

ROLE AND RESPONSIBILITIES OF CHILD WELFARE COMMITTEES
UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN)
ACT, 2015

“A child is a person who is going to carry on what you have started...He will assume control of your cities, states and nations. He is going to move in and take over your churches, schools, universities and corporations...the fate of humanity in his hand.”

-Abraham Lincoln

I. CHILD WELFARE AND INDIAN CONSTITUTION

The Constitution of India under its head, directive principle of state policy, provides that the state must seek to ensure “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 rights pertaining to equality, to protection of life, to personal liberty, and against exploitation are enshrined in articles 14–17, 21, 23, and 24 of the Constitution. Article 15, which protects against discrimination on various grounds, contains an important proviso that “[n]othing in this article shall prevent the State from making any special provision for women and children.” In light of this constitutional framework the government of India has “assigned focal responsibility for child rights and protection to the Ministry of Women and Child Development (MWCD), and has given it key responsibility for overseeing implementation of the National Policy. Pursuant to principles in the National Policy, the Ministry developed and released a National Plan of Action for Children (NPAC) on January 24, 2017. One of the key priority areas in the Plan is “protection” and the objective is to “[p]rotect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking.”

II. CHILD WELFARE SCHEMES AND PROGRAMMES

- **INTERNATIONAL LEVEL**

Since its inception as an international body in 1945, the United Nations (UN) was concerned with the needs and problems of children and other vulnerable groups resulting from the Second World War. At the beginning, its programmes were remedial and rehabilitative in nature. However, the emphasis had been shifted from remedial to preventive and development approaches in social welfare with the joining of the UN by a larger number of developing countries and those liberated from colonial rule were admitted as its members.

The most important contribution of the UN regarding Child Welfare and Development is the creation of United Nations Children’s Fund (UNICEF) by the General Assembly on December 11, 1946 to provide massive emergency relief to the destitute young victims of the Second World War. The Fund began to focus its attention on the widespread malnutrition, diseases and

illiteracy afflicting millions of children throughout the developing world. Accordingly, the UNICEF promotes and augments the available resources for the success of “Child Survival and Development Revolution.” The UNICEF has given assistance for rural primary health centres, pre-vocational training, Integrated Child Development Services Projects, Applied Nutrition-Programme, children in difficult circumstances etc.

The International Labour Organisation (ILO), which was created under the League of Nations in 1919, aims at improving labour conditions, raising living standards and promoting economic and social stability. ILO also aims at promoting social justice and peace. It assists states for prevention, treatment and rehabilitation of working children through child welfare programmes, social security measures and anti-child labour measures etc.

World Health Organisation (WHO) has assisted India in developing child health services as an integral part of maternity and child welfare and nutritional services.

The Food and Agriculture Organization (FAO), founded in 1945, has played an important part in increasing food production and taking measures aimed at development of rural families with particular reference to women and children. It also helps the people of the world in their continuing fight against hunger and malnutrition.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) helps to develop text books and promotion and teaching of national languages to the children of migrant workers, training of staff for pre-school children and assists projects to set up production of children’s books and libraries especially for destitute children. A National Commission on UNESCO is functioning as part of the Ministry of HRD in India.

The UNESCO and the ILO have helped India in child education and prevention of child labour respectively. The International Union for Child Welfare, CARE, Children Christian Fund, India Sponsorship Committee, CASP, PLAN, USAID, Norwegian Agency for Development and other international voluntary agencies have taken keen interest in developing child welfare services in India. Besides these, the other international agencies contributing towards women and child development in India are: Swedish International Development Authority (SIDA) and the Canadian International Development Agency (CIDA).

- **INDIA**

- (1) Integrated Child Development Services (ICDS)
- (2) Creche Scheme for the Children of Working Mothers
- (3) Nutrition Component of Prime Minister Gramodya Yojana and Nutrition Programme for Adolescent Girls
- (4) Reproductive and Child Health Programme
- (5) Pulse Polio Immunization Programme
- (6) Sarva Shiksha Abhiyan (SSA)
- (7) A National Programme for Education of Girls at Elementary Level
- (8) Kasturba Gandhi Balika Vidyalaya

