her to an extent where the child becomes unable to perform regular tasks, temporarily or permanently; or

xii. the child gets pregnant; or

xiii. inflicts the child with HIV or any other life threatening disease or infection that would temporarily or permanently impair the child; or

xiv. where the child is mentally or physically disabled; or

xv. assaults more than once or repeatedly; or

xvi. on a child below 12 years of age; or

xvii. is a relative of the child, or is in foster care or living in the same shared household with the child; or

xviii. is a staff member, management member of any institution that is providing services to the child; or

xix. is in a position of trust or authority; or

xx. when the child is pregnant; or

xxi. commits the assault and attempts to murder the child; or

xxii. during communal or sectarian violence; or

xxiii. has been previously convicted of an offence under this Act or any other sexual violence; or

xxiv. makes the child to strip or parade naked in public;

If it is an aggravated penetrative sexual assault (Section 5), then the punishment is rigorous imprisonment for a term not less than 10 years and may extend upto life imprisonment and shall also be liable to fine. (Section 6)

If it is an aggravated sexual assault (section 9), then the punishment is imprisonment for not less than 5 years and may extend upto 7 years and shall also be liable to fine. (Section 10)
Sexual Harassment [Section 11]:

- A person is said to commit sexual harassment upon a child if such person with sexual intent:
  - i. utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; OR
  - ii. makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; OR
  - iii. shows any object to a child in any form or media for pornographic purposes; or
  - iv. repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
  - v. threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
  - vi. entices a child for pornographic purposes or gives gratification therefor.

Any question of sexual intent shall be a question of fact

If a person commits sexual harassment upon a child she/he shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine. (Section 12)

Using a Child for Pornographic Purposes

Section 13 provides that if a person uses a child in any form of media including:

- programme or advertisement telecast by television channels; or
- internet or
- any other electronic form or
- printed form, or
- whether or not such programme or advertisement is intended for personal use or for distribution, for the purposes of sexual gratification, which includes:
  - a. representation of the sexual organs of a child;
  - b. usage of a child engaged in real or simulated sexual acts (with or without penetration);
  - c. the indecent or obscene representation of a child.

shall be guilty for the offence of using a child for pornographic purposes.

The expression 'use a child' includes involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.
PUNISHMENT FOR PORNOGRAPHY:

1. For using a child for pornographic purpose: imprisonment up to five years and fine for first conviction, and in the event of second or subsequent conviction with imprisonment up to seven years and fine.

2. If the person using the child for pornographic purposes commits penetrative sexual assault [Section 3] by directly participating in pornographic acts: Imprisonment not less than ten years which may extend to imprisonment for life, and shall also be liable to fine.

3. If the person using the child for pornographic purposes commits aggravated penetrative sexual assault [Section 5], by directly participating in pornographic acts: Rigorous imprisonment for life and shall also be liable to fine.

4. If the person using the child for pornographic purposes commits sexual assault [Section 7], by directly participating in pornographic acts: imprisonment not be less than six years but which may extend to eight years, and shall also be liable to fine.

5. If the person using the child for pornographic purposes commits aggravated sexual assault [Section 9], by directly participating in pornographic acts: imprisonment not less than eight years but which may extend to ten years, and shall also be liable to fine.

Abuse of a child can be through physical contact or through non-physical contact such as showing the child, pornographic images/videos etc.

Storage of pornographic material involving a child
Any person who stores pornographic material in any form involving a child shall be punished with imprisonment for a term which may extend to 3 years or with fine or with both. (Section 15)

Abetment of an Offence [Section 16]

○ A person is said to have abetted an offence under this Act if the person:
  i. Instigates any person to do that offence; or
  ii. Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or
  iii. Intentionally aids, by any act or illegal omission, the doing of that offence.

○ The punishment for abetment of any offence provided under this Act is the same as prescribed for the offence. [Section 17]

● An attempt to commit the offence of the offence, shall be punishable with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life, or as the case may be, one half of the longest term of imprisonment provided for that offence or with fine or with both. [Section 18]

Mandatory Reporting of Offences:

● Section 19 makes it mandatory for any person who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, shall provide such information to:

Handbook for Ending Violence Against Children (II- Overview of Laws) 69
a. The Special Juvenile Police Unit; or
b. The Local police

Every report should be [Section 19(2)]:

a. ascribed an entry number and should be in writing.
b. read over to the informant and
c. entered in a book to be kept by the Police Unit.

The section further provides the manner and the process to be employed while reporting:

i. If the report is made by the child the same should be recorded in a simple language so that
   the child understands the contents being recorded [Section 19(3)]
ii. If the language of the child is not understandable or in case contents is recorded in a
    language not understood by the child, a translator or an interpreter should be provided to
    the child if the child fails to understand the language. [Section 19(4)]
iii. If the SJPU or the local police is satisfied that the child is in need of care and protection it
    shall after recording the reasons in writing, make immediate arrangement to be made to
    give the child such care and protection (including admitting the child to the shelter home or
    the to nearby hospitals) within 24 hours. [Section 19(5)]

The SJPU or the local police must report the matter to the CWC and the Special Court or
where no Special Court has been designated, to the Court of Session, within 24 hours.
[Section 19(6)]

A person shall incur no liability, whether civil or criminal, for giving information in good faith
under Section 19(1). [Section 19(7)]

● Obligation of media, studio and photographic facilities to report cases:

As per Section 20 of the Act, any personnel of the media or hotel or lodge or hospital or club
or studio or photographic facilities (by whatever name called or irrespective of the persons
employed therein), on coming across any material or object which is sexually exploitative of the
child (including pornographic, sexually-related or making obscene representation of a child or
children) through the use of any medium, is under obligation to provide such information to the
Special Juvenile Police Unit, or to the local police.

FAILURE TO REPORT OR RECORD A CASE:

i. imprisonment upto 6 months with or without fine.

ii. Further any person, being in-charge of any company or an institution who fails to report the
commission of an offence under section 19 in respect of a subordinate under his control, shall
be punished with imprisonment for a term which may extend to one year and with fine.

iii. The provisions shall not apply to a child under this Act. [Section 21]

● Section 22 provides for false complaint or false information.

i. If a person makes false complaint or provides false information against any person, in respect
   of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to
   humiliate, extort or threaten or defame him, then such a person shall be punished with
   imprisonment for a term which may extend to six months or with fine or with both.

ii. Where a false complaint has been made or false information has been provided by a child,
    no punishment shall be imposed on such child [Section 22(2)].
Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment, which may extend to one year or with fine or with both. [Section 22(3)]

Protection of Identity of the child and Bar from publishing/reporting unauthentic information pertaining to the child on the Media [Section 23]:
- Reports or comments on any child, which is not complete and authentic cannot be published/reported on any form of media or by any studio or photographic facilities which may have the effect of lowering his reputation or infringing upon his privacy.
- Identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child shall not be disclosed.
- In some exceptional cases, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child. The reasons for permitting the disclosure must be recorded in writing.
- The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.
- Any person who contravenes the provisions shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

Chapter VI of the Act deals with procedures for recording the statement of the child by the police and the magistrate. The same have been detailed in the SOP.  

CHAPTER VII prescribes that in every district a Court of Session may be designated as a Special Court to try the offences under the Act and for the purposes of providing speedy trial. [Section 28]
- The State Government in consultation with the Chief Justice of High Court by notification in the Official Gazette shall designate for each district a court of session to be a Special Court.
- A Special Court shall also try an offence with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.
- The Special Court shall have jurisdiction to try offences under section 67B of the Information Technology Act with respect to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online. [Section 28]

Section 29 provides that where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed the offence, unless the contrary is proved.  

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17 See part II in the section of the Police as well as the Magistrate.
18 The provisions of the Cr.P.C. (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provision, the Special Court be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.
PROCEDURE AND POWERS IN THE COURTS

The cases under this section have to be conducted by the Police with one significant difference from the other cases. Ordinarily, under the Criminal Procedure Code, the police file their final investigation report before a Magistrate who then formally sends it to the Court of Session if the offence is one that has to be tried by the Court of Sessions. In cases under POCSO, the final report has to be filed before the special court and not before the Magistrate. (Section 33).

The Special Court 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. [Section 33(4)]

- **Section 30 provides for presumption of culpable mental state to commit the offence:**
  - The court assumes the existence of such mental state of the accused;
  - The accused may use it to his defence that he had no such mental state with respect to the act charged as an offence in that prosecution.
  - "Culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Under this Act, it is mandated that the cases would be tried by a designated Special Court subject to the proviso specified in section 28(1), i.e., the Children’s Court may also decide cases under the POCSO Act. It also mandates that Special Public Prosecutors must be appointed to deal with the cases. **Section 39** provides that the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, and mental health and child development to be associated with the pre-trial and trial stage to assist the child.

