

# **CHILD WELFARE COMMITTEES IN INDIA**

**A comprehensive analysis aimed at strengthening the Juvenile**

**Justice System for children in need of care and protection.**

**March 2013**

**ON BEHALF OF: THE NATIONAL COMMISSION FOR PROTECTION OF  
CHILD RIGHTS (NCPCR)**

## FOREWORD

Child Welfare Committees (CWCs) have been designated by law as the final district-level authorities for the care, protection, treatment, development and rehabilitation of Children in Need of Care and Protection (CNCP). CWCs thus have the sole authority to deal with matters concerning CNCP and are bestowed with the powers of a first class judicial magistrate. This is an immense responsibility impacting the lives and future of many children. However, the smooth functioning of CWCs has remained a significant challenge across most parts of the country, despite its constitution nearly a decade ago. It is therefore vital to focus on ways in which the CWCs can be strengthened to perform their responsibilities with greater efficiency.

The present study, **‘Child Welfare Committees in India: A comprehensive analysis aimed at strengthening the Juvenile Justice System for children in need of care and protection’** is the first ever qualitative analysis on the functioning of the CWCs in India. It presents the existing CWC field realities, providing key insights into the system’s strengths, gaps and challenges, and is largely based on seven State studies namely, ‘A study on status of Child Welfare Committees in Andhra Pradesh’ (HELP, 2010), ‘Towards streamlining implementation of processes and measures pertaining to children in need of care and protection: a study of child welfare committees in Delhi’ (Haq, 2012), ‘Functioning of Child Welfare Committees in Karnataka’ (Baburaj, 2010), ‘Report of the Study on Status and Functioning of Child Welfare Committees in Tamil Nadu’ (SCOPE India & Thozhamai, 2011), ‘A Study on Child Welfare Committees in Selected States of India - NCT of Delhi, Karnataka and Uttar Pradesh’ (Kamath, 2009), ‘Study on functioning of Child Welfare Committee in West Bengal’ (Ghosh, 2011), and ‘A study of the role and functioning of the Child Welfare Committees in Maharashtra: Opportunities and challenges in strengthening the Juvenile Justice System’ (Shekar & Vora, 2010). Through these insights, the study aims to provide recommendations that will contribute to the efforts of policy-makers and child protection practitioners in bringing about well-informed, evidence-based progressive changes within the Juvenile Justice System for children in need of care and protection.

This study is the result of a collaborative effort between the National Commission for Protection of Child Rights (NCPCR) and Child rights and You (CRY) undertaken during February-March 2013. The Ministry of Women and Child Development, Government of India, had requested the NCPCR to undertake a study on the functioning of CWCs across the country with a view to making recommendations on the same to the Government of India. It is in this context that NCPCR approached CRY. CRY in turn, commissioned Ms. Neeti Daftari, an independent child protection consultant, to conduct an analytical review of all existing literature on the theme of CWC functioning, and based on this analysis and a close working partnership with NCPCR, prepare a comprehensive report providing recommendations towards increasing CWC effectiveness.

NCPCR owes a special thank you to CRY for commissioning this study. We further wish to acknowledge the contribution of *Ms. Neeti Daftari* for her exhaustive analytical review of literature on the subject, analysis of the findings and in the writing of this study report; *Ms. Nina Nayak*, Member, NCPCR, for her invaluable insights on the subject matter and her meticulous evaluation of several drafts of this paper to ensure that the final product is truly comprehensive; and *Ms. Vijayalakshmi Arora*, CRY, for her unwavering support and engagement throughout the study process.

# CONTENTS

<b>ABBREVIATIONS .....</b>	<b>9</b>
<b>CHAPTER 1 - INTRODUCTION: PURPOSE AND SCOPE OF THE RESEARCH .....</b>	<b>12</b>
<b>1.1. STUDY CONTEXT .....</b>	<b>12</b>
<b>1.2. OBJECTIVES AND APPROACH .....</b>	<b>14</b>
<b>1.3. STUDY FRAMEWORK .....</b>	<b>15</b>
<b>CHAPTER 2 - BACKGROUND CONTEXT AND METHODOLOGY .....</b>	<b>17</b>
<b>2.1. BACKGROUND CONTEXT .....</b>	<b>17</b>
<b>The Juvenile Justice System</b>	
<b>Powers and Functions of Child Welfare Committees</b>	
<b>2.2. METHODOLOGY .....</b>	<b>22</b>
<b>Strengths of the existing data</b>	
<b>Constraints/ limitations of the existing data</b>	
<b>CHAPTER 3 - DATA ANALYSIS: STATUS AND FUNCTIONING OF CWCs .....</b>	<b>25</b>
<b>3.1. SETTING UP OF CWCS AND SUPPORT BODIES .....</b>	<b>25</b>
<b>3.1.a. Number of CWCs per district and jurisdictional coverage</b>	
<b>3.1.b. CWC Support Bodies</b>	
<b>3.2. COMPOSITION AND PROFILE OF CWC MEMBERS .....</b>	<b>31</b>
<b>3.2.a. Member strength</b>	
<b>3.2.b. CWC Gender Composition</b>	
<b>3.2.c. Eligibility of Members</b>	
<b>i) Age</b>	

