



Rajasthan State Legal Services Authority

**JUVENILE JUSTICE
SALIENT FEATURES, PROVISIONS
AND CHALLENGES
INCLUDING
POST COVID-19 THREAT OF
TRAFFICKING OF CHILDREN**

JUVENILE JUSTICE: SALIENT FEATURES, PROVISIONS AND CHALLENGES INCLUDING POST COVID-19 THREAT OF TRAFFICKING OF CHILDREN

By

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Statistics

Number of crimes committed by juveniles has increased – 27,936 IPC crimes by juveniles in 2012 and 31,725 cases in 2013, 35,849 in 2016, 33,606 in 2017 and 31,591 in 2018 (number of juveniles apprehended 38,256- Crime in India Report published by NCRB for 2018, total crimes in country 50,74,634)

Rajasthan- 2273 in 2016, 2048 in 2017 and 2068 in 2018

In fact report says that since 2016, number of crimes committed by children has decreased.

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Significantly, share of IPC crimes committed by juveniles to total IPC crimes reported in the country has remained more or less the same- 1.2% in 2012 and 1.2% in 2013 and 2014. Share in total crimes 0.62% in 2018.

- 91% of the children had received primary level education and 45% were educated between matriculation and higher secondary.
- 99.3% of the children involved were boys.
- 382 children or about 1% were below 12 years
- 75.5% were between 16 to 18 years old.

Need to treat children differently

- Children need to be treated distinctly from the adults because:
 - children are weak and vulnerable and need special care
 - of their tender age and physique, mental immaturity and incapacity to look after themselves
 - they have to take the responsibility to rule the country in the near future and they should develop into responsible citizens.

Constitutional Provisions and International Conventions

- Articles 15(3), 21, 21A, 22, 23, 24, 39, 39A, 45, 47 and 51A (k) of the Constitution impose on the State the primary responsibility of ensuring that all needs of the children are met.
- India is a signatory to the Convention on the Rights of the Child.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules or Declaration).

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- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- SAARC Convention on Regional Arrangements for Promotion of Child Welfare adopted in 2002.

BACKGROUND

- Act of 1986
- Act of 2000, amended in 2006
- Act of 2015
- Juvenile Justice (Care and Protection of Children) Rules, 2007 – called the ‘Model Rules’
- Juvenile Justice (Care and Protection of Children) Rules, 2016 – also called the ‘Model Rules’.

How children come before courts

- As victims of crimes
- Witnesses
- Children in conflict with law
- Children in need of care and protection

Comparitive Table

Topic	Regular Criminal Court	Juvenile Justice Board
Jurisdiction – age of offender	Above 18 years	Upto 18 years
Purpose of criminal process	Retribution and deterrence and now reformation	Best interest of the child Rehabilitation and reintegration in the society
Adjudicatory body	Magistrate or Sessions/ Addl. Sessions Judge	Principal Magistrate who is a judicial officer and 2 social workers
Location	In court complex	In or near an Observation Home
Institutions for sending undertrials	Jails	Observation Homes/ Place of Safety
Institutions for sending convicts/ persons found to be involved	Jails	Special Homes/ Place of Safety
Nature of Proceedings	Adversarial	Not strictly adversarial

Decision by whom	Judge presiding over the court	By majority and in case of no majority, decision of PM to prevail
Age inquiry	To be conducted where a person produced is upto the age of 21 years	In every case where there is doubt regarding the age
Procedure for age inquiry	As per section 94 of the Act	As per section 94 of the Act
Registration of FIR	In all cases	Not to be registered except where a heinous offence is alleged to have been committed by the child or when such offence is alleged to have been committed jointly with adults.
Arrest/ Apprehension	As per Cr.P.C. And judgment in Arnesh	Only with regard to heinous offences unless it is in the best interest of child.
Compliance of D.K. Basu's judgment at time of arrest	Mandatory	Mandatory, certain additional safeguards laid down. Information of apprehension to be given to PO

Bail	Depends on the case	Matter of right and denied only on grounds specified in S.12 of the JJ Act. While releasing on bail, child may be placed under supervision of a Probation Officer or under care of fit institution or fit person
Time period for production	24 hours, if holiday, produced before Duty Magistrate/ Judge	24 hours, if holiday, produced at home before PM or before a Member of the JJB
Any report to be produced at time of first production of offender	No specific report required	Child Welfare Police Officer to file Social Background Report Petty offence may be disposed of then itself
When released on bail	Accused is summoned again when charge sheet filed	Better to keep the matter pending to enable early filing of final report and to be able to supervise the child
Issuance of coercive process	Bailable warrants, non-bailable warrants and proceedings under sections 82/83 Cr.P.C. Section 174A may also be resorted to	Warrants not resorted to, instead issue order for apprehension or production of child. Use section 26 i.e. Provision in respect of escaped child when the child cannot be found and no separate proceeding to be instituted in that respect

Time period for filing charge sheet	As per Cr.P.C.	2 months from date of information to the police in cases of petty or serious offences except where not known that person involved a child, in which case extension possible.
Time period for disposal of the case	No fixed time period	Within 4 months extendable to six months and further extension in case of serious and heinous offences
Nature of trial	Summons or warrants trial	Basically an inquiry but procedure of summons trial to be followed
Charge	Notice or charge is framed depending on the offence	Only notice is served upon the child
Statement of accused	To be recorded	To be recorded (Rule 10(8) of Model Rules, 2016)
Defence Evidence	Can be led	Can be led
Sentencing/ Dispositional alternatives	Punishment as prescribed by IPC	As per Section 18 of the Act
Maximum period of detention	As per IPC/Cr.P.C.	3 years in a special home/ place of safety
Life imprisonment or death	Can be granted	Cannot be granted

Effect of conviction	Stigma of conviction attaches, acts as bar for government service and some other facilities	No disqualification is attached to a conviction and all relevant records to be removed after expiry of period of appeal or a reasonable period.
Revealing the identity	Can be revealed	Strict prohibition on revealing the identity in media etc.
Appeal	As per Cr.P.C.	To Sessions Court No appeal from order of acquittal lies No second appeal lies from order of Sessions Court
Revision	As per Cr.P.C.	Only before High Court

Principles to be borne in mind

- Best interest of the child
- Rehabilitation and restoration or reintegration of the child in the society
- Child is treated in a manner consistent with the promotion of his sense of dignity and worth
- Presumption of innocence

Apply to all.