- **Section 40** provides the family or the guardian of the child are entitled to the assistance of a legal counsel of their choice for any offence under this Act: Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

- The National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights shall monitor the implementation of the provisions of this Act in such manner as may be prescribed and shall have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 while inquiring into any matters relating to this Act. **[Section 44]**

- ** Provision for Support Person [Rule 4(7), POCSO rules, 2012]:** It is also pertinent to note that under the POCSO framework, the CWC may provide a support person to render assistance to the child through the process of investigation and trial, upon receiving a report under subsection (6) of section 19 of the Act or on the basis of its assessment under subrule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children’s home or shelter home having custody of the child, or a person employed by the DCPU.

This Rule does not prevent the child and his parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

- **Compensation [Section 33(8) of the Act, Rule 7, POCSO Rules]:**
  - **Section 33(8) of the Act empowers the Special Court to, in addition to the punishment, direct payment of compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.**
Rule 7 provides that:

- The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report.

- Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

- The Special Court may, on its own or on an application filed by or on behalf of the victim recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

- Where the Special Court, under subsection (8) of section 33 of the Act read with subsections (2) and (3) of Section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim. (Please refer to Rule 7(3) for the factors that may be considered)

Section 357A of the Code of Criminal Procedure: The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under Section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government. The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order. The Section provides:

- Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. [Section 357A (1)]

- Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme. [Section 357A (2)]

- If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation. [Section 357A (3)]

- Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation. [Section 357A (4)]

- On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months. [Section 357A (5)]

The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit. [Section 357A (6)]
THE PROHIBITION OF CHILD MARRIAGE ACT, 2006
This Act was introduced repealing the previous one in 2006 with significant changes introduced. It is a Central Act enacted with a view to prohibit the solemnization of child marriages. It applies across all religions however, certain sections are subject to the personal laws prevailing on the subject.

● Applicability of the Act
  ○ It is applicable to all the citizens of India irrespective of the religion except to the State of Jammu and Kashmir and Renoncants of the Union territory of Pondicherry.

**KEY BENEFICIARIES:** Children as defined under this Act, girls under 18 years of age and boys under 21 years of age.

**KEY AUTHORITIES:**
1. Child Marriage Prohibition Officer;
2. District Magistrate
3. First Class Judicial Magistrates or Metropolitan Magistrate
4. Police
5. Family Courts
6. Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer - a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organisation.

● Key Definitions under the Act:
Section 2 of the Act deals with the definition of the following terms.
  ○ "Child" refers to a female who has not completed 18 years of age, and a male who has not completed 21 years of age. [Section 2(a)]
  ○ Minor is a person who under the provisions of the Majority Act, 1875, is to be deemed not to have attained his majority.
  ○ "Child Marriage" means a marriage in which either of the contracting parties is a child.
  ○ 'Contracting party' with respect to a marriage refers to either of the parties whose marriage is or is about to be solemnized.

● Protection/Safeguards afforded to children who are victims of child marriage:
  ○ The law makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage [Section 3]. The petition for obtaining a decree of nullity can be filed only by a person who was a contracting party to the marriage and was a child at the time of marriage.
  ○ If the petitioner is a minor at the time of filing the petition, it may be filed through the minor’s guardian or next friend alongwith the Child Marriage Prohibition Officer [Section 3(2)]

19 The petition under section 3 can be filed at any time but within the completion of two years after the child has attained majority. [Section 3(3)]
○ The Act makes provisions for maintenance and if the female contracting party makes the application, then the district court may also order for providing her with suitable residence until her remarriage. [Section 4]

○ The Act makes provisions for the custody and maintenance of the child born out of child marriage. [Section 5]

○ The best interest and welfare of the child should be the paramount consideration while granting custody of the child born out of a child marriage. [Section 5]

○ It gives a legal status to all children born out of child marriage before or after the annulment of the said marriage. [Section 6]

○ Promoting or participating or solemnizing the marriage is punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees [Section 11]

○ If a child is taken away from their lawful guardian by enticement, force or use of deceitful means or, is sold or trafficked for the purpose of marriage such marriage will be declared null and void [Section 12].

○ Injunction prohibiting child marriages can be issued by the court (Judicial Magistrate of the first class or a Metropolitan Magistrate) if it is brought to the knowledge of the Court that a marriage in contravention of the provisions of this Act is likely to be performed. [Section 13]

○ Child marriages will be declared null and void if the marriage is performed violating or in contravention of the injunction prohibiting a child marriage from taking place. [Section 14]

**Performance, Solemnization, Abetment of Child Marriage is an Offence**

- A male adult, above eighteen years of age who contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or fine which may extend upto Rs. One Lakh, or both. [Section 9]

- Solemnization of Child marriage is an offence: Whoever performs, contracts or abets child marriage shall be punishable with rigorous imprisonment, which may extend to two years and with fine, which may extend upto one lakhs rupees. [Section 10]

- Child marriage is a cognizable and non-bailable offence. [Section 15]

- Section 11 provides for punishment for promoting or permitting solemnization of child marriages.
  
  ○ The provision applies to any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, including attending or participating in a child marriage.
  
  ○ The offender shall be punished with rigorous imprisonment, which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees.
  
  ○ No woman shall be punishable with imprisonment under Section 11. However, a woman can be punished with fine.

**Presumption of negligence:** For the purposes section 10, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnized. [Section 11(2)]
The offender can be:
    i. A parent or guardian,
    ii. Priests,
    iii. Relatives/friends of both parties,
    iv. Neighbours of both parties,
    v. Community leaders who give patronage to such marriages,
    vi. Marriage bureaus/persons responsible for fixing marriages,
    vii. Traffickers, the bridegroom if he is over 18 years of age.

Role of Child Marriage Prohibition Officers [Section 16]:

Child Marriage Prohibition Officers are to be appointed in every State:
    o To prevent child marriages and to ensure protection of the victims as well as prosecution of
      the offenders.
    o To create awareness and sensitized the community on the issues of child marriage.

Jurisdiction/Powers of the Court

    o The District Court can grant a decree of nullity of the Child marriage. [Section 3]
    o Court has the power to order for maintenance and custody of the children born out of
      child marriage. [Section 4 and 5]
    o District Court is empowered to add to, modify or revoke any order relating to maintenance
      and custody of children born from a child marriage [Section 7].

    o The Judicial Magistrate of the First Class or a Metropolitan Magistrate may take suo moto
      cognizance of any reliable report of information of child marriage. [Section 13(3)];
    o In case of mass child marriage, the District Magistrate will act as a Child Marriage
      Prohibition Officer and will exercise all the powers to stop or prevent solemnization of child
      marriages. [Section 13]
    o The Courts have the power to issue injunction for prohibiting child marriages from taking
      place [Section 13]

Reporting of Child Marriage:

    o Any person can report an incidence of child marriage before or after it has been
      solemnized.
    o The complaint can be made to the police, the Child Marriage Prohibition Officer or
      such persons as may be appointed to assist him/her, the First Class Judicial Magistrate
      or Metropolitan Magistrate, Child Welfare Committee or a member of the Child Welfare
      Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000
      as amended in 2006, Child Line.

Annulment:

    o The child can file the petition for annulment of child marriage within a period of 2 years of
      attaining majority before the District Court. [Section 3(3)]
    o The Petition for annulment of child marriage can be filed by the contracting party to the
      marriage and if the petitioner is a minor the petition can be filed through a guardian or the
      next best friend along with the Child Marriage Prohibition Officer [Section 3 (1) and (2)]
THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986
It is a Central Legislation drafted with an object to completely ban the employment of children below 14 years of age. It underwent significant amendments in 2016 and the concept of “adolescent” was added. This Act prohibits employment of children under 14 years in certain occupations like bidi-making, mines, domestic work, power looms, automobile workshops, carpet weaving etc. and enterprises, except those run by his or her own family, provided that education does not hampered.

**KEY BENEFICIARIES:** Children upto the age of 18 years  
**KEY AUTHORITIES:** District Magistrate

- **Key Definitions under the Act:**

Section 2 of the Act defines the following terms:-

- "Adolescent" [Section 2(i)]: - Any person who has completed 14 years of age but has not completed 18 years of age.

- "child" [Section 2(ii)]: - A person who is below the age of 14 years or such as may be specified in the Right of Children to Free and Compulsory Education Act, 2009;\(^ {20} \)

- "family"[section 2(v)]: - In relation to an occupier, it means the individual, the wife or husband of such individual and their children, brother or sister of the individual.

- **Prohibition of child labour/Adolescent Labour [Section 3 and 3A]:**

- Employment of children has been completely banned except in the following two cases:

  - Children are allowed to help in his/her family or family enterprise(s) provided that:
    - i. such enterprise is not involved in hazardous processes set forth in the Schedule and
    - ii. the work is carried out after school hours or during vacations.

