

Role of Special Juvenile Police Unit in Interface with Juvenile in Conflict with Law

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Abstract

Special Juvenile Police Unit has to shoulder great responsibility while dealing with Child in Conflict with law and Children in need of Care and Protection. While discharging this duty along with other duties it is often seen that they violate human rights principles. The Juvenile Justice (Care and Protection) Act 2015 and Model Rules 2016 provide that these members of Special Juvenile Police Units should take Child Friendly approach. In other words they have to discharge their duties in Children Friendly manner. This paper attempts to give a road map to these officers who are designated as member of Special Juvenile Police Units handling cases relating to children regarding the position of law, judicial trend and also provides dos and don'ts in their approach.

Keywords: *Juvenile in Conflict with Law, Special Juvenile Police Unit, Position of Law and Judicial Trend*

I. Introduction

The United Nations Beijing Rule 1985 emphasised and envisaged special humane treatment of a child who came in contact with the police. The Juvenile Justice Act 2000, incorporated and introduced the Special Juvenile Police Unit (SJPU), which aimed at fostering an atmosphere wherein the interaction between the child in both the categories and the police officer will have undergone massive change. Section 107 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act 2015), provides for creation of a SJPU by State Governments/Union Territories Administrations for every district and city to coordinate all functions of Police related to children.

The police being the sentinel of the criminal justice system, the child in conflict with law (CCL) come into their contact from the very beginning and also in cases of child in need of care and protection (CNCP). If the police are not well

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versed with protectionist principles in dealing with the children then with their enormous power, and consequent lack of sensitization, the child shall be further victimized.

A remarkable feature of the JJ Act, 2015 can be seen in the principle of Diversion. The police acting under this should avoid the apprehended CCL to come and face the judicial proceedings, unless it is in the best interest of the child or the society.

The role of the SJPU does not end here; it has to uphold the constitutional rights of the child in need of care and protection (CNCP). Their interest, wellbeing and dignity have to be safeguarded at all times. For this along with the police there has to be a coordinated effort of the NGOs and the members of the civil society. The endeavour would be to change the form of the police working from controlling stance to constructing child-police relations based on active participation from the community.

The Government of West Bengal has started various schemes which is preventive in nature. One of them is the *Kanyashree* scheme launched in October 2013, wherein monetary grant for education, is accorded to girl child from 13 years, was spearheaded by the State has been put in place to overcome incidence of child marriage, sexual exploitation as well as vagrancy. This effort of the State has been recognised by the Department of International Development, United Kingdom and the United Nations Children Fund (UNICEF).

After setting up Women Police Stations across the State, the West Bengal Government is setting another example by forming Child-friendly Police Stations. Nine police stations in Kolkata and 29 police stations across the State have been shortlisted initially. A model Child Friendly Corner (CFC) was started in Tollygunj Police Station (P.S) with CINI Urban Unit's collaboration and with the help of SANLAAP, at Watgunj P.S. Recently under the J.J Act 2015; CFC has been opened on 14th November 2016 with the help of CINI Urban Unit, at Ultadanga and Karaya P.S in collaboration with Child line Child friendly police corner was created in Electronics Complex, Salt Lake by Save the Children with collaboration of local partner. Such police stations will help the children to file their complaints in a friendlier atmosphere. Also, children, who have committed offences, will be dealt according to their age. Still in some

police stations, the Sub Inspector (SI) or Assistant Sub Inspector (ASI) is not yet designated as CWPO. In most of the cases, the CWPO is not well informed about the child related legislations or child friendly approach and they try to register cases of children as adults to ease the process of enquiry. There are no guidelines or Standard Operating Procedure (SOP) for the functioning of the SJPU as a reason the officers who are deployed for the work are also unable to perform their duties. For correcting this situation the present paper as SOP has been formulated in the absence of a child friendly guideline, the officers deployed are sometimes unable to justify their roles, hence there was a need to develop child friendly SOP for the SJPU which will be a ready reference for the police officials while performing their tasks. Moreover, this is not part of their regular training programme.

Objective

This paper shall aim to provide the Police Department

- With a fundamental base that will govern the actions of the SJPU,
- Information on the planned training programme for police officers who are to be designated as Child Welfare Police Officers (CWPOs) procedures and,
- Protocols needed for the implementation of the SJPU in West Bengal, the trainings required information for police officers that are to be designated as Child Welfare Police Officers (CWPOs).

II. Child Friendly Special Juvenile Police Unit

The objective of Juvenile Justice System is that all children who come in contact with it, be dealt in a child friendly environment where their needs are met. It is important that there is ample scope of reformation and their overall development in the system. The CCL or CNCP invariably come in contact with the police and thus it is imperative that their experience is of a caring child friendly police station. For being child friendly, there is certain Do's and Don'ts enumerated below:²

²http://www.dpju.com/index.php?option=com_content&view=article&id=283&Itemid=209 (Last visited: Feb. 12, 2020)

i. What the Child Friendly Special Juvenile Police Unit Should Do

1. SJPU will have to be readily accessible, with child friendly corner.
2. Child friendly procedure of reporting, recording of evidences, investigation and trial of cases.
3. Police as much as possible, should be in plain clothes.
4. Respect the child's wishes.
5. Provide them with adequate legal aid and counselling.
6. Where required an interpreter if the child has language and understanding issues also if he/she is differently abled child.
7. Follow the Convention on the Rights of the Child (CRC) principles of child participation, non-discrimination, best interest and right to life.
8. Talk to the child in a caring and friendly manner, avoiding derogatory, incriminating and abusive language.
9. Ensure that the environment is conducive for helping the child to talk freely.
10. Child/juvenile should be escorted to Observation Home (OH)/ Juvenile Justice Board (JJB)/Child Welfare Committee (CWC) by police officer in civil dress.
11. Ensure that women police personnel are present when a girl child is taken into custody or escorted.
12. Provide food, safe shelter, water, access to toilet and phone.
13. Provide medical care and attention.
14. In the event of interviewing a child witness, ensure that the investigating officer goes to the house of the child and does not ask the child to come to the police station.
15. Ensure privacy and dignity.