Role qua children as offenders

- All the stakeholders must recognise the long term damage which can be done to a child because of an encounter with the criminal law early in his or her life. Prosecution must be regarded as a severe measure with significant implications for the future development of the child concerned.
- In fact one of the fundamental principles contained in S.3 of the JJ Act is the principle of diversion i.e. 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.

Adjudicating Machinery

- Juvenile Justice Boards- section 4 for children in conflict with law
- To be set up in each district
- Consists of :

Metropolitan Magistrate/ Judicial Magistrate of First Class

Two social worker members including one woman at least.

Being monitored by Supreme Court in **Sampurna Behura v. Union of India.**

Children's Court if the matter is sent there by the Board.

Cases of children first before JJB

- All cases relating to children in conflict with law to be first brought before the Board (section 8(1) of the Act)
- Thus even as regards special offences, the provisions of JJ Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of children in conflict with law under such other law.
- Under Section 5 the inquiry has to be continued in JJB even where the child ceases to be a child during the course of such inquiry and orders passed under the Act.

Homes

Children not to be kept in jails (proviso to section 10(1) of the Act).

Supreme Court in **Sheela Barse v. Union of India** (1986) 3 SCC 632 observed:

“If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. Even apart from the statutory prescription, it is elementary that a jail is hardly a place where a juvenile should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society.”

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- Observation Homes – pending inquiry
- Place of Safety – pending inquiry or after having been found involved
- Special Homes – after having been found involved.

Types of offences

Petty offences – offences for which maximum punishment under IPC or any other law is imprisonment upto 3 years [s.2(45)]

Serious offences – imprisonment between 3 and 7 years [s.2(54)]

Heinous offences – for which minimum punishment under IPC or any other law is seven years or more [s.2(33)] (judgment of Hon'ble High Court of Punjab and Haryana in **Bijender v. State of Haryana and Another** in context of sections 307 and 436)

- Judgement of Hon'ble Supreme Court in **Shilpa Mittal v. State of NCT of Delhi and Anr.** Crl.App. No.34 of 2020 decided on 9.1.2020- Held:
- “...hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be a heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz. offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter.”
- Applies to all offences committed after coming into force of the Act.

Who is a child in conflict with law?

- Who is alleged or found to have committed an offence, and
- Who has not completed eighteen years of age as on the date of commission of such offence.
- Section 82 IPC – less than 7 years old
- Section 83 IPC – 7 to 12 years

There may be situations in which the children in conflict with law may also be treated as children in need of care and protection.

AGE

- Immediately on apprehension police officers should make enquiries about the age of the person involved especially if he appears to be a minor.
- Mandate of Supreme Court in **Gopi Nath Ghosh v. State of West Bengal**, AIR 1984 SC 237
- Steps taken in this regard to be mentioned in the final report.
- Police officers should try to obtain documentary information and if there is any doubt benefit of doubt has to be given to person apprehended and he should be treated as a child and produced before the Board.

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AGE

- Section 9 – applies to Magistrate's court- on forming an opinion that the person is a child, forward to the Board.
- Section 9(2) – every court where claim of juvenility is raised to make an inquiry to determine the age.
- Claim can be made even after final disposal of the case.
- If the court finds a person to be a child on the date of commission of offence the child is to be forwarded to the Board.
- Pending age inquiry, a person may be kept in place of safety [Section 9(4) of the Act].

AGE INQUIRY

- Section 94 of the Act applies to courts or the JJB or the CWC alike (earlier rule 12 was there).
- Where based on the appearance of a person, it is obvious that a person is a child, such observation is to be recorded stating the age of the child as nearly as may be and inquiry under section 14 is to be proceeded with. (earlier S.7A was there which applied to all courts and when a claim of juvenility is raised before a court or the court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court has to make an age inquiry).
- In case of reasonable grounds for doubt, age determination has to be undertaken.

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The age inquiry is to be conducted by seeking evidence by obtaining:

- (i) the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
 - (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
 - (iii) and only in absence of (i) and (ii) the medical opinion will be sought and such medical age determination test to be completed within 15 days.
- Thus ossification test is not to be directed straightaway but only when the above documents cannot be found after sincere efforts.
 - Age recorded is deemed to be the true age of the person.

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- Courts have held that generally the documentary evidence is to be preferred over the medical evidence and only when the documents produced are doubtful that the ossification test report should be relied on.
- Generally the age on the lower side of the range is to be considered.
- Same procedure has to be followed for *determining the age of the victims* (**Jarnail Singh v. State of Haryana** (2013) 7 SCC 263; **Mahadeo v. State of Maharashtra** (2013) 14 SCC 637).

Scope of Age Inquiry

- Has been a question of difficulty with some courts ordering detailed inquiry including examining witnesses, while others relying upon documentary proof and passing orders. Detailed guidelines have been laid down by the Hon'ble HC of Delhi in **Court on its own motion** in judgment dated 11.5.2012.
- The issue was dealt in detail by Hon'ble Supreme Court in **Ashwani Kumar Saxena v. State of M.P.** (2012) 9 SCC 750. It was observed that S.7A (Act of 2000) obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. Further it was observed that the Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc as evidence need not be oral evidence; and that age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service.

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“There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, JJ Board or a Committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the JJ Board or the Committee need to go for medical report for age determination.”

- And further:

“The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.”

Where claim of juvenility is raised after conviction

- Claim of juvenility may be raised at any stage even after final disposal of the case and delay in raising the claim of juvenility cannot be a ground for rejection of such claim.
- If the claim is raised after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary, initial burden has to be discharged by the person who claims juvenility.
- Such materials which would prima facie satisfy the court cannot be catalogued.
- An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision shall not be sufficient in justifying an enquiry to determine the age of such person *unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.* (Emphasis supplied)

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- Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim must be rejected by the court at the threshold whenever raised.
- Court where plea is raised for the first time should be guided by the objectives of the 2000 Act and a hyper technical approach is not to be taken. *The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.*

Abuzar Hossain @ Gulam Hossain v. State of West Bengal (2012)10 SCC489.