  Family here refers to child’s mother, father, brother, sister and father’s sister and brother and mother’s sister and brother.

  Family enterprise refers to family enterprise”:- Any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons.

- Children are allowed to work as artistes in the audio-visual entertainment industry including advertisement, films, television serials or any such other entertainment or sports activities except circus subject to (i) compliance with prescribed conditions and adoption of safety measures, and (ii) this work does not affect the school education of the child.

- Children between 14-18 years shall not be employed or permitted to work in hazardous occupation and processes as specified in the Schedule of the Act. [Section 3A]

\(^ {20} \) Section 2(c ) of the Right to Education Act defines child as a male or a female child of the age of six to fourteen years.
● **Procedure pertaining to duration of work for an adolescent working in an establishment [Section 7]:**
  ○ An adolescent should not be allowed to work for more than 3 hours before he has had an interval rest for at least one hour.
  ○ The duration of work shall not be spread out beyond 6 hours including waiting for work for any day.
  ○ They should not be employed or allowed to work between 7:00 p.m. and 8:00 a.m.
  ○ The child shall not be required or permitted to work overtime.
  ○ They should not be employed or allowed to work in any establishment on any day when he has already been working in another establishment, which means double employment of an adolescent is banned.

  ○ **Weekly Holiday [Section 8]:** The child is entitled to a holiday of one whole day in a week.

● **Disputes regarding age of the child/adolescent [Section 10]:**
  ○ In the absence of certificate as to the age of the adolescent the certificate granted by a medical authority shall be considered as conclusive evidence with regard to the age of the adolescent.

● **Punishment for parents/guardians:**
  ○ There shall not be any punishment in case of a first offence by parents/guardians in contravention of sections 3 or 3A. [Section 14(1B)]
  ○ In case of a second and subsequent offence, the penalty prescribed is a maximum fine of Rs. 10,000. [Section 14(2A)]

● **The Offence committed under this Act are cognizable offence [Section 14A]:** Any offence committed by an employer which is punishable under Section 3 and 3A is a cognizable offence.

● **In certain exceptional situations, like first time offenders or when parents have committed an offence, the District Magistrate can compound the offence on the payment of a fine.** (Section 14D)

● **Filing the Complaint:**

  Any person, police officer or Inspector can file a complaint before a Court of Metropolitan Magistrate or a Magistrate of First Class. [Section 16]

● **District Magistrate to implement the provision [Section 17A]:** Government may confer powers on a District Magistrate (DM) to ensure that the provisions of the law are properly carried out and implemented.

● **Inspection and Monitoring:** The Government should make periodic inspection and monitoring of places where employment of children is prohibited and hazardous occupations or processes are carried out. [Section 17B].
RIGHTS OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009
The Constitution of India was amended in 2002 and Article 21A was added to bestow the fundamental right to education. The Article vests the Centre and the States with the responsibility to provide free and compulsory education to all children of the age of six to fourteen years.

“21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

2. Substitution of new article for article 45- For article 45 of the Constitution, the following article shall be substituted, namely:- .

“Provision for early childhood care and education to children below the age of six years.”

“45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

3. Amendment of article 51A- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-

“(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

In order to comply fully with the Constitutional amendment, in 2009, the act was introduced. This is a Central legislation which aims to provide free and compulsory education to all children from the age of six to fourteen years.

It does not apply to Madrasas, Vedic Pathsalas and educational institutions imparting religious instructions. [Section 1(5)]

For the purposes of this Act, a ‘child’ is a person aged between six and fourteen years. [Section 2(c)]

KEY BENEFICIARIES: Children aged 6 to 14 years of age.


Key Definitions:
- "Child belonging to disadvantaged group" includes [Section 2(d)]:
  - a child with disability; or
  - child belonging to the schedules caste, schedule tribe, the socially and economically backward class; or
  - other groups having disadvantage owing to social, cultural, economical, geographical, linguistic, gender; or
  - such other factor specified by the Government by notification
- "Child belonging to weaker section” means whose parents or guardian annual income is lower than the minimum limit as notified by the Government.
o **“Capitation fee”** means any kind of donation or contribution or payment other than the school fees.

o **“Child with Disability”** means a child with ‘disability’ defined by the Persons with Disabilities Act, 1995 and National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and multiple Disabilities Act 1999.

‘Disability’:

As per section 2(i) of the Persons with Disabilities Act, disability includes: (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (viii) mental illness;

Section 2(j) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 defines “persons with disability” as a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability; and severe disability” means disability with eighty per cent or more of one or more multiple disabilities.

o **“Elementary Education”** is education from Class I to Class VIII

o **“Parent”** means the natural or step or adoptive father or mother of a child.

o **“School”** in the Act refers to any recognised school imparting elementary education owned or controlled by the Government, aided or unaided by the Government or local authorities.

**The Act provides right to free and compulsory education**

o Every child from the age of six to fourteen of age is entrusted by this Act with the right to free and compulsory education in a school till the child completes his/her elementary education.

o No school fees, capitation fees, charges or expenses are to be paid by a child to elementary education. [Section 3]

o **When a child of above six years has not been admitted to any school** or, if admitted, is unable to continue studies:

  ♦ Such a child shall be admitted to a class appropriate to his age.

  ♦ Such a child will be also given special training (minimum of 3 months; maximum 2 years) to bring her at par with the rest of the class.

  ♦ She can continue her education beyond 14 years in order to complete her elementary education. [Section 4]

o If a school does not provide facility to complete elementary education then a child of that school can take a transfer to any other government (govt.) or government-aided school. [Section 5]

o Each child is also entitled to free textbooks, writing material and uniform.

**The Statute prohibits certain acts:**

o **For using screening procedures for admission of children:** If a child or the parent/guardian of the child is subjected to screening procedure, the school/persons will be punished with a fine, which may extend to twenty five thousand rupees for the first contravention and fifty thousand for each subsequent contravention. [Section 13]

o **For Charging Capitation fee:** If any school or person receives capitation fees, fine will be imposed on the school/persons, which may extend to ten times the capitation fee charged [Section 13]

84 Handbook for Ending Violence Against Children (II- Overview of Laws)
Proof of age for the admission to elementary education should be the birth certificate or other such documents as may be prescribed however a child cannot be denied admission in a school for lack of age proof. [Section 14]

A child admitted in a school cannot be held back in any class or expelled from school till the completion of elementary education. [Section 16]

Physical punishment and mental harassment. If a person subjects a child to physical punishment and mental harassment he/she will be liable to disciplinary action under the service rules applicable to such person. [Section 17]

Private tuition by teachers is barred under the Act [Section 28]

It is the duty of every parent to admit their child below 14 years to a school;

OVERVIEW OF THE KEY PROVISIONS IN THE CONTEXT OF VIOLENCE AGAINST CHILDREN

The government, local authority must:

- ensure admission, attendance and completion of elementary education of the children and maintain records of children up to the age between 6 to 14 years.
- provide infrastructure including school buildings, teaching staff and learning equipment.
- ensure that children from the weaker and marginalized sections of the society are not discriminated against in school.
- provide special training facility for children not admitted to any school or those who have not completed elementary education.
- Ensure good quality elementary education according the specified standards and norms.
- Ensure that no new school is either started or allowed to function without obtaining a certificate of recognition form a designated authority and schools, already existing before the RTE Act came into effect, obtain such certificate within 3 years of the Act’s commencement.
- The Central and State governments have concurrent responsibility to provide funds for execution of this Act.
- The schools shall provide free and compulsory elementary education to all children admitted thereof and shall provide such information as may be required by the appropriate Government or the local authority.
- No school shall be established or function without obtaining a certificate of recognition and on contravention of this provision fine shall be imposed which may extend Rs. One Lakh and in case of continuing contraventions Rs. Ten Thousand for each day.
- A school, other than an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority, shall constitute a School Management Committee in which 50% of the members shall be women.
- The School Management Committee shall prepare school development plan at least three months before the end of the financial year.

Duties of Teachers [Section 24]

- Ensure they attend the school regularly and punctually.
- They have to ensure completion of curriculum within specified time.
- They have to assess the ability of each child and recommend special training, if required. They have to conduct parent-teacher meetings to apprise parents on attendance, learning ability and actual progress of each child.
Each school should have

i. an all-weather building with one classroom for every teacher,
ii. an office cum store cum Head Teacher’s room,
iii. separate toilets for boys and girls,
iv. safe and hygienic drinking water facility,
v. a kitchen to prepare mid-day meals,
vi. playground,
vii. fencing for the premises,
viii. a library, and
ix. Teaching learning equipment & play & sports equipment.

Sections 19(1) and 21(2) of the POCSO Act cast a duty on the teachers and management of the educational system to report instances of child sexual abuse along with the penalties for failure in reporting such offences.

Are private educational institutions included in this Act?

Yes, under section 12 (c) of the Act, the obligation to provide free education is cast upon private educational institutions as well.