ii. What the Child Friendly Special Juvenile Police Unit Should Not Do

1. As far as possible police officer should not be in uniform when talking to the child/juvenile.
2. Should not detain the child at night in PS.
3. When CWC/JJB is not sitting, the child should be housed in a Children's Home/Fit Institution/Observation Home.
4. A Child/juvenile should not be taken into police custody or kept in the police station between sunset and sunrise.
5. When a juvenile is taken into custody for any alleged offence CWPO to ensure that the juvenile is not beaten/abused/ill-treated.
6. Do not coerce a child to give statement/confession as this will not be valid at the JJB.
7. For children in conflict with law ensure that no dossiers are prepared or fingerprints taken.
8. Do not publish names and photographs of children in print or visual media.
9. When children are released on bail they should not be asked to report and sign at the police station.
10. In the case of children taken into custody for serious offence,
 - Inform the juvenile/parent/guardian their right to legal aid but do not make any reference to a private lawyer.
 - If juvenile is not released on bail, he/she should be sent to the OH.
 - If JJB is not sitting, juvenile should be housed in OH.
 - Offences committed by a juvenile should not be held against him/her when apprehended for offences committed as an adult.

III. Charter of Child Rights

i. **Right to Privacy and Confidentiality** – The name of the child, the family, educational institution wherein s/he is enrolled and other information capable of identifying her/him shall be kept confidential.³

ii. **Right to Dignity**- the child survivor shall be treated with dignity and respect at all stages in the matter and by all players including health care workers, police, judiciary, prosecutor, translators, etc.⁴

iii. **Right to Non-Discrimination** – There shall be no discrimination against any child based on religion, race, sex, or caste. For example, girl children cannot be discriminated against by blaming them for their dress / attire for the incident of sexual offence. At the same time, all stakeholders shall be sensitive to any special needs of a child. For instance, disabled children, medically unfit children or very young children will need to be accorded special treatment.⁵

iv. **Right to express his /her views in all matters**: The wishes of the child shall be given priority when decisions regarding institutionalization, medical examination of the child and appointment of a support person. The views of the child shall be given due weight in accordance with the child's age and level of maturity.⁶

v. **Right to Well-being** – The best interest and well being of the child survivor must be regarded as being of paramount importance at every stage of the trial. Each stakeholder under the Act shall act with sensitivity to the healthy physical, emotional, intellectual and social development of the child.⁷

³Article 3 of the CRC, Preamble to the Protection of Children from Sexual offences (POCSO) Act, *Shankar Kisanrao Khade vs. State of Maharashtra*, 2013 (6) SCALE 277.

⁴Article 39 (f) of the Constitution of India, Preamble to the CRC.

⁵Article 15 (1) of the Constitution of India, Article 2 of the CRC

⁶Article 12 of the CRC

⁷Preamble to the POCSO Act, also In *Shankar Kisanrao Khade vs. State of Maharashtra 2013 (6) SCALE 277*, (the Supreme Court laid down various guidelines for stakeholders under the Act, and held that in cases where the perpetrator of the crime is a family member, utmost care must be taken bearing in mind the best interest of the child is of paramount consideration).

vi. **Right to be protected from all forms of sexual exploitation by the State:** There can be no exemption for committing sexual intercourse with a child – not even if the accused is married to the child.⁸

vii. **Right to Medical Treatment-** The child survivor shall not be denied medical treatment.⁹

IV. Judicial Pronouncements

i. The Supreme Court on 12.10.11, pronouncing interim order in *SampurnaBehrua v Union of India*¹⁰, has directed States and Union Territories to give full effect to the provisions in Juvenile Justice Act, 2000 related to constitution of Special Juvenile Police Units and Juvenile/ Child Welfare Officers in all districts and all police stations respectively. National Legal Services Authority has been directed to issue guidelines for training and orientation of Special Juvenile Police and State Legal Services Authorities through their district level units will provide these trainings.

ii. In *Court on its own motion v Department of Women and Child Development and others*¹¹, the Delhi High Court opined that an advisory/circular/Standing Order, as may be appropriate, be prepared by the Special Juvenile Police Unit for the assistance of police officer/IOs for the purpose of assistance on matters related to inquiry of age. Such advisory/Circular/Standing Order shall also include the procedure which needs to be followed by the IOs in cases of transfer of cases from adult courts to JJB and vice versa.

iii. In the case of *BachpanBachaoAndolan v Union of India & Other's*¹² the Apex Court in an order dated 17. 01. 2013, directed that in case of any missing children is reported in a Police Station, the same shall be reduced to First

⁸Article 34 of the CRC, Section 42A of the POCSO Act.

⁹Section 27 of the POCSO Act.

