



Research Report
Policy Landscape for children in
shelters

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MAKE A DIFFERENCE

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1. INTERNATIONAL CONTEXT:

Children are considered to be dependent and vulnerable; thus requiring nutrition, care, protection and development from the fundamental group in society: family. In earlier days, a child was considered to be the property of parents/family and children were traditionally never considered a separate group. Since the last century, there has been a growing concern for childhood. Universally, this has led to a shift witnessed from a needs-approach to a rights-based approach in matters regarding the children. This report documents the existing international mechanisms and the national landscape of legislation and policies around children with a focus on children living in shelter homes.

The Declaration of Geneva promulgated in 1924 by Save the Children Fund International Union was the most significant declaration towards the protection of the best interests of the child. This was later revised and extended in 1948 after the World War II and was adopted unanimously by the General Assembly of the United Nations on November 20, 1959. In 1978, the **Government of Poland** was the first to declare a convention on the rights of the child. While the **United Nations Convention on the Rights of the Child** was adopted and opened for signature, ratification and accession by the General Assembly of the United Nations in 1989. In 1990, it became a law whereby all the signatory States became bound by the 54 articles under this law. India ratified the United Nations Convention on the Rights of the Child on December 10, 1992.

The United Nations Convention on the Rights of the Child underlines the principle of the **best interest of the child** with their basic human rights – civil, economic, social, cultural and political which enable the children to achieve their full potential. The main areas covered under the rights are - survival, development, protection and participation. In detail:

1. The survival right includes adequate living standards and access to medical services.
2. Development right includes access to information, education, play and leisure, cultural activities and the right of freedom of thought, conscience and religion.
3. Protection apart from embracing of the above also covers all forms of exploitation and cruelty, arbitration, separation from family and abuses in the criminal justice system.
4. Participation rights include the freedom to express opinion in matters affecting ones' own life and the right to play an active role in society at large.

There are other international mechanisms in place for the protection and well-being of the children - **The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985** commonly referred as **The Beijing Rules**, **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990** and **Guidelines of Alternative Care, 2009**; to name a few. A comprehensive list is provided in the Annexure section of this report.

The approach towards working with children has seen a major shift over the past century and the shift has been from a needs-based approach to a rights-based approach as depicted below. Another major shift has been with respect to the participation of children in matters relating them which was not the case previously.

2. INDIAN CONTEXT:

The nodal ministry under the **Government of India** for matters related with children is the **Ministry of Women and Child Development (MWCD)**. Other related Ministries are Ministry of Human Resource Development, Ministry of Social Justice and Empowerment (MSJE), Ministry of Health and Family Welfare and Ministry of Youth Affairs and Sports, some of the tasks of these ministries are applicable to the children living in institutional care.

A brief history of the evolution of the Ministry of Women and Child Development: In the year 1985-86, the erstwhile Ministry of Welfare was bifurcated into the Department of Women and Child Development and the Department of Welfare. Simultaneously, the Scheduled Castes Development Division, Tribal Development Division and the Minorities and Backward Classes Welfare Division were moved from the Ministry of Home Affairs and also the Wakf Division from the Ministry of Law to form the then Ministry of Welfare. Subsequently, the name of the Ministry was changed to the Ministry of Social Justice & Empowerment in May, 1998. With effect from 30.01.2006, the Department (Department of Women and Child Development) has been upgraded to a Ministry (Ministry of Women and Child Development).

In January, 2007, the Minorities Division along with Wakf Unit have been moved out of the Ministry and formed as a separate Ministry and the Child Development Division has gone to the Ministry of Women & Child Development. (reference: <http://socialjustice.nic.in/UserView/index?mid=1508>)

It is evident from the re-shuffling of the departments under the various Ministries that the Ministry of Women and Child Development is a recent formation. Apart from MWCD, MSJE also cares for vulnerable children but specifically belonging to scheduled castes, socially and educationally backward classes, denotified tribes, economically backward classes, beggary and victims of alcohol and substance abuse and person with disability. MSJE rolls out special schemes aimed at social, educational and economic empowerment via scholarships, hostels, residential schools, skill training, concession loans and subsidy for self-employment, etc

2.1. The Constitution of India

The constitution confers upon each citizen the fundamental rights and directive principles as abiding laws.

