

Ms. KUSHAL SINGH  
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भारत सरकार  
GOVERNMENT OF INDIA  
राष्ट्रीय बालक अधिकार संरक्षण आयोग  
NATIONAL COMMISSION FOR  
PROTECTION OF CHILD RIGHTS

D. O. No. 18-2/NCPCR/2014-15(JJ)

25640

Dated: 1<sup>st</sup> August 2013

Dear *Shri Oberoi*

Kindly refer to Ministry's letter No. 1-3/2012-CW-II (Pt) dated 24.07.2014 seeking comments and suggestions of NCPCR on the draft 'Juvenile Justice (Care and Protection of Children) Bill, 2014'.

2. In this context, it is mentioned that NCPCR perused the entire document carefully. The Commission appreciates that some of the comments and suggestions shared by NCPCR have been incorporated in the Bill. However, the Commission, from its own experience and learnings, offers further suggestions/comments on the proposed Bill in the Annexure to make it more child-friendly.

With *regards*

Yours sincerely,

*K Singh*  
(Kushal Singh)

**Shri V.S. Oberoi**  
Secretary,  
Ministry of Women and Child Development  
Shastri Bhawan,  
New Delhi – 110 001

Ms. KUSHAL SINGH  
Chairperson



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D. O. No. 18-2/NCPCR/2014-15(JJ) / 25641

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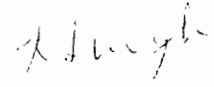
With

Yours sincerely,

Sd/-  
(Kushal Singh)

**Shri V.S. Oberoi**  
Secretary,  
Ministry of Women and Child Development  
Shastri Bhawan,  
New Delhi - 110 001

Copy to: Dr. Vivek Joshi, Joint Secretary, Ministry of Women and Child Development, Shastri Bhawan, New Delhi - 110 001

  
(Kushal Singh)

**NCPCR Comments & Recommendations on the Juvenile Justice  
(Care & Protection of Children) Bill, 2014**

- The Commission appreciates that the issues and concerns pointed out by the Commission in its suggestions and comments on the Draft of the Bill, forwarded to the Ministry dated 3<sup>rd</sup> July 2014, have been taken into account and incorporated in the final Bill. In particular the Commission appreciates that its recommendations regarding constitution of Child Welfare Committees and its monitoring by DCPU and restoration of the role of family court for decision on adoption have been taken into consideration and changes made in the draft accordingly. It is further appreciated that a provision has been laid down to provide a secretary to the CWC. The Commission believes that this will strengthen the functioning of the Committee.
  - The Commission further appreciates that the concern regarding children lodged in jail in clear violation of the JJ Act has been taken into account and it is proposed in the Bill that the JJB shall conduct regular inspection of jails meant for adults to check if any child is lodged in such jails and to take immediate measures for transfer of such children to the observation homes.
  - The Commission also appreciates that one of the functions of the Juvenile Justice Board will be to conduct at least one inspection visit per month of residential facility for children in conflict with law.
2. However, we would like to reiterate the earlier views of the Commission on the following provisions:
- The Commission is highly concerned about the provision under Sections 14(5)(f)(ii), 18(3), and 19 of the Bill which appear to be vengeful and retributive in nature which will defeat the intent and purpose of the Act. Similarly the Commission is also concerned that the provision under 5(4) will have serious consequences on lives of children making them vulnerable to long term sentencing for indefinite period and denial of opportunity to reform and rehabilitation.
  - Putting children in conflict with law under regular criminal justice system in any manner is against the principle of care, protection, development, rehabilitation and social reintegration. It is also a violation of the rights of children guaranteed under Article 39 of the Constitution of India which states that "children are to be given opportunities and facilities to develop in healthy manner in freedom and dignity and that childhood and youth are protected against exploitation".
  - The procedure of inquiry to be conducted by the JJB in cases of alleged heinous crimes has been laid down under Section 14(f) in the Bill. Under the provision, the inquiry in the case of children in conflict with law

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below 16 years is proposed to be conducted in accordance to the Cr.PC. This provision violates the basic philosophy of the Juvenile Justice Act as even children below 16 will be subjected to criminal investigation system. There is no guarantee that their rights will be safeguarded and taken into account during such procedure.

- Judging children based on their mental and physical capacity to commit such offence would not be possible as there are no universally defined standards to ascertain such facts and also in present circumstances, there are no competent trained psychologists and psycho-social workers available in the districts to provide technical support to the Board to conduct such inquiry. In such situation, the inquiry will be merely a formality and children will be referred to children's court for further trial.
  - The mandate and functioning of the Children's Court is not different from the formal judicial Court, therefore, transferring case of children in conflict with law to such court would not be different than putting them under formal judicial proceedings. Secondly, it has been observed that the Children's Courts have still not been set up in most places and the Sessions Courts have been designated as Children's Court. As such transferring the cases of juveniles to Children's Court has little significance as in any case children will be treated on par with the adult criminals.
  - The increase in number of juvenile sexual offenders reported by NCRB is the result of enactment of POCSO Act which criminalises the consensual sex among children below 18 years and due to provision of mandatory reporting. The provisions in the Bill will create further risk of treating such children as adults criminals involved in heinous offences and they will be tried in criminal justice system. This will jeopardise the lives of numerous adolescents involved in non criminal activity which cannot be undermined.
  - The Commission is concerned about the provision under Section 6 of the Bill which states that *any person who is currently above the age of twenty one year and is apprehended for committing any offence, when such a person was below the age of eighteen years, then notwithstanding anything contained in this Act, such person shall be tried, as if he has committed such offence as an adult.*  
This will violate the fundamental principle of justice and human rights and should not be a part of the Law.
3. The Commission would like to reiterate that the issue requires wider consultation with the stakeholders and should not be rushed through without such a consultation. It will be appropriate to devote some more time to introspection and genuine analysis of the issues in order to ensure that the present lacunae in the existing law are addressed appropriately.

4. One of the stated reasons for repeal and re-enactment of the Act has been the increase in reported incidents of abuse of children in institutions, families and communities. In view of this, the provision under Section 75 (Punishment for cruelty to child) of the Bill needs further elaboration with classification of crime on the basis of nature and severity and fixing quantum of punishment accordingly.
5. Similarly sale and trafficking of children is a burning issue making millions of children victim in the country. Therefore, trafficking should also be defined and provisions in the Section 370 of the Criminal Law (Amendment) Act, 2013 may be incorporated under Section 81 in the Bill (sale and procurement of children for any purpose).
6. The Commission recommends that the training of the JJB Members and Child Welfare Committees should be for three weeks and should be conducted prior to assumption of their office.
7. The criteria for sponsorship mentioned under Section 45(1) needs to be expanded to include children of families without sufficient means of subsistence, dysfunctional, homeless, displaced due to various reasons, children of incarcerated parents, etc. In view of this, it is suggested that the Act should be as concise as possible and procedural parts and criterion may be incorporated in the Rules.
8. It has been observed that children alleged to be involved in petty crimes are kept in observation homes for longer period waiting for decision by JJB. Therefore, there should be a provision to make it mandatory that the maximum period is not exceeding more than prescribed period in the Act.
9. Last but not the least, the Commission emphasises that one of the drawbacks of the existing system is that there is no formal provision for monitoring of the implementation of the Act and could not be implemented properly in last 14 years. Therefore, the Commission re-stresses that NCPCR/SCPCRs should be given clearly defined monitoring roles in the Act.

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