ii) Education and experience

**3.2.d. CWC selection process**

**3.3. CWC INFRASTRUCTURE AND SITTINGS ..... 35**

**3.3.a. Infrastructure**

**3.3.b. Venue of sittings**

i. Practice of additional special sittings

ii. Practice of rotation sittings

iii. Practice of parallel sittings

**3.3.c. Frequency and duration of CWC sittings**

**3.3.d. CWC member attendance during sittings**

**3.3.e. Management of cases during sittings**

i. Display board

ii. Style of sitting

iii. Management of case flow during CWC proceedings

**3.3.f. Child-friendliness**

**3.4. CHILD REFERRAL SOURCES ..... 43**

**3.5. CASE CATEGORIES/ REASONS FOR CHILD REFERRALS ..... 46**

**3.6. PROCESS AND NATURE OF CWC DECISIONS ..... 49**

**3.6.a. Nature of decisions**

i. Restoration to family

ii. Exploring alternate care options

iii. Case types requiring urgent procedural clarity

iv. Innovative case disposals

v. Political interference in CWC decisions

vi. Time taken for decision-making and case pendency

**3.6.b. CWC orders and case procedure guidelines**

<b>3.7 FULFILMENT OF CORE CWC RESPONSIBILITIES AND FUNCTIONS .....</b>	<b>61</b>
3.7.a. Case monitoring and follow-up	
3.7.b. Ensuring availability during non-CWC hours	
3.7.c. Police complaints and FIRs	
3.7.d. Identifying ‘fit Institutions/persons’ and monitoring role of CWCs	
3.7.e. Converging and networking with other stakeholders	
i. Quality of CWC-DWCD coordination	
ii. Networking with core child protection stakeholders	
iii. CWC-NGO networking	
<b>3.8. DOCUMENTATION PRACTICES OF CWCS .....</b>	<b>70</b>
3.8.a. Quarterly reports for District/ State records	
3.8.b. Case records	
3.8.c. Case recording and reporting formats	
<b>3.9 PERSONNEL SUPPORT FOR CWCS .....</b>	<b>73</b>
<b>3.10 MONETARY CONCERNS .....</b>	<b>75</b>
3.10.a. Honorarium	
3.10.b. Travel allowances	
3.10.c. Child-related funds and other allowances	
<b>3.11. AWARENESS ON JJS AND CORE CWC POWERS AND RESPONSIBILITIES .....</b>	<b>78</b>
3.11.a. Awareness amongst CWC members	
3.11.b. Awareness amongst other child protection stakeholders	
<b>3.12. TRAININGS AND CAPACITY BUILDING .....</b>	<b>81</b>
<b>3.13. AUTONOMY OF CWCS AND THEIR MONITORING .....</b>	<b>82</b>
<b>CHAPTER 4 - FINDINGS: KEY GAPS AND CHALLENGES .....</b>	<b>86</b>
<b>4.1 OVERALL FINDINGS: GAPS AND CHALLENGES IN CWC FUNCTIONING .....</b>	<b>86</b>