- (9) Mid-Day Meal Scheme
- (10) Integrated Programme for Street Children
- (11) Integrated Programme for Juvenile Justice
- (12) Child Helpline
- (13) The National Rural Health Mission
- (14) Elimination of Child Labour
- (15) Child Budgeting
- (16) Pilot Project for Combating Trafficking of Women and Children

- **RAJASTHAN**

- (1) Palanhar Yojana (Family based kinship care)
- (2) Mukhya MantriHunarVikasYojana (Training for skill development , further studies to vulnerable children)
- (3) Pahal Yojana (To promote reporting on cases of violence against children)
- (4) Protsahan Yojana and Adopt a Home
- (5) SAG Scheme for Adolescent Girls

- **LEGISLATIVE FRAMEWORK**

- (1) Protection of Children From Sexual Offences Act,2012
- (2) The Commission for Protection of the Child Rights Act 2005
- (3) Juvenile Justice (Care and Protection of Children) Act, 2015
- (4) Juvenile. Justice(Care and Protection of Children) Rules, 2016.
- (5) Child Labour(Prohibition and Regulation) Act, 1986
- (6) Foster Care Rule, 2014
- (7) Sponsorship Guidelines 2015
- (8) Rajasthan Children Participation Guidelines, 2014
- (9) Rajasthan Juvenile Justice (Care and Protection of Children) Rules, 2017
- (10) Protection of Children from Sexual Offences(POCSO) Rules, 2020.
- (11) Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

III. CHILD WELFARE COMMITTEE

1. BACKGROUND

Prior to 1986, each State in India had its own enactment on Juvenile Justice with children being treated differently by different State legal systems. The Union Parliament of India passed its first central legislation on Juvenile Justice with the JJ Act of 1986. A uniform law was thus established, with India being the only country in the world to have a juvenile justice law that covers both children in need of care and protection and children who come in conflict with law. With the passing of this Act, ensuring protection for children in difficult circumstances i.e. children in need of care and protection, came to be viewed for the first time as an integral part of

social justice as also the justice delivery system. The JJ Act 1986 however discriminated against boys in terms of age, with the scope of the Act extending up to eighteen years for girls but only sixteen years for boys.

In the year 2000, this 1986 law was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2000 came into being. It was amended in 2006 to build in minimum standards of care and protection as part of justice delivery and to strengthen the existing child protection mechanisms. The Act underwent further amendment in 2010 to end the segregation of disease-hit children from other occupants within child care institutions. This JJ Act of 2000, with amendments made in 2006 and 2010 continues to be followed to this date. The Juvenile Justice (Care & Protection of Children) Act 2000, as amended in 2006 and 2010, internalises the Constitution of India (as prescribed in article 15 (3), article 39 (e) and (f), articles 45 and 47); the United Nations Convention on the Rights of the Child, 1989; the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (“the Beijing Rules”); the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990; the UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (“The Riyadh Guidelines”); the UN Standard Minimum Rules for Non-custodial Measures, 1990 (“The Tokyo Rules”); and many other international conventions/treaties and instruments. In 2015 this Act was then repealed by enactment of The Juvenile Justice (Care & Protection of Children) Act 2015. The current JJ Act 2015 is a highly progressive legislation that has as its primary focus, the principle of best interest of the child. All children below age eighteen years fall within the scope of this Act. It provides for appropriate care and protection by catering to the child’s needs and rights; it adopts a child-friendly approach in the adjudication and disposition of child cases. The Act follows a two pronged approach with the Juvenile Justice Boards (JJBs) being the competent authority for Children in Conflict with Law (CICL) and Child Welfare Committees (CWCs) being the competent authority for Children in Need of Care and Protection (CNCP).

2. CHILD WELFARE COMMITTEE UNDER JJ ACT, 2015.

The Child Welfare Committee is an autonomous body declared as a competent authority to deal with children in need of care and protection. Section 27 of Chapter V of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that it is mandatory to form one or more Child Welfare Committees in every district for exercising power and to discharge the duties conferred in relation to children in need of care and protection.

Section 2(14) of the Act, provides a comprehensive list of children who can be declared as those in need of care and protection. These include:

- (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 solemnisation of such marriage;

A child in need of care and protection is brought before a Child Welfare Committee (CWC) to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

The institutional and non-institutional measures for children in need of care and protection include:

1. Children's home: These are meant for placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation.
2. Specialised adoption agencies: These are meant for the rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care.
3. After care: This is meant for any child who leaves a child care institution on completion of eighteen years of age with financial support in order to facilitate child's re-integration into the mainstream of the society.
4. Foster care: This can be individual foster care or group foster care. Under foster care, children are placed in a family which does not include the child's biological or adoptive parents or in an unrelated family, which is recognised as suitable for the purpose by the State Government, for a short or extended period of time.