It is immaterial whether they receive an aid or not or whether are reimbursed by the government to this end.

The schools are bound to reserve 25% of the class strength for children from the weaker or disadvantaged sections in the neighbourhood for admission in Class I or pre-primary classes.

Functions of National Commission for Protection of Child Rights and State Commission for Protection of Child Rights [Section 31]

The Act authorizes the National Commission for Protection of Child Rights and State Commission for Protection of Child Rights to perform the following functions –

i. Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation.

ii. Inquire into complaints relating to a child’s right to free and compulsory education and to take necessary steps.

The NCPCR Guidelines for Safety and Security of Children:

The NCPCR has in 2017 formulated an extensive Handbook On Safety And Security Of Children In School, which gives guidelines for various aspects concerning children in a school setting. For details please refer to <http://ncPCR.gov.in/showfile.php?lang=1&level=1&sublinkid=1343&lid=1550>

Redressal of grievances [Section 32]

- If any person has any grievance relating to the right of child, s/he can make a written complaint to local authority having jurisdiction.

- The local authority shall decide the matter within three months.

- Any person aggrieved by the decision of the local Authority can file an appeal before the State Commission for Protection of Child Rights.
THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956
This Act was passed in pursuance of the International Convention signed at New York on the 9th May, 1950, for the prevention of immoral traffic. (U.N. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others, 1949). Even though, in view of the extensive amendments to the Penal Code in 2013 by way of addition of Section 370 and 370A, a broader aspect of trafficking in persons is addressed, as of today, this is the comprehensive law dealing with commercial sexual exploitation. This act will have to be complemented with the Juvenile Justice system when used in cases of children.

KEY BENEFICIARIES: Children and Women;
KEY AUTHORITIES: Special police, Magistrate, Sessions Court, Protective homes

- **Terminologies:**
  - Section 2 of the Act lays down the definitions for terms as used in the Act.
  - The Act distinguishes a ‘child’ from a ‘minor’ and a ‘major’.
    - A child (16+), for the purpose of this Act is conceived as any person who has not completed the age of 16 years [Section 2(aa)].
    - A minor (16<18) is a person who has completed 16 years of age but has not attained 18 years of age. [Section 2(cb)]
    - A person is regarded as a major (18<) if she/he has completed 18 years of age.
  - The Act provides a broad definition for what constitutes a ‘brothel’ [Section 2(a)]. It provides that a brothel:
    - Includes any place, room, house, portion of a house, conveyance
    - Which is used/accessed for the purpose of sexual exploitation or abuse
    - For the Gain/Mutual gain of another person or of two or more prostitutes.
  - In the same line, Section 2(f) defines prostitution as sexual exploitation or abuse of persons for commercial purpose.
  - The Act provides for ‘corrective institution’ and ‘protective home’, which are established/recognized under this Act for catering to purposes specified under the Act.
  - The Act provides for institution of ‘special police officer’ (appointed by/on behalf of the State Government) and ‘trafficking police officer’ (appointed by the Central Government) to implement the provisions of the Act.

- **Section 3 penalizes a person for keeping/managing/ or assisting in keeping/managing a brothel.** This provision also applies to a person who has allowed her/his premises to be used as a brothel.
  - The section penalizes on account of first conviction, a person who keeps/manages or assists in keeping/managing a brothel with a rigorous imprisonment of for a term between 1 to 3 years and with a fine upto Rs. 2,000/-
  - On account of second/subsequent conviction, the penalty for a person who keeps/manages or assists in keeping/managing a brothel will be a rigorous imprisonment for a term of 2 to 5 years and a fine of upto Rs. 2,000/-.
  - **Section 3(2) provides for letting/allowing/permitting the use of premises as a brothel by:-**
    - **Section 3(2)(a) provides for punishment of a person who being a tenant/lessee, occupier/person-in-charge or knowingly allows the use of the premises by another person;**
Section 3(2)(b) provides for punishment of a person who being the owner/lessor/landlord who willfully uses or lets part or whole of the place with the knowledge that the same shall be used as a brothel.

- In both these circumstances as described under section 3(2), the offender shall be punishable on first conviction with a rigorous imprisonment for a term extending to two years and a fine which may extend to Rs. 2,000; In case of a subsequent/second conviction, the term of rigorous imprisonment is extendable to five years along with an imposition of fine.

- Section 3(2A) elaborates on section 3(2) and describes the circumstances in which the owner/tenant or lessor/lessee as the case may be will be presumed to have the knowledge that the premise in question or a part thereof was used as a brothel.

- The subsection 2A further specifies that if convicted, then, any agreement/lease deed, which had authorized the use of the place (as a brothel) in question, will be deemed void and inoperative since the day of the conviction.

Living on the earnings of Prostitution:

- Section 4 makes it an offence for a person who being above 18 years of age knowingly lives, wholly or in part on the earnings incurred through the prostitution of another person.

- The section penalizes such a person with imprisonment for a term, which may extend to two years, or with fine, which may extend to one thousand rupees, or with both.

- Providing for a sterner approach with respect to prostitution of children, section 4 further provides that if the earning made is in connection to the prostitution of a child, then such a person will be imprisoned for 7-10 years.

- Section 4(2) elaborates on the factors that enable the presumption that a person was ‘knowingly living on the earnings of the prostitution of another person.’ The section provides that where a person aged over 18 years is proved to:
  1. Be living with/habitually in the company of a prostitute; OR
  2. Exercise control/influence/direct the movements of the prostitute which would suggest abetting/aiding/compelling her prostitution; OR
  3. Be acting as tout (hawker) or pimp on behalf of the prostitute.

Section 5 relates to procuring or inducing or taking a person for the purpose of prostitution

- The section penalizes a person under this section for even attempting to procure, induce or take a person with the intent of prostituting the person, from one place to another to carry on prostitution.

- The section strictly penalizes procurement or attempt at procuring a person for the purpose of prostitution irrespective of the consent of the person who is being procured.

- Section 5(1)(d) penalizes a person who causes or induces a person to carry on prostitution.

Punishment:

- The section provides that on conviction of any of such persons mentioned above, such a person shall be punishable with rigorous imprisonment for a term of 3 to 7 years and also with fine, which may extend to two thousand rupees.

- The provision further states that if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years.
iii. If the person in respect of whom the offence is committed is a child (below 16 years of age), then the section stipulates a punishment of rigorous imprisonment of not less than 7 years but may extend to life.

iv. If the person in respect of whom the offence is committed is a minor (16<18 years of age), then the section provides for a punishment of rigorous imprisonment of a term not less than 7 years but for not more than 14 years.

Jurisdiction:

Section 5(3) provides that the offence will be triable either in the place from where the person was procured etc., or in the place where the person may have gone as a result of the procurement, etc.

● Section 6 deals with the offence of detaining a person in premises where prostitution is carried out:

  ○ If a person has been detained either in any brothel or in any premises with the intention that that person may have sexual intercourse with a person, who is not a spouse of the person being detained, then the person who detains the person is punishable under section 6.

  ○ Punishment: The punishment, on conviction is an imprisonment of either description for a term of not less than 7 years but may be for life or for a term extending to ten years, and an imposition of fine. However, on furnishing of adequate and special reasons, the Court may impose a sentence of imprisonment for a term of less than seven years.

  ○ If a person is found to be with a child, then such a person shall be punishable unless otherwise established, under section 6(1), as if the person had detained the child.

  ○ Presumption in case a minor or child is found in a brothel: Section 6(2A) provides that if a child or a minor is found in a brothel and on medical examination, it is detected that the minor/child has been sexually abused, then it shall be presumed that the child or minor has been detained for purposes of prostitution or has been sexually exploited for commercial purposes.

  ○ Detained for the purpose of sexual intercourse with a man, who is not the spouse: Section 6(3) provides that if a person:-

    i. Withholds from a woman/girl, her jewellery/money/wearing apparel/property belonging to her, or

    ii. Threatens to initiate legal proceedings if she parts with her belongings specified above, With the intention to compel or induce her to remain there, Then it shall be presumed that the woman or girl has been detained in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband.

    ○ No legal proceedings shall lie against the girl or woman under Section 6(3). [Section 6(4)]

● Addressing Prostitution carried out in public places or in the vicinity of public places [Section 7]:

  ○ Section 2(h) defines ‘public place’ to mean any place intended for use by, or accessible to, the public and includes any public conveyance;

  ○ Section 7(3) provides that the State Government may after roping in relevant considerations, by notification in the Official Gazette [power entrusted with Section 23 (2) (a)], direct that prostitution shall not be carried out in specified areas. The notification shall have specifications with reasonable certainty and subsequent notification alerting about the same area shall be issued only after the lapse of 90 days.
○ Section 7(1) penalizes a person who carries on prostitution and the person with whom such prostitution is carried on in any premises which are:

i. Within the area notified by the State Government under Section 7(3); OR

ii. Within a distance of 200 metres of any place of public religious worship/educational institution/hotel/hospital/nursing home or other public place as notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed.