¹⁰Writ Petition Civil 473 of 2005, <http://www.hrln.org/hrln/child-rights/pils-a-cases/736-create-special-juvenile-police-for-children-and-train-them-well--supreme-court-of-india.html> (13.2.17)

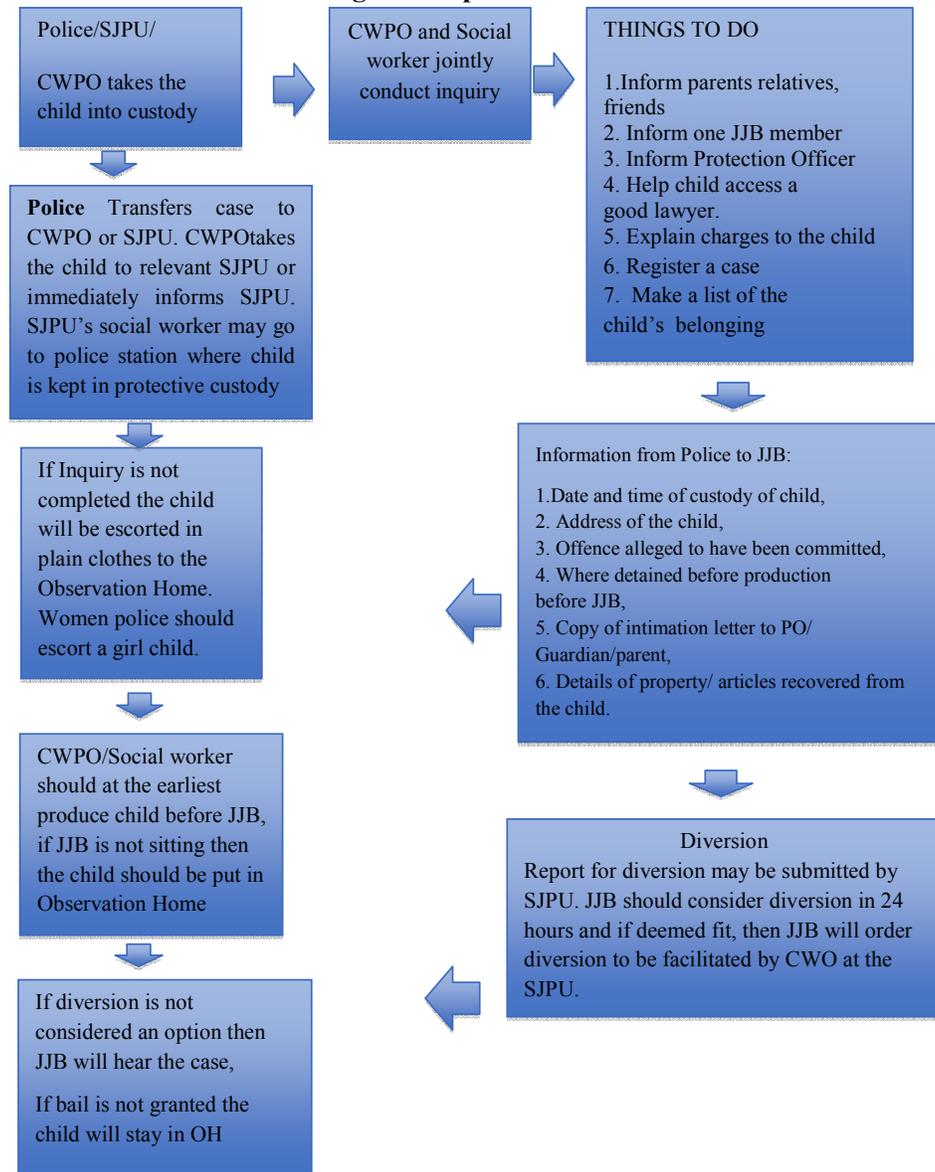
¹¹Court on its own motion v. Department of women and child development and others, WP(C) No. 8889 OF 2011 , decided on, 11.05.2012, http://ncpcr.gov.in/show_img.php?fid=537(last visited on Feb 13, 2017).

¹²BachpanbachaoAndolan v. Union of India, WP (civil) No 75 of 2012

Information Report (FIR) and appropriate steps be taken to see that follow up investigation is done immediately thereafter. The Court also directed that within two months States who had not yet formed Special Juvenile Police Unit, set up the same and ensure that all police stations have at least one Police officer from the SJPU.

iv. In the above case, *BachpanBachaoAndolan v Union of India & Other's*, in an order dated 10.05.2013, in dismissing the contempt petition filed by the petitioner, once again cleared that in case of any missing children is reported in a Police Station, the same shall be reduced to First Information Report. They also were inclined to the suggestions that there should be in shifts, a Police officer from the SJPU to ensure that the directions contained in the Order be complied with.

V. Flow Chart of Proceedings in Respect to Police



VI. Special Juvenile Police Unit and Their Functions¹³

According to Section 107 of the JJ Act, 2015 speaks about CWPO and SJPU.¹⁴ Any Police officer of ASI or above rank shall work as CWPO. He shall be assisted by two local NGOs. These units are supposed to identify the children who are vulnerable, missing, abused or suspected of committing an offence, their due support.

The following functions of the Special Juvenile police unit (SPJU) are given as under:

- The SJPU and the CWPO will deal with CCL as well as CNCP. The social worker attached to the unit, as far as possible shall be the first contact with the CNCP and CCL.
- The SJPU will make sure that the perpetrators of crime against the children are apprehended quickly and booked and charged under applicable laws.
- Whenever there are reports of missing children the SJPU should take steps to investigate immediately.
- The SJPU will collaborate and work with NGO, local governing bodies, community-based organizations to identify CCL as well as reporting cases of child neglect, abuse, violence and exploitation.

¹³http://www.dpjju.com/index.php?option=com_content&view=article&id=289&Itemid=247 (last visited on Feb 4, 2017)

¹⁴Section 107(1) states “In every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations”.

