
DIVISIONAL WORKSHOPS ON MISSION VATSALYA AND MISSION SHAKTI

Key legislatures related to Mission Vatsalya- Juvenile Justice (Care and Protection of Children) Act, 2015, POCSO Act, 2012 , Prohibition of Child Marriage Act, 2006 and Child Labour Act, 1986

KEY LEGISLATURES RELATED TO CHILDREN IN REFERENCE TO MISSION VATSALYA

- Juvenile Justice (Care and Protection of Children) Act, 2015
 - Protection of Children from Sexual Offences, 2012
 - Child Marriage Act, 2006
 - Child Labour Act, 1986
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JJ ACT, 2015...

- The JJ Act 2015 replaced the JJ Act of 2000. It came into force on 15th January 2016,
 - Category of children covered under the Act- Children in Conflict with Law and Children (Section 2 (13)) in need of care and protection (Section 2 (14))
 - Its principles basically focus on rehabilitation and social re-integration of children in need of care and protection and those in conflict with the law.
 - Key stakeholders as mentioned under the Act -DCPU, CWC, JJB, SJPU and DLSA
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PROCEDURES LAID IN THE ACT

- **General Principles** of Care and Protection of Children laid in the Act- Under Section 3 of the Act. (16 principles- Key principles- Principle of presumption of **innocence**, principle of **dignity and worth**, principle of **best interest**, principle of **positive measures**, principles of **non-stigmatising semantics**, principle of **institutionalisation as a measure of last resort**, principle of **repatriation and restoration**, principle of **fresh start**, principle of **diversion**, principle of **natural justice**)
 - **Procedures for CNCP**- Chapter -VI (Section 31- 38)
 - **Procedures for CICWL** - Chapter - IV (Section 10-30)
 - **Adoption**- Chapter VIII (Section 56-73)- In country and Inter Country . To be read with the guidelines of CARA (Central Adoption Resource Authority)
 - **Child Care Institutions**- Registered CCIs under **Section 41** of the JJ Act- CNCP- Open Shelter, After Care Home, Children Home, SAA ; CICWL- Observation Home, Special Home, Place of Safety
 - **Monitoring of CWCs and JJBs**- District Magistrate and Chief Judicial Magistrate
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AMENDMENT 2021...

- Section 2 (17) '**Children's Home**' has been replaced by Child Care Institution
 - '**District Magistrate**' term has been elaborated to DM as well as ADM
 - Section 2 (26) - Under the definition of "District Child Protection Unit" 'supervision of the **District Magistrate** has been added 'to ensure the implementation of this Act and other child protection measures in the district.
 - Section 16 (4)- **Additional power given to the District Magistrate(added)** that may, as and when required, in the best interest of a child, he/she may call for any information from all stakeholders including the Board and the Committee.
 - Section 41- At the time of registration under this section, the State Government shall, after considering the **recommendations of the District Magistrate** (added), determine and record the capacity and purpose of the institution and shall register the institution as children's Home or open shelter or Specialized Adoption Agency or observation home or special home or place of safety, as the case may be.
 - Section 54(2)- Such inspection committees shall mandatorily conduct visits to all facilities housing children in the area allocated, at least once in three months in a team of not less than three members, of whom at least one shall be a woman and one shall be a medical officer, and submit reports of the findings of such visits within a week of their visit, to **District Magistrate** for further action.
 - Section 54 (3)- On the submission of the report by the inspection committee within a week of the inspection, appropriate action shall be taken within a month by **District Magistrate** and a compliance report shall be submitted to the State Government.
 - Section 55 (1)-The Central Government or State Government or **District Magistrate (added)** may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government.
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NEW ROLE OF DMS FOR ADOPTION OF CHILDREN...

- Section 56 (5)- Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the **District Magistrate (replaced)**, shall be punishable as per the provisions of section 80.
 - Section 58 (3)- On the receipt of the acceptance of the child from the prospective adoptive parents along with the child study report and medical report of the child signed by such parents, the Specialised Adoption Agency shall give the child in pre- adoption foster care and file an application before the **District Magistrate (replaced)** for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.
 - Section 59 (7)- On receipt of the acceptance of the child from the prospective adoptive parents, the Specialised Adoption Agency shall file an application before the **District Magistrate** for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.
 - Section 60 (1)- A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the **District Magistrate** and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.
 - Section 61 (2)- Before issuing an adoption order, the Section 54 (3)- On the submission of the report by the inspection committee within a week of the inspection, appropriate action shall be taken within a month by **District Magistrate** and a compliance report shall be submitted to the State Government.
 - Section 55 (1)-The Central Government or State Government or **District Magistrate (added)** may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government.
 - Section 61 (1)- Before issuing an adoption order, the **District Magistrate** shall satisfy itself that— (a) the adoption is for the welfare of the child; (b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and (c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.
 - Section 61(2)- The adoption proceedings shall be held in camera and the case shall be disposed of by the **District Magistrate** within a period of two months from the date of filing.
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ROLE OF STAKEHOLDERS AT DISTRICT LEVEL