'Sentencing' where a person is found to be a child after conviction

- Several views were taken:
 - 1) The child was found guilty of crime but the sentence awarded was quashed.
 - 2) The view taken was that the child was adequately punished for the offence committed by him by serving out some period in detention.
 - 3) The entire case was remitted for consideration by the jurisdictional JJB, both on the innocence or guilt of the child as well as the sentence to be awarded if the child was found guilty.
 - 4) Case was examined on merits and after having found the child guilty of the offence, the matter was remitted to the jurisdictional JJB on the award of sentence.
- Held in **Jitendra Singh @ Babboo Singh** that the appropriate course of action would be to remand the matter to the jurisdictional JJB for determining the sentence.

Age of victim/ prosecutrix

- **Jarnail Singh v. State of Haryana** (2013) 7 SCC 263- no difference in so far as minority is concerned, between a child in conflict with law, and a child who is a victim of crime.'
- **Mahadeo v. State of Maharashtra** (2013) 14 SCC 637- JJ Rules apply in case of age determination of the prosecutrix in criminal cases.
- **State of MP v. Anoop Singh** (2015) 7 SCC 773- Primacy given to documents over medical opinion.
- **Sri Ganesh v. State of Tamil Nadu**, 6.1.2017.

Who has to be informed by IO about apprehension of child?

- Immediately on apprehension, the child is to be placed under the charge of SJPU or child welfare police officer (Section 10(1) r/w rule 8(2)) who is to inform:
- Parents/guardian along with address of Board and date and time when parents need to be present before the Board [Section 13 (1) (i) r/w rule 8(2)(i)]
- Probation Officer or Child Welfare Officer or Case Worker attached to the Board [Section 13 (1) (ii) r/w rule 8 (2) (ii) and (iii)].

Whether apprehension is mandatory in all cases

- In case of petty or serious offences the child may be apprehended only where same is necessary in the best interest of the child. [proviso to rule 8 (1)].
- In all other cases of petty and serious offences and cases where apprehending the child is not necessary in the interest of the child, the police or SJPU or CWPO shall forward the information regarding the nature of offence alleged to be committed by child along with SBR to Board and inform parents/ guardian when child is to be produced before Board for hearing.
- In case of heinous offences the power of apprehension may be exercised. [proviso to rule 8(1)].

Do's and don'ts

Child not to be handcuffed, chained or fettered and no coercion or force to be used on the child [rule 8(3)(ii)]

- Child not to be sent to lock-up or jail (proviso to S.10), not to be kept with adult accused (**Salim Ikaramuddin v. Officer- in –charge 2005 Cri.L.J.799**)

- Transfer of child to CWPO not to be delayed

- Child to be informed promptly and directly of all charges levelled against him through his parent or guardian

- If FIR is registered, copy of same to be made available to the child or copy of police report to be given to the parent or guardian. cont...

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- Child to be provided appropriate assistance – medical, food, assistance of interpreter or special educator or any other assistance which child may require.
- Child not to be compelled to confess his guilt **Court of its own motion v. Govt. of NCT of Delhi order dt. 3.3.2009**
- Child to be interviewed only at SJPU or at a child-friendly premises or at a child friendly corner in the police station, which does not give the feel of a police station or of being under custodial interrogation. Parent or guardian may be present during interview of the child by the police.
- CWPO to speak to child in polite and soft manner and shall maintain dignity and self-esteem of the child.

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- Child not to be asked to sign any statement.
- Child not to be subjected to any cruel or degrading treatment- police officer found guilty of torturing a child liable to be removed from service besides prosecution under Section 75 of the Act.
- Where victim and person in conflict with law are both children, they shall not be brought in contact with each other. [rule 86(9)]

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- District Legal Services Authority to be informed to provide free legal aid to the child.
- Child Welfare Police Officer to be in plain clothes and not his uniform [rule 8(4) and rule 86(5)]. For dealing with girl child, women police personnel shall be engaged.
- Child not to be taken in a vehicle which presents look of a police vehicle
- Child Welfare Police Officer to prepare Social Background Report in **Form 1** which contains the social background of the child and the circumstances of apprehending the child. To gather best possible information SJPU or CWPO to contact the parent or guardian of the child [rule 8(5)]

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- Child to be produced before the Board within 24 hours of apprehension (Section 10 (1) – if not sitting before the member (**Court on its own** motion v. **Govt. of NCT of Delhi** WP (C) 8801/2008 order dated 3.3.2009 that the requirement of Section 10(1) is immediate production of the juvenile before the JJB and not mere production within 24 hours).
- Police officer may send the person apprehended to an observation home or fit facility only for such period till he is produced before the Board i.e. within 24 hours of his being apprehended and obtaining appropriate orders from the Board [rule 8(3)(i) and rule 9(6)].
- Rule 69 provides for overnight protective stay – Form 42

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- Notwithstanding anything in the Code of Criminal Procedure, 1973 no preventive proceeding shall be instituted against a child in conflict with law such as proceedings u/s 107/150, 107/151, 109, 110 Cr.P.C. (Section 22).
- The guidelines laid down in **D.K. Basu v. State of West Bengal** (1997)1SCC416 to be adhered to by the police in all cases of arrest or detention and the amended provisions of Cr.P.C. are equally applicable, *mutatis mutandis*, to a child (**Jitender Singh**) particularly S.41-B, 50A, 54 of Cr.P.C.

Whether FIR is to be registered mandatorily?

- In cases of petty or serious offences no FIR to be registered except when such offence is alleged to have been committed jointly with adults— SJPU or CWPO to record information regarding the offence alleged to have been committed in the general daily diary entry followed by SBR and circumstances in which child was apprehended where applicable and forward it to the Board.[rule 8(1)]
- In heinous offences FIR to be registered.

Time period for completion of investigation

- Objective is expeditious disposal of cases
- In cases of petty or serious offences, final report to be filed before the Board at the earliest and in any case not beyond the period of two months from date of information to the police, except in those cases where it was not reasonably known that the person involved in the offence was a child, in which case extension of time may be granted by the Board. [rule 10(6) – earlier within 3 months of date of offence or registration of FIR **Sheela Barse v. Union of India**, AIR 1986 SC 1773]
- Even in cases of heinous offences final report should be filed at the earliest.
- In Delhi the matter is kept pending even after bail is granted so that IO can be reminded constantly to file the PIR and to keep the child under assessment.

Procedure in relation to Board

- Procedures to be child friendly (section 7)
- Board not to resemble court.
- Order of Board not to be invalid by the reason of absence of any member.
- Two members including Principal Magistrate to be present at time of final disposal or while making order on preliminary assessment.
- Decision to be taken by majority if difference of opinion but if not there then opinion of PM prevails.