(2) “To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman.”

(3) “All police officers of the Special Juvenile Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively.”

(4) “Special Juvenile Police Unit also includes Railway police dealing with children, <http://www.indiacode.nic.in/acts-in-pdf/2016/201602.pdf> (last visited on 8.4.17).

- A list of all the NGOs, Homes, voluntary organizations, shall be with the SJPU. They will also have contact with all the reputed people from various fields like psychologist, counsellors, doctors etc. so that any need of the child is met with.

VII. Guidelines for Police Officials Dealing with Children in Need of Care and Protection

1. The Juvenile Justice Act, 2000 and Amendment Act 2006 and Rules 2007 and the latest 2015 Act are the bible of a Police Officer dealing with Children in Need of Care and Protection (CNCP). Along with this they should be conversant with The Child Labour (Prohibition and Regulation) Act, 1986 and The Bonded Labour System (Abolition) Act, 1976, and rules framed under these acts as well as other national and international laws, conventions and Acts which uphold the rights of the child and Protection of Children from Sexual Offences (POCSO) Act, 2012.
2. A Police Officer while dealing with CNCP should always be in plain clothes.
3. The police should be ready with the basic requirements like food, shelter, clothes etc, till a child is under their care and protection.
4. A police officer should be fully aware of the Child Welfare Committee(s) (CWC), its place and days of sittings as well as of the names, addresses and phone numbers of its individual members.
5. List of various governmental and nongovernmental organizations (NGOs) working with children in the area, should be available with the police so that necessary emotional and legal support can be provided to CNCP through these organizations. A copy each of said list should also be kept with the Station House Officer (SHO) and Duty Officer of the concerned police station. They should also have all the list of shelter and homes, fit institutions, child helpline, hospitals, paediatric units, recognised under JJ Act, 2015.

VIII. Procedure To Be Adopted In Case of Different Categories Of Children

i. Found Child¹⁵

This category of children includes street children, child beggars, missing/lost children, homeless children/children with nobody to take care of and runaway children:

- a) As soon as such a child is found, the concerned police officer should make a detailed Daily Diary (DD) entry with his full name and mobile number.
- b) Consequently as soon as information about missing persons is recorded in the DD, a form 'M' will be filled with all the of the necessary details along with the photo of the missing person and the same shall be uploaded in the Portal and transmitted to District Crime Record Bureau (DCRB).
- c) There should be fully fledged efforts to find the parents/ guardians of the child. If the child is found to be from outstation then they should be taken to their state and asked to locate their relatives and house. Wireless message should be sent immediately to the concerned Police station.
- d) A wireless message with particulars of the child should be sent immediately in all the police stations. The record of police station(s) in vicinity of area where child is living should be meticulously checked for missing reports, if any.
- e) Hue and cry notice should be issued and published at the earliest.
- f) Photographs of the child found should be taken for his/her identity.
- g) Seek public help in his/ her identification through media.
- h) The information should be passed on immediately to District Missing Persons Squad as per procedure laid down and efforts of the Squad should be to link it with procedure followed by crime branch for missing children. (Information of missing children should also be in track child portal.)
- i) Form of the Found Child should be filled up.
- j) In the event the child is unable to give information of the parents, he should be produced before CWC within 24 hours, excluding the journey time. CWC

¹⁵, <http://childwelfarecommitteesikar.weebly.com/guidelines-for-police-officers-of-the-special-juvenile-police-unit-in-relation-to-children-in-need-of-care-and-protection-cnep.html> (last visited on Feb 7, 2017)

and the names, addresses, phone numbers etc. of the members of the committee(s) should be known to the concerned police officer.

k) In case the CWC is not sitting, none is available then after a telephonic call to any one member the child should be taken to an appropriate institution of children, registered and certified under the JJAct2015, (as amended up to date). The same institution will produce the child before CWC, within 24 hours, as per Model Rule 27 Sub rule 6.

l) If a child in charge of a police officer needs any medical aid, same should be made available to him/her without any delay.

m) Medico Legal Case (MLC) of a child should be prepared only if any physical or sexual abuse or sickness is suspected or stated by child. Any medical or gynaecological examination is not a prerequisite for production of child before CWC as per Central Model Rules under JJ (Care & Protection of Children) Act 2015, Rule 27 and Sub Rule 8.

n) During the period of the custody of the child, the concerned police officer should take care of the food and other basic amenities that are required by the found child.

o) All expenses incurred for handling Children in Need of Care and Protection, their care, food and transport etc. shall Protection, be claimed under the head of 'Investigation Expenses'.

p) In all cases where adults are seen exploiting or abusing Children in Need of Care and Protection, immediate intervention should be provided to the victim child and help of a social worker of the SJPU or a NGO, counsellor should be sought for any emotional or legal needs of the child.

ii. Children Under 14 Years of Age¹⁶

a) Contact and coordinate with concerned Child Line, Deputy Commissioner of Labour and Child Welfare Committee(s).

b) FIR should be registered under Section

1. 14¹⁷, 16¹⁸ of The Child Labour (Prohibition and Regulation) Act 1986;

¹⁶Sourced from, <http://mphc.gov.in/PDF/JuvenileJustice/j4-060314.pdf> (last visited on Feb 7, 2017).

