

I. Juvenile Justice Home:

Sub-committee to consist of

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National Commission for Protection of Child Rights (NCPCR)

Establishment of Expert Committee - Review of Operation of Observation and Children's Homes

SUMMARY TERMS OF REFERENCE

Committee Members: Mrs. Kabir, Mr. SonyKutty George, Ms. Nina Nayek

Steering Group: Ms. Shantha Sinha, Chairperson NCPCR; Ms. Dipa Dixit, Member NCPCR; Process co-coordinator, NCPCR

Objective

To conduct a policy application and implementation review on the **establishment and operation of observation and children's homes** which provide the primary temporal and longer term 'ex-family' custodial care infrastructure enabling rescue, rehabilitation and restoration of children in need of care and protection

Scope of Review:

1. Review and Analysis on **state-by-state basis on the gaps (and their causal factors)** between the provisions of the Act and accompanying Rules and implementation to date.
2. Development of **issue specific and state specific recommendations** on how to address the above implementation gaps noting state specific constraints; development of proposals for any **required legislation reform**.
3. Development of recommendations on how best to **mobilise systemic transformation in an achievable manner directed by a hierarchy of prioritised outcomes**.

Key Issue Areas [Outlined in attached long form TOR]:

The NCPCR would like in particular to direct the Committee to the key areas of review noted below which are by no means exhaustive and should be added to as appropriate:

1. Financial / Budgetary allocations and disbursement (Centre/State)
2. NGO – State partnership basis
2. Home management & delivery of operational care standards
3. Child case management
4. Child Entitlements & Participation
5. Parent / Family Tracing & Restoration and Participation
6. Custodial Care Support / Linkages

7. Education
8. Rehabilitation – Psycho-social, mental health and special needs counseling/treatment
9. Vocational Training
10. Data management
11. Governance & Monitoring

Role of Committee Members:

- (i) To lead review of home operation guided by their respective expertise/knowledge through access to existing assessment data as well as through undertaking/directing appropriate additional field
- (ii) To issue state by state reports outlining recommendations for key short-term priority actions, medium-term operational reform implementation plans and legislative reform proposals

Role of NCPCR:

Access to government personnel, facilities and records as well as provision of support resources as appropriate.

Role of NCPCR Steering Group:

Oversight, periodic review & consultation and sign-off on final report; Overall programme management of Committee's review process and report delivery, facilitation of any consultation 'roundtables'.

Reporting Timeframe

[January, 2008]

**National Commission for Protection of Child Rights (NCPCR)
Establishment of Expert Committee - Review of Operation of Observation and Children's Homes**

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Steering Group: Ms. Shantha Sinha, Chairperson NCPCR; Ms. Dipa Dixit, Member NCPCR;
Process Co-ordinator, NCPCR

Context:

The Juvenile Justice Act of 1986 introduced the basis for a national uniform juvenile justice system addressing the care, protection and treatment of 'neglected' and 'delinquent' juveniles. Its repeal and introduction of the Juvenile Justice (Care and Protection) Act in 2001 was founded on the basis of addressing significant biases against a child centric system with provisions which were at odds with the delivery of care and protection standards in the best interests of the child. These included in particular adequate separation of processes and infrastructure addressing 'juveniles in conflict with the law' and those in 'need of and care and protection' and the need for the elimination of an underlying orientation toward criminalisation and institutionalisation in the judicial and custodial treatment of children. Subsequent amendments to the Act in 2006 and revisions to the Rules contained in currently proposed Model Rules have attempted to further strengthen the above and instill a child centric rehabilitation and family restoration focused system through appropriate procedural and operational guidelines and provisions.

However to date, achieving de-criminalisation and de-institutionalisation and ensuring the basic human dignity of all children often remain as unmet objectives within the juvenile justice system as highlighted by the ground reality evidence on incomplete, inconsistent and inadequate application and implementation and the pervasive cultural and systemic factors inhibiting the necessary transformation required to establish the intended system. This situation has been compounded by step change legislative reform which in each stage has not been fully understood, addressed or implemented and has also required several stages of dismantling and establishment of new processes / infrastructure.