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- Board to ensure that no person unconnected with case remains present in room when case is in progress.
- Board to ensure that only those persons in whose presence the child feels comfortable are allowed to remain present during the sitting.
- While communicating with child, Board to use child friendly techniques through its conduct and adopt a child friendly attitude.
- Child may be produced before individual member when Board is not in sitting. One member to be always accessible. PM to draw up a monthly duty roster of members who will be available and to be circulated in advance (Rule 6)

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- In case child cannot be produced even before a single member of the Board due to apprehension of child during odd hours or distance, child to be kept by CWPO in Observation Home in accordance with rule 69 D or in a fit facility and thereafter be produced before Board but within 24 hours of apprehension.
- If child is produced before individual member, order to be ratified by the Board in its next meeting.
- Where child is not apprehended and information is forwarded to the Board, Board shall require the child to appear before it at the earliest so that measures for rehabilitation, where necessary can be initiated (Rule 9)

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Legal Aid: At the time of first production itself the Board shall ensure that child is represented by a lawyer.

The child and his guardian should be informed about availability of legal aid.

The Board shall ensure that the Legal cum Probation Officer in the District Child Protection Unit and the State or District Legal Aid Services Authority extends free legal services to the child. [Rule 7(ix)]

Bail

- S.12 provides for release on bail of a person accused of a bailable or non-bailable offence, and apparently a child when he is apprehended or detained or appears or is brought before a Board.
- Bail can be with or without surety or he can be placed under the supervision of a PO or under the care of any fit institution or fit person.
- Grounds on which bail can be refused are expressly stated i.e. if there appear reasonable grounds for believing that the release is
 - likely to bring him into association with any known criminal; or

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- expose him to moral, physical or psychological danger; or
- that his release would defeat the ends of justice.

Thus even here primarily the interest of the child is seen and the children are to be kept in protective custody if the Board forms an opinion that the release will put him under moral, physical danger.

Where a child is unable to fulfil conditions of bail order within seven days of the bail order, child shall be produced before the Board for modification of the conditions of bail.[Section 12(4)]

Where child is released on bail, probation officer or child welfare officer has to be informed by the Board.[Section 13(2)]

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Boards are required to consider not the offence alleged against the child or the gravity thereof or the role of the child in the same or even the interest of the victim but whether it would be in the interest of the juvenile to keep him in protective custody. In 129 (2006) DLT 577 the High Court of Delhi did not entertain the plea of the State:

“...that the alleged act said to have been committed by the juvenile along with co-accused was one of great moral degradation and the act in itself would demonstrate the perversity of the mind of the juvenile”

Holding that the nature of the offence is not one of the grounds on which bail can be granted or refused to the juvenile.

ESCAPED CHILD

There may be several situations where a child may be said to have escaped:

- He has been released on bail or undertaking but does not appear before the Board on date fixed for appearance and no application is moved for exemption or there is no sufficient ground to grant exemption (rule 10)

- He has been kept in protective custody but escapes from there

S.26 of the Act talks of a child in conflict with law 'who has run away from a special home or an observation home or a place of safety or from the care of a person under whom the child was placed under the Act'.

In regular courts when an accused escapes or does not appear before the Court, NBWs are issued against the accused and thereafter if he avoids the service of the warrants resort is had to Section 82 Cr.P.C.

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Boards do not issue NBWs or resort to process under S.82 Cr.P.C. but issue notice to the parents/ guardians/ sureties to produce the children before the Boards.

Directions are issued to the Child Welfare Police Officer and the person-in-charge of the police station for production of the child.[rule 10(3)]

If CWPO fails to produce the child even thereafter, Board to pass orders under section 26 which provides that the child is to be produced before the Board within 24 hours which may pass appropriate orders. [rule 10(4)]

No additional proceeding is to be instituted in respect of the child.

Enquiry by the Board

- The Board conducts an inquiry and not a trial (S.14 and R.10, 11, 12)
- Cases of petty offences shall be disposed of through summary proceedings
- The procedure of summons trial is to be followed (S.14), in serious offences and heinous offences dealt with by it, accordingly notice is served upon the juvenile and a charge is not framed even in heinous matters.
- Only the material witnesses are examined as a full fledged trial is not required.

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- When witnesses are produced for examination, the inquiry is not to be conducted in the spirit of strict adversarial proceedings.
- Board to use the powers conferred by S.165 Evidence Act to interrogate the child and proceed with the presumptions that in favour of the child.
- While examining the child and recording his statement, the Board shall address the child in a child-friendly manner.
- Board may take into account report of the police, SIR, and the evidence produced by the parties for arriving at a conclusion. (rule 10)

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- Inquiry is to completed within 4 months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two months by the Board having regard to the circumstances of the case and after recording reasons in writing for such extension.(Section 14)
- If inquiry for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated.(S.14)
- In case of serious or heinous offences, further extension of time to be granted by CMM for reasons to be recorded in writing.
- Rule 12- case monitoring sheet

Preliminary assessment

- In case of heinous offences alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board is to conduct a preliminary assessment. (Section 15)
- Preliminary assessment is to be done with regard to:
- the mental and physical capacity of the child to commit such offence;
- ability of the child to understand the consequences of the offence; and
- the circumstances in which the child allegedly committed the offence.

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- Board to first determine that child above 16 years (rule 10A)
- Child to be presumed to be innocent unless proved otherwise.
- Board may take assistance of experienced psychologists or psycho-social workers or other experts.
- Not a trial but is to assess the capacity of such child to commit and understand consequences of the alleged offence.

Thus no cross-examination to be done.