2. Sections 23,¹⁹ 26²⁰ of The Juvenile Justice Act, 2000 (as amended up to date); and corresponding Sections 76 and 80 of The Juvenile Justice

¹⁷Section 14 States, “(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both. (2) Whoever, having been convicted of an offence under section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years. (3) Whoever-- (a) fails to give notice as required by section 9; or (b) fails to maintain a register as required by section 11 or makes any false entry in any such register; or (c) fails to display a notice containing an abstract of section 3 and this section as required by section 12; or (d) fails to comply with or contravenes any other provisions of this Act or the rules made there under. shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both.” available at

<http://bba.org.in/sites/default/files/Child%20Labour%20Prohibition%20%20Regulation%20Act.%201986.pdf> (last Visited on Feb 4, 2017).

¹⁸Section 16 “Procedure relating to offences. -- (1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction. (2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates. (3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.” available at

<http://bba.org.in/sites/default/files/Child%20Labour%20Prohibition%20%20Regulation%20Act.%201986.pdf> (last Visited on Feb 4, 2017)

¹⁹Section 23 of JJ Act –“Punishment for cruelty to juvenile or child.- Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.” available at , <http://www.childlineindia.org.in/cp-cr-downloads/jjact2006.pdf> (last Visited on Feb 5, 2017).

²⁰Section 26 of the JJ Act, “Exploitation of juvenile or child employee.- Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and with-holds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.” available at , <http://www.childlineindia.org.in/cp-cr-downloads/jjact2006.pdf> (last Visited on Feb 5, 2017).

Act, 2015. 3. Section 16,²¹17²²,18²³ and 19²⁴ of The Bonded Labour System (Abolition) Act 1976 as per circumstances.

3. Get the child medically examined and have his/ her MLC prepared.
4. Produce the child before the concerned CWC.
5. In case provisions of The Bonded Labour System (Abolition) Act, are

²¹Section 16 of Bonded labour Act-Punishment for enforcement of bonded labour.- Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for term which may extend to three years and also with fine which may extend to two thousand rupees, available at , [http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20\(Abolition\)%20Act%201976%20and%20Rules.pdf](http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20(Abolition)%20Act%201976%20and%20Rules.pdf)(last Visited on Feb 7, 2017).

²²Section 17 of Bonded labour Act-Punishment for advancement of bonded debt.- Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees. Available at , [http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20\(Abolition\)%20Act%201976%20and%20Rules.pdf](http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20(Abolition)%20Act%201976%20and%20Rules.pdf)(last Visited on Feb 7, 2017).

²³Section 18 of Bonded labour Act- Punishment for extracting bonded labour under the bonded labour system.- Whoever enforces after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependent of such person is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him. available at , [http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20\(Abolition\)%20Act%201976%20and%20Rules.pdf](http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20(Abolition)%20Act%201976%20and%20Rules.pdf)(last Visited on Feb 7, 2017).

²⁴Section 19 of Bonded labour Act- Punishment for omission or failure to restore possession of property to bonded labourers.-Whoever, being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of thirty days from the commencement of this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day during which possession of the property was not restored to him ;available at , [http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20\(Abolition\)%20Act%201976%20and%20Rules.pdf](http://www.childlineindia.org.in/CP-CR-Downloads/Bonded%20Labour%20System%20(Abolition)%20Act%201976%20and%20Rules.pdf)(last Visited on Feb 7, 2017).

attracted the child should be presented before the concerned Sub Divisional Magistrate (SDM) to acquire relevant certification of bonded labour. This would include those children who provide labour or service but are not paid remuneration or are paid remuneration which is less than the minimum wage.

iii. Abused Child

Sexual abuse on a child differs from those of adult sexual abuse. They very rarely disclose sexual abuse immediately after the event. The child shows physical complaint or a change in behaviour before the abuse comes to light. Therefore, the evaluation of children requires special skills and techniques related to consent and reporting of child sexual abuse.²⁵ This category of children includes all children who are subjected to any form of physical/emotional/ mental harm and includes cases of sexual abuse of children.

IX. Role of Police under Protection of Children from Sexual Offence Act, 2012²⁶

The Act puts in place certain statutory obligations for sensitive handling of the child by the police. Under the Act, the police officer concerned has to have continuous and uninterrupted communication with a child. In this regard, there are specific responsibilities for the police officer to discharge-

- ❖ The police must act in the best interest of a child by protecting the child's freedom and dignity;
- ❖ The police must enable treatment and medical examination, respecting the child's sensitivities at all times;

²⁵World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, , 2003, 75, <http://apps.who.int/iris/bitstream/10665/42788/1/924154628X.pdf> (last visited on Feb 6 ,2017)

²⁶ Lawyers Collective Women's Rights Initiative (LCWRI) and UNICEF, *Monitoring Guidelines for NCPCR / SCPCR for Roles and Functions of Various Stakeholders Police, Special Courts, and Special Prosecutors*, 25, <http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=407&lid=844> (last visited on Feb 7, 2017)

- ❖ The police must extend help and give relevant information to the child or its parents throughout till the conclusion of the criminal prosecution;
- ❖ The police must respect the right to privacy and confidentiality of the child;

Additionally, the police should also inform the child and his guardian about the following:²⁷

- ❖ Availability of support services including counselling.
 - ❖ Right to legal aid and representation.
 - ❖ Availability of public and private emergency and crisis services.
 - ❖ Availability of victims' compensation benefits.
 - ❖ Developments in the case, including arrest of the accused, applications filed, and court proceedings.
 - ❖ Procedural steps involved in a criminal prosecution.
 - ❖ Status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation.
 - ❖ Rendering of a verdict after trial.
 - ❖ Sentence imposed on an offender.
 - ❖ Filing of charges against a suspected offender.
 - ❖ Bail, release or detention status of an offender or suspected offender.
 - ❖ Schedule of court proceedings that the child is either required to attend or is entitled to attend.
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- While the Code of Criminal procedure (Cr.P.C) applies to cases under the POCSO Act, this Act introduces additional procedures to be followed by the police and the courts. The police have been entrusted with more responsibility under the POCSO Act than those entrusted by the Cr.P.C or any other Acts relating to police.
 - Recording relevant information under section 19 of the POCSO Act is mandatory. There are four steps to be followed by police when