Key indicators such as length of time in institutions, rate of restoration to families or to family based care, case pendency, child rehabilitation and mainstreaming with education as the cornerstone, and protection (from abuse, violations, deprivations) under non family based care do not yet hold up to scrutiny. The 2005 National Plan of Action has stated that the rights of children in conflict with the law must be protected through 'preventive, protective, reformatory and rehabilitative' policies. Further, the National Charter for Children 2003 previously highlighted the conditions of 'neglect; and 'degrading treatment' from which all children must be protected and noted that 'the state and community shall undertake all possible measure to ensure and protect the survival, life and liberty of all children.' **The call to arms in urgently addressing the current operation and implementation of the Juvenile Justice system stems from the real danger that that the very system created for the protection of children does not itself contribute to their neglect and abuse.**

Objective

To conduct a focused review on the **operation of observation and children's homes**, which provide the primary temporal and longer term 'ex-family' custodial and residential care infrastructure enabling rescue, rehabilitation and restoration of children in need of care and protection and rehabilitation and restoration of those in conflict with the law.

The focus of the review needs to be on developing a comprehensive understanding of discrepancies and gaps in implementation and developing strategies on how best to address **operational and procedural reform**. These recommendations must be understood and profiled on a **state by state basis** to appropriately reflect practical regional variations in the implementation of infrastructure and processes resulting from a number of factors which include rural/urban make-up, child trafficking and labour migration prevalence / flows, etc. The two main objectives are:

- I. To identify implementation gaps and actions required to focus the operational delivery and reform efforts of the central and state governments working in collaboration with NGOs, communities and children to achieve the intended outcomes of the JJ legislation

and
- II. To identify any significant areas of reform (addressing omissions, alternate provisions) for the Juvenile Justice legislation and accompanying rules where existing provisions/guidelines in their practical application have substantively been found to impede the facilitation of intended care and protection outcomes in the best interests of the child; or where amendments are needed to allow differentiated regional application of provisions whilst still guided by uniform, national procedural and operational principles of a child centric system.

Scope of Review:

1. **Review and Analysis on state by state basis** on the gaps (and their causal factors) between the provisions of the Act and accompanying Rules on the **establishment and operation of Observation and Children's Homes** and their implementation to date. (Sampling methodology to be utilised by Committee as appropriate).

The above Homes defined as per JJ Act to include :

- state run observation home and children's home facilities
- NGO operated - state funded observation homes & children's homes and
- deemed 'Fit Institutions' (can act as observation or children's homes and may be State funded)

The review will focus on the operation of the above with commentary provided on the prevalence/status of non-registered child care facilities within the states.

2. Development of **issue specific and state specific recommendations** on how to address the above implementation gaps noting state specific constraints and the implications for priority

outcomes within the context of staged implementation reform; development of proposals for any required legislation reform.

3. Development of recommendations on how best to **mobilise systemic transformation in an achievable manner directed by a hierarchy of prioritised outcomes**. This may include analysis of change readiness of the key stakeholders, identification of key nodal persons and organisations who can be supported as 'change agents' and outline of reform implementation methods such as 'transformation teams' being attached on a temporal basis to selected districts/ homes

Key Issue Areas:

The NCPCR would like in particular to direct the Committee to the key areas of review noted below which have been highlighted through preliminary assessments of home operation but are by no means exhaustive and should be added to as appropriate based on the Committee's experience to date and detailed review outcomes:

1. Financial / Budgetary allocations and disbursement

A comprehensive review of allocation basis and outlays is required to understand causes of substantive funding shortfalls, delays and inconsistent allocation practices. Key factor for consideration include:

- Centre and state government established norms for full service delivery cost allocation (custodial care/welfare and rehabilitation) and nature / basis of differential
- Process for centre and state disbursement of funds and reasons for non-release / delays
- Basis of NGO run v state run funding allocations
- Review of profile of incurred operational costs / level of service provision of NGO run and state run homes based on operating history to date; best practice cost allocation basis and budgeting gap implications
- Monitoring and governance of application of funds

The implementation and operation of State Juvenile Justice Funds as the mechanism for funding welfare and rehabilitation programmes would also need to be reviewed with respect to contribution and allocation profile.