Preliminary assessment to be disposed of within a period of three months from date of first production of child before the Board (S.14)

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- No specific indicators laid down but the Board may take into consideration:

Social Investigation Report

Report of investigation

Statements of witnesses recorded by Child Welfare Police Officer – CWPO is required to produce the statement of witnesses recorded by him and other documents within a period of one month from date of first production of child before the Board and copy to be given to child or parent or guardian or child. [rule 10(5)]

Medico legal report, Forensic report

Other documents prepared during course of investigation filed by the police. Medical reports of the child/ Mental health reports

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- **The Board may consider:**

whether the child also qualifies as a child in need of care and protection;

whether the child has himself been a victim of any offence in the past;

whether the child has had a history of abuse and exploitation;

whether the unlawful conduct has been done for survival;

whether the alleged offence has been committed due to situational factors such as the child being put to extreme mental trauma and cruelty to compel him to commit an offence;

whether the child had committed the offence under coercion or fear of mental or physical harm to himself or to some other person;

Cont..

whether the alleged offence has been committed under the control of adults, or with an adult or the child has been used by a group of adults,;

whether the child suffers from a mental illness;

whether the child is prone to taking drugs or alcohol;

whether the child is under the influence of peer groups or associates with those who present risk of harm e.g. sexual offenders, drug peddlers etc. or criminals;

whether the child has been involved in violent incidents prior to the alleged offence;

whether the child has been previously involved in any offence;

whether the child has suicidal tendencies or of harming himself;

Cont..

whether the child has been exposed to media, internet including to pornography and media depicting violence;

personality traits and habits of the child;

whether the child was aware of what he has done and his perception of the act; and

whether the child has been recruited or used by any non-State, self-styled militant group or outfit declared as such by the Central Government.

- The Board may, after the preliminary assessment decide to dispose of the matter itself in which case procedure of summons trial shall be followed.

Cont..

- Where the Board passes an order that there is a need for trial of the child as an adult, then the Board may transfer the trial of the case to the Children's Court having jurisdiction to try such offences (section 18(3) of the Act of 2015).
- The Board is required to assign reasons for the same and the copy of the order is to be provided to the child forthwith [Rule 10A(4) of the Model Rules of 2016].
- The order of the Board on the preliminary assessment is appealable under section 101(2) of the Act of 2015.
- The Children's Court or Sessions Court while deciding the appeal, can also take assistance of experienced psychologists and medical specialists other than those whose assistance had been obtained by the Board. The Children's Court would have to consider similar factors as the Board is required to consider during preliminary assessment. The Children's Court is to record its reasons for arriving at a conclusion whether the child is to be treated as an adult or as a child.

Contd...

- After the Children's Court receives the preliminary assessment, it has to decide whether to try the child as an adult or as a child.
- If Children's Court decides that there is no need for trial of child as an adult, it may conduct an inquiry as a Board.
- In such a situation, only an inquiry would be conducted and not a trial and the procedure for trial in summons case under the Cr.P.C. would be followed [Rule 13(7)(ii) of the Model Rules of 2016].
- The Children's Court is to conduct the proceedings in a child friendly atmosphere.

Dispositional Orders

- After the conclusion of inquiry, the Board/ Children's Court acting as Board may pass one of the dispositional orders enumerated in S.18 of the Act.
 - a) Allow the child to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the child;
 - b) Direct the child to participate in group counselling and similar activities;
 - c) Order the child to perform community service
 - d) Order the child or parents or the guardian of the child himself to pay a fine.
 - e) Direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person on their executing a bond for a period not exceeding three years.

Cont..

f) Direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility.

g) Direct the child to be sent to a special home for a period of three years or a place of safety.

In addition, a child may be asked to attend school, attend a vocational training centre, attend a therapeutic centre, prohibit the child from visiting, frequenting or appearing at a specified place or undergo a de-addiction programme.

Every final order is to include an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or DCPU or member of NGO.

•No child in conflict with law can be sentenced to death or for imprisonment for life without the possibility of release.

Trial by Children's Court

- Where the Children's Court decides to treat the child as an adult, the procedure for trial by sessions may be followed.
- Where an appeal has been filed against the order of the Board declaring the age of the child or against the finding of preliminary assessment, the Children's Court shall first decide the appeal. (Rule 13)
- Reasons are to be recorded while arriving at a conclusion whether child is to be treated as adult or child.
- Where the child is treated as an adult, a child friendly atmosphere is to be maintained.

Cont..

- After trial, the Court may pass appropriate orders, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere.

Cont..

- Where a child is found to be involved in an offence by a Children's Court, the final order is to include an individual care plan.
- Child found to be in conflict with law may be sent to place of safety till he attains the age of 21 years. Thereafter he may be transferred to a jail in certain circumstances.
- Periodic follow up report by probation officer or DCPU or social worker.

Contd..

There has to be a yearly review by the probation officer or the District Child Protection Unit or a social worker to evaluate the progress of the child [Rule 13(8)(iv) of the Model Rules of 2016] in the place of safety and to ensure that there is no ill-treatment to the child in any form.

The Children's Court may also direct the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan [Rule 13(8)(v) of the Model Rules of 2016].

Cont..

- When child in conflict with law attains the age of 21 years and is yet to complete the term of stay, follow up to be done to see if reformatory changes have taken place. Thereafter:
 - Child may be released or on certain conditions including appointment of a monitoring authority who may be a probation officer or case worker or Child Welfare Officer or a fit person under the Model Rules of 2016.
 - Child may be directed to complete remainder of his term in jail.

Appeal and Revision

- Appeal against order of Board can be filed within thirty days from date of order
- No appeal shall lie against order of acquittal made by the Board [Section 101(3)] other than heinous offence by a child above 16 years.
- No second appeal lies from order of Court of Session passed in appeal.
- Revision lies under section 102.

Early release

- On report of Probation Officer, Board may consider release of a child from special home either:
 - Absolutely, or
 - On some conditions

Permitting him to live with his parents or guardian or under supervision of a named person. [Section 97(1)]

IF conditions imposed are not fulfilled, the child may be placed back in the home.

Leave of absence

- Child may be permitted leave of absence or allowed on special occasions like examination, marriage of relatives, death of kith and kin or accident or serious illness of parent or any emergency to go on leave under supervision, generally for 7 days excluding the time taken for journey (Section 98).
- If child refuses or fails to return to the institution, he may be sent back to the concerned home and period of stay in the institution may also be extended.

Miscellaneous

- A child cannot be charged with or tried for any offence together with a person who is not a juvenile.(S.23)
- A child shall not suffer disqualification, if any, attaching to a conviction of an offence except a child above 16 years found to be in conflict with law by Children's Court. (S.24)
- The media is barred from disclosing the name, address or school or any other particulars calculated to lead to the identification of the child except with the permission of the authority holding the inquiry. (S.74).
- Difference in terminology- terms like NBWs, charge sheet, arrest are not used.