With respect to children, the following articles have a direct impact on the children of the nation:

Fundamental Rights under the Constitution of India:

2.1.1. [Article 14] Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

2.1.2. **[Article 15 and Article 15 (3)] Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

- 2.1.2.1. 15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- 2.1.2.2. 15. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -
 - 2.1.2.2.1. (a) access to shops, public restaurants, hotels and places of public entertainment; or
 - 2.1.2.2.2. (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- 2.1.2.3. 15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- 2.1.2.4. 15. (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- 2.1.2.5. 15. (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

2.1.3. **[Article 17] Abolition of Untouchability**

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

2.1.4. **[Article 19(1)] Protection of certain rights regarding freedom of speech, etc**

- 2.1.4.1. 19 (1) All citizens shall have the right-
- 2.1.4.2. 19 (1) (a) to freedom of speech and expression;
- 2.1.4.3. 19 (1) (b) to assemble peacefully and without arms;
- 2.1.4.4. 19 (1) (c) to form associations and unions;
- 2.1.4.5. 19 (1) (d) to move freely throughout the territory of India;
- 2.1.4.6. 19 (1) (e) to reside and settle in any part of the territory of India; and
- 2.1.4.7. 19 (1) (g) to practice any profession, or to carry on any occupation, trade or business

2.1.5. **[Article 21] Protection of life and personal liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law.

2.1.6. **[Article 21A] Right to education**

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

2.1.7. **[Article 23(1)] Prohibition of traffic in human beings and forced labour**

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

2.1.8. **[Article 24] Prohibition of employment of children in factories, etc**

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Directive Principles of State Policy under the Constitution of India:

2.1.9. **[Article 39] Certain principles of policy to be followed by the State.**

The State shall, in particular, direct its policy towards securing-

2.1.9.1. **Article 39(e)** that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

2.1.9.2. **Article 39(f)** 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

2.1.10. **[Article 45] Provision for free and compulsory education for children**

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

2.1.11. **[Article 46] Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections**

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

2.1.12. **[Article 47] Duty of the State to raise the level of nutrition and the standard of living and to improve public health**

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

2.1.13. **[Article 51] Promotion of international peace and security**

The State shall endeavor to-

2.1.13.1. **Article 51 (a)** promote international peace and security;

2.1.14. **[Article 51A (k)] Fundamental Duties**

It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

2.2. **The Juvenile Justice (Care and Protection of Children) Act, 2000**

The Juvenile Justice (Care and Protection of Children) Act, 2000 is a comprehensive act which primarily outlines the framework on work with **children in conflict with the law** and **children in need of care and protection**. Commonly known as the JJ Act, it has been amended thrice (2006, 2011, 2015). In a nutshell, the JJ Act outlines the principles, systems, processes and related statutory bodies to cater to the basic needs of children through proper care, protection, development, treatment and social re- integration. The legislative outline for both the non-institutional care and institutional care has been clearly segregated under this act. The JJ Rules 2007, based on the JJ Act chart out the standards of care for institutions in detail. The main statutory bodies defined under the JJ Act are **Juvenile Justice Board (JJB)** to deal with children in conflict with law and **Child Welfare Committee (CWC)** to deal with children in need of care and protection. JJ Act follows 14 principles and the most important among them for work related to Make A Difference is the principle that institutionalization of children is the last resort i.e. when all means of providing care and protection to a child, direct, foster or alternative have been exhausted, only then can institutionalization be considered.

A child is defined as any person below the age of 18 years except in case of heinous crimes; the person in age group of 16-18 years is also considered an adult. Make A Difference works with children living in institutional care who are in need of care and protection. A child in need of care and protection is defined as under in the JJ Act:

- 2.2.1. *who is found without any home or settled place of abode and without any ostensible means of subsistence; or*
- 2.2.2. *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*
- 2.2.3. *who resides with a person (whether a guardian of the child or not) and such person—*
 - 2.2.3.1. *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*
 - 2.2.3.2. *has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or*
 - 2.2.3.3. *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*
- 2.2.4. *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*
- 2.2.5. *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*
- 2.2.6. *who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or*
- 2.2.7. *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*
- 2.2.8. *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*
- 2.2.9. *who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or*
- 2.2.10. *who is being or is likely to be abused for unconscionable gains; or*
- 2.2.11. *who is victim of or affected by any armed conflict, civil unrest or natural calamity; or*
- 2.2.12. *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*

The **child care institutions** means Children Home, Open shelter, Observation home, Special home, Place of safety, Specialized Adoption Agency and A fit facility recognized under JJ Act for providing care and protection to children, who are in need of such services. Child Care Institutions can be established and maintained by the State Government itself or through voluntary/ non-governmental organizations. Thus the types of child care institutions based on funding are: Government-aided institutions, Government-run institutions and NGO-run institutions (private institutions). All types of institutions for children have to be mandatorily registered under the

appropriate sections of the JJ Act. Figure 1 depicts a structural representation of child care institutions and the respective statutory bodies.

