

## Module 4: Child Welfare Committee

### Session 3: CWC Orders related to CNCP

Duration: 21: 06 min

### Session 3: CWC Orders related to CNCP

Welcome to session 3 of Child Protection E-Learning Module 5 on Child Welfare Committee (CWC). In this session, you will learn about various orders issued by CWC with respect to Children in Need of Care and Protection (CNCP).

At the end of this session you will be able to describe

- Orders passed by the Committee regarding a CNCP (and respective formats)
- Restoration of child in need of care and protection
- Procedure for determination of age of a person brought before the CWC

Orders passed by the Committee regarding a CNCP as per Section 37(I) of the JJ Act.

Let us look at the various orders and directions which can be passed by CWC.

On being satisfied through the inquiry that the child before the Committee is a CNCP and after considering the Social Investigation Report and child's wishes, CWC may pass one or more of the orders given below:

1. Declaration that a child is in need of care and protection.
2. Restoration of the child to parents or guardian or family with or without supervision of CWO or designated social worker.
3. Placement of the child in Children's Home or fit facility or SAA for the purpose of adoption, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child.
4. Placement of the child with fit person for long term or temporary care.
5. Foster care orders
6. Sponsorship orders

### Other directions by CWC

CWC also issues many directions on various aspects of care and protection of CNCP such as:

1. Directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child,
2. Directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or

behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the DCPU or State Government and other agencies.

3. Declaration that the child is legally free for adoption.

The Committee may also pass orders for

1. Declaration of fit persons for foster care
2. Getting after care support
3. Any other order related to any other function as may be prescribed

Let us look at some of the orders and formats used by CWC given below :

1. Certificate Declaring the Child Legally Free for Adoption
2. Deed of Surrender
3. Order of Placement of a Child in an Institution
4. Undertaking by the Parent or Guardian or 'Fit Person'
5. Social Investigation Report For CNPC
6. Release cum Restoration Order
7. Escort Order

During the session you will be able to identify which order formats are to be filled in which situation.

Now we know about the orders for placing children in Institutional and Non-Institutional support such as Fit Facility, Fit Person, Foster Care and Sponsorship.

Let us learn more about these facilities and CWC's role in ensuring CNCP can avail them.

### **Fit facility**

1. The Committee shall recognise a facility being run by a governmental organisation or a NGO registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child.
  2. The Committee may withdraw the recognition with reasons to be recorded in writing.
- Now let us look at who is a fit person

### **Fit person**

1. The Committee shall after due verification of credentials, recognise any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period.
2. The Committee may withdraw the recognition granted with reasons to be recorded in writing.

The JJ Act emphasizes non-institutional care and protection for CNCP such as foster care and sponsorship. Let us read about them.

### Foster Care – as per (Section 44, JJ Act)

1. A CNCP may be placed in foster care, including group foster care for their care and protection through orders of the Committee, after following the procedure, in a family which does not include the child's biological or adoptive parents or in an unrelated family recognised as suitable for the purpose by the State Government, for a short or extended period of time.
2. The selection of the foster family shall be based on family's ability, intent, capacity and prior experience of taking care of children.
3. All efforts shall be made to keep siblings together in foster families, unless it is in their best interest not to be kept together.

Do you know Foster families are provided financial support by the state government if the families requires?

4. The State Government, after taking into account the number of children, shall provide monthly funding for such foster care through DCPU.
5. A child's parents may visit the child in the foster family at regular intervals, unless the Committee feels that such visits are not in the best interest of the child.
6. It's important for you to know that the Foster families have the responsibilities of the children just like their own families.
7. The foster family shall be responsible for providing education, health and nutrition to the child and shall ensure the overall well-being of the child.

You must also know about the monitoring system in place for ensuring a child's well-being.

8. The CWC shall conduct inspection of foster families every month to check the well-being of the child and whenever a foster family is found lacking in taking care of the child, the child shall be removed from that foster family and shifted to another foster family as the Committee may deem fit.

As we already know, many such children are regarded as adoptable. Hence,

9. No child regarded as adoptable by the Committee shall be given for long-term foster care.

The Ministry of Women and Child development Government of India has issued Model Guidelines for Foster Care, 2016 in wake of the revised JJ Act, 2015. The link is given on the screen. You must read it when time permits.