Offences Against Children

- Prohibition of disclosure of identity of children – Section 74
- Cruelty to child – Section 75 and Rule 55 of Model Rules, 2016
- Employment of child for begging – Section 76
- Giving intoxicating liquor or narcotic drug or psychotropic substance to a child – Section 77 and Rule 56 of Model Rules, 2016
- Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor or narcotic drug or psychotropic substance to a child – Section 78 and Rule 57 of Model Rules, 2016
- Exploitation of a child employee – Section 79

Contd..

- Adoption without following prescribed procedures – Section 80 and Rule 58 of Model Rules, 2016
- Sale and procurement of children – Section 81 and Rule 59 of Model Rules, 2016
- Corporal punishment – Section 82 and Rule 60 of Model Rules, 2016
- Use of child by militant group or other adults – Section 83
- Kidnapping and Abduction – Section 84

Inquiry in case of missing child to be as per rule 92

Rules 54 to 60 of the Model Rules, 2016 lay down the procedure to be followed in cases of offences against children.

Children in need of care and protection

- Certain children are categorised as children in need of care and protection.
- JJ Act has elaborate provisions for their rehabilitation and reintegration as well.
- All such children have to be produced before the Child Welfare Committees which passes appropriate orders in their respect.
- Rehabilitation could be through foster care, adoption, sponsorship or after care or even be institutional in children's homes.

Production of child before CWC

- A child in need of care and protection may be produced before CWC by any police officer or SJPU or designated Child Welfare Police Officer.
- Child to be produced within a period of 24 hours excluding the time necessary for journey.
- Person producing child before Committee to make report in Form 17 containing the particulars of the child and the circumstances in which the child was received or found. [rule 18(2)]

Duty of SJPU

- Police officer interacting with children shall be as far as possible in plain clothes and not in uniform and for dealing with girl child, woman police personnel shall be engaged.[rule 86(5)]
- CWPO or any other police officer shall speak in polite and soft manner and shall maintain dignity and self-esteem of the child.
- Where questions that may lead to discomfort of the child are to be asked, such questions shall be asked in tactful manner.

Contd...

- When FIR registered for offence against a child, copy of FIR to be handed over to the complainant or child victim and subsequent to completion of investigation, copy of report of investigation and other relevant documents to be handed over to complainant or any person authorised to act on his behalf.
- No accused or suspected accused shall be brought in contact with the child.
- SJPU to work in coordination with Committee.

Custody of Minor Victim

Where child is a child in need of care and protection, the child has to be produced before Child Welfare Committee which will decide the question of custody. This could be in cases of child labour, victims of sexual abuse, trafficking.

In cases under POCSO, the Special Juvenile Police Unit or the police have to report the matter to the Child Welfare Committee.

However not all child victims are to be produced before the Child Welfare Committee by the police.

Cont..

Rule 4(3) of POCSO Rules clarifies that **only the following child victims of sexual crimes are to be produced before the Child Welfare Committee:**

- (i) a child who has been abused or is likely to be abused by a person living in the same household as the child or a child's family member
- (ii) a child living in a child care institution and without parental support
- (iii) a child without any home or parental support

Delhi Commission for Women v. Delhi Police WP (Crl.)696/2008
decided on 23.4.2009

Trafficking of Children

Statistics

- As per government statistics, in every eight minutes, a child goes missing
- In 2011 about 35,000 children were reported missing and in fact less than half the cases are reported. A total of 1,11,569 children were reported missing by the year 2016 and 55,625 children were untraced at the end of the year.
- There are possibilities that missing children may have been trafficked, hence we need to look at trafficking as well.
- Total 6,877 cases of crime relating to human trafficking were registered in 2015 according to NCRB data compared to 5,466 cases during 2014
- 3,490 cases of crimes relating to child trafficking were registered in 2015

Definition of Missing Children

The term “Missing and Trafficking” are mentioned, though not defined in

Juvenile Justice (Care and Protection of Children) Act, 2015
Section 2(14)

Unless the context otherwise requires,- ...

"child in need of care and protection" means a child – (i) who is found without any home or settled place or abode and without any ostensible means of subsistence, ...

(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, ...

(ix) who is found vulnerable and is likely to be inducted into drug abuse or **trafficking”**

Cont...

- Hon'ble Supreme Court in **BBA v. UOI** WP (Civil) 75/2012 has defined missing child as a person below 18 years of age whose whereabouts are not known to the parents, legal guardians and any other custodian of child.
- As per the Standard Operating Procedure of Delhi Police, “a child (a person who is **below 18 years** of the age) whose whereabouts are unknown to the parents, legal guardians or any other person who may be legally entrusted with the custody or guardianship of the child and in ordinary circumstances would know about the whereabouts and would be concerned about the wellbeing of the child, whatever may be the circumstances/causes of disappearance.

(This definition has also been used in Juvenile Justice Model Rules, 2016)

The child will be considered missing and in need of care and protection, until located and/or his/her safety/well-being is established.”

Definition of Trafficking

- Article 3, para (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the UN Convention against Transnational Organised Crime, 2000 defines Trafficking in Persons as the Recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The Problem

- Trafficking is the third largest organized crime after drugs and arms trade across the globe
- Almost 80% of human trafficking is done for sexual exploitation
- Rest for bonded and forced labour and organ trade
- India is source, destination and transit state.
- There is a strong linkage between 'trafficking' and 'missing persons'. The Supreme Court has held that **whenever a child goes missing, it should be presumed to be a case of kidnapping or trafficking** (*BBA Vs. Union of India W.P.(C) No.75/2012*).
- Results in mental and physical issues for the victims.

Cont...

- Women and children are vulnerable to trafficking.
- In India, there are communities who are engaged in prostitution. Women and children in these communities would be particularly vulnerable.
- Areas affected by unrest, instability, conflict or natural disasters are also vulnerable areas for trafficking.
- There are some neighbouring countries from where women and children are trafficked into this country.
- Trafficking also occurs due to gender imbalance.
- Vulnerable areas would also include transit points such as bus stations, railway stations, airports and international borders.

Reasons

a. Children are trafficked for various types of exploitation including, but not limited to:

- i. Forced labour
- ii. Commercial sexual exploitation
- iii. Illegal adoption racket, marriage
- iv. Armed conflict v. Organ trade and medical testing
- v. Other crimes including begging, pick pocketing, addiction etc.

b. Runaway Children

Children run away from their families because of poverty, ill treatment by parents/ neighbour etc.

c. Abandonment

On the basis of gender, health/ disability, children born out of relationships other than wedding, etc.

