Towards a new dawn

NATIONAL CONSULTATION ON CHILD PROTECTION
5th June, 2018

Deliberations on JJ Act 2015 and POCSO Act 2012

Government of India, Ministry of Women and Child Development
Structure of Presentation

- The Juvenile Justice (Care and Protection of Children) Act, 2015
  The Protection of Children from Sexual Offences Act, 2012

- Status: Inter State

- Important provisions of JJ Act 2015 and POCSO Act 2012

- Issues

Government of India, Ministry of Women and Child Development
Status of Crime Against Children
Crime Against Children

Government of India, Ministry of Women and Child Development

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Incidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>89,423</td>
</tr>
<tr>
<td>2015</td>
<td>94,172</td>
</tr>
<tr>
<td>2016</td>
<td>106,958</td>
</tr>
</tbody>
</table>

Source: NCRB, Crime in India 2016
Crime Against Children

Government of India, Ministry of Women and Child Development

Source: NCRB, Crime in India 2016
Crime Against Children - High Prevalence States

Government of India, Ministry of Women and Child Development

Source: NCRB, Crime in India 2016
Crime Committed by Children

No. of cases

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Incidents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>38,455</td>
</tr>
<tr>
<td>2015</td>
<td>33,433</td>
</tr>
<tr>
<td>2016</td>
<td>35,849</td>
</tr>
</tbody>
</table>

Source: NCRB, Crime in India 2016

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Category of Crime Committed by Children

Source: NCRB, Crime in India 2016

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Crime Committed by Children - High Prevalence States

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Source: NCRB, Crime in India 2016
The Juvenile Justice (Care and Protection of Children) Act, 2015
## Legislative Framework

### Juvenile Justice Act, 2015

- Primary law for children in need of care & protection (CNCP) & children in conflict with law (CCL).
- Provides for a safety net for CNCP by way of institutional and non-institutional mechanism.
- Mandates a child-friendly approach in the adjudication and disposal of matters in the best interest of children.
- Addresses the need of child victims.
Provisions under the JJ Act, 2015

Children in Need Care & Protection
- Child Welfare Committee

Children in Conflict with Law
- Juvenile Justice Board

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## Provisions under the JJ Act, 2015

<table>
<thead>
<tr>
<th>Children In Need and Care in Protection (CNCP)</th>
<th>Child in Conflict with the Law (CCL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Rehabilitation</td>
<td>□ Apprehension</td>
</tr>
<tr>
<td>□ Re-integration</td>
<td>□ Detention</td>
</tr>
<tr>
<td>□ Restoration</td>
<td>□ Prosecution</td>
</tr>
<tr>
<td>□ Adoption</td>
<td>□ Penalty</td>
</tr>
<tr>
<td>□ Foster care,</td>
<td>□ Rehabilitation</td>
</tr>
<tr>
<td>□ Sponsorship</td>
<td>□ Social re-integration</td>
</tr>
<tr>
<td>□ After care</td>
<td></td>
</tr>
</tbody>
</table>

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### Provisions under the JJ Act, 2015

#### Institutional Support Services

<table>
<thead>
<tr>
<th>Children in need of care and protection</th>
<th>For Children in Conflict with Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>❑ Specialised Adoption Agency</td>
<td>❑ Observation Home</td>
</tr>
<tr>
<td>❑ Children Home</td>
<td>❑ Special Home</td>
</tr>
<tr>
<td>❑ Open Shelter</td>
<td>❑ Place of Safety</td>
</tr>
<tr>
<td>❑ Fit person/Fit Facility</td>
<td></td>
</tr>
</tbody>
</table>

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Provisions under the JJ Act, 2015

Reporting & Review Process of CWC

State Government
- S 36 (5)

DM
- (quarterly)
- S 27 (8) & 36(5)

CWC
- (quarterly basis)
- S 36(4)

Reporting & Review Process of JJB

High Level Committee
- s16 (2)

CJM/CMM & DM
- (Every six month)
- S 16(3)

JJB
- (quarterly basis)
- S 16 (6)

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## Structure of CWPO/SJPU

<table>
<thead>
<tr>
<th>Structures/ Mechanisms</th>
<th>Level</th>
<th>Composition</th>
<th>Nodal Authority/Officer in charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Welfare Police Officer (CWPO) – s 2 (18) and 107(1)</td>
<td>Police Station</td>
<td>≥ Assistant Sub-Inspector designated exclusively</td>
<td>SJPU</td>
</tr>
<tr>
<td>Special Juvenile Police Unit (SJPU) – s 2(55) and 107(2)</td>
<td>District/ City/ Railway Police Unit</td>
<td>All CWPOs + 2 Social Workers (of whom one shall be a woman)</td>
<td>≥ Deputy Superintendent of Police</td>
</tr>
<tr>
<td>SHO – s 12 (2)</td>
<td>Police Station</td>
<td>In-charge of the police station</td>
<td>SJPU</td>
</tr>
</tbody>
</table>
The Protection of Children from Sexual Offences Act, 2012

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**POCSO Act, 2012**

- Special law for protection of children from sexual offences
- Burden of proof with accused
- Responsibility for reporting the crime has also been fixed; failure attracts punishment
- Addresses the need for punishing the perpetrator and expected to act as a deterrent
Provisions under POCSO Act, 2012