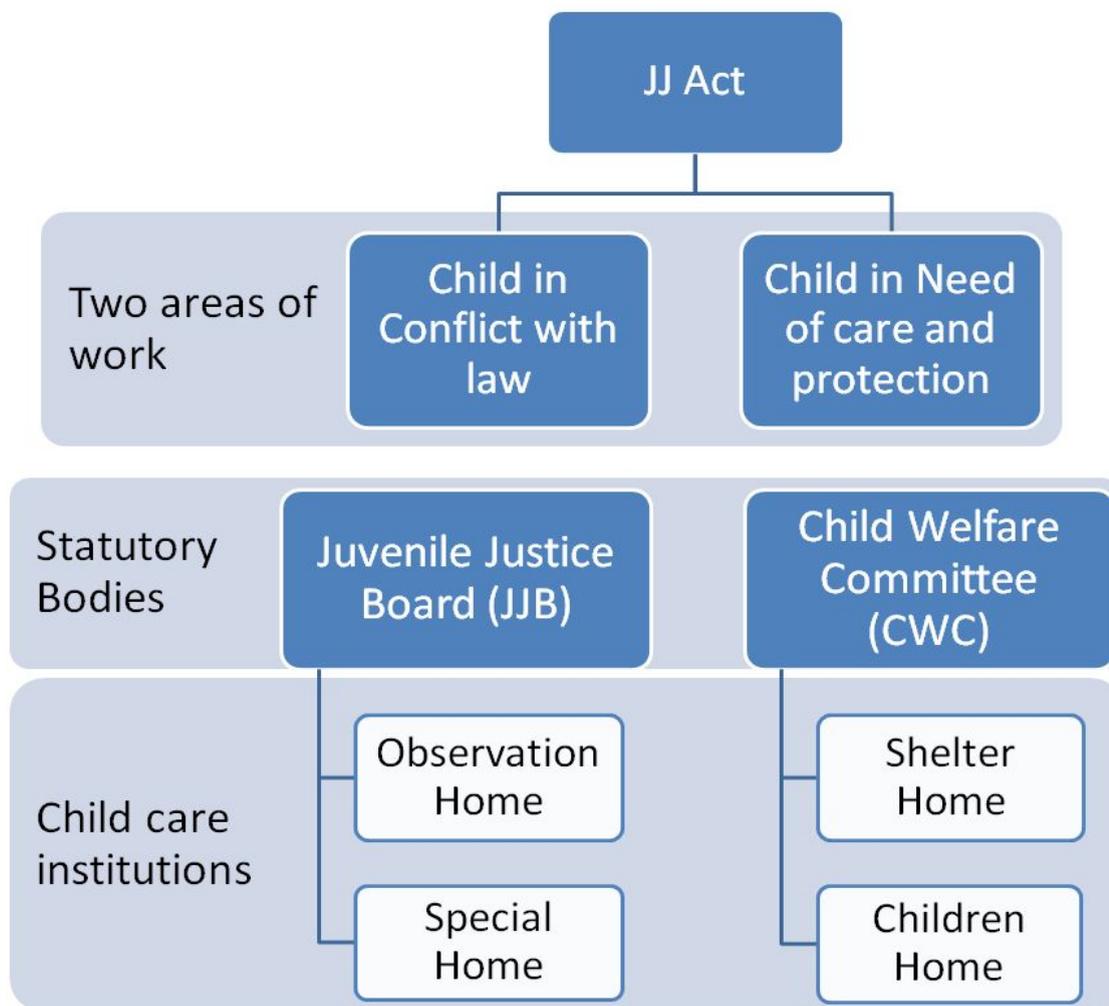


Figure 1

The definitions of the various types of child care institutions are as follows:

- A. **Children Home:** for the placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation
- B. **Open Shelter:** 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
- C. **Observation Home:** for temporary reception, care and rehabilitation of any child alleged to be in conflict with the law, during the pendency of any inquiry under JJ Act
- D. **Special Home:** for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board