Cont...

d. Theft of Children

Theft from hospitals, nursing homes etc., theft for personal animosity, sacrifice of children for religious purposes etc.

e. Natural Calamities

Missing children after earthquake, tsunami, cloud burst, cyclone etc.

f. Missing from Government/ NGO institutions

Children have also been reported missing from institutions run by government and NGOs.

g. Social Perception and the culture of silence

One of the main issues hampering the causes of missing children is the societal perception that trafficking cases are not actually missing children cases



CONSTITUTIONAL PROVISIONS

Article 14

provides equality before the law or equal protection of the laws within the territory of India.

Article 15

prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, or of any of them.

Article 15(3)

provides for positive discrimination in favor of women and children. It states that, nothing in this article shall prevent the state from making any special provision for women and children.

Article 16 (1)

provides equality of opportunity in matters of public employment.

Article 21A

provides that 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.

Article 23 prohibits traffic in human beings and forced labour.





Article 23(1)

specifically prohibits traffic in human beings, begar and other forms of forced labour.

Article 38

enjoins the state to secure a social order for the promotion of welfare of the people.

Article 39

enumerates certain principles of policy to be followed by the state. Among them being right to adequate means of livelihood for men and women equally and equal pay for equal work.

Article 39(f)

provides that the children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood should be protected against exploitation and against moral and material abandonment.

Article 46

directs the state to promote the educational and economic interests of the scheduled castes, scheduled tribes and other weaker sections (in which women are included) and that it shall protect them from social injuries and all forms of exploitation.



Legislative Provisions

- 1950, the Government of India ratified International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others.
- Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) was the first central Act to deal with suppression of immoral traffic and prevention of prostitution.

Cont...

- By an amendment in 1986, the nomenclature of this Act was changed, and with effect from 26th January, 1987 the Act is known as The Immoral Traffic (Prevention) Act, 1956 (ITPA).
- Section 6 makes it punishable to detain any person with or without consent in any brothel, or for sexual intercourse with a person not a spouse.
- Under Section 7 a person who carries on prostitution and a person with whom such prostitution is carried on within a notified area shall be punishable with imprisonment for varying terms depending on the aggravated conditions such as using a child.

Cont...

- Section 5 relates to the offence of procuring, inducing or taking a person for the sake of prostitution, and reads as under:
- *“5. Procuring, inducing or taking person for the sake of prostitution. –*
- *(1) Any person who -*
- *(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or*
- *(b) Induces a person to go from any place, with the intent that he may for the purpose of prostitution 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 carrying on, or being brought up to carry on prostitution; or*
- *(d) causes or induces a person to carry on prostitution,*

cont...

- *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 a the person in respect of whom an offence committed under this sub-section,-*
- *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; and*
- *is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;*

Cont...

- *(3) An offence under this section shall be triable –*
- *(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or*
- *(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.*

Thus the activities surrounding the act of prostitution have been made punishable with imprisonment of varying terms.

Other provisions in ITPA deal with rescue and post rescue handling of the rescued persons in protective homes and corrective institutions.

Offences under IPC

- Section 370 IPC defines trafficking as under:
- *“Trafficking of person- (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-*
- *First- using threats, or*
- *Secondly- using force, or any other form of coercion, or*
- *Thirdly- by abduction, or*
- *Fourthly- by practicing fraud, or deception, or*
- *Fifthly- by abuse of power, or-*
- *Sixthly- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.*
- *Explanation 1- The expression ‘exploitation’ shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or, forced removal of organs.*
- *Explanation 2- The consent of the victim is immaterial in the determination of the offence of trafficking.”*

Cont...

- Section 370A IPC provides for more severe punishment for sexual exploitation of a victim of trafficking, as under:
- *“370A. Exploitation of a trafficked person.- (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, 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.*
- *(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.”*

Cont....

- Other relevant provisions in the IPC are:
- Kidnapping from lawful guardianship Section 361 and 363 – Section 84 of JJ Act makes provisions from Sections 359 to 369 applicable to a child under 18 years of age.
- Abduction Section 362
- Kidnapping or maiming a minor for the purpose of begging Section 363 A
- Procuring of minor girl(section 366-A IPC)
- ii) Importation of girl from foreign country (Sec. 366-B IPC)
- iii) Selling minor for purposes of prostitution, etc. (Section-372 IPC)
- iv) Buying minor for purposes of prostitution (Section -373 IPC)

Cont...

- Child and Adolescent Labour (Prohibition and Regulation) Act also prohibits child labour in some processes and regulates it in others.
- The Bonded Labour System (Abolition) Act, 1976 prohibits bonded or forced labour. Forced labour means not only the physical and legal force but also arising out of the compulsion of the economic circumstances.

Section 81 of the JJ Act, 2015 lays down punishment for selling or buying a child for any purpose and procedure is laid down in Rule 59 of the Model Rules, 2016.

POCSO where children have been subjected to sexual offences.

Court Directions

- Several cases have come up before the Hon'ble Supreme Court and Hon'ble High Court of Delhi in which directions have been issued for dealing with the issue of missing children.
- Standard Operating Procedure has been issued by Delhi Police.
- Ministry of Women and Child Development has come out with an SOP on Missing Children.
- Model Juvenile Justice Rules, 2016 also contain provision in this respect.
- However, the situation still continues to be grim and the matter is pending before Hon'ble High Court of Delhi in **Sadhan Haldar v. The State of NCT of Delhi and Others** WP (Crl.)1560/2017.

Horilal Vs. Commissioner of Police, Delhi & others

Supreme Court Guidelines in Writ Petition (Cri.) No 610 of 1996

Effective steps to be taken for tracing missing children (14.11.2002)

The steps include publishing of missing persons photographs, making inquiries in the place of work, school friends and relative etc., inquire about any incidents of violence within the family in the past, thereafter, the Investigating Officer/Agency will obtain the records from parents and examine them, search hospitals and mortuaries, reward for furnishing clues to be announced, hue and cry notices to be given, women police officers to be involved, immediately verify the red light areas in metropolitan cities and establish a multitask force for locating girl children.