5. Open Shelter: These function as a community based facility for children in need of residential support, on short term basis, with the objective of protecting them from abuse or weaning them, or keeping them, away from a life on the streets.
6. Sponsorship: Sponsorship can be individual to individual sponsorship, group sponsorship or community sponsorship. The sponsorship programme provides 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.
6. Place of Safety: As per Section 2(46) of JJ Act, 2015, "place of safety" means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in -charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.

Further, as per Rule 29 (1) (iii) of JJ Model Rules, 2016, following are the categories of Place of Safety:

- for children in the age group of 16 to 18 years alleged to have committed heinous offence pending inquiry;
- for children in the age group of 16 to 18 years found to be involved in heinous offence upon completion of inquiry;
- for persons above 18 years alleged to have committed offence when they were below the age of 18 years pending inquiry;
- for persons above 18 years found to be involved in offence upon completion of inquiry;
- for children as per the orders of the Board under clause (g) of sub - section (1) of section 18 of the Act.

This institution was not created to house any child entering the juvenile justice system, but instead to address the specific and special needs of a special category of children. It is also understood thereby that children in conflict with law, especially those who are alleged or found to have committed heinous offences are children who are most vulnerable and need specialized, focused and designed interventions which would ensure the emotional, physical, social and economical well being of such children. Thus this institutional mechanism also caters to the children in conflict with law who at the same time are also the children in need of care and protection .

It is mandatory to form one or more Child Welfare Committees in every district for exercising power and to discharge the duties conferred in relation to children in need of care and protection. The Child Welfare Committee functions as a bench guided by the powers that are conferred in the Code of Criminal Procedure, 1973. Anyone connected to the child is allowed to file a petition to the Magistrate of that District, who considers and passes appropriate orders.

2.1 COMPOSITION OF CWC

The committee consists of a Chairperson and other four members who according to the State Government are fit to be appointed, at least one of whom should be a woman and the other should preferably be an expert on matters that are concerning the children.

A Secretary and other staff shall be provided by the District Child Protection Unit for secretarial support to the Committee for its effective functioning. For becoming a member of the Committee, that person (who wants to become a member) should be actively involved in health, education and welfare activities in relation to children for at least seven years or should be a practising professional who has a degree in child sociology, psychiatry, psychology, law or human development.

For the appointment of a member, he should possess all the prescribed qualifications. The duration of this appointment should not exceed the time period of three years. Appointment of a member shall be terminated if that member uses his power for wrong measures, been convicted of an offence involving moral turpitude (where such conviction has not been reversed and he has not been granted full pardon) and does not attend the meetings of the Committee for a period of three months of three-fourths sitting of the Committee in that year. A review in every three months shall be conducted by the District Magistrate.

2.2 PROCEDURES IN RELATION TO THE COMMITTEE

The procedures in relation to the committee are mentioned in Section 28 of the Juvenile Justice (Care and Protection of Children) Act, 2015. There should be a meeting of the Committee at least twenty days in a month for observing rules and procedures with regards to the transaction at its business meetings.

A sitting of the Committee is considered when there is a visit to an existing child care institution of the Committee. A child, who is in need of care and protection needs to be placed in a Children's Home or a fit person when the Committee is not in session but he must be produced before an individual member of the Committee.

The opinion of the majority shall prevail if there is any difference of opinion between the members of the Committee.

If there is no majority of such kind then the opinion of the Chairperson shall be considered. Subject to the provision of minimum members of the Committee, there shall be no order made by the Committee that declares it invalid by reason of just the absence of a member during any stage of the proceedings that are held. This is applicable provided that there are at least three members who need to be there to dispose of the case finally.

Under Section 30(viii) of the Act, the Child Welfare Committee is required to conduct at least two inspection visits per month of residential facilities for children in need of care and protection

and make recommendations for improvement to District Child Protection Unit and the State Government.

Under Section 17(2) of the Act, when the Board feels that a child in conflict with law is also a child in need of care and protection then it can refer the child to the Committee for necessary action.