4.1.1. INADEQUATE NUMBER OF CWCS AND SUPPORT BODIES	
4.1.2. IRREGULARITIES IN CWC COMPOSITION AND MEMBER SELECTION	
4.1.3. POOR INFRASTRUCTURE AND IMPROPERLY MANAGED CWC SITTINGS	
4.1.4. CONCERNS RELATED TO CWC CHILD REFERRAL SOURCES	
4.1.5. ISSUES SURROUNDING CWC CASE TYPES AND CATEGORIZATION	
4.1.6. PROCESS AND NATURE OF CWC DECISIONS: GAPS AND CHALLENGES	
4.1.7. SEVERE GAPS IN FULFILMENT OF CORE CWC RESPONSIBILITIES AND FUNCTIONS	
4.1.8. POOR CASE DATA RECORDS AND REPORTING PRACTICES	
4.1.9. INADEQUATE PERSONNEL SUPPORT	
4.1.10. MONETARY CONCERNS	
4.1.11. POOR CWC ROLE CLARITY AND INADEQUATE LEGAL AWARENESS	
4.1.12. INADEQUATE STATE EFFORTS TOWARDS CWC CAPACITY BUILDING	
4.1.13 ABSENCE OF CWC MONITORING	
<b>4.2 POSITIVE EFFORTS AND INITIATIVES .....</b>	<b>96</b>
4.2.1. Innovative case disposals	
4.2.2. Extending State support and capacity building	
4.2.3. Ensuring the availability of alternate care options	
4.2.4. Effective CWC-NGO networking	
4.2.5. Internal CWC review meetings	
<b>4.3. SPECIFIC ISSUES THAT REQUIRE CLARIFICATION .....</b>	<b>100</b>
<b>CHAPTER 5 - RECOMMENDATIONS: THE WAY FORWARD .....</b>	<b>102</b>
<b>5.1. ENSURE OPTIMAL CONSTITUTION OF CWCS AND SUPPORT BODIES PER DISTRICT..</b>	<b>104</b>
5.1.1. Number of CWCs per district and jurisdictional coverage	
5.1.2. Ensure functioning of allied structures within the JJ Act	
<b>5.2. CORRECT IRREGULARITIES IN CWC COMPOSITION AND MEMBER SELECTION .....</b>	<b>105</b>

5.2.1. Maintain five-member strength	
5.2.2. Gender parity	
5.2.3. Eligibility of Members	
5.2.4. CWC selection process	
<b>5.3. IMPROVE INFRASTRUCTURE, MANAGEMENT &amp; FUNCTIONING OF CWC SITTINGS ..</b>	<b>108</b>
5.3.1. Infrastructure	
5.3.2. Venue of sittings	
5.3.3. Frequency and duration of CWC sittings	
5.3.4. CWC member attendance during sittings	
5.3.5. Case management during sittings	
5.3.6. Child-friendliness	
<b>5.4. ENSURE A WIDE RANGE OF APPROPRIATE CHILD REFERRAL SOURCES ALONGWITH EFFECTIVE GATEKEEPING BY CWCs .....</b>	<b>112</b>
<b>5.5. RESOLVE ISSUES SURROUNDING AMBIGUOUS CASES AND CATEGORIZATION .....</b>	<b>114</b>
<b>5.6. IMPROVE CWC DECISION-MAKING PROCESSES AND OUTCOMES .....</b>	<b>115</b>
<b>5.7. ENSURE FULFILMENT OF CORE CWC RESPONSIBILITIES AND FUNCTIONS .....</b>	<b>119</b>
5.7.1. Case management and follow-up	
5.7.2. Case production during non-CWC hours	
5.7.3. Police complaints and filing of FIRs	
5.7.4. Identifying 'fit Institutions/persons' and monitoring role of CWCs	
5.7.5. Converging and networking with stakeholders	
<b>5.8. IMPROVE DOCUMENTATION AND REPORTING PRACTICES .....</b>	<b>124</b>
5.8.1. Quarterly formats	
5.8.2. Effective and innovative use of technology	
i. Mobile/ web-based applications	
ii. A collaborative and interactive child protection website with MIS	

iii. MWCD’s Child Tracking System - ‘TrackChild’	
<b>5.9. PROVIDE ADEQUATE PERSONNEL SUPPORT .....</b>	<b>129</b>
<b>5.10. ADDRESS AND ALLEVIATE MONETARY CONCERNS .....</b>	<b>130</b>
5.10.1. Honorarium	
5.10.2. Travel allowances	
5.10.3. Child-related funds and other allowances	
<b>5.11 STRENGTHEN PUBLIC AWARENESS AND ADVOCACY EFFORTS .....</b>	<b>131</b>
<b>5.12 PROVIDE HIGH-QUALITY SPECIALISED TRAININGS AND WORKSHOPS .....</b>	<b>133</b>
<b>5.13 ESTABLISH CWC MONITORING AND REVIEW MECHANISMS .....</b>	<b>135</b>
5.13.1. Internal CWC review mechanism	
5.13.2. External CWC monitoring mechanism	
<b>REFERENCES .....</b>	<b>139</b>