Categories of offences

- Penetrative Sexual Assault (S-3)
- Aggravated Penetrative Sexual Assault (S-5)
- Sexual Assault (S-7)
- Aggravated Sexual Assault (S-9)
- Sexual Harassment of the Child (S-11)
- Use of Child for Pornographic Purposes (S-13)
## Punishments under the Act

<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>MINIMUM</th>
<th>MAXIMUM</th>
<th>Ordinance 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Penetrative Sexual Assault SEC 3</td>
<td>7 years</td>
<td>Life Imprisonment</td>
<td>Sec. 376- Sec. 376(3) 10 years till life imprisonment, 20 years till Natural life.</td>
</tr>
<tr>
<td></td>
<td>SEC 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Aggravated Penetrative Sexual Assault SEC 5</td>
<td>10 years (Rigorous Imprisonment)</td>
<td>Life Imprisonment</td>
<td>Sec. 376AB 20 years till natural life or with death penalty.</td>
</tr>
<tr>
<td></td>
<td>SEC 6</td>
<td></td>
<td>Sec. 376DA  life imprisonment till natural life.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Sec. 376DB  life imprisonment till natural life or Death.</td>
</tr>
<tr>
<td>3) Sexual Assault SEC 7</td>
<td>3 years</td>
<td>5 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SEC 8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4) Aggravated Sexual Assault SEC 9</td>
<td>5 years</td>
<td>7 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SEC 10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5) Sexual Harassment SEC 11</td>
<td>SEC 12</td>
<td>3 years</td>
<td></td>
</tr>
</tbody>
</table>

Government of India, Ministry of Women and Child Development
<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>MINIMUM</th>
<th>MAXIMUM</th>
</tr>
</thead>
<tbody>
<tr>
<td>6) Use of child for pornographic purposes</td>
<td>SEC 14 (1)</td>
<td>5 years</td>
</tr>
<tr>
<td>SEC 13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Penetrative Sexual assault SEC 14 (2)</td>
<td>Life Imprisonment (Rigorous)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SEC 14(2)</td>
<td></td>
</tr>
<tr>
<td>b) Aggravated penetrative sexual assault</td>
<td>Life Imprisonment</td>
<td></td>
</tr>
<tr>
<td>SEC 14 (3)</td>
<td>(Rigorous)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SEC 14(3)</td>
<td></td>
</tr>
<tr>
<td>c) Sexual assault SEC 14 (4)</td>
<td>6 years</td>
<td>8 years</td>
</tr>
<tr>
<td></td>
<td>SEC 14 (4)</td>
<td></td>
</tr>
<tr>
<td>d) Aggravated Sexual Assault SEC 14(5)</td>
<td>8 years</td>
<td>10 years</td>
</tr>
<tr>
<td></td>
<td>SEC 14(5)</td>
<td></td>
</tr>
</tbody>
</table>
Role of Police during investigation and trial

- Police is mandated to record the statement of the child, get the medical examination done and produce the child before JJB.

- SJPU or local police to update child/guardian/other person whom the child trusts/Support person about the progress of the case:
  - Availability of emergency & crisis services
  - Procedural steps in criminal prosecution
  - Availability of victim compensation benefits
  - Status of investigation
  - Arrest of suspected offender
- No particulars of the child leading to the identification shall be disclosed in any newspaper, magazine, news-sheet or visual media.

- Police officer shall be in plain clothes and not in uniform while dealing with the juveniles.

- No handcuffs or fetters shall be used while dealing with the juveniles.
• Recording of the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of Sub-Inspector.

• No child to be detained in the police station in the night for any reason.
• Police officer to not be in uniform while recording the statement of the child.

• The statement of the child to be recorded as spoken by the child.

• Failure in discharging the responsibility attracts penal provisions of imprisonment of six months or with fine or both (S 21 (1))
PROBLEMS FACED BY POLICE IN PERFORMING THEIR DUTIES

- The need for specialized training for appropriate handling of children
- Low community participation in addressing issues related to children.
- Poor police image and perception makes it difficult to establish a rapport with the child and to work within the community with mutual trust and goals.
- The positive efforts of the police do not get reflected in their output oriented

Source: Ms. Suman Nalwa, Addl.DCP/SPUW&C, Nanak Pura, New Delhi, July 2011
Delay in recording/conducting the inquiry results in:

diluting the information process.
Victim turning hostile
Accused pressurizing the victim

Delay in filing FIR

89.6 % POCSO cases pending across the country

29.6 % conviction rate

Load of other kind of work with SJPUs

Need for setting up of a child friendly police Stations

Orientation and capacity building of front end police personnel
- Need for regular interaction with the CWCs, JJBs and Executive Department
- Monitoring of pendency of the cases at the highest level
- Need for single complaint window at highest level
- Need for more female police personnel
- Lack of social interaction with community
- High rate of children/family turning hostile

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I am the child,
You hold in your hand my destiny.
You determine largely,
whether I shall succeed or fail.
Give me, I pray you,
Those things
that make for happiness.
Train me, I beg you,
That I may be a blessing to the world.
Thank You