2.3 POWERS OF THE COMMITTEE

The powers of the Child Welfare Committee are laid down in Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2015:

- The Committee has the full authority of disposing of cases for the care, protection and treatment of the children.
- The Committee can also dispose of cases that are for the development, rehabilitation and protection of children that are in need, and also to provide for the basic need and protection that is needed by the children.
- When a Committee is constituted for any particular area, then it has the power to exclusively deal with all proceedings that are being held under the provisions of this Act that are related to children in terms of need of care and protection.
- While exercising the given powers curtailed under this Act, the Committee is barred from performing any act which would go against anything contained in any other law that is in force at that time.

In the case of *Ms. Sheila Ramchandra Singh v. State of Maharashtra and Others*¹, a Government Circular dated 16 June 2016 was issued by the Women and Child Development Department (Government of Maharashtra). The said circular stated that the Child Welfare Committee of Thane (Maharashtra) was not fully constituted and functional. By looking at the above Circular, the charge of Thane Child Welfare Committee was handed over to the Child Welfare Committee, Mumbai on the command of the State Government. The Deputy Secretary of the Woman and Child Development Department presented this in the Court. The Bombay High Court directed the Child Welfare Committee, Mumbai to take up an application dated 4 April 2016 on a priority basis and pass appropriate orders in accordance with law. The petition was disposed of by giving such directions.

In the case of *Krishna Kumar v. Kollam Child Welfare Committee*², a writ petition was filed by the father of a victim of a rape case. The Kerala High Court was approached by her father who contended that the child was originally handed over to the father by the Child Welfare Committee but later, the Committee took away the child and then that child was housed at the Nirbhaya Shelter Home. He contended for the custody of the child as he was the biological father. The learned Counsel had submitted that the child had no complaint against the father. The

¹Writ Petition No. 1988 Of 2016

²W.P.(Cri) No. 160 Of 2017

Court was of the view that the child will be more protected when she is in the custody of the Child Welfare Committee. It shall be open for the petitioner to approach the Child Welfare Committee and seek for appropriate orders and therefore dismissed the writ petition.

In the case of *NidhiLuharuwalla v. State of Karnataka and Ors.*³, it was held by the Karnataka High Court that the CWC constituted under Juvenile Justice Act, 2015 has no powers to interfere with minor's custody when matter is in Family Court.

In the case of *SampurnaBehrui v. Union of India*⁴, the Hon'ble Supreme Court reviewed the systemic implementation lapses of the Juvenile Justice Act with regard to the functioning of CWCs and JJBs. The court referred to its judgment in *SheelaBarse v. Union of India*⁵ which also dealt with abandoned or destitute children lodged in various jails across the country for their safe custody. It was noted in that decision that the National Policy for the Welfare of Children contained the following preamble:

“The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development of all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice. The Court noted in that decision that if a child is a national asset (as per the National Policy), it is the duty of the State to look after the child with a view to ensuring full development of the personality and that is why statutes dealing with children provide that a child shall not be kept in jail. It was directed that on no occasion should children be kept in jail and if a State Government does not have sufficient accommodation in its remand homes or observation homes for children, they should be released on bail instead of being subjected to incarceration in jail.”

It was also emphasized that Juvenile Courts should be set up in each district and there must be a special cadre of Magistrates who are suitably trained for dealing with cases against children.

2.4 PROCEDURE FOLLOWED BY THE COMMITTEE FOR PLACING A CHILD IN AN INSTITUTION

The procedure followed by Committee for placing child in an institution involves following steps:

- On receiving a child the CWC holds inquiry to understand the circumstances under which the child is produced and accordingly declares him/her as a child in need of care and protection
- Prima facie determines the age of the child in order to ascertain its jurisdiction

³ Writ Petition No. 1372 Of 2019

⁴ (2018) 4 SCC 433

⁵ 1986 SCALE (2)230

- Assign the case to a social worker or case worker or child welfare officer or to any recognised non-governmental organisation for conducting the social investigation through an order in Form 21. The social investigation is to be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child.

- If required, send the child to Children's home, fit facility, fit person or Specialized Adoption Agency during the process of inquiry

- On completion of inquiry –

- o if the Committee decides that the child has no family or other support then they send the child to a children's home , fit facility or person or foster family till suitable means of rehabilitation are found or till the child attains the age of 18 years.