The punishment is of imprisonment upto 3 months.

○ Section 7(1A) proceeds a step further to state that if the offence is committed in respect of a child or a minor, then the person convicted of the offence shall be liable to imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine. However, on furnishing of adequate and special reasons, the Court may impose a sentence of imprisonment for a term of less than seven years.

○ Section 7(2) provides for punishment of keepers, tenants or owners in charge of any of the premises (public places/vicinity) with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use.

If the offender is a keeper, owner or tenant, then, on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction, then, with imprisonment for a term which may extend to six months and also with fine hundred rupees.

If the public place in question happens to be a hotel, then the act provides for suspension of licence for three months, which may extend to one year. However, if the offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

○ Section 18 lays down the procedure for closing down brothels and eviction of offenders from the premises. (Elaborated later)

● Seduction of a person who is in custody is an offence punishable under section 9.

○ If a person who is in charge of or in a position of authority over or in care of another person, causes or aids or abets the seduction for prostitution of the person in custody/under care, then the Act prescribes an imprisonment of either description for a min. 7 years upto life. However, on furnishing of adequate and special reasons, the Court may impose a sentence of imprisonment for a term of less than seven years.

● The Act, further contemplates monitoring of residence of those convicts in accordance with Section 11.

○ In order to deter those convicted by Courts in India (under any of these sections: 366, 366A, 366B, 367, 368, 370, 371, 372 or 373 whose imprisonment is for two years or upwards) or tribunals/Courts in other country (under similar provisions or under the Act with similar sentence) from repeating the offence (within 2 years from release from the prison after 1st conviction), section 11 empowers the Court to, while issuing the sentence of imprisonment on the subsequent conviction, notify the address of the residence for a period of not more than 5 years.

○ Any person charged with a breach of any rule referred to in sub-section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified, as his residence is situated.

○ As understandable, if the conviction of an offence is itself challenged or appealed against, then the order of such notification of address becomes void. Section 11(2)
Section 11(3) empowers an Appellate Court or by the High Court, to exercise the power to
issue orders under this section, when exercising its powers of revision.

**Institution of Special Police Officers [Section 13]:**

- Section 13 mandates the State Government to appoint of its own accord or on its behalf, a
  Special Police Officer in every area specified by the State Government, for the purpose of
dealing with the offences under the Act.
- Qualification of SPO: Shall not be below the rank of an inspector police.
- Section 13(2A) provides that the District Magistrate may confer upon any retired police
  (who at the time of his retirement, was holding a post not below the rank of an inspector)
or military officer (at the time of his retirement, was holding a post not below the rank of a
commissioned officer) all or any of the powers conferred by or under this Act on a special
police officer, with respect to particular cases or classes of cases or to cases generally, if she/
he deems it expedient and necessary.
- **Assistance to SPO:** Section 13(3) provides for mechanisms to assist the SPO:
  i. The State Government may, as it deems fit appoint any number of subordinate police
     officers (women police officers wherever feasible) to assist the SPO;
  ii. The State Government may engage a non-official advisory body consisting of not
      more than five leading social welfare workers of that area (men and women) to
      advise the SPO on significant aspects concerning the provisions of the Act.
- **Officers to Investigate Offences in more than One State [Section 13 (4)]:** To attend to/
  investigate offences of or sexual exploitation or other offences committed in more than one
State, the Central Government has been empowered to appoint number of police officers
as trafficking police officers who shall exercise all the powers and discharge all the functions
exercisable by special police officers and these functions and powers shall be exercisable all
over India.

**Section 18 provides for closure of brothels and evicting offenders.**

- The Magistrate is empowered to, upon receipt of information that any place as referred to
under Section 7(1) (at public places and within 200 mts. therefrom) is being run or used for
the purpose of a brothel by any person or is being used by prostitutes for carrying on their
trade, issue a notice to the owner, lessor or landlord or their agent thereof, to show cause
within seven days of the receipt of the notice why the same should not be attached for
improper use of the same.
- The court can also issue this order of closure of brothels and evicting the offenders if it
convicts someone under the offence of sections 3 or 7, [Section 18(3)]
- If after hearing the person concerned, the Magistrate is satisfied that the house, room, place
or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may
issue an order directing the eviction of the occupier within seven days from the date of the
order, directing that if the house/premise is let out again within the passage of the order
within a year from the passage of the order, the prior approval of the Magistrate be taken
by the landlord/owner/lessor or agent thereof. However, if a minor was found in the premise
during the search under section 15, then the prior approval to let out shall be needed for
letting out for three years.
- If, however, the Magistrate finds that the landlord/lessor/owner is innocent and was infact
unaware of such activity being carried out in her/his premises, then the property shall be
restored to the same with the direction of the Magistrate that the premise/place shall not
be leased out, or otherwise given possession of, to or for the benefit of the person who was
allowing the improper user therein.
○ No appeal lies against the order issued under this section and the order shall not be set aside and the same shall cease to operate on its own after 1 or 3 years. However, if the conviction under sections 3 or 7 is set aside and it is found that the house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, then the order of eviction/closure under section 18(1) shall be set aside.

○ If the Magistrate passes an order under section 18(1), then any agreement/lease under which under which the house, room, place or portion is occupied at the time, shall become void and inoperative. [Section 18 (4)]

○ When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1), he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly. [Section 18(5)]

Section 22 provides that no Court inferior to the Metropolitan Magistrate or a Judicial Magistrate of the first class shall try shall try any offence under section 3, section 4, section 5, section 6, section 7 or section 8.

Power to Institute Special Courts:

○ Section 22A and 22AA deal with establishing Special Courts to enable the provisions of the Act.

○ Section 22A gives the discretion to the State Government to institute Special Courts, if there appears a need to provide for speedy trials of offences under this framework, in any district, by notification in the Official Gazette and in consultation with the High Court. The courts instituted are courts of Judicial Magistrates of the first class, or, as the case may be, Metropolitan Magistrates, in such district or metropolitan area.

○ Section 22AA, provides that if for the purpose of providing speedy trial for offences committed in more than one State, it is necessary that a Special Court of that stature be established, then, the Central Government shall accordingly exercise such power in consultation with the High Court concerned.

○ The Special Courts shall exercise jurisdiction and powers only within the confines of this Act, unless directed otherwise by the High Court. [Section 22A (2)]

○ A Special Court shall be deemed to be a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure, 1973 [Section 22A (4)]

Provision on Summary Trials:

○ Section 22B makes room for summary trials which shall be directed at the discretion of the State Government concerned, if it deems it necessary that offences under the provisions of this Act be summary trials. A Magistrate including the presiding officer of a Special Court established under sub-section (1) of section 22A may conduct the summary trial if directed by the State Government.

○ However, the section mandates that the Magistrate shall not for any conviction in case of a summary trial, sentence the person with an imprisonment of more than one year. If the Magistrate, at the commencement of the summary trial perceives that the sentence for the offence shall exceed one year of imprisonment, or for other reasons believes that the case at hand should not be tried summarily, then the Magistrate shall accordingly record the reasons and recall any witness to be examined and proceed to hear the case, or rehear the case, in accordance with the procedure laid down.
THE INFORMATION TECHNOLOGY ACT, 2000
The Information Technology Act is a statute dealing with aspects relating to governance of technology. It contains certain provisions relating to violence against children in the Cyberspace. For the purposes of this handbook, the sections relevant to children are included.

Key beneficiaries: Children, parents, and teachers;

Key Authorities:

i. Ministry of Electronics and Information Technology

ii. Ministry of Home Affairs

iii. Ministry of Women and Child Development

iv. Indian Computer Emergency Response Team

v. Intermediaries;

vi. Cyber-cells

Terminologies in the Act:

- "Intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message; [Section 2(1)(w)]

- "Data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer; [Section 2(1)(o)]

- "Electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche; [Section 2(1)(f)]

- "Information" includes data, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche; [Section 2(1)(u)]

Retention of records:

Section 7 provides for retention of records.

Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if—

1. the information contained therein remains accessible so as to be usable for a subsequent reference;

2. the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
3. the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information, which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

● **Attribution of electronic records:**

**Section 11** provides that:

An electronic record shall be attributed to the originator—

a. if it was sent by the originator himself;

b. by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

c. by an information system programmed by or on behalf of the originator to operate automatically.

● Under **Section 79** of the Act, technology companies, referred to as the intermediaries are exempt from prosecution under this Act as long as they exercise due diligence in their conduct for effective removal of material. This necessarily implies that they have a statutory duty to ensure that material covered under these sections must not be available for public viewing.