## ABBREVIATIONS

- ADM:** Assistant District Magistrate
- CICL:** Children In Conflict with Law
- CNCP:** Children in Need of Care and Protection
- CPSU:** Central Project Support Unit
- CPU:** Child Protection Unit
- CRC:** Convention on the Rights of the Child
- CrPC:** Code of Criminal Procedure
- CRY:** Child Rights and You
- CWC:** Child Welfare Committee
- CWO:** Child Welfare Officers
- DAB:** District Advisory Board
- DCPC:** District Child Protection Committee
- DCPS:** District Child Protection Society
- DCPU:** District Child Protection Unit
- DLSA:** District Legal Services Authorities
- DoE:** Department of Education
- DoH:** Department of Health
- DoL:** Department of Labour
- DoP:** Department of Police
- DSW:** Department of Social Welfare
- DSWO:** District Social Welfare Officer
- DWCD:** Department for Women and Child Development
- FIR:** First Information Report

**ICPS:** Integrated Child Protection Scheme

**IGNOU:** Indira Gandhi National Open University

**ITPA:** Immoral Traffic Prevention Act

**JAPU:** Juvenile Aid Police Unit

**JJB:** Juvenile Justice Board

**JJC:** Juvenile Justice Committee

**JJ (C & CP) Act, 2000:** Juvenile Justice (Care and Protection of Children) Act, 2000

**JJ Fund:** Juvenile Justice Fund

**JJS:** Juvenile Justice System

**J&K:** Jammu and Kashmir

**KSCPCR:** Karnataka State Commission for Protection of Child Rights

**MIS:** Management Information System

**MSOP:** Maharashtra Standard Operating Procedures

**MWCD:** Ministry for Women and Child Development

**NALSA:** National Legal Services Authority

**NCPCR:** National Commission for Protection of Child Rights

**NGO:** Non-Governmental Organization

**NIPCCD:** National Institute of Public Cooperation and Child Development

**PIL:** Public Interest Litigation

**PO:** Probation Officer

**POCSO:** Protection Of Children against Sexual Offences

**SAA:** Specialised Adoption Agency

**SATHI:** Society for Assistance to Children in Difficult Situation

**SAB:** State Advisory Board

**SCPC:** State Child Protection Committee

**SCPCR:** State Commission for Protection of Child Rights

**SCPU:** State Child Protection Unit

**SIR:** Social Investigation Report

**SJPU:** Special Juvenile Police Unit

**SLSA:** State Legal Services Authority

**SOP:** Standard Operating Procedure

**UN:** United Nations

**UT:** Union Territory

# CHAPTER 1

## INTRODUCTION: PURPOSE AND SCOPE OF THE RESEARCH

### 1.1. STUDY CONTEXT

The present study is the first ever qualitative analysis on the functioning of the CWCs in India. It presents the existing CWC field realities and provides key insights into the system's strengths, gaps and challenges. Through these insights, the study aims to contribute to the efforts of policy-makers and child protection practitioners in bringing about well-informed, evidence-based progressive changes within the Juvenile Justice System for children in need of care and protection.

The nationwide functioning of the Juvenile Justice System (JJS) first came under the Supreme Court scanner in the Sampurna Behrua v/s Union of India and others case (Writ Petition (C) No. 473 of 2005). NCPCR was made a respondent in this case through an order dated 14/ 02/ 2011 and was directed to submit a report providing recommendations for appropriate implementation of the provisions of the Juvenile Justice Act. In pursuance of the Supreme Court directive, the NCPCR filed a detailed affidavit in which the dismal functioning of CWCs along with reasons for the same were specified, although no in-depth research study was conducted at the time to arrive at the same. The current set of recommendations to be submitted by the NCPCR to the GOI however, will be based on thoroughly analyzed research data.

The recent 16<sup>th</sup> December 2012 Delhi gang rape case has brought the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 and 2010 (hereinafter referred to as the JJ Act) under severe public scrutiny. In this infamous case, one of the accused is a juvenile aged seventeen years and six months as per school admission records. The heated political, judicial, public and media debates surrounding this case have continued to center around the appropriate level of punishment that is to be meted out to juveniles who commit heinous crimes, with the mass discourse significantly leaning towards severe punishment for the juvenile. In terms of the JJ Act, the discussions surrounding the case are

primarily focused on the JJ Act pertaining to Children In Conflict with Law (CICL), while the State's responsibility as prescribed in the JJ Act for Children in Need of Care and Protection (CNCP) has rarely, if ever, been discussed. A Times of India article (Srivastava, 2013, February 1) has revealed that the juvenile accused had a thorny childhood history having left his home and family at a very young age and having been enrolled in school for only a year and a half, thus clearly indicating that the State had failed in its responsibility of ensuring adequate care as well as the right to education for this child. It is quite possible that had the concerned CWC identified this child in time and provided the necessary care, protection and rehabilitation, he could have well been prevented from committing such a heinous crime. It goes without saying that such preventions and interventions can only be made possible through a high-functioning JJS system for children in need of care and protection, one that India sorely lacks but urgently requires.