### **Sponsorship (Section 45, JJ Act)**

Now let us look at the various types of sponsorship.

1. State Government shall make rules for the purpose of undertaking various programmes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship.

Let's now learn the criteria of sponsorship.

2. The criteria for sponsorship shall include:
  - where mother is a widow or divorced or abandoned by family;
  - where children are orphans and are living with the extended family;
  - where parents are victims of life threatening disease;
  - Where parents are incapacitated due to accident and unable to take care of children both financially and physically.
3. The duration of sponsorship shall be such as may be prescribed (as per CPS or Sponsorship and Foster Care Approval Committee)
4. The sponsorship programme may provide supplementary support to families, to Children's Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life.

You know that all children including orphan have the right to grow up in a supportive and caring family environment. The Central Adoption Resource Authority (CARA) is the statutory and nodal body for promoting adoption of children in India. Now let us see what is the role and process followed by CWC in declaring a child free for adoption

### **Procedure for declaring a child legally free for adoption as per Section 38, JJ Act.**

1. In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and upon completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption.
2. Such declaration shall be made within a period of two months from the date of production of the child, for children who are up to two years of age and within four months for children above two years of age.
3. Notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act.

4. In case of surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately on completion of two months, for declaring the child legally free for adoption.
5. A child of mentally retarded parents or an unwanted child of victim of sexual assault, such child may be declared free for adoption by the Committee, by following the procedure under this Act.
6. The decision to declare an orphan, abandoned or surrendered child as legally free for adoption shall be taken by at least three members of the Committee.
7. The Committee shall inform the State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed, every month.

Try to reflect which form will the CWC use here?

### **Restoration of child in need of care and protection as per (Section 40, JJ Act)**

We have discussed in detail the various institutional and non-institutional options for placing a CNCP. Now let us learn about restoring a child to the family as emphasized under JJ Act and the role of CWC in doing so.

- i. As per Section 40 (1) of the JJ act, the restoration and protection of a child shall be prime objective of any Children’s Home, Specialized Adoption Agency or Open Shelter.
- ii. As per Section 40 (2), the Children’s Home, Specialized Adoption Agency or an Open Shelter, shall take such steps as are considered necessary for the restoration and protection of a child deprived of his family environment temporarily or permanently where such child is under their care and protection.

In the previous session we have learnt about the powers of CWC and the process of inquiry.

- iii. The CWC shall have the powers to restore any child in need of care and protection to his parents, guardian or Fit Person, after determining the suitability of the parents or guardian or Fit Person to take care of the child and give them suitable directions.

The JJ Act provides various forms of protection to CNCP. Let us see what these are.

### **Prohibition on disclosure of identity of children as per Section 74, JJ Act.**

You must know that disclosure of identity of children is strictly prohibited under JJ Act.

1. No report in any newspaper, magazine, newssheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particulars, which may lead to the identification of a child in conflict with law (CCL) or a CNCP or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published.

2. The Committee, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

What does JJ Act say about the attendance of parent or guardian? Let's learn.

#### **Attendance of parent or guardian of child as per Section 90 of the JJ Act.**

The Committee, before which a child is brought under any of the provisions of this Act may, whenever it so thinks fit, require any parent or guardian having the actual charge of the child to be present at any proceeding in respect of that child.

Let's now understand the procedure regarding the attendance of the Child.

#### **Dispensing with attendance of child as per (Section 91 of the JJ Act.**

1. If, at any stage during the course of an inquiry, the Committee is satisfied that the attendance of the child is not essential for the purpose of inquiry, the Committee can dispense with the attendance of a child and limit the same for the purpose of recording the statement.
2. Subsequently, the inquiry shall continue even in the absence of the child concerned, unless ordered otherwise by the Committee.
3. Where the attendance of a child is required before the Committee, such child shall be entitled to travel reimbursement for self and one escort accompanying the child as per actual expenditure incurred, by the Committee (or the DCPU).

#### **Placement of a child suffering from a disease and requiring treatment as per Section 92 of the JJ Act.**

When a child, who has been brought before the Committee, is found to be suffering from a disease requiring prolonged medical treatment, the Committee may send the child to any place recognised as a fit facility as prescribed for such period which is necessary for the required treatment.