- Inspection of CCIs- Inspection Committee, District Magistrate, DPO , CWC
 - Awareness on the provisions of the Act
 - Monitoring of DCPU and CWC
 - Strengthening of CCIs
 - Adoption procedures
 - Rehabilitation and restoration of children
 - Activate local resources and CSOs for support
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POCSO ACT, 2012

- In order to address the problem of Child Sexual Abuse through less ambiguous and more stringent legal provisions, the POCSO Act was formulated in June 2012.
 - The Protection of Children from Sexual Offences Act, 2012 came into force on 14 November 2012. The Act was passed in the Indian Parliament in May 2012. The act under its ambit defines child as a person below the age-group of 18 and is gender neutral and has a clear definition for all types of sexual abuses like sexual harassment, penetrative and non-penetrative sexual abuse and pornography.
 - All children whether male or female below the age of eighteen come under this ACT.
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SALIENT FEATURES OF THE ACT

- Gender Neutral
 - Child Friendly approach
 - Child is given police protection during the Investigative Procedure
 - Can avail Emergency Medical Treatment
 - Provisions for avoiding re-victimisation of the child
 - Special Court to decide compensation for the child
 - Availability of support persons and interpreters for the child
 - Can testify through Video-link
 - Reporting of child sexual abuse is mandatory
 - A CSA case should be disposed within one year of reporting
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PROCEDURES LAID IN THE POCSO ACT, 2012

- Chapter V- procedure for reporting of Cases
 - Chapter VI- Procedure for recording Statement of the Child
 - Chapter VII- Special Courts
 - Chapter VIII- Procedure and Powers of Special Courts and recording of evidence
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ROLE OF STAKEHOLDERS

- Police
 - Child Welfare Committee
 - District Child Protection Officer/ Child Welfare Officer
 - Magistrate
 - Medical Examiner
 - Special Public Prosecutor
 - District Legal Services Authority
 - Special Court
 - Counselor
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THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

- To overcome the shortcomings of the Child marriage Restraint Act 1929 the prohibition of Child Marriage Act, 2006 was introduced. It came into force on 1 November, 2007
 - Objective to prevent solemnisation of child marriages
 - 'Child' means a person, if a male, has not completed 21 years of age and if a female has not completed 18 years of age
 - Every child marriage, whether solemnised before or after the commencement of this act shall be voidable at the option of the contracting party who was a child at the time of the marriage.
 - Solemnisation of child marriage is a cognisable and non-bailable offence
 - Child Marriage Protection officers (appointed in every district) are responsible for protection victims and prevent child marriage
 - DM and CMPO responsible for awareness
 - Courts have the power to issue injunction for prohibiting child marriages from taking place
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PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL, 2021

- The Bill increases the minimum age for females to 21 years. It also specifies that the provisions of the Act shall override any other law, custom, usage or practice.
 - Time period for filing petition to annul child marriage: Under the 2006 Act, a person who is married before the minimum specified age may apply to annul the marriage. The petition must be filed within two years of attaining majority (i.e., 20 years of age). The Bill increases this to five years (i.e., 23 years).
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LANDMARK JUDGEMENTS ...

- **Sampurna Behura v. Union of India & Ors.** [Writ Petition (Civil) No. 473 of 2005] This case was primarily related to the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000, and Juvenile Justice (Care and Protection of Children) Act, 2015 (“JJ Act, 2015”).
 - **Sheela Barse & Anr. v. Union of India & Ors.** [1986 AIR 1773] This petition was filed in the Hon’ble Supreme Court for getting directions regarding the release of children, below 16 years of age, from jails. The petitioners also prayed for the production of complete information about children in jails, and the existence of juvenile courts, homes, and schools in the country.
 - Suo Motu Writ Petition (Civil) No. 4 of 2020 in the matter of : **IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES**
 - **Alakh Alok Srivastava v. Union of India and others (2018)**- The Supreme Court of India laid down guidelines to be followed by Special Courts while trying a case under the POCSO Act, 2012 so that the trial is completed within a period of one year from the date of taking cognizance of the offence, as provided under Section 35 of the POCSO Act.
 - **Nipun Saxena Vs Union of India (Supreme Court), 2019**- In context to victims of rape, the Supreme Court held that their cross-examination “should be done with a certain level of decency and respect to women at large.” It was held that the phrase “matter which may make known the identity of the person” in Section 228A IPC “does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media.”
 - **Junaid vs. State of U.P. and Another**, Criminal Miscellaneous Bail Application 46998 of 2020 (High Court of Allahabad)- The Hon’ble High Court of Allahabad elaborated on Rights of the accused, a bail processual framework violates fundamental rights and personal liberties of an accused, timelines for various stakeholders and produces for children in need of care and protection
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MAJOR AREAS OF CONCERN AS HIGHLIGHTED BY HCJJC...