In view of this urgent requirement to strengthen the child protection system in India, the 2013-14 Union Budget released this month in March 2013 is extremely disappointing painting a highly distressing picture for child protection stakeholders. The percentage share of children's budget within the Union Budget has been reduced from 4.76% in 2012-13 to 4.64% in 2013-14. Further distressing is the fact that maximum cuts have been made in the component of child protection, especially at a time when the Centre is pushing for the implementation of the Juvenile Justice Act and the Protection of Children from Sexual Offences Act. The total expenditure for the Integrated Child Protection Scheme (ICPS) has been reduced from Rs. 400 crores to Rs. 300 crores this year, which is a 25% cutback, as against the backdrop of the 12<sup>th</sup> Planning Commission having estimated the need for operationalization of child protection programmes at Rs. 5300 crores over the Plan period i.e. Rs. 1060 crores per year. This major cutback to the only national child protection scheme funded by the Centre that provides a seemingly comprehensive child protection agenda, is unfathomable at a time when child abuse and violence against children has been on a constant rise (The Indian Express, 2013, March 4; webindia123, 2013, February 28; The Hindu, 2013, March 14).

Child protection has consistently remained a low priority in India. Unless the central government takes adequate note of the current poor functioning of the child protection

system that is reeling due to inadequate funds and lack of State support, there is a possibility that the efficient functioning of the JJS, inclusive of the CWCs - the competent authority for ensuring protection to children, may remain elusive.

## 1.2. OBJECTIVES AND APPROACH

CWCs are the most critical district-level bodies for ensuring appropriate implementation of the JJ Act. The law empowers CWCs to be the final authority for the care, treatment, protection, development and rehabilitation of children in need of care and protection and for disposing all complaints related to these children while ensuring that their basic rights and needs are met. In the current setting as has been detailed above, it is therefore vital to focus on the ways in which the CWCs can be strengthened to perform their responsibilities with greater efficiency. To be able to do this, it is essential to firstly assess the lacunae and challenges in the existing CWC operations. Based on this rationale, the following are outlined as the **key objectives** of the current study:

- 1) Evaluate the current functioning of CWCs based on existing State-level studies and other relevant literature
- 2) Identify gaps and challenges in CWC functioning
- 3) Provide recommendations for enhancing CWC effectiveness.

The study dwells into the entire range of CWC-related constitutional and functional factors, including profile of CWC members, management of sittings, child referral sources, process and nature of CWC decisions, stakeholder coordination, documentation practices, monetary concerns, capacity building etc. so as to delineate ways in which the functioning of these areas can be improved.

Due to the wide-ranging geographical coverage and large sample size, the data presented in this study can be largely considered to represent CWCs across the country. The CWC data analysis in Chapter 3 includes data from the entire country wherever possible though an in-depth review has only been possible for CWCs of seven large States namely, Andhra Pradesh, Delhi, Karnataka, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal,

primarily because State-level studies have only been conducted and made available for these States. The collective sample size of CWCs reviewed across the various studies is over hundred. This is a significantly large sample size. Moreover, the States reviewed are physically spread across the map of the country with Delhi and Uttar Pradesh in the north; Andhra Pradesh, Karnataka and Tamil Nadu in the south; West Bengal in the east and Maharashtra in the west. Therefore, the overall CWC findings and corresponding recommendations for strengthening CWC efficiency as presented in this study may be generalised and used, albeit with caution, throughout the country.

In spite of limited resources and numerous constraints, several CWCs have successfully disposed off many CNCP cases; there have been occasional innovations and good practices as well. The most significant of these have been mentioned in this study to encourage replicability. Keeping to the stated objective of this study, however, the bulk of the analysis focuses on the existing gaps and challenges in CWC functioning, with the ultimate aim being to smoothen out and streamline the system so as to enable it to function at its optimum.

The findings and recommendations provided in this study are relevant for policy makers, CWCs, and all child protection stakeholders working directly or indirectly with the JJS. These include primarily the Ministry for Women and Child Development (MWCD), State Departments for Women and Child Development (DWCDs), District/ State Legal Services Authorities (D/SLSAs), State Commissions for Protection of Child Rights (SCPCRs), District/ State Child Protection Units (D/SCPU), Juvenile Justice Boards (JJBs), Department of Police (DoP), Department of Social Welfare (DSW), Department of Labour (DoL), Department of Education (DoE), Non-Governmental Organizations (NGOs) working in the area of child rights, public spirited persons etc.

