

National Commission for Protection of Child Rights (NCPCR)

Establishment of Expert Committee - Review of Implementation of Juvenile Justice Boards (JJBs)

TERMS OF REFERENCE

Committee Members: Mrs. Vidya Shankar, Mrs. Asha Mukundan, Mr. Sameer Dalwai, Mr. Arvind Narain, Mr. Madhava Somasundaram

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 **implementation of Juvenile Justice Boards** as a key mechanism for providing rehabilitative and restorative paths of social justice paths to children 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, district level juvenile offence prevalence profile, area topography, incidence of cross-border child movement 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 the judiciary, 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 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 a 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 Juvenile Justice Boards** and their implementation to date.
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 the use of 'transformation teams'.

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 JJB 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. JJB Orientation (composition)

The development of a dedicated, specialised child-centric juvenile justice arm of the judiciary working in partnership with specialised juvenile focused social work practitioners who have the competence for executing juvenile case inquiries is critical in meeting the objectives of the JJB. As such appropriately conducted selection and appointment protocols and training provision which addresses the needs as well as appropriate methods of delivery for these groups is essential.

2. JJB allocation/location (State /District profile)

A district based review by state needs to establish the optimal allocation and location of JJBs based on the practical needs dictated by factors such as offence prevalence profile of districts, the profile of children under parent / family guardianship v institutional care; regional topography (impacting travel times) etc. Specific recommendations should ensure State resource allocation and implementation efforts dictated by these needs.

3. De-criminilisation & de-institutionalisation – procedural & operational processes:

- (i) Currently **procedural process** is largely conducted by default as per the CrPC framework, which is distinctly at odds with a specialised, child-centric system focused on rehabilitation and family restoration as its primary objective. The above procedural elements encompass rules of evidence, inquiry setting and hearing protocols, charge sheet filing and social investigation reporting, determination of age; bail provisions, legal aid, probation and detention disposition and family notification processes.

The above need to be addressed both with regard to sufficient articulation and clarity on guidelines within the Act and Rules (e.g. provision of specific guidelines on alternate bases of age determination which should be followed in absence of standard / readily available documentation) and the required **knowledge transfer and training** associated with operationalising these guidelines, as well as the cultural change required to establish a child-centric JJB.

A comprehensive end to end process needs to be clearly and simply articulated which guides the management of cases from initial police custody to case disposal utilising alternate child-centric procedures (e.g. alternative to FIR as noted in the model rules) with assessment guidelines promoting the gradation of cases whereby only alleged involvement in serious offences are subject to full length inquiries.

- (ii) Lack of clarity on and inadequate implementation of **operational processes** such as referral linkages between the JJBs and Child Welfare Committees and family tracing and notification protocols also do not currently facilitate a focus on child rehabilitation and family care restoration and need to be appropriately addressed.
- (iii) In particular **the selection, development and training** (knowledge and cultural change) requirements for key personnel in contact with the child during the inquiry and pre and post production before the JJB (including **police officers and probation officers**) must be comprehensively addressed.

4. Case processing

The current situation in a number of states is characterised by high levels of backlog, and long case pendency timeframes (extending beyond maximum sentencing provisions) with lengthy and onerous inquiries. As well as addressing the areas noted above, the committee should evaluate specific recommendations regarding alternate measures currently outside the provisions of the Act, which would expedite the significant current backlog within the system.

5. Data management

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

6. Governance

Both judicial and state government review processes are essential to the on-going effectiveness and performance of the JJBs. Current status and gaps need to be identified and addressed with regard to key implementation obstacles including those relating to linkages across judicial and governmental jurisdictions.

Role of Committee Members:

- (i) To lead review of JJB implementation and 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.

- (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

[December 2007]