● The Information Technology (Intermediary Guidelines) Rules, 2011, notified by virtue of powers under the Act, in addition to calling upon all intermediaries to exercise due diligence, also states that they shall through rules and regulations, terms and conditions or user agreement, inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that harms minors in anyway, [Rule 3(2)(c)], or is paedophiliic or pornographic [Rule 3(2)(b)]

● The guidelines further require that the intermediaries retain the information with them even about content that is removed from public viewing upto a period of 90 days for the purposes of sharing with law enforcement.

● The offences under the Act with respect to children are dealt with in the table above at page 17.
THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016
It is a central legislation enacted by the Parliament. It aims at safeguarding and furthering the inherent rights of persons with disabilities including right to dignity, right to accessibility among others, and is built keeping in mind the right to equity. The Act recognises the role and responsibilities of various persons and entities including care-givers, medical professionals, private establishments, public facilities and buildings, institutions in enabling the rights of the intended beneficiaries.

- Key Beneficiaries: Children with disabilities;
- KEY ENFORCEMENT AGENCIES: Central and State governments, Chief Commissioner of Persons with Disabilities, State Chief Commissioner, Magistrate

- Key Definitions under the Act:
  - “care-giver” means parents and other family Members who with or without payment provides care, support or assistance to a person with disability;
  - “communication” includes formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology;
  - “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;
  - “high support” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;
  - “inclusive education” means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;
  - “information and communication technology” includes all services and innovations relating to information and communication, including telecom services, web based services, electronic and print services, digital and virtual services;
  - “institution” means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities;
  - “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;
  - “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;
  - “person with disability having high support needs” means a person with benchmark disability certified by the Central Government who needs high support;

16 As they existed before the Criminal Law Amendment Act 2013.
○ “public facilities and services” includes all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, transportation;

○ “reasonable accommodation” means 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;

○ “registered organisation” means an association of persons with disabilities or a disabled person organisation, association of parents of persons with disabilities, association of persons with disabilities and family members, or a voluntary or non-governmental or charitable organisation or trust, society, or non-profit company working for the welfare of the persons with disabilities, duly registered under an Act of Parliament or a State Legislature;

○ “rehabilitation” means a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychological environmental or social function levels;

○ “Special Employment Exchange” means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, regarding— (i) persons who seek to engage employees from amongst the persons with disabilities; (ii) persons with benchmark disability who seek employment; (iii) vacancies to which persons with benchmark disabilities seeking employment may be appointed;

○ “specified disability” means disabilities such as Blindness, Low-vision, Leprosy Cured persons, Hearing Impairment (deaf and hard of hearing), Locomotors Disability, Dwarfism, Intellectual Disability, Mental Illness, Autism Spectrum Disorder, Cerebral Palsy, Muscular Dystrophy, Chronic Neurological conditions, Specific Learning Disabilities, Multiple Sclerosis, Speech and Language disability, Thalassemia, Hemophilia, Sickle Cell disease, Multiple Disabilities including deaf blindness, Acid Attack victim, Parkinson’s disease

● Rights of Disabled Persons:

○ It is the responsibility of the governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others. [Section 3]

○ The Government and the local authorities shall ensure that women and children with disabilities enjoy their rights equally with others. They have to ensure that children with disabilities enjoy equal rights to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability. [Section 4]

○ It is the responsibility of the government to ensure that Persons with disabilities have a right to live a community life [Section 5]

○ The Government should take up measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment. They shall not be a subject of any research with his or her free and informed consent obtained through accessible modes, means and formats of communication and without prior permission of a Committee for Research on Disability [Section 6]

○ The Government should take up measures to protect person from disabilities from abuse, violence and exploitation, to take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents and rehabilitate the victims of such incidents. [Section 7]

○ A child with disability shall not be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child. [Section 9]
○ 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 9(2)]

○ The Government should ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit. They should ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law. [Section 13]

○ It is the duty of the Government, in consultation with the Chief Commissioner or the State Commissioner, to conduct, encourage, support or promote awareness campaigns and sensitization programmes to ensure that the rights of the persons with disabilities provided under this Act are protected.

○ The Government should also formulate schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community taking into consideration the diversity of disability, gender, age, socio economic status. They should also provide for safety, sanitation, health care and counselling. (Section 24)

○ The Central Government in consultation with the Chief Commissioner should formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas. (Section 40)

○ The appropriate Government should take measures to provide facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines etc and provide incentives and concessions and personal mobility assistance. (Section 41)

○ The appropriate Government should ensure that all contents available in audio, print and electronic media are in accessible format, persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning, electronic goods and equipment which are meant for everyday use are available in universal design. (Section 42)

No child with disability should be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child and where the parents are unable to take care of a child with disability. (Section 9)

Every child with benchmark disability, between the age group of 6 and 18 years shall have the right to free education (Section 31)

All Government institutions of higher education and other higher education institutions receiving aid from the Government should reserve not less than 5% seats for persons with benchmark disabilities. They will be given an upper age relaxation of five years for admission in institutions of higher education. (Section 32)
● **Right to Education [Sections 16 to 18, 31 and 32]**
  ♦ Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities.
  ♦ The institution should provide education and opportunities for sports and recreation activities equally with others.
  ♦ The building, campus and various facilities should be made accessible and equipped to facilitate children with disabilities.
  ♦ The institutions shall provide reasonable accommodation according to the individual's requirements and ensure that the education to persons who are blind or deaf or both is imparted in the suitable languages and modes and means of communication.
  ♦ The institutions shall detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them.
  ♦ They shall monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability.
  ♦ Provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs. [Section 16]
  ♦ Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education. [Section 31];
  ♦ All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities. [Section 32]
  ♦ The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education. [Section 32(2)]

● **Guardianship:** The Act provides for grant of guardianship by District Court under which there will be joint decision-making between the guardian and the persons with disabilities. (Section 14)

● **Registration and Certification:**
  ♦ No person can establish or maintain any institution for persons with disabilities without a certificate of registration issued in this behalf by the competent authority (Section 50);
  ♦ The competent authority can revoke the certificate of registration if it is found that the information provided in the application for the issue or renewal of the certificate is incorrect or false in material particulars, or has committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted.
  ♦ However such order should not be made without an opportunity to show cause as to why the certificate of registration shall not be revoked. (Section 52)

● **Certificate of Disability:**
  ♦ Section 58 deals with procedure for certification. Person with disabilities should apply to a ‘certifying authority’ having jurisdiction for issuance of certificate of disability.
  ♦ On receipt of an application, the certifying authority after making necessary assessment, should issue a certificate of disability to such person, in such form prescribed by the Central Government.
  ♦ The certificate of disability issued is valid across the country.
  ♦ Establishment of Authorities
♦ Central Advisory Boards on Disability as apex policy-making bodies at the Central level. [Section 60]
♦ State Advisory Boards on Disability at the State Level [Section 66]
♦ Office of Chief Commissioner of Persons with Disabilities [Section 74]
♦ Office of State Commissioners of Disabilities [Section 79]
♦ District Level Committees will be constituted by the State Governments to address local concerns of PWDs. [Section 72]
♦ Special Courts will be designated in each district to handle cases concerning violation of rights of Person with Disabilities. [Section 84]
♦ National and State Fund are established under the Act to provide financial support to the persons with disabilities. The existing National Fund for Persons with Disabilities and the Trust Fund for Empowerment of Persons with Disabilities will be subsumed with the National Fund. [Sections 86 and 88]

● Protection from Abuse, Violence and Exploitation:
  ○ Any person or registered organization can complain to the Executive Magistrate about any act of abuse, violence or exploitation; [Section 7(2)]
  ○ The Executive Magistrate on receipt of such information should take immediate steps to stop or prevent its occurrence. S/he is empowered to issue an order directing the rescue of the victim of such act, by authorizing the police or any organization working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be: for providing protective custody to the person with disability, if such person so desires; to provide maintenance to such person with disability. [Section 7(3)]
  ○ Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of—
    a. his or her right to apply for protection under sub-section (2) and the particulars of the Executive Magistrate having jurisdiction to provide assistance;
    b. the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities;
    c. the right to free legal aid; and
    d. the right to file a complaint under the provisions of this Act or any other law dealing with such offence:
       Provided that nothing in this section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.
  ○ If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the Indian Penal Code, or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter.
**Penalties for Offences:**

- The Act provides for penalties for offences committed against persons with disabilities and also violation of the provisions of the new law.