2. NGO – State partnership basis

The basis of NGO-state participation in the operation of homes needs to be reviewed with regard to establishing uniform standards for:

- ethical, financial and technical management and ability to deliver [minimum] standards of service delivery for care, welfare and rehabilitation
- child case management process guidelines (e.g. uniform protocols for basis of parental notification, CWC referrals etc)
- central collation of uniform home operation data

- review of areas for specialised service delivery (e.g. mental health /counseling) by NGOs in state run facilities with established guidelines for service provision and governance

3. Home management & delivery of operational care standards *

Review of implementation of operational standards of quality of care with a focus on child protection from neglect, and abuse; rehabilitation and family restoration and provision of a child-centric environment based on family care principles (children's homes)_as required by the Act and Rules, including specifications for

- home registration
- age / offence segregation; inquiry in-process v post inquiry detention segregation (observation home)
- physical infrastructure/facilities and provision of 'consumables' to maintain appropriate standards of nutrition, hygiene, health etc
- provision of key on-site services e.g. medical and psycho-social support (see below)
- personnel competency, remuneration, management structure and performance measurement
- home culture and environment

(* Key provision areas such as Education/ Rehabilitation addressed separately below 8-10)

4. Child Case Management

Establishment of processes and capability for home care based on tailored child specific case plans for temporary custody (including ensuring continuation of family linkage /education access) longer term custodial care (addressing rehabilitation and care based on individual needs / abilities and maintenance of family/community linkages where possible)

5. Child Entitlements & Participation

Establishment of guidelines addressing child entitlements within the Home (such as a uniform set of 'non-negotiables') as well as child participation in their own case management / review processes and home operation review processes.

6. Parent/ Family Tracing & Restoration and Participation

As family tracing and notification protocols do not currently facilitate a focus on child rehabilitation and family care restoration implementation and adherence to guidelines for:

- parental notification
- family location tracing
- inter-state / out of location tracing referrals , inter-home / CWC communication and data sharing basis

7. Custodial Care Support / Linkages

Review of requirements for additional capacity and inter-dependencies and flows between other institutional infrastructure such as between children homes and 'shelter homes' which prevent potential for children's involvement in criminal activity and allow for temporal residential care alternatives; observation homes v special homes for juvenile detained under 'sentencing' provisions which facilitate offence/case specific rehabilitation/restoration. The approvals and monitoring basis for 'fit institutions' across above categories needs to be evaluated on a national basis

8. Education

Access and quality of education provision that addresses in-house provision (OH), remedial needs and mainstreaming requirements for particular groups such as those children rescued from child labour. Implementation of processes for follow-up of education continuation following temporal / permanent family care restoration also need to be reviewed.

9. Rehabilitation – Psycho-social, mental health and special needs counseling /treatment

In-home processes for needs evaluation, treatment/support and follow-up need to be established which address psychosocial implications of ex-family care environment (separation etc); case specific trauma (rescue from child labour, violent, abusive, trafficked situations etc); treatment of trauma related problems (learning difficulties, emotional coping mechanism) and specialized treatment (drug abuse etc).

10. Rehabilitation – Vocational Training

The majority of current vocational training programmes in place in Homes do not provide training or competency development linked to viable future employment paths in line with the child's abilities and needs. There is limited utilization of appropriate technical/professional institutes and programmes and collaborations within the corporate and trade sectors. Dangerously, many vocational training programmes are based on the responsibilities of the Home being translated into children's work in the name of training (cooking, making their own clothes etc) or engagement in small low skill production of items such as candles.

11. Data management

An evaluation of the extent of and nature and quality of data being collected is required to identify optimal data management processes / systems which allow for cross-linkages, regional and cross-department sharing and life-cycle case monitoring. Resource and budgeting constraints inhibiting this function need to be identified and addressed.

12. Governance & Monitoring

Currently monitoring and governance to the extent it occurs is focused on the physical infrastructure / facilities provision in line with the Act. There is no substantive monitoring of the Home's capacity to care and protect the children adequately in line with their needs, within a child –centric environment through performance measures which reflect their ability to deliver key rehabilitative, restoration outcomes through attention to the emotional, social and mental development needs of the children whilst in custodial care. Further the Act has specified a number of governance mechanisms (involving State, civil and community participation) including Advisory Boards, Inspection Committees and the Child Protection Unit. Clear delineation of the role and operationalisation of these multiple mechanisms needs to be addressed.

Role of Committee Members:

- (iii) To lead review of home operation guided by their respective expertise/knowledge through access to existing assessment data as well as through undertaking/directing appropriate additional field analysis necessary to develop a comprehensive state by state profile. The members should nominate required resources / personnel they would like to access in undertaking the above.
- (iv) To issue state by state reports outlining recommendations for key short-term priority actions, medium-term operational reform implementation plans and legislative reform proposals

Role of NCPCR:

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Role of NCPCR Steering Group:

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