- E. **Place of Safety:** to place a person above the age of eighteen years or child in conflict with law, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence
- F. **Specialised Adoption Agency:** for the rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care
- G. **Fit facility:** Recognized by the Board (JJB) or Committee (CWC) as fit to temporarily take the responsibility of a child for a specific purpose

2.3. The National Policy for Children, 2013

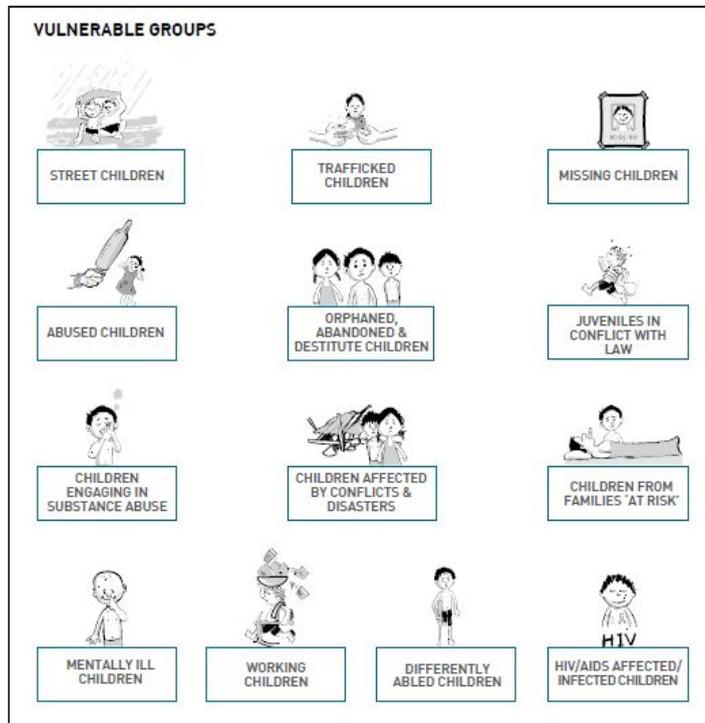
The National Policy for Children, 2013 recognizes a child as any person below the age of 18 years acknowledging and uplifting the four rights of children irrespective of religion, caste, class, creed and gender. These rights are:

- A. Survival, Health and Nutrition
- B. Education and Development
- C. Protection
- D. Participation

Declared by the Government of India in 1974, The National Policy for Children ensures that programmes for children are incorporated in the National Plans for development. In order to realize the full potential of the children, strengthening family ties and community environment are focused upon in this policy.

2.4. The National Plan of Action for Children

The National Plan of Action for Children was prepared by the Government of India. For Children in Need of care and protection, it significantly calls for improved protection of these children while identifying the various target groups of vulnerable children. The Plan covered the areas of health, nutrition, water, sanitation, children in need of care and protection, education, girl child, adolescent girls, advocacy, resources monitoring and evaluation. Specifically addressing the goals for a girl child of: survival and protection, overall development and special protection of a girl child given the deeply patriarchal Indian context, **The National Plan of Action for Girl Child** was also devised by the Government of India.



Source: Childline (Child Protection and Juvenile Justice System)