²⁷Sourced from, <http://bangalore.citizenmatters.in/articles/how-should-a-case-of-child-abuse-be-dealt-with-under-pocso#sthash.YrypfRIF.dpuf> (last visited on february 8, 2017).

information is given about (a) commission of offence or (b) expressing apprehension that such offence is likely to be committed: 1. Record such information in writing. 2. Ascribe an entry number to the recorded information. 3. Read it to the informant. 4. Enter the information in a book kept by the police unit.

- The fact that section 19 of the POCSO Act, imposes parallel obligation upon the Special Juvenile Police Unit to make a similar record cannot be used as a justification for the police to direct the informant to the Special Juvenile Police Unit or vice-versa.
- The obligation of recording information under section 19 of POCSO Act cannot be avoided by citing provisions of the Cr.P.C. The record under section 19 of the Act can be the basis of further police action including registration of FIR under section 154 of the Cr.P.C. The information recorded under section 19 of POCSO Act, is not automatically an FIR.
- When a child gives information to the police under section 19 of the POCSO Act, the special procedure of recording it, in the interest of justice, consists the use of:
 - (i) simple sentences in reducing information to enable the child to understand contents of the record [section 19 (3)POCSO Act];
 - (ii) language understood by the child; and
 - (iii) Qualified and experienced translator or interpreter when necessary on payment of fees prescribed [section 19 (4)POCSO Act].
 - (iv) Further, the statement must be recorded in the presence of the parents or any person having the trust and confidence of the child.
 - (v) It is important to follow this procedure as U/s 145 of the Evidence Act, 1872, the victim can be cross-examined by the defence counsel in respect of this record during the trial.
- Information given by telephone or cellular phone must be
 - (i) reduced to writing by the police;
 - (ii) ascribed a number and
 - (iii) read-over to the informant, and there is no requirement to take the signature of the informant or to give him copy of the report. Even anonymous information must be recorded under section 19 (2) of POCSO Act.
- Police officer reducing information into report under section 19 of the POCSO Act, has to immediately give to the informant the details of his

name, designation, address and telephone number and of his supervising officer.

- After recording information under section 19 of the Act the police to take steps for care and protection of the child.
- If the child has no home or no satisfactory arrangements can be made for his secure stay within the family, or such child already living in care institution apprehends maltreatment, he must immediately be placed by the police temporarily in a children's home or shelter home. Placing the child in a shelter home for his/ her care and protection must be the last option.
- Report to the CWC, under Sub-Section (1), section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015, or the Special Court under Section 19 read with rule 7 (1) of the Protection of Children from Sexual Offences(POCSO) Rules, 2012, to enable financial assistance / interim compensation to be given to a child.
- Rule 4 (3) of the POCSO Rules, 2012, and section 19 (6) of the POCSO Act provide for the production of a child by the police before the CWC within 24 hours after the receipt of information under section 19 of the Act.
- Under section 47 of the Juvenile Justice (Care and Protection of Children) Act, 2000, and corresponding section 91 of Juvenile Justice (Care and Protection of Children) Act, 2015, dispense with the presence of a disabled, severely injured or a child below 2 years before the CWC in the beginning with the statutory inquiry.
- Recording FIR is compulsory under section 154 of the Cr.P.C in cognizable offences. A copy of the FIR shall be given free of cost to the informant.
- Police officer recording information under section 19 of the POCSO Act, to record FIR in the following circumstances when it:
 - a) discloses one or more offences under sections 3, 5, 7, 9, 11, 13 and 15 of the POCSO Act;²⁸

²⁸Section 3 deals with penetrative sexual assault; Section 5- aggravated penetrative sexual assault; Section 7- sexual assault, Section 9 -aggravated sexual assault; Section 11- sexual harassment, Section 13- use of child for pornographic purpose and Section 15- punishment for storing pornographic material involving child.

- b) discloses attempt to commit any offence under section 3, section 5, section 9 or section 13 of the POCSO Act;
- c) discloses abetment to commit a cognizable offence under the POCSO Act and any act is committed in consequence of the abetment, as specified under section 17 of POCSO Act; or
- d) Discloses non-cognizable offence under the Act along with any other cognizable offence under the Indian Penal Code.

X. Procedures under Code of Criminal Procedure

- a) Whenever there is a cognizable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately and investigation will be carried out by an officer not below the rank of Sub-Inspector, preferably a sensitized lady officer.
- b) The statement of the victim shall be recorded verbatim.
- c) The officer who is in the presence of the victim while recording the statement should not be in police uniform.
- d) The statement should be recorded promptly and recorded in question answer form at the residence of the victim or any other place where the victim can make a statement freely without fear.
- e) When the victim child due to young age is unable to give details of the act in the presence of parents, inputs from the parents of the child or any other person in whom the child reposes trust and confidence will be taken.
- f) The investigating officer has to ensure that at no point the child victim should come in contact with the accused.
- g) The child victim shall not be kept in the police station overnight on any pretext, whatsoever, including medical examination.
- h) The officer investigating (IO) should make the surrounding child friendly so that the victim is comfortable and also see that the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.
- i) In the event the Investigating Officer should so feel the necessity, he may take the assistance of a counsellor / psychologist/ psychiatrist.
- j) In accordance with Section 164A Cr.P.C , the IO shall ensure that the child victim is medically examined at the earliest preferably within twenty four hours at the nearest government hospital or private hospitals recognized/ empanelled by the government.