### **1.3. STUDY FRAMEWORK**

This study comprises of five chapters. **Chapter 1** presents the study context, objectives and approach. **Chapter 2** provides a brief background on the JJS including the functions, powers and responsibilities of the CWCs as per the JJ Act. It also outlines the study's methodology. **Chapter 3** compiles the available data on CWC constitution, roles and functioning, and

examines these within various relevant sections/ sub-sections. **Chapter 4** is presented in three parts. It summarises and outlines the issues, gaps and challenges in CWC functioning drawn from the analysis in Chapter 3, identifies positive efforts and initiatives for replication by other CWCs/ States and delineates specific CWC-related issues that require clarification. **Chapter 5** offers practice and policy-based recommendations for the key gaps and challenges identified in Chapter 4.

## CHAPTER 2

### BACKGROUND CONTEXT AND METHODOLOGY

*This chapter begins by providing a brief overview of the Juvenile Justice System as it exists in India, followed by a description of CWC powers and functions. The methodology used in this study is then presented before entering the next chapter on in-depth data analysis.*

#### 2.1. BACKGROUND CONTEXT

##### **The Juvenile Justice System**

Prior to 1986, each State in India had its own enactment on Juvenile Justice with children being treated differently by different State legal systems. The Union Parliament of India passed its first central legislation on Juvenile Justice with the JJ Act of 1986. A uniform law was thus established, with India being the only country in the world to have a juvenile justice law that covers both children in need of care and protection and children who come in conflict with law. With the passing of this Act, ensuring protection for children in difficult circumstances i.e. children in need of care and protection, came to be viewed for the first time as an integral part of social justice as also the justice delivery system. The JJ Act 1986 however discriminated against boys in terms of age, with the scope of the Act extending up to eighteen years for girls but only sixteen years for boys.

In the year 2000, this 1986 law was repealed and the Juvenile Justice (Care and Protection of Children) Act, 2000 came into being. It was amended in 2006 to build in minimum standards of care and protection as part of justice delivery and to strengthen the existing child protection mechanisms. The Act underwent further amendment in 2010 to end the segregation of disease-hit children from other occupants within child care institutions. This JJ Act of 2000, with amendments made in 2006 and 2010 continues to be followed to this date.

The JJ (C & CP) Act 2000, as amended in 2006 and 2010, internalises the Constitution of India (as prescribed in article 15 (3), article 39 (e) and (f), articles 45 and 47); the United

Nations Convention on the Rights of the Child, 1989; the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (“the Beijing Rules”); the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990; the UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (“The Riyadh Guidelines”); the UN Standard Minimum Rules for Non-custodial Measures, 1990 (“The Tokyo Rules”); and many other international conventions/treaties and instruments.

The current JJ Act is a highly progressive legislation that has as its primary focus, the principle of best interest of the child. All children below age eighteen years fall within the scope of this Act. It provides for appropriate care and protection by catering to the child’s needs and rights; it adopts a child-friendly approach in the adjudication and disposition of child cases.

The Act follows a two pronged approach with the Juvenile Justice Boards (JJBs) being the competent authority for Children in Conflict with Law (CICL) and Child Welfare Committees (CWCs) being the competent authority for Children in Need of Care and Protection (CNCP). CICL includes children who have engaged in deviant or criminal behaviour. CNCP includes working children, children engaged in begging, children living on streets, victims of child marriage, child victims of physical/ sexual abuse, trafficked minors, mentally/ physically challenged children, children affected by HIV/ AIDS, children who are missing or have run away from home, children who have been abandoned or neglected, children harmed by natural disasters or man-made disasters like armed conflicts, earth quakes, floods etc. For both CNCP as well as CICL, there are provisions for rehabilitative placement and protection with due process. The 2000 Act expands the scope of CNCP rehabilitation to include family and community based alternative care options such as Sponsorships and Foster Care, as opposed to the previously practiced sole alternate care option of institutionalization. The focus of the Juvenile Justice Law in India, as it currently stands, is centred on protection of the dignity of the child and ensuring access to child rights, protection and rehabilitation through State responsibility and action.