- Any person who violates provisions of the Act, or any rule or regulation made under it, is punishable with imprisonment up to six months and/or a fine of Rs. 10,000, or both. For any subsequent violation, imprisonment of up to two years and/or a fine of Rs. 50,000 to Rs. five lakh can be awarded. **[Section 89]**

- Where an offence under this Act is committed by a company, every person who at the time the offence, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, will be deemed to be guilty of the offence and will be liable to be proceeded against and punished accordingly. **[Section 90]**

- Any person who, fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, is punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both. **[Section 91]**

- Whoever intentionally insults or intimidates a person with disability, or sexually exploits a woman or child with disability, is punishable with imprisonment between six months to five years and fine. **[Section 92].**

- Alternate punishments: Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any other law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree. **[Section 95]**
THE MENTAL HEALTHCARE ACT, 2017
The statute aims to provide mental healthcare and services for persons with mental illness and lays down provisions to protect the rights of such persons by emphasizing on the role and responsibility of the persons, institutions and authorities that come in contact with and deal with persons with mental illnesses.

**KEY BENEFICIARIES:** Persons with mental illness, care giver;

**KEY INSTITUTIONS:** Central Mental Health Authority or the State Mental Health Authority, Mental Health Review Board, Police Officers, Medical Examiners, Magistrate,

- **Key Definitions under the Act:**

  **Section 2 of the Act defines the following term:-**

  - "care-giver" means a person who resides with a person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function, either free or with remuneration;
  
  - "family" means a group of persons related by blood, adoption or marriage;
  
  - "informed consent" means consent given for a specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person;
  
  - "least restrictive alternative" or "least restrictive environment" or "less restrictive option" means offering an option for treatment or a setting for treatment which—(i) meets the person’s treatment needs; and (ii) imposes the least restriction on the person’s rights;
  
  - "Mental healthcare" includes analysis and diagnosis of a person’s mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness;
  
  - "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence;
  
  - "minor" means a person who has not completed the age of eighteen years;
  
  - "prisoner with mental illness" means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison;
A. Procedure to be followed while admitting a minor with mental illness to a mental health establishment (Section 87)

- **Section 87** provides the procedure to be followed while admitting a minor with mental illness to a mental health establishment:

  a. The nominated representative of the minor shall apply to the medical officer in charge of a mental health establishment for admission of the minor to the establishment.

  b. The minor will be admitted to the establishment, only if two psychiatrists, or one psychiatrist and one mental health professional, or one psychiatrist and one medical practitioner examine the minor.

  c. The examination may take place on the day of admission or in the preceding seven days and the examiners should independently conclude based on the examination and, if appropriate, on information provided by others.

  d. The examiners should also record the reasons requiring for admission to a mental health establishment for example, admission is required in the best interests of the minor, with regard to his health, well-being or safety, taking into account the wishes of the minor if ascertainable and the mental healthcare needs of the minor cannot be fulfilled unless he is admitted;

  e. A minor so admitted should be accommodated separately from adults, in an environment that takes into account his age and developmental needs and is at least of the same quality as is provided to other minors admitted to hospitals for other medical treatments.

  f. The nominated representative or an attendant appointed by the nominated representative should under all circumstances stay with the minor in the mental health establishment for the entire duration of the admission of the minor to the mental health establishment.

  g. In the case of minor girls, where the nominated representative is male, a female attendant should be appointed by the nominated representative and under all circumstances should stay with the minor girl in the mental health establishment for the entire duration of her admission.

  h. A minor should be given treatment with the informed consent of his nominated representative.

  i. If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health establishment, the mental health establishment should discharge the minor.

  j. The medical officer or mental health professional in charge of the mental health establishment should inform the concerned Board within a period of seventy-two hours about any admission of a minor to a mental health establishment.

  k. The concerned Board has the right to visit and interview the minor or review the medical records if the Board desires to do so.

  l. Any admission of a minor, which continues for a period of thirty days, should be immediately informed to the concerned Board.

  m. The concerned Board should carry out a mandatory review within a period of seven days of being informed, of all admissions of minors continuing beyond thirty days and every subsequent thirty days.

  n. The concerned Board should at minimum, review the clinical records of the minor and may interview the minor if necessary.
B. Right of Persons with Mental Disabilities

a. Right to appoint a Nominated Representative

A person who is not a minor will have the right to appoint a nominated representative to take on his/her behalf, all health related decisions. (Section 14)

In case of minor the legal guardian will be the nominated representative unless the Board makes an order. (Section 15)

b. Right to access mental health care (Section 18)

A person will have the right to access mental health care, treatment and services run or funded by the Government which are affordable, of good quality, in sufficient quantity, available nearby and without any discrimination. A Person with Mental Illness (PMI) living below poverty line, a destitute or a homeless, shall get free treatment at state run or funded health establishments. The mental health services made available to PMI by the state shall be of the same quality as of general health services. All medicines on the essential drug list shall be made available to PMI’s free of cost at the establishments run or funded by the government.

c. Right to community living

A Person with mental illness will have the right to live in community and be part of and not segregated from society (Section 19)

d. Right to protection from cruel, inhuman and degrading treatment (Section 20)

i. Every Person with mental illness will be protected from cruel, inhuman or degrading treatment in any mental health establishment.

ii. Every person with mental illness admitted in an mental health establishment will have a right to safe and hygienic living environment, proper sanitation and facilities for leisure, recreation, education, religious practices and privacy.

iii. He will also have a right to proper and dignified clothing, which prevents exposure.

iv. He will not be forced to work in a mental health establishment and those who agree to work shall be paid appropriate remuneration for the work done.

v. He will be protected from all forms of physical, verbal, emotional and sexual abuse.

vi. A person with mental illness in a mental health establishment cannot be subjected to compulsory tonsuring (shaving of hair).

vii. They cannot be forced to wear uniform by the establishments.

e. Right to equality and non discrimination (Section 21)

i. Every person with mental illness will be treated as equal persons with physical illness.

ii. They should not be discriminated on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disabilities.

iii. A woman receiving institutional care shall ordinarily not be separated from her child if the child is below the age of three.

iv. Every insurer will make provision for treatment of mental illness at par with provisions made for physical illness.
f. Right to Information

A person with mental illness and his nominated representative about the existing law, the nature of the person’s mental illness ad proposed treatment. (Section 22)

g. Right to confidentiality. (Section 23)

i. A person with mental illness will have the right to confidentiality in respect of his mental health, mental healthcare, treatment and physical healthcare.

ii. However the health professionals on certain exceptions can release the information to the nominated representative to enable him to fulfill his duties, to other mental health professionals and other health professionals to enable them to provide care and treatment to the person with mental illness, to protect any other person from harm or violence and on the order of the concerned Board or the Central Authority or high Court or Supreme Court to release information.

h. They have the right to access to medical records. (Section 25)

i. Right to legal aid

A person with mental illness will be entitled to receive free legal services to exercise his/her rights available under the Act. (Section 27)

C. Prohibited Procedures/Practices and Restrictions

a. Prohibited procedures

No Electroconvulsive Therapy (ECT) can be performed without the use of muscle relaxants and anesthesia.

Electroconvulsive Therapy cannot be performed on minors. In exceptional cases it may be done after getting informed consent of the guardian and prior permission of the Board.

Sterilization of men or women, intended as a treatment for mental illness, shall not be done.

There will be no chaining a person with mental illness, in any manner or form. (Section 95)

b. Restriction on Psychosurgery

Psychosurgery cannot be performed as a treatment for mental illness without obtaining the informed consent of the patient and approval from the Board. (Section 96)

c. Restriction on physical restraints

○ Physical restraints should be used sparingly, only when absolutely needed, and are deemed as the least restrictive method. Seclusion and solitary confinement is totally banned (Section 97)

○ No photographs or any other information can be released to the media without the consent of the person with mental illness. (Section 24)

○ Any Registered Medical Practitioner can initiate emergency treatment to any person with mental illness if there is threat to self, others, objects or property. (Section 94).

● Duties of nominated representative (Section 17)

a. While fulfilling his duties he has to consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;
b. He has to give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;

c. To provide support to the person with mental illness in making treatment decisions;

d. He has the right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;

e. He should access to the family or home based rehabilitation services on behalf of and for the benefit of the person with mental illness;

f. He should be involved in discharge planning;

g. He should apply to the mental health establishment for admission of the person with mental illness;

h. He should apply to the concerned Board on behalf of the person with mental illness for admission and treatment of minor, persons with mental illness with high support needs in mental health establishment upto thirty days and beyond and to appoint a suitable attendant.

i. He should apply to the concerned Board against violation of rights of the person with mental illness in a mental health establishment;

j. He has the right to give or withhold consent for research.

● **Duties of a Police Officer**

a. Officer in charge of a police station should take under protection any person found wandering at large within the limits of the police station, if he/she appears to be with mental illness and is incapable of taking care of himself/herself and should be taken to the nearest public health establishment as soon as possible but not later than twenty four hours.

b. If a person with mental illness is homeless or found wandering in the community a first information Report of a missing person should be lodged and should trace the family and inform the family about the whereabouts of the person. [(Section 100)]

c. If he finds any person with mental illness is being ill treated or neglected he should report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides. [(Section 101)]

● **Attempt to commit suicide not an offence**

A person who attempts to commit suicide will be presumed to be “suffering from severe stress” and shall not be subjected to any investigation or prosecution. [(Section 115)]

● **Mental Illness during judicial process:**

If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court. [(Section 105)]
MEDICAL TERMINATION OF PREGNANCY ACT, 1971
The legislation is built with the object of providing a statutory framework for the termination of certain pregnancies, by registered medical practitioners. Only registered medical practitioners are authorized to conduct the termination of pregnancies and shall not be punished for conducting termination in accordance to the provisions of this Act [Section 3(1)]. Such termination conducted by an unregistered medical practitioner is a punishable offence under the Indian Penal Code, as is provided under section 5(2) of this Act.