#### **Procedure for transfer of a child to the place of residence as per Section 95 of the JJ Act.**

We already know that JJ Act also gives ample focus on connecting the child with her/his family or community.

1. If during the inquiry it is found that a child hails from a place outside the jurisdiction, the Committee, shall, if satisfied after due inquiry that it is in the best interest of the child and after due consultation with the Committee or of the child's home district, order the transfer of the child, as soon as possible, to the said Committee, along with relevant documents as prescribed in the JJ Act.
2. What is the procedure in case of inter-state transfer of a case.
3. In case of inter-State transfer, the child shall be, if convenient, handed over to the Committee of the home district of the child, or to the Committee in the capital city of the home State.
4. Once the decision to transfer is finalised, the Committee shall give an escort order to the SJPU to escort the child, within 15 days of receiving such order.
5. A girl child shall be accompanied by a woman police officer.

Can you make out which order form will the CWC use here?

We have already learnt about SJPU and the woman police officer placed in SJPU. What to do if SJPU is not available? Let's see.

6. Where a SJPU is not available, the Committee, shall direct the institution where the child is temporarily staying or DCPU, to provide an escort to accompany the child during travel.
7. Travelling allowance to the escorting staff for the child, shall be paid in advance as per rules made by the State Government.
8. The Committee receiving the transferred child will undertake the process for restoration or rehabilitation or social re-integration, as provided in this Act.

### **Release of a child from an institution as per Section 97 of the JJ Act.**

Let's now learn the procedures regarding the release of the child.

1. When a child is kept in a Children's Home or special home, on the report of a PO or social worker or of Government or a voluntary or NGO, the Committee may consider the release of such child.

Release should be either absolutely or on such conditions as it may think fit to impose, permitting the child to live with parents or guardian or under the supervision of any authorised person named in the order.

They should be willing to receive and take charge, educate and train the child, for some useful trade or calling or to look after the child for rehabilitation.

What to do if such person fails to fulfil such conditions?

2. If the person under whom the child is placed fails to fulfil such conditions, the Committee may, if necessary, cause the child to be taken charge of and to be placed back in the concerned home.

### **Leave of absence to a child placed in an institution as per Section 98 of the JJ Act.**

We have seen the various procedures involved in the restoration of a child. Let's now learn the procedure when a child is absent from an institution.

1. The Committee may permit leave of absence to any child on special occasions like examination, marriage of relatives, death of kith or kin or accident or serious illness of parent or any emergency of like nature, under supervision, for a period generally not exceeding seven days in one instance, excluding the time taken in journey.

2. The time during which a child is absent from an institution where s/he is placed, based on such permission granted under this section, shall be deemed to be part of the time for which she/he is liable to be kept in the Children's Home or special home.
3. If a child refuses, or has failed to return to the Children's Home or special home, the Committee may, take her/him back to the concerned home.

### **What is the procedure for determination of age of a person brought before the CWC?**

Let's now learn how the JJ Act has laid down the procedures to determine whether the person who is brought to CWC is a child or an adult.

#### **Presumption and determination of age as per Section 94 of the JJ Act.**

1. Where, it is obvious to the Committee, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry, without waiting for further confirmation of the age.
2. In case, the Committee has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee, as the case may be, shall undertake the process of age determination, by seeking evidence.

Let's now understand that how the evidence for age determination will be sought.

3. The evidence will be sought by obtaining:
  - The date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence of it;
  - The birth certificate given by a corporation or a municipal authority or a panchayat
  - And only in the absence of both of these, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee.
4. Age determination test conducted on the order of the Committee shall be completed within 15 days from the date of such order.
5. The age recorded by the Committee to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

Now you know all the procedures of CWC in relation to CNCP.

### Important points and tips

As a professional there are certain points that you must consider to be important while dealing with children.

1. Since the CWC members and people working with children have to deal with cases where children may possibly be under varying degree of trauma, attitudinal aspects of dealing with such children is most important.
2. Therefore, it's important for such people to focus on active listening, empathy and on the need for hearing the child's opinion, especially where the child is old enough to decide on the best recourse.
3. Trainers also should emphasise these aspects during their training. You will learn it in detail in Module on Facilitation skill through some activities.
4. You have already learnt about empathy in SJPU Module with help of some activities.