In 2007, the Ministry of Women and Child Development framed the Juvenile Justice Rules (hereinafter referred to as the Model Rules), further elaborating the functions of the

Committees and Boards. It should be noted that though CWCs and JJBs are constituted as per the Central Act, they function within the State according to the rules framed by the State government, which can vary from state to state. Every State has framed rules based on the JJ Act enacted in 2000. The amendment to the Act in 2006 however again necessitated framing of rules by the individual State governments. Many State governments though are yet to formulate the revised Rules. Until such a time that the new Rules are formulated by the individual States, the law requires that the Model Rules be implemented by the respective CWCs and JJBs.

Having presented a brief outline on the structure and functioning of the Juvenile Justice System in India, the focus is being directed to the main subject of this research study i.e. the CWC which as explained above, functions within the JJS.

### **Powers and Functions of Child Welfare Committees**

The CWC is a statutory authority with its members being executive appointees. As one of its most progressive features, the Act mandates the participation of civil society in CWC membership.

Section 31 (1) of the JJ act empowers the CWC to be the final authority in disposing cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights. CWCs therefore have the sole authority to deal with matters concerning CNCP.

Further, as per Section 29 (5) of the JJ Act, the CWCs are to function as a Bench of Magistrates. The powers of the CWC are equivalent to the powers held by a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class as conferred by the Code of Criminal Procedure (CrPC) 1973 (2 of 1974). It is important to point out here that CWC members hold this power only as a bench and not on an individual basis. CWCs are to use their discretion when addressing the unique circumstances of each child brought before them, so as to ensure that the concerned child receives adequate care, protection and/ or rehabilitation.

The various **functions and powers** of the CWC are presented in Section 25 of the Model Rules. These are as follows:

- Take cognizance of and receive children produced before the Committee
- Decide on the matters brought before the Committee
- Reach out to such children in need of care and protection who are not in a position to be produced before the Committee, being in difficult circumstances, with support from the District Child Protection Unit or State Child Protection Unit or the State Government;
- Conduct necessary inquiry on all issues relating to and affecting the safety and well being of the child
- Direct the Child Welfare Officers (CWOs) or Probation Officers (POs) or non-governmental organisations to conduct social inquiry and submit a report to the Committee
- Ensure necessary care and protection, including immediate shelter
- Ensure appropriate rehabilitation and restoration, including passing necessary directions to parents or guardians or fit persons or fit institutions in this regard, in addition to follow-up and coordination with District Child Protection Unit or State Adoption Resource Agency and other agencies
- Direct the Officer-in-charge of children's homes to receive children requiring shelter and care
- Document and maintain detailed case record along with a case summary of every case dealt by the Committee
- Provide a child-friendly environment for children
- Recommend 'fit institutions' to the State Government for the care and protection of children
- Declare 'fit persons'
- Declare a child legally free for adoption
- Keep information about and take necessary follow-up action in respect of missing children in their jurisdiction
- Maintain liaison with the Board in respect of cases needing care and protection

- Visit each institution where children are sent for care and protection or adoption at least once in three months to review the condition of children in institutions, with support of the State Government and suggest necessary action
- Monitor associations and agencies within their jurisdiction that deal with children in order to check on the exploitation and abuse of children
- Co-ordinate with the Police, Labour Department and other agencies involved in the care and protection of children with the support of District Child Protection Unit or State Child Protection Unit or State Government
- Liaison and network with the corporate sector and non-governmental organisations for any of the above, including for social inquiry, restoration and rehabilitation, as and when required
- Maintain a suggestion box to encourage inputs from children and adults alike and take necessary action.

Some **limitations** to the powers of the CWC include:

- CWC cannot issue orders without a quorum of at least three members including Chairperson
- CWC does not have the jurisdiction to deal with children in conflict with law
- CWC does not have the authority to declare 'fit institutions'. It can only recommend 'fit institutions' to the State Government.
- CWCs can only declare a child legally free for adoption. The subsequent legal process of adoption is the purview of the judiciary. The CWC does not have the power to directly place children in adoption
- In custodial conflict cases, CWCs cannot pass orders for the child's custody, the powers of which are vested with the judiciary. CWCs can only provide for the care and protection of the child in such matters.

With an understanding of the JJS and CWC mechanisms in place, it is now possible to move on to the crux of the study – the data analysis. However, before doing so, it is important that the methodology of the current study be specified and elaborated upon.

## 2.2. METHODOLOGY

The present study is based on an extensive and exhaustive review of secondary literature on CWC functioning across India. The seven existing State-level qualitative studies form the core of this review; and covers CWCs from the States of Andhra Pradesh, Delhi, Karnataka, Maharashtra, Tamil Nadu, Uttar Pradesh, and West Bengal. A wide range of data collection methods were used within these studies such as structured as well as open-ended face-to-face interviews, telephonic interviews, questionnaires, on-field researcher observation notes, information compiled through RTI applications, data compiled from child case files/ admission registers/ other CWC records, focused group discussions etc. All seven studies were completed between 2009 to 2012, with a collective sample size of over 100 CWCs.