Section 3 addresses when pregnancies can be terminated:

That a pregnancy shall be terminated only upon the consent of the woman [Section 3(4)(b)]. However, if the woman has not attained the age of 18 years or is over 18 years but not in a position to take a decision because of her mental illness, then the parent/guardian of the person is authorized to terminate the pregnancy by providing the consent for the same in writing.

- Section 3(2) provides that a pregnancy may be terminated by a registered medical practitioner:
  - a. If the pregnancy has not exceeded 12 weeks and the registered medical practitioner is of the opinion that the pregnancy would affect the life or mental or physical health of the woman, or that the pregnancy entails a substantial risk to the child after its birth (it would suffer from such physical or mental abnormalities as to be seriously handicapped); OR
  - b. if the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks and at least two registered medical practitioners are of the opinion that the pregnancy would affect the life or mental or physical health of the woman, or that the pregnancy entails a substantial risk to the child after its birth (it would suffer from such physical or mental abnormalities as to be seriously handicapped)

- Pregnancy by rape is regarded as a grave injury to the mental health of the pregnant woman. If the pregnancy has been caused due to failure of contraceptives used by the woman or husband, then too it shall constitute a grave injury to the mental health of the pregnant woman.

- The registered medical practitioner(s) while assessing that the continuation of pregnancy may affect the health of the woman/child, will also give due weightage to the pregnant woman's immediate and foreseeable position. [Section 3(3)]

- However, the contingencies with respect to the length of the pregnancy and the opinion of (at least) two registered medical practitioners shall cease to operate if the registered medical practitioner is of opinion formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. [Section 5(1)]

Place of Termination: Termination of pregnancy can be executed only in accordance with the provisions of the Act and only in the following places:

- A hospital established or maintained by Government, or
- A place for the time being approved for the purpose of this Act by Government.

However, this provision shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. [Section 5(1)]

- Section 5 empowers the Central Government to formulate Rules supplementing and furthering the provisions of this Act.
- There can lie no legal proceedings against a registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act. [Section 8].
THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989
The Act was enacted to prevent the commission of offences of atrocities against the members of SCs and STs and to provide relief and rehabilitation of the victims of such offences. The Act further provides specific rights to the dependent of the victim. The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Amendment of 2016 provides for establishment of Exclusive Special Courts at the district level for trial of offences listed under the Act. [Section 14]

**KEY BENEFICIARIES:** Persons Belonging to SC/ST Communities;

**KEY AUTHORITIES:** Police, Special Courts,

The Act provides for punishments for offences committed on members of the Scheduled Castes and Scheduled Tribes.

- A public servant who neglects her duty is punishable under this Act [Section 4].
  - Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.
  - The charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.
  - The cognizance in respect of any dereliction of duty (as listed below) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.
  - The duties of public servant shall include [Section 4(2)]:
    - (a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;
    - (b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;
    - (c) to furnish a copy of the information so recorded forthwith to the informant;
    - (d) to record the statement of the victims or witnesses;
    - (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;
    - (f) to correctly prepare, frame and translate any document or electronic record;
    - (g) to perform any other duty specified in this Act or the rules made thereunder.

- All offences listed in the Act are cognizable. The police can arrest the offender without warrant and start investigation into the case without taking any orders from the court.

- The Exclusive Special Courts shall be established in addition to Special Courts (Courts of Session designated for the purpose of this Act).

- The cases before the Special Courts and Exclusive Special Courts are to be disposed off within a period of two months.

- Appeals from these Courts shall lie with the High Courts, which shall be decided within three months from the date of appeal. [Section 14A]
GUARDIANS AND WARDS ACT, 1890
The Guardians and Wards Act is a Central legislation enacted by the Parliament in 1890 with a view to protect the interests of minor and to grant security to the person and property of the minor. The Act is of universal application irrespective of the religion dealing with guardianship of children applicable to the Indian Territory as a whole but not applicable to State of Jammu and Kashmir.

**Key Beneficiaries:** Children upto 18 years of age;
**Key Functionaries:** District Court

**Definitions:**
- *Section 4* of the Act deals with the definition of a minor, guardian, ward, collector and court.
  - "a minor/child" *Section 4 (1)* is defined as a person under the age of 18 years
  - "Guardian" *Section 4 (2)* means a person taking care of the minor or property of the minor or both.
  - "ward" *Section 4 (3)* means a minor for whom a guardian is appointed.

**Types of Guardianship:**
- a. Guardian of the Minor
- b. Guardian of the Property.

**Process of Guardianship:** An application regarding the guardianship of a minor should be filed by the interested person before the District Court where the minor resides and if the application is with regard to the property than it should be before the District Court where the minor resides or where the property is situated. *Section 9*
- The application/Petition should be duly signed and verified by the person according to the process prescribed under the Civil Procedure Code. It should contain the name, age, residence, details of relatives etc. and such other details specified by the Act. It should also be accompanied by a declaration of his willingness to act signed by him and attested at least by two witnesses. However the Collector can apply for the guardianship of the minor by way of letter addressed to the Court. *Section 10*
- If an application for guardianship is filed it will be placed before the Judge and on examination, if the Court is satisfied that there is sufficient ground to proceed, the court will issue notice to the concerned parties informing the acceptance of the application and the date of hearing in the manner prescribed under the Civil Procedure Code. *Section 11*
- Courts should ensure that the interest of the minor is protected, while appointing the guardian. *Section 7*.
- Court should consider the personality, character and capability of the guardian and consider the relationship of the guardian with the minor. However it is not necessary that a guardian will be appointed because an application is made before the Court.
- The Court is bound to record the reason for rejection of the Application in writing as Appeal lies before the High Court. *Section 47*. 
Evidence to be heard: - The court should hear evidence supporting or opposing the application for guardianship before making a decision [Section 13].

In case of Simultaneous proceedings in different courts: -

Section 14 provides for the procedure in the event that simultaneous proceedings for appointment of guardian of a minor are taken in more than one courts:

1. If proceedings for the appointment or declaration of a guardian of a minor are taken in more courts than one, each of those courts shall, on being apprised of the proceedings in the other court or courts, stay the proceedings before itself.

2. If the courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

3. In any other case in which proceedings are stayed under sub-section (1), the court shall report the case to, and be guided by such orders as they may receive from their respective State Governments.

Powers of the Court:

a. The Court can direct any person who is having the custody of a minor, to produce him or cause him to be produced at any place and time before any person appointed by the court. If the minor is a female, she will be produced as per the customs and manners of the country. However, the court cannot direct a female minor to be placed before a person claiming to be her guardian on the ground of him being her husband unless the minor is in his custody with the consent of the parents.

b. The Court can also pass orders for the protection of the property of the minor [Section 12].

Guardians cannot be appointed in certain instances: -

a. The Court cannot appoint or declare a guardian of the property of a minor if the property is under the superintendence of a court of wards.

b. The court cannot appoint or declare a guardian of the person of a minor who is married even though the court is of the opinion that the husband is unfit to be a guardian, if the father is alive and of a minor if the property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor. [Section 19]

The Court can remove a guardian appointed by a court or appointed by will or other instruments on receiving an application of any interested person or of its own motion if there are abuse of his trust, failure to take proper care of the ward, incapacity, disobedience of court orders or contumacious disregard of this Act, convicted of any offence, adverse interest and if ceases to reside within the local limits of the jurisdiction of the Court. In case of a guardian of property, the guardian can be removed if he is bankrupt or declared insolvent. [Section 39].

A guardian can also asked the Court to discharge him from his office. [Section 40]

Penalties:

If a person appointed as a guardian removes the ward from the jurisdiction of the Court he can be punished with imprisonment for a term, which may extend to six months and a fine not exceeding one thousand rupees. [Section 44]
Section 45 provides for penalty in case of failure to comply with the orders/directions of the authorities appointed under the Act: The section provides for penalty in the following cases:

(a) If a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1); or

(b) if a guardian appointed or declared by the court fails to deliver to the court, within the time allowed by or under clause (b) of Section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section;

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with the requisition under section 41, sub-section (3), the person, guardian or representative, as the case may be, shall be liable, by order of the court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the court may cause him to be arrested and recommitted to the civil jail.
Say No to Child Sexual Abuse

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