- k) The site of the crime also needs to be combed at the earliest by the investigating team and all available evidence gathered.
- l) The IO shall promptly refer for forensic examination clothing and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.
- m) The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days and supervised by senior officer(s).
- n) The IO shall ensure that the identity of the child victim is protected from publicity.
- o) Detailed DD entry with full name and mobile number of concerned police officer should be recorded.
- p) Concerned CWC should be informed with a copy of DD entry and medical report. If any child is hospitalized, then after discharge by the hospital the child shall be produced before CWC along with all relevant original papers.
- q) In case of abandoned infant, the child shall be placed in an adoption agency u/s 56 and/ or children home, recognized and certified u/s 50 of the JJ Act, 2015 or paediatric unit of a government hospital followed by production of the child before CWC within 24 hours.
- r) In case of surrendered child, the parent(s) who want to surrender a child should be produced before concerned CWC. The rest of the responsibility is that of the CWC. Police Officer's responsibility gets over once the parent(s) and the child is produced before CWC.

XI. Guidelines for Police Officers of SJPU in Relation to Children in Conflict with Law

‘Children in Conflict with the Law’ (CCL) refers to anyone under 18 who has or is suspected of having committed an offence. Most of these used to be petty crimes or minor offences but recently it has taken a turn towards serious offences. Hon’ble Supreme Court observed in *Hari Ram v. State of Rajasthan*²⁹ any infraction of a child should not be dealt as when dealing with adults. The implementation of the Juvenile Justice Act to reach to its objective

²⁹ (2009) 13 SCC 211; MANU/SC/0744/2009.

requires a total change in the mindset of those who are vested with authority of enforcing the same.

The SJPU should have the best interest of child as a prime consideration in all acts done or action taken in respect of a Child in Conflict with Law. Police Officers dealing with CCL should follow the provisions of Juvenile Justice (Care and Protection of Children) Act 2015.

i. Procedure in Relation to Children in Conflict with Law

When a CCL is apprehended then certain procedures are to be followed, among them the first is Pre-Production action of police and other agencies³⁰

- Only in cases where the crime is committed by child above the age of 14 years and below 18 years of age of a crime heinous in nature, apprehension of a child can take place. But in case of petty offences or offences wherein the punishment is up to seven years apprehension is not necessary in the interest of the child. In such cases the SJPU/ CWPO will give the kind of offence committed along with socio-economic background of the CCL to the Board while informing the parents or guardian of the child the date the child is to be produced for hearing before the Board.
- A CCL who has been apprehended by the police shall be handed over to the SJPU/ CWPO under section 10 of the JJ Act, 2015.
- Actions of the SJPU/ CWPO after this would be to immediately inform:
 - the parents or guardian as mentioned above,
- (ii) the probation officer concerned, so that he can obtain the social background of the child and other material circumstances likely to be of assistance to the Board for conducting the inquiry; and
 - a child welfare officer or a case worker from a registered voluntary or NGO, who shall accompany the SJPU/ CWPO before the Board within twenty four hours as per sub-section (1) of section 10 of the Act.
- The police officer apprehending a child in conflict with law shall:

³⁰Section 7 (1), 8 (3), 10 (2), 12 (2) of the JJ Act, 2015.

- (i) in no case send the child to lock-up or jail or keep him with adult accused;
- (ii) not delay handing over the CCL to the SJPU/ CWPO, though the police officer may under section 12 (2) of the Act send the person apprehended to an observation home only for such period till he is produced before the Board i.e. within 24 hours of his apprehension and appropriate orders are obtained as per Rule 13 of these rules;
- (iii) The CCL shall not be handcuffed or fettered in chain;
- (iv) inform the child as well as his parent/guardian of the charges against him and in case if an FIR is registered or a police report made then the copy of the same should be made available to the child or his parents/guardian free of cost;
- (v) provide appropriate medical assistance, assistance of interpreter if the child cannot understand the language or any other assistance which the child may require;
- (vi) give food to the child if he has not had his meals;
- (vii) not compel the child to confess his guilt and he should be interviewed only at the Special Juvenile Police Unit or at a child-friendly premises or child friendly corner in the police station, which does not give the feel of a police station nor of being under custodial interrogation. The parents may be present during the interview of the child by the police;
- (viii) not ask the child to sign any statement;
- (ix) take immediate action against the perpetrators, if the version of the child reveals that he has been subjected to any neglect/ abuse/ ill treatment by anyone, or any group;
- (x) free legal aid is the right of the child apprehended and services of the District Legal Services Authority for providing free legal aid will be given;
- (xi) it is of utmost importance that the apprehended child is not subject to any cruel or degrading treatment;
- (xii) No coercion should be used on the child; and
- (xiii) inform the parents/guardian about the availability of legal aid.