2.5. The Integrated Child Protection Scheme (ICPS)

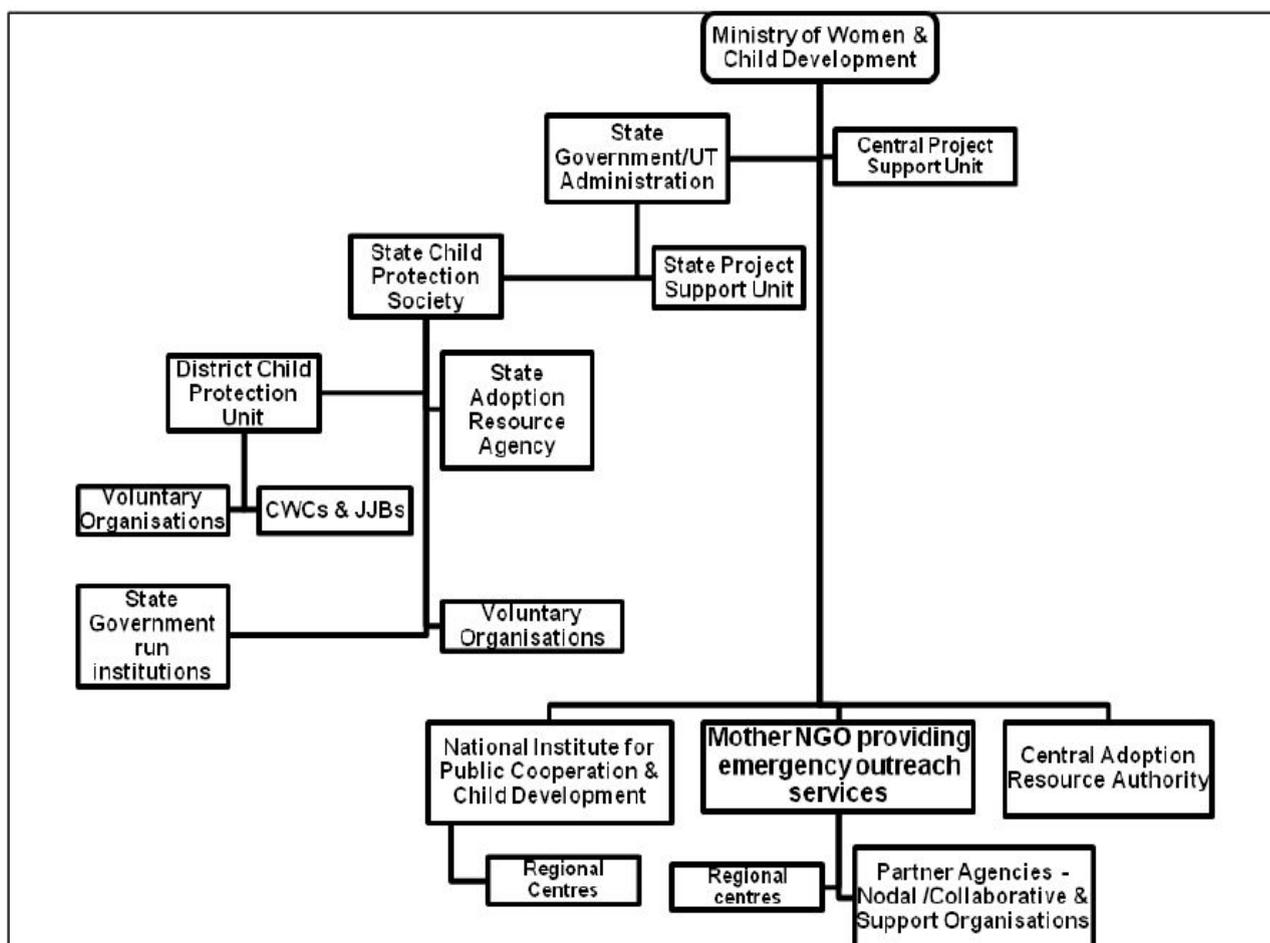
The Integrated Child Protection Scheme (ICPS), a Centrally Sponsored Scheme under the Ministry of Women and Child Development, with the primary aim of establishing a safety net of dedicated and quality personnel, structures and services for Child Protection across the country, was approved for implementation in 2009. As envisaged in the Juvenile Justice (Care and Protection of Children) Act, the ICPS furthers the child rights for development of full potential of the children by establishing/ supporting dedicated delivery structures across Central, State and District levels. ICPS sees through the Child Protection Programmes and the financial allocation for the target group of children in need of care and protection, children in conflict with the law, children in contact with the law (as witness or victims) and any other vulnerable child (children of migrant families, children of socially marginalized groups, exploited/trafficked/drug-addicted children, children of prisoners/ sex-workers and children affected/infected with HIV/AIDS). These services are available for both non-institutionalized (adoption and sponsorship) and institutionalized children (shelter/children/observation/special homes for children).

The Service Delivery Structure at the Central, State and District levels with respect to non-institutionalized and institutionalized services is depicted here:

LEVEL	STRUCTURE	FUNCTIONS (INCLUDING BUT NOT LIMITED TO)
CENTRAL	Central Project Support Unit (CPSU)	The mission directorate - a technical support unit responsible for facilitation of scheme implementation across the country, especially fund disbursement, the child tracking system and impact assessment.
	National Institute of Public Cooperation and Child Development (NIPCCD)	Child Protection Unit - to spearhead research and capacity building, including creating a cadre of child protection personnel.
	Central Adoption Resource Agency (CARA)	Implements international commitments related to rights, safeguards and procedures involving children who are orphaned, abandoned or surrendered.
	Childline India Foundation (CIF)	Coordinated and facilitates childline services through nodal, collaborative and supportive organizations.
STATE	State Project Support Unit (SPSU)	Technical support unit to facilitate implementation of the scheme including training, updating State level information on status of child protection structures and their functioning.
	State Child Protection Society (SCPS)	The implementing arm of the State Governments/UT Administration at the State level.
	State Adoption Resource Centre (SARA)	To promote and regulate adoption in the State.
DISTRICT	District Child Protection Society (DCPS)	The implementing arm of the State Governments/UT Administration at the District level.
	Child Welfare Committees (CWC) and Juvenile Justice Boards (JJB)	To adjudicate over all matters related to children in need of care and protection and children in conflict with law.