Lalita Kumari v. Govt. of UP & Ors. WP (Crl.) No.68/2008

(14.7.2008)

- If steps not taken for registration of FIRs immediately and copies made over to the complainants, they may move the concerned Magistrates by filing complaint petitions
- Court may further give direction to take immediate steps for apprehending the accused persons and recovery of kidnapped/ abducted persons and properties subject matter of theft or dacoity.
- Magistrate may initiate contempt proceeding against delinquent officers and punish them.
- When missing child is traced or comes back, IO to examine all relevant angles such as involvement of organised gangs, application of Bonded Labour and other Acts. In case of former matter be referred to Crime Branch of Delhi Police or Special Cell constituted by CBI.

Court on its own motion v. Union of India and Others

High Court of Delhi Writ Petition (Criminal) No. 249 of 2009

- The Hon'ble Court accepted the definition of Missing Children as defined in SOP for NCT of Delhi.

Particularly, in the order dated 16.09.2009 Hon'ble Delhi High Court directed:

Since majority of the missing children belong to lower strata of the society and their family members are not able to follow up these cases, we deem it appropriate to issue the following directions with regard to missing children **upto the age of 16 years:**

1. Delhi Police will promptly, without any delay register all complaints of missing children as FIRs.
2. Delhi Police will ensure strict compliance with its revised Standing Order No. 252 dated 18th March, 2009.
3. The information with regard to missing children shall be immediately uploaded on Delhi Police's web based Zipnet programme (now we have trackthemissingchild portal)

Cont...

2. The Home Ministry is directed to issue appropriate directions to neighbouring States of Delhi to adopt web based Zipnet programme with regard to missing children.
3. It shall be mandatory for Delhi Police to forward both by e-mail and by post a copy of each FIR registered with regard to missing children to Delhi Legal Services Authority (hereinafter referred to as “DLSA”) along with addresses and contact phone numbers of parents of the missing children.
4. DLSA will in turn constitute a team comprising a lawyer and a social worker to follow up the case with the Delhi Police. The said team will not only provide all possible legal aid to the parents and families of the missing children but shall also act as an interface between the parents of the missing children and the Delhi Police. DLSA will maintain a record of all cases of missing children.
5. Both DLSA and the Delhi Police shall ensure that the Supreme Court interim directions/guidelines pertaining to missing/kidnapped children passed in Writ Petition (Crl.) No. 610/1996 (Horilal vs. Commissioner of Police, Delhi) and in the case of Lalita Kumari vs. State of U.P. and Ors. (Writ Petition (Crl.) No. 68/2008) are strictly complied with.

Cont...

6. Whenever a missing child is traced or he/she comes back on his/her own, the Investigating Officer will examine all relevant angles such as involvement of organized gangs, application of provisions of Bonded Labour Act and such other relevant Acts.

7. Whenever, the involvement of any organized gang is found, it shall be the responsibility of the Investigating Officer to refer the matter to the Crime Branch of Delhi Police or the Special Cell constituted in the CBI. An Action Taken Report with regard to implementation of the aforesaid guidelines shall be filed by the Delhi Police as well as by the DLSA prior to the next date of hearing.”

Bachpan Bachao Andolan vs Union of India and Ors.

W.P. (Civil) 75 of 2012 order dated 17/01/2013

The Hon'ble Court took into cognizance that in 2011 alone 90,654 children went missing with 34,406 children still remaining untraced. However only 15,284 FIRs were registered and investigations were launched.

The Hon'ble Supreme Court issued the following directions:-

- **Compulsory registration of cases by police of missing children with the assumption that they are victims of kidnapping & trafficking.**
- **Compulsory registration of cases by police of all those children who are still untraced (in 2011 34,406 children are still untraced).**
- **Police will prepare standard operating procedures in all the states to deal with the cases of missing children.**
- **Appointment and training of Special Child Welfare officers in every police station to deal with the cases of missing children.**
- **Police will maintain records of recovered children along with photographs and Ministry of Home Affairs to facilitate the maintenance of records of missing children.**

- It was also directed that all complaints regarding children (for non cognizable offences) shall be investigated after referring them to a Magistrate; NALSA to appoint para legal volunteers, in shifts, in the police station to keep watch over the manner in which complaints regarding missing children and other offences against children, are dealt with, computerized website to be created; even after recovery police shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and the State authorities shall arrange adequate shelter homes for children who are recovered.

Model Juvenile Justice Rules, 2016- Rule 92

- When a complaint is received about a child who is missing, the police shall register FIR forthwith.
- Police to inform CWPO and forward FIR to SJPU for immediate action for tracing the child.
- Steps to be taken for publicity etc. detailed in the Rule.
- Steps to be taken when a child is traced also listed.

Cont...

- Ministry of Women and Child Development has brought out the Standard Operating Procedure for cases of Missing Children which lays down role of different stakeholders and includes checklist for Investigating Officers.

Role of CWC in case of recovered or found child

When missing child is found or recovered, to be produced before CWC

- if FIR is not registered, complaint be forwarded to JJB who shall direct registration of FIR and also for offences committed against the child

- any three members of the Committee may take *suo motu* cognizance of a case of missing child, report to police or the AHTU immediately and initiate process of providing care and protection to child.

assess needs of child and pass orders with respect to repatriating child or placing child in fit facility or with a fit person or declaring child free for adoption or foster care or other arrangements

- engage services of DCPU/DLSA in source district of found/ traced child to facilitate smooth and effective rehabilitation of the child and for any legal support

- ascertain if child is in need of medical care

- get age determination done

- pass orders for recovery of back wages if child trafficked for forced or/ and bonded labour.

- ensure follow up.

Entitlement to Legal Aid

- Under Section 12 of Legal Services Authorities Act, 1987, among others, the following are entitled to legal services:
 - a member of the Scheduled Caste or Scheduled Tribe
 - a victim of trafficking in human beings or begar as referred to in article 23 of the Constitution
 - a woman or a child
 - a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster
 - In custody, including custody in a protective home within the meaning of clause (g) of section 2 of Immoral Traffic (Prevention) Act

Other services for victims

- Entitled to compensation under the Victim Compensation Scheme
- There may be need to provide protection under Witness Protection Scheme
- Support persons may be appointed by Legal Services Authorities or by Child Welfare Committees in cases under POCSO
- NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015 with the objective to address the concerns of victims of trafficking at every stage i.e. prevention, rescue and rehabilitation.