- Decongestion of Homes
 - Strengthening of CCLs
 - Rehabilitation of Children of CCLs
 - Restoration of children
 - Promising support to children for their education, legal aid to CICWL and CSA, skill development for children of CCLs
 - Time bound inquiry and investigation for CSA
 - Availability of support persons, counsellors and professionals for children in need of care and those effected by CSA
 - Convergence of concerned Departments
 - Training and Capacity building of Stakeholders
 - Documentation
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PREVENTION OF SEXUAL HARASSMENT (POSH)

- It came into force on 9th December, 2013. Seeks to prevent women from sexual harassment at workplace.
 - **“Sexual harassment”** includes any one or more of the following **unwelcome acts or behavior** (whether directly or by implication) namely:— (i) **physical** contact and advances; or (ii) a demand or request for **sexual favours**; or (iii) making **sexually coloured remarks**; or (iv) showing **pornography**; or (v) any other **unwelcome** physical, verbal or non-verbal **conduct of sexual nature**;
 - **‘Workplaces covered under the Act’**- i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate **Government or the local authority or a Government company or a corporation or a co-operative society**; (ii) any **private sector organisation** or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;(iii) **hospitals or nursing homes**; (iv) any **sports** institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;(v) **any place visited by the employee arising out of or during the course of employment** including transportation by the employer for undertaking such journey; (vi) a **dwelling place or a house**;
 - The term workplace also **includes unorganized sector** which means an enterprise owned by individuals or self-employed workers, engaged in the production or sale of goods or providing service of any kind whatsoever, and the number of such workers is less than ten.
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CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE (SECTION 4)

A. Section 4- Every office or branch of an organization **employing ten or more employees must have** an internal committee dedicated to hearing and resolving sexual harassment complaints.

B. It is **essential to comply with the composition of the committee**, which is mentioned as follows:

- There shall be a **female Presiding Officer** who is an employee at a senior level at work
 - There should be at **least two members** among the employees. These members shall be ideally committed to women's causes or have social work experience or legal knowledge.
 - An **external member** is required, who should be from **NGOs or associations** that support the cause of women or have experience in sexual harassment issues. As per Rule 4 of the POSH Rules, the external member shall be an individual with expertise in workplace sexual harassment issues, such as a social worker with at least five years of experience or somebody familiar with labour, service, civil, or criminal law.
 - At least **one-half of IC's** total must comprise female members.
 - IC members have a **maximum term of three years**.
 - An inquiry must be conducted by at **least three members** of the IC, including the Presiding Officer.
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LOCAL COMMITTEE

- **District Level (Under Section 5).**-

- Local Complaints Committee must be **formed**
 - To handle complaints of sexual harassment at workplace when there is **no internal mechanism** in place
 - Local committees are responsible to **investigate and respond to complaints** of sexual harassment from the **unorganized sector** and from **establishments where the IC has not been formed** due to **fewer than 10 employees** of the establishment or when the complaint is against the employer.
 - LC is particularly relevant for instances of sexual harassment of **domestic workers** or when the complaint involves the employer or a third party not employed by the company.
 - **Composition of LC:** (i) A **chairperson, who shall be a woman** (women's rights activist and an eminent social worker) (ii) A **local woman**, who shall be nominated amongst women who work in blocks, talukas, tehsils, wards, and municipalities within the district (iii) **NGO members-** two NGO members- one from an organization dedicated to women's issues, or a person knowledgeable about sexual harassment issues. It is recommended that at least one of the members has legal experience and a woman belonging to one of the Scheduled Castes or Scheduled Tribes.
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SERVICES UNDER THE ACT

- Procedure of Complaint (Section 9)
 - Conciliation (Section 10)
 - Interim Relief
 - Punishment of Complaint (Section 15)
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PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

- Enacted to protect women from domestic violence- **physical, sexual, verbal, emotional, economic abuse.**
 - Covers all women who may be **mother, sister, wife, widow or partners living in a shared household (includes relationships with family members living together as a joint family).**
 - Recognises rights of aggrieved woman
 - Application can be **filed to a Magistrate for relief-** by an **aggrieved person** or a **Protection Officer** or **any other person on behalf of the aggrieved person** may present an application to the magistrate
 - It is the duty of the protection officer and the service provider to **provide all assistance to the woman** who is a victim of domestic violence.
 - **Magistrate may pass orders** for (Section 18 to 23)- **Counseling**, direct that the woman shall not be evicted or excluded from the household or any part of it, If necessary, the proceedings may be directed to be **conducted in camera**, issue **Protection order**, **Grant monetary relief** to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence,**Grant custody orders**, i.e., temporary custody of any child or children to the aggrieved person, **Grant compensation/damages** for the injuries. including mental torture and emotional distress caused by the acts of domestic violence committed by that respondent.
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THANKYOU...