- o Restore the child to parents or guardian or family after verifying reports including social investigation report, which provides an assessment of the family situation of the child

- o give dates for follow-up of the child not later than one month from the date of disposal of the case and thereafter once every month for the period of first six months and thereafter every three months for a minimum of one year or till such time as the Committee deems fit.

While exercising its *suomoto* cognizance in the matter of *In Re Contagion of COVID 19 Virus In Children Protection Homes*⁶ the Hon'ble Supreme Court issued extensive directions to CWCs to protect children in Protection Homes from spread of Coronavirus. The directions asked the CWCs to make proper inspections and take other necessary steps for children in need of care and protection in light of the current pandemic situation.

2.5PROCEDURE IN RELATION TO ADOPTION OF CHILDREN IN NEED OF CARE AND PROTECTION

- ✓ The procedure for surrender of child and declaring him/her as legally free for adoption
- Parent or guardian who wishes to surrender a child to make an application to the Committee in Form 23
- Where parent or guardian is unable to make an application due to illiteracy or any other reason, the Committee is to facilitate the same through the Legal Aid Counsel provided by the Legal Services Authority
- Give parents or guardians who wish to surrender the child, a two months' time to reconsider their decision
- Conduct inquiry and provide counselling to parents to explain and understand the consequences of surrender
- Execute a surrender deed by the parent or guardian after completion of reconsideration period and declare the child as legally free for adoption

⁶Suo Moto Writ Petition (C) No.4/2020

- ✓ As per Section 38(3) of the Act, notwithstanding anything contained in any other law for the time being in force, a mentally retarded parents or victim of sexual assault, can surrender a child before the Child welfare Committee. The Committee after following the procedures under the Act can declare such child as free for adoption.

The procedure for declaring an orphan or abandoned child as legally free for adoption includes:

- If abandoned or orphan child is received by a child care institution, he/ she is to be produced before the Committee within twenty-four hours (excluding the time necessary for the journey) along with a report in Form 17 containing the particulars and photograph of the child as well as the circumstances in which the child was received.
- A copy of the report is also to be submitted by the child care institution to the local police station within the same period.
- Child Welfare Committee is to issue an order in Form 18 for short term placement and interim care of the child during pendency of inquiry.
- Committee to use Trackchild portal to ascertain whether the abandoned child or orphan child is a missing child.
- Committee may direct the publication of the particulars and photograph of the orphan or abandoned child in national newspapers with wide circulation within 72 hours from the time of receiving the child for the purposes of tracing out the biological parents or the legal guardian(s).
- After making inquiry, Committee is to issue an order in Form 25 declaring the abandoned or orphan child as legally free for adoption.
- Decision to declare an orphan or abandoned child as legally free for adoption is to be taken by at least three members of the Committee.

3. FUNCTIONING OF THE CWC IN RAJASTHAN

Currently there are 33 CWCs which are operational in the State of Rajasthan and are listed as below:

1.	Ajmer	18.	Jaipur
2.	Alwar	19.	Jaisalmer
3.	Banswara	20.	Jhalore
4.	Baran	21.	Jhalawar
5.	Barmer	22.	Jhunjhunu
6.	Bharatpur	23.	Jodhpur
7.	Bhilwara	24.	Karauli
8.	Bikaner	25.	Kota
9.	Bundi	26.	Nagaur
10.	Chittorgarh	27.	Pali
11.	Churu	28.	Pratapgarh

12.	Dausa	29.	Rajsamand
13.	Dhaulpur	30.	SawaiMadhopur
14.	Dungarpur	31.	Sikar
15.	Ganganagar	32.	Sirohi
16.	Hanumangarh	33.	Tonk
17.	Udaipur		

In recognizing the role of the Government as a custodian of child rights, Government of Rajasthan has taken several measures to ensure compliance with these national and international commitments and overcome the challenges in their implementation. Setting up regulatory and oversight mechanisms and establishing necessary linkages to address the gaps between commitment and implementation has been a serious concern. As a result, over the years, the state has invested greatly in strengthening the institutional base and policy and programmatic interventions to secure basic rights of its children.