Source: Integrated Child Protection Scheme

The fund flow of the scheme or the process of disbursement is as below:



Source: Integrated Child Protection Scheme

2.6. Protection of Children from Sexual Offences, 2012

Protection of Children from Sexual Offences, 2012 commonly referred as POCSO is another landmark act to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. Before this act came into force, the Indian Penal Code did not distinguish between the adult and child victims in case of sexual offences. POCSO provides protection to children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. It also defines the gravity of the offence and the relationship between victim and the accused to decide upon the punishment. **The National Commission for Protection of Child Rights (NCPCR)** was established in 2007 under **The Commissions for Protection of Child Rights Act, 2005** for providing speedy trial of offences against children or of violation of child rights. **The State Commission for Protection of Child Rights (SCPCR)** are established at the State level within the country for the same purpose. Both the Commission's' (NCPCR and SCPCR) play a vital role in the implementation of POCSO.

Other important acts are **The Guardian and Wards Act, 1890** which deals with the qualification, appointment and removal of guardians of children by the courts. **The Hindu Adoption and Maintenance Act, 1956** codifies the law pertaining to adoption and maintenance for Hindus. **The Prohibition of Child Marriage Act, 2006** prohibits the solemnization of child marriages. The male child considered under this act is under 21 years while the female child is under 18 years.

The Infant Milk Substitutes, Feeding bottles and Infant Foods (Regulation of Production, Supply Distribution) Act, 1992, The Pre-conception & Pre-natal Diagnostic Technique (Regulation, Prevention and Misuse) Act, 1994, The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and The Child labour Act (Prohibition & Regulation) Act, 1986 are the other acts in India for children devised for specific needs.

3. ANNEXURE:

To understand in detail about the existing legislation and regulatory framework in the International as well as Indian context, the reader can refer the following:

INTERNATIONAL MECHANISMS:

1. [United Nations Convention on the Rights of the Child, 1992](#)
2. [United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 \(The Beijing Rules\)](#)
3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990
4. [Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, 1993](#)
5. Charter of the United Nations
6. Universal Declaration of Human Rights
7. [Geneva Declaration of the Rights of the Child, 1924](#)
8. International Covenant on Civil and Political Rights
9. International Covenant on Economic, Social and Cultural Rights
10. Declaration on the Protection of Women and Children in Emergency and Armed Conflict
11. [Guidelines for the Alternative Care of Children, 2009](#)

INDIAN CONTEXT

LEGISLATION/ ACTS:

1. [The Constitution of India](#)
2. [The Juvenile Justice \(Care and Protection of Children\) Act, 2000 \(amended in 2006, 2011, 2015\)](#)
3. [The Commissions for Protection of Child Rights Act, 2005](#)
4. [The Protection of Children from Sexual Offences Act, 2012](#)
5. [The Immoral Traffic \(Prevention\) Act, 1956](#)
6. [The Child Marriage Restraint Act, 1929](#)
7. [The Prohibition of Child Marriage Act, 2006](#)
8. [The Child Labor \(Prohibition and Regulation\) Act, 1986](#)
9. [The Goa Children's \(Amendment\) Act, 2005](#)
10. [Guardians and Wards Act, 1890](#)
11. [The Hindu Adoptions and Maintenance Act, 1956](#)
12. [The Right Of Children To Free and Compulsory Education Act, 2009](#)
13. [The Young Persons \(Harmful Publications\) Act, 1956](#)

POLICIES/ CHARTERS/ COMMISSIONS/ SCHEMES:

14. [The National Policy for Children, 2013](#)
15. [Integrated Child Protection Scheme, 2009](#)
16. [National Charter for Children, 2003](#)
17. [National Plan of Action for Children, 2005](#)
18. National Plan of Action for the Girl Child
19. [National Human Rights Commission - Children in India and their Rights](#)