- The Child Welfare Police Officer shall be in plain clothes and not in uniform.
- The police officer, if found guilty of torturing or cruelty to a child, will be liable to disciplinary action under major penalty procedure besides being prosecuted under section 75 of the JJAct, 2015.
- The CWPO shall record the social background and the circumstances of apprehension in Form 1 which shall be forwarded to the Board forthwith
- A list of all designated CWPO, Child Welfare Officers, Probation Officers, Para legal volunteers, District Legal Services Authorities and registered voluntary and non-governmental organizations in a district, Principal Magistrate and members of Boards and members of SJPU, with contact details shall be prominently displayed in every police station.
- No FIR shall be registered except where the offence alleged to have been committed by the child entails an imprisonment of 7 years and more for adults, or when such offence is alleged to have been committed jointly with adults. In all other matters, the SJPU/ CWPO shall record the information of the offence in the general daily diary followed by a report containing social background of the child in Form 1 and circumstances of apprehension and the alleged offence and forward it to the Board before the first hearing.
- Where the apprehension is not warranted, the child shall be released to the parents/ guardians or a fit persons custody in the interest of the child and who shall furnish an undertaking on non-judicial paper in Form 2 to ensure their presence on the dates during enquiry/proceedings before the Board.
- When a CCL is released on bail and is handed over in custody of his parents / guardian, the Police Officer/ CWPO shall arrange for necessary counselling along with the parents if required, from recognized voluntary organizations and/or probation officers so that possibility of said child coming in a situation of conflict again, in future, is ruled out.
- As per the tenets of fundamental rights, a CCL should be given an opportunity of being heard and to express his/her views/defence freely.

- A CCL has a right to family protection. So right after apprehension the family of the child needs to be contacted at the earliest. For children from outer states, concerned SP/Gram Pradhan/District Welfare Officer/CWC etc should be contacted at the earliest.
- A female Child in CCL should preferably be kept in charge of a female Juvenile/Child Welfare Police Officer. Her privacy is to be fully respected.
- It shall be the responsibility of CWPO concerned to ensure that no harm is caused by stigmatic exposure or publicity or labelling the CCL.
- The concerned Police should collect age proof of CCL at the earliest and in this regard provisions of rule 12(3)(a) of Juvenile Justice (Care and Protection of Children) Rules, 2007 are to be strictly adhered to. The proof of age should be produced before the JJB, at the time of first production of the child before them. In case, for some reasons, beyond the control of the IO, the age proof cannot be collected at the time of apprehension then it should be collected and produced before JJB at the earliest, in any event before filing of the charge sheet and/or final report before the JJB.
- In case no document of age, as prescribed in Rule 12(3)(a) is available then the CCL should be examined by a duly constituted Medical Board for opinion as to the age.
- In all cases where a complaint is filed or FIR is registered or DD entry is made, against a child below the age of 18 years, for an offence punishable with imprisonment of not more than 7 years, the investigations shall be completed by the Investigating Officer within a period of 3 months from the date of filing of the complaint or lodging of FIR/DD entry and if the investigation is not completed within this time the case against the CCL shall be treated as closed.
- All guarantees and protections which are accorded to adult offenders, under any law or rules, have to be made available to every CCL with law upon apprehension.
- Every CCL should be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and desirability of promoting the child's reintegration and encouraging his or her constructive role in the society.

- Record of a CCL must be kept strictly confidential and must not be accessible to other than duly authorized authorities.
- A police officer dealing with CCL should also make sincere effort to acquire knowledge of other acts/laws/notifications which recognize and protect rights of children.

ii. Efforts of the State of West Bengal

In the State of West Bengal, by the Police Order No 9/2010,³¹ a missing children tracking portal (MCTP), was made operational at the Missing Persons Bureau (MPB), in Crime investigation Department (CID), West Bengal. As soon as information about missing persons is recorded in the General Diary (G.D), a form M will be filled with all the of the necessary details along with the photo of the missing person and the same shall be uploaded in the Portal and transmitted to District Crime Record Bureau (DCRB).

According to Police Order No. 5/2014,³² there will be a Protection of Women & Children Cell (POWC) in HQ of every District/ Commissionerate headed by one Inspector heading the Missing Persons Bureau will be ex- officio SJPU officer. POWC will act as SJPU and will mandatorily take over cases wherein the child is missing over 4 months (*BachpanBachaoAndolan V Union of India*, WP(C) No 75/2012).

Track Child Portal has been designed and developed and in use from 2011-2012, adhering to the guidelines provided in the Juvenile Justice (Care and Protection of Children) Act, 2000 and Model Rules 2007 and the provisions laid down in the Integrated Child Protection Scheme (ICPS) facilitate data entry and matching of missing and found children and also enable follow up of the progress of children who are beneficiaries of the scheme.³³

³¹http://trackthemissingchild.gov.in/trackchild/readwrite/publications/police_order_no.9-10-MBP.pdf (last visited on 6.4.2017).

³²http://trackthemissingchild.gov.in/trackchild/readwrite/publications/Police%20Ord_32_0200201Police_Order_05_2014.pdf (last visited on 6.4.2017).

³³http://nceg.gov.in/sites/nceg.gov.in/files/nceg2016/casestudies/Track-Child_CaseStudy.pdf (last visited on 6.4.2017).

XII. Conclusion

The main objective of SJPU is to bring in a human face and friendly touch in the front line interventions relating to all children. SJPU have been mandated to serve all the needs of a child. Their role from an incarcerator has taken a turn towards more humane, integrated and child rights respecting police practices.

The CRC principles will be like a bible to the SJPU who will be guided by the core of child participation, non-discrimination, best interest and right to life. “Child friendly” police stations are much emphasised upon and it implies physical space or a child corner provided, language used, accessibility of SJPU, quality of intervention, legal aid, interpreter, respecting child’s wishes, respecting child and parental rights unless child’s life is at risk.

While referrals are made, it is pertinent to keep the best interest principle. The child should be sent to a service that would best meet his/her needs within the framework of law. As far as possible and bearing in mind the best interest principle, children should be diverted from the Juvenile Justice system. For optimization of the objective of the JJ Act, all the stakeholders need to work in tandem towards the same goal.