A separate State Child Policy was formulated in 2008 with a view to ensure comprehensive development of children, protection of their rights and mainstreaming children's rights into all development agenda through convergence with various state departments. In 2013, a State Policy for the Girl Child came into existence to address their vulnerabilities and a State level Task Force on Care and Protection of the Girl Child was set up to augment state action. The Rajasthan State Commission for Protection of Child Rights was established on 23 February 2010 as an independent statutory mechanism for reviewing and monitoring the implementation of laws and policies relating to children.

The establishment of its own policies, plans of action, guidelines, protocols and institutions necessitated the need for an overarching administrative unit that would strengthen and streamline governance for children. The Department for Child Rights was thus established and various Child Protection programmes were undertaken for ensuring welfare of children.

4. ROLE OF CHILD WELFARE COMMITTEE UNDER POCSO RULES 2020

On 9th March 2020, the Central government notified new rules for POCSO Act, 2012 repealing the previous rules of 2012. Under these rules The Child Welfare Committee (CWC) shall make a recommendation to District Legal Services Authority for legal aid and assistance. The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987 (39 of 1987).

Under Rule 4 where SJPU or the local police receives information under section 19 (1) of the Act and has apprehension of the commission of the offence then such SJPU or the local police shall produce the child before the concerned child welfare committee within 24 hours from receipt of such report, with reason in writing as to whether the child is need of care and protection under section 19(5) of the Act with request of assessment. Upon receipt of a report under sub-rule 3, the concerned CWC must proceed, in accordance with section 31(1) of the Juvenile Justice Act,

2015, to determine whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or shelter home. In determination under sub-rule 4, the CWC shall take into account any preference or opinion expressed by the child on the matter, with regard to the consideration listed in the rule. Information of determination shall be made to affected child or child's parents etc. The CWC, on receiving a report under section 19 (6) of the Act or on the basis of its assessment made under sub-rule (5) and with the consent of the child and child's parent may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child. Sub-rule 9 directed to maintain confidentiality of the information by the support person. Sub-rule 10 provide the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing, in case of support person is provided to the child. Sub-rule 11 made provision for service of support person. In case a child needs any special relief like food, clothes, transport or any other need which CWC might find satisfactory, CWC may recommend for payment of such needs to

- (i) The DLSA under Section 357A or
- (ii) the DCPU out of such funds placed at their disposal by state or
- (iii) funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)

The payment shall be made immediately within a week of receipt of recommendation.

5. HIV/AIDS ACT 2017 AND CHILD WELFARE

On September 10, 2018, the Ministry of Health and Family Welfare notified "*Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017*" (Hereinafter called 'Act') with immediate effect. The Act had already received Presidential assent in April 2017 and was notified after Hon'ble Delhi High Court's intervention seeking immediate notification to protect and secure the human rights of persons affected with HIV/Acquired Immune Deficiency Syndrome (AIDS). Section 2(c) of the Act defines "child affected by HIV" as a person below the age of eighteen years, who is HIV-positive or whose parent or guardian (with whom such child normally resides) is HIV-positive or has lost a parent or guardian (with whom such child resided) due to AIDS or lives in a household fostering children orphaned by AIDS. The Act seeks to protect children also among other affected persons. The relevant provisions emphasizing on children are hereby mentioned below:

Chapter VI (S. 13,14) seeks to control the spread of the virus by requiring the Central and State governments to undertake Anti- Retroviral Therapy (ART) and Opportunistic Infection Management which are the medicines and processes used to control HIV. In fact, in 2013 the India Department of AIDS Control initiated the lifelong ART programme guidelines also known as the National Guidelines for Prevention of Parent to Child Transmission (PPTCT) 2013, based on WHO guidelines of 2013, for all pregnant and lactating women living with HIV (regardless of stage) to prevent transmission of HIV to their children.

Chapter VII (S. 15-18) lays down 'Welfare measures by the Central and State Government' such as framing schemes for HIV infected women and children, protecting the property of such children, promoting age-appropriate, gender sensitive information, education and communication programmes to them as well as counselling, care, and support. Thus, the Act provides for soft law supportive mechanisms as well.