The following are the State-level Studies that have been reviewed in this paper:

- HELP (2010). *A study on status of Child Welfare Committees (CWCs) in Andhra Pradesh*. Ongole: Child Rights Resource Centre.
- Haq (2012). *Towards streamlining implementation of processes and measures pertaining to children in need of care and protection: a study of child welfare committees in Delhi*. New Delhi: Haq: Centre for Child Rights.
- Baburaj, P.P. (2010). *Functioning of Child Welfare Committees (CWCs) in Karnataka*. Society for Assistance to Children in Difficult Situation. Bangalore: SATHI.
- SCOPE India & Thozhamai (2011). *Report of the Study on Status and Functioning of Child Welfare Committees (CWCs) in Tamil Nadu*. Tamil Nadu: EveryChild.
- Kamath, P. (2009). *A Study on Child Welfare Committees in Selected States of India (NCT of Delhi, Karnataka and Uttar Pradesh)*. Society for Assistance to Children in Difficult Situation. Bangalore: SATHI.
- Ghosh, M (2011). *Study on functioning of Child Welfare Committee in West Bengal*. Society for Assistance to Children in Difficult Situation. Bangalore: SATHI
- Shekar, N. & Vora, A. (2010). *A study of the role and functioning of the Child Welfare Committees in Maharashtra: Opportunities and challenges in strengthening the Juvenile Justice System*. The Department of Women and Child Development, GoM & UNICEF. Maharashtra: UNICEF.

In order to provide a more comprehensive picture of CWC functioning in India, this study also referred to the largely quantitative information available on CWC infrastructure and basic administrative functioning compiled by the National Legal Services Authority (NALSA) in 2011. NALSA obtained this data from the 598 District Legal Services Authorities (DLSAs) all over the country (excluding the States of Jammu and Kashmir, and Arunachal Pradesh). The State-wise data provided in this compilation though, is occasionally noted to be incomplete.

In addition to the above, several other pieces of grey literature have been referred to and analysed. These include State-level reports, DWCD letters/ notices/ circulars, SCPCR reports, minutes of national consultation meetings, conference reports etc. Child-related legislative acts, Central and State Rules, High Court and Supreme Court orders, government schemes etc. have been studied and referred to in this study where necessary. Relevant press reports and online articles are also included.

### **Strengths of the existing data**

The qualitative nature of the State-level studies provides a rich insight into the day-to-day functioning of CWCs and the difficulties therein. Detailed and nuanced information on CWC operations and outcomes are especially available from the States of Delhi, Maharashtra and Karnataka, with two studies each covering the States of Delhi and Karnataka. This has significantly contributed to a more thorough overall analysis. Further, all included studies have been conducted over the past four years, ensuring that the data reviewed in the present study is relatively recent.

### **Constraints/ limitations of the existing data**

Every single research study reviewed in this paper has faced serious constraints in obtaining access to complete and reliable data on CWC outputs due to poorly maintained CWC data records and reporting mechanisms. In some cases, data collection was further affected due to the non-cooperation of CWC members and other research participants such as government officials, institutional staff etc. As a result, some of the information presented in the State studies is occasionally fragmented and unusable. Where contradictions between

or within studies have occurred, the information has either been dropped or the most recent study has been quoted.

A major constraint for the purpose of the present study has been the lack of uniformity in the CWC themes covered across the different State studies. For instance, key information such as the profile of children entering the system, nature of CWC decisions, number of pendency cases etc. have not been adequately covered by all State studies, making it difficult to provide a more rounded analysis on some CWC themes.

Another significant constraint is that there are no existing large-scale studies that provide information on the CWC situation post January 2012. In order to counter this limitation, recent CWC-related court/ State directives, conference reports, newspaper articles and online material have been referred to.

Since the data collection period varies widely across the State studies, it is cautioned that the information provided here not be used for comparison of CWC performance across States.

## CHAPTER 3

### DATA ANALYSIS: STATUS AND FUNCTIONING OF CWCs

*The following chapter compiles and analyses data from a key pool of seven qualitative studies collectively covering the States of Andhra Pradesh, Delhi, Karnataka, Maharashtra, Tamil Nadu, Uttar Pradesh, and West Bengal. In addition to this, a wide range of other literature is also referred to and analysed including nationwide quantitative data studies, