

PROTECTION OF CHILDREN IN INDIA

National and International Laws

**CHILD
SOLDIERS**

International Convention on the Rights of the Child
OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD
ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS



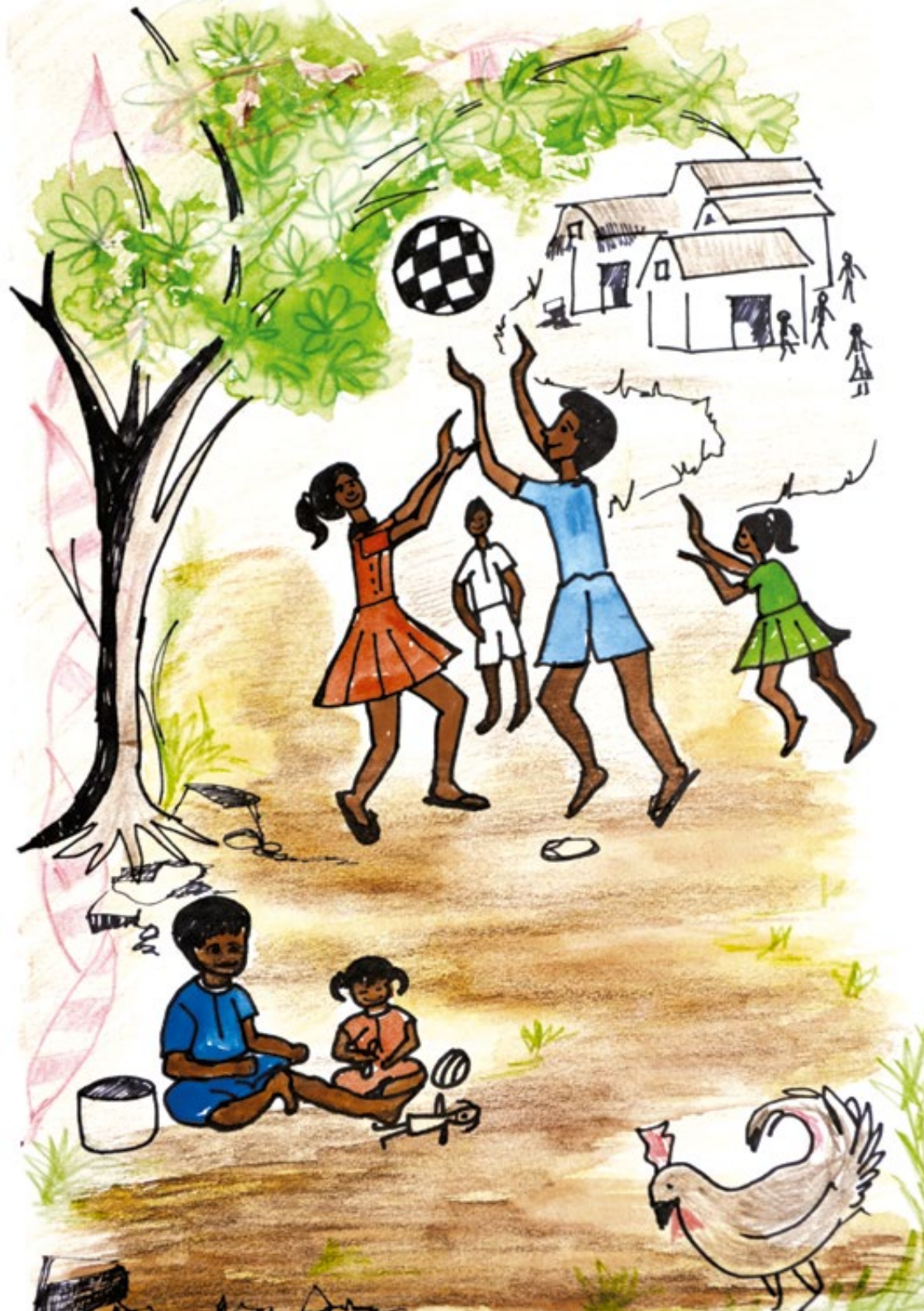
Centre
for
Child
Rights

**The government
of India has
ratified these
international
treaties
related to the
association
of children
with non-state
armed groups:**

**Convention on the Rights of the
Child, 1989 (CRC)**

**Optional Protocol to the CRC on
the involvement of children in
armed conflict, 2000 (OPAC)**

**International Labour Organization
Worst Forms of Child Labour
Convention, 1999 (ILO 182)**



Who is a child?

**Under international law
Article 1 of the CRC states:**

***A child means every human being
below the age of eighteen years
unless under the law applicable to
the child majority is attained earlier.***

**A child is also defined as anyone
under 18 years of age under the
following Indian national laws
and policies:**

- **The Juvenile Justice (Care And Protection Of Children) Act, 2015 (JJ Act)**
- **National Policy for Children, 2013**
- **Protection of Children from Sexual Offences Act (2012)**



Who is a “child soldier”?

There is no definition of “child soldier” in international treaties. Children are militarily recruited and used by armed forces and groups in many parts of the world. To address these complex and varied practices, and to offer the widest protection, a child associated with an armed force or an armed group has been defined as:

“any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.”¹

1 The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups.



What is the law on recruitment and use of children?

International law

OPAC states:

Article 1 - States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2 - States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3 – (1) States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

(2) Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

(3) States Parties that permit voluntary recruitment into their national armed forces under the age of eighteen years shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;

(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;

(c) Such persons are fully informed of the duties involved in such military service;

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

(4) Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

(5) The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4 - Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

Article 4(2) - State Parties shall take all feasible measure to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

National Law

Section 83 of the JJ Act states:

Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.



What are the risks to children in association with an armed group once they have been recruited?

They can be killed, seriously injured, tortured or ill-treated. This is prohibited by the following legal standards:

International Law

Article 6.1 of the CRC states:
Every child has the inherent right to life

Article 19 of the CRC states:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 37a of the CRC states:

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

National Law

Article 21 of the Constitution of India, on the right to life and liberty states:

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

Article 22, on the protection against arrest and detention in certain cases, states:

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest...

Article 23, on the prohibition of traffic in human beings and forced labour, states:

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

Article 24, on the prohibition of employment of children in factories, etc. states:

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

Article 39, certain principles of policy to be followed by the State, states:

(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.

And further states:

(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.



Children associated with non-state armed groups can be sexually abused or raped. This is prohibited by the following legal standards:

International Law

The CRC states: *Article 34 - States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.*

Article 36 - States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

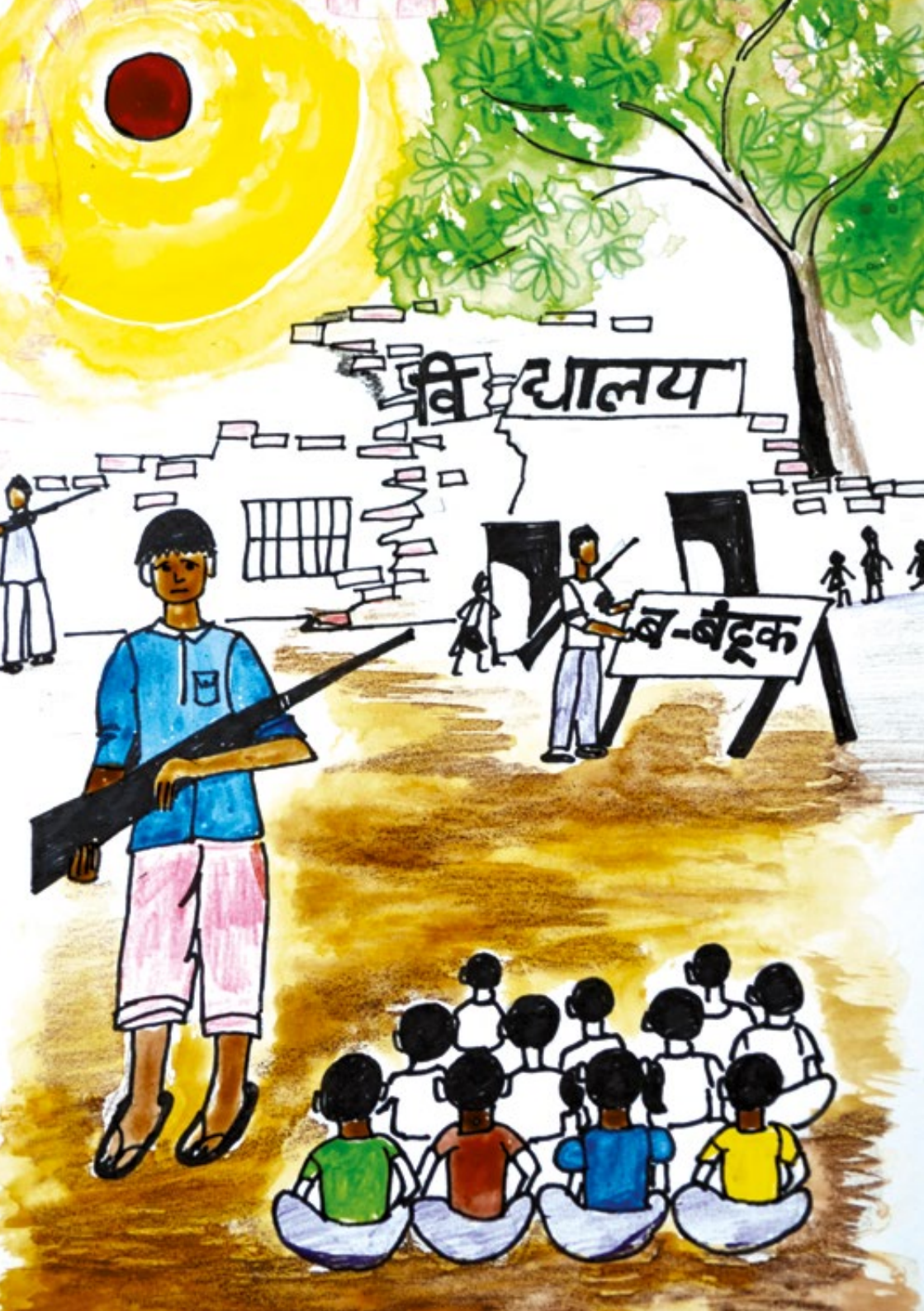
National Law

The Protection of Children from Sexual Offences Act (2012) (POCSO Act) is a special law enacted to deal with the sexual abuse of children. A wide range of sexual offences are covered by this law and it addresses offences against all children below the age of 18 years irrespective of gender.

As the POCSO Act ruled out the question of consent in the case of children below the age of 18 years, Art Section 375 of the Indian Penal Code sets the age of consent as 18 and therefore sexual intercourse with a minor is deemed as rape. (Criminal Law Amendment Act 2013).

Section 376 of the Indian Penal Code provides that any person who commits rape will be subject to a term of imprisonment or rigorous imprisonment from seven years to life and may also be subject to a fine.

Section 42 of the POSCO Act provides that where an act or omission constitutes a sexual offence both under this Act and the Indian Penal Code, then the offender found guilty of such offence shall be liable to punishment that is greater in degree under either of these laws.



Education is disrupted, because children who are fighting are not attending school, and because armed forces and groups sometimes attack schools and teachers or occupy schools. Education is a fundamental right.

International Law

Under international law schools should not be used for military purposes and should not be targeted for attacks.

National Law

Article 21(A) of India's Constitution of India states:

The State shall provide free and compulsory education to all children of the age of 6 – 14 years.

Articles 41, 45 and 46 of the Constitution contain Directive Principles of State Policy, which state that the State should endeavour to provide education.

The Right of Children to Free and Compulsory Education Act (2009) guarantees free and compulsory education to every child of the age of six to fourteen years.

Supreme Court Cases

In the case of *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, the court issued a directive that North-Eastern States and relevant Central Government ministries needed to “ensure that schools, hospitals and children’s home complexes currently occupied by armed/security forces are vacated” and that school buildings and hostels are not allowed to be occupied by the armed or security forces in the future for whatsoever purpose.” (Supreme Court, *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and others* (7 March 2011).

In the case of *Nandini Sundar and others v. State of Chhattisgarh*, the court stated that it “had to intercede and order the Government of Chhattisgarh to get the security forces to vacate the schools and hostels that they had occupied; and even after such orders, many schools and hostels still remain in the possession and occupancy of the security forces.” Supreme Court *Nandini Sundar and others v. State of Chhattisgarh* (hearing held on 5 July 2011).





Children who are recruited into armed forces and groups suffer many violations of their rights.

Child soldiers are first and foremost victims of grave abuses of human rights, and states must provide for their rehabilitation and reintegration. Considering the vulnerability of children, they should never be prosecuted solely for their association with an armed group.² States should prioritise the prosecution of those who unlawfully recruit and use them.

How should children captured or released from armed groups be treated?

International Law

Article 6.3 of OPAC states:

Released or demobilised child soldiers have the right to *“appropriate assistance for their physical and psychological recovery and their social reintegration.”*

Article 39 of the CRC states:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

National Law

A child captured or released from an armed group could be a child in need of care and protection or a child in conflict with the law, depending on the circumstances and facts of each case.

According to the Juvenile Justice (Care and Protection of Children) Act, 2015 (referred to as the JJ Act), inquiry, restoration, rehabilitation and reintegration of a child in need of care and protection is to be dealt with by a Child Welfare Committee.

In case of a child in conflict with the law, the authority responsible for their inquiry and disposal of criminal charges against them is the Juvenile Justice Board (JJB). The only exception to this rule are children in conflict with the law between the age of 16 and 18 years, alleged to have committed a heinous offence liable for minimum sentence of imprisonment for seven or more years under the Indian Penal Code or any other law in force. Such cases **may** be transferred by the JJB to the Children’s Court on the basis of a psychological assessment with regard to the child’s mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstances in which the offence was allegedly committed.



Children in conflict with the law have special legal rights

International Law

Article 37 of the Convention on the Rights of the Child states:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate

assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40.1 of the CRC states:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

National Law

The definition of a child in need of care and protection under Section 2(14)(xi) of the JJ Act includes “a child who is a victim of or affected by any armed conflict, civil unrest or natural calamity.”

Further, Section 83 and 86 of the JJ Act make recruitment and use of children by non-state militant groups a cognisable and non-bailable offence.

The juvenile justice system is bound by key principles of juvenile justice and child rights in any decision or action taken by the authorities while implementing the JJ Act. Among the key principles are the principles of best interest of the child, equality and non-discrimination and safety of children, principles of positive measures and diversion, the principles of participation and natural justice along with a right to privacy and confidentiality throughout the judicial process and use of institutionalisation as a measure of last resort.

According to Section 8(3)(c) of the JJ Act, Juvenile Justice Boards must ensure the availability of legal aid for a child in conflict with the law through legal services institutions. A similar responsibility rests with the Child Welfare Committee under Section 30 (xvii) for children in need of care and protection.

Under Section 21, the JJ Act prohibits the death penalty for children and also life imprisonment without the possibility of release.

No child in conflict with the law can be sent to a prison, except where a 16 to 18 year old child is transferred to and tried by the Children's Court and is found guilty of committing a heinous offence. Even in such a situation, as per Section 20 of the JJ Act, the child will be detained within the juvenile justice system until the age of 21 years. On attaining the age of 21 years, the child may be released on certain conditions or shifted to a prison to serve the remaining sentence, subject to an evaluation as to whether the child has undergone any reformatory changes and can be a contributing member of the society.

Under Section 18 of the JJ Act, Juvenile Justice Boards can order a number of actions to deal with children in conflict with the law short of trial, including:

Sending a child home after appropriate inquiry and counselling to such child and to his parents or the guardian;

Directing the child to participate in counselling or take part in community service;

Directing the child to be released on probation of good conduct;

Directing the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support, or sent to a place of safety;

Ordering the child to attend school or a vocational training centre or therapeutic centre, or undergo a de-addiction programme.

According to Section 8(3)(m) of the JJ Act, Juvenile Justice Boards must conduct regular inspections of jails meant for adults to make sure there are no children there; if children are found in jails meant for adults, they must be transferred to an Observation Home.





**CHILD
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ENDING CHILD SOLDIERY
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