Chapter XI (S. 29-33) lays down 'Special Provisions'. Every protected person, who is a woman or person below the age of eighteen years, shall have the right to reside and not to be excluded from the shared household in a non-discriminatory manner. Several studies highlight the need for such gender sensitive provisions in light of the extensive discrimination faced by women in Indian patriarchal society. Further, the Act requires every person in the care or custody of the State shall have the right to HIV prevention, counselling, testing and treatment services. A person between the age of 12 to 18 years who is sufficiently mature to understand and manage the affairs of his HIV/AIDS affected family shall be competent to act as a guardian of another sibling below 18 years of age for matters relating to admission to educational establishments, operating bank accounts, managing property, care, and treatment, amongst others. Grievances can be addressed to systems such as the Child Welfare Committee (CWC) established under Juvenile Justice Act.

6. JUDICIAL PRONOUNCEMENTS-RAJASTHAN HIGH COURT

a. Neelam Bohra vs. Child Welfare Committee and Ors. (20.03.2020 - RAJHC) : 2020(3) RLW 1912

The Court after going through the sequence of events as noticed in the ordersheet was of the view that instead of inquiring about the safety and well-being of the child, the CWC attempted to resolve the dispute between the parties, which apparently is not the function/responsibility entrusted to the CWC under Section 30 of the 2015 Act. The Court after dealing with the Rule 21 & 22 of the Rules 2017 observed as follows:

"Looking to the overall scheme of the provisions as noticed hereinbefore, the CWC is required to immediately act on an information received pertaining to a child in need of care and protection as per the Act; whereafter, the action in terms of the Act, has to be swift and the CWC is required to proceed strictly in accordance with the procedure as prescribed by the Act and the Rules and can't at its whims continue with the proceedings either seeking to conciliate between the parties, which normally would be in a case, where the dispute is between the parents of the child in question and in rest of the cases, such situation would not arise and during the period of conciliation, pass orders providing for visitation rights etc., which in a summary procedure as envisaged under the Act, cannot be supported and sustained."

b. Deepika vs. State of Rajasthan and Ors. (07.04.2020 - RAJHC) : 2020(3)RLW 2402

While dealing with the habeas corpus petition filed by the petitioner Mst. 'D', the alleged detenu against her illegal confinement at the BalikaGruh, Jodhpur despite having attained the age of majority the court observed as follows:

We have more than one reasons to hold so. The father of the girl ShriJawarilal clearly mentioned in the FIR that Mst. 'D' was 19 years of age. The girl had clearly conveyed to the CWC as early as on the first date of her production before it that she was not desirous to go with her parents and that the date of birth certificate submitted by her parents was fabricated. In spite thereof, rather than immediately summoning the original school record for concluding the age related enquiry expeditiously, the CWC intentionally kept on calling the parents of the girl in the proceedings even though they had expressly conveyed their unwillingness to take the girl back with them. In any event, in the month of April 2019, all relevant documents pertaining to the age of the girl had been placed before the CWC and there was no cause to defer the proceedings any further. The girl was brought to the CWC from BalikaGruh, Jodhpur on number of occasions and she persistently pleaded that she should be released from the BalikaGruh. However, her pleas fell on deaf ears. The CWC, Pali concluded the age related enquiry only after receiving a strong direction issued by this court vide order dated 08.08.2019. Therefore, we have no hesitation in holding that the entire endeavour of Mr.Durga Ram Arya, the Ex-Chairperson, CWC, Pali in not concluding the age related enquiry was malafide and tainted with foul motive and resulted into the illegal confinement of the corpus Mst. 'D' at the BalikaGruh for a period of almost 11 months. The action of the CWC runs totally contrary to the mandate of the Juvenile Justice Act. Therefore, the conduct of the Ex-Chairperson, CWC, Pali deserves to be deprecated. We are informed that by now composition of the CWC, Pali stands dissolved and the noticees are no longer holding the relevant posts.

CONCLUSION:

The existing mechanism seems to suffice the needs of the society. Although this web, for now, has been sufficient but there needs to be multi-sectoral approach to develop an operational plan to inform and coordinate between different CWCs. Heavy investment is required in need-based and equity focused planning and implementation of programmes for children. Focus needs to be more on advisory-cum-coordination mechanism to set up technical support group at state, district and village levels, enlisting participation of both state and non-state actors. Establishing coordination and convergence among the Department for Child Rights and other nodal departments responsible for programmes for programmes relating to child health and nutrition, early childhood for children in difficult circumstances or children placed in institutional care. Thus Government collaboration and leadership along with partnership from state and private actors can lead forward to better visibility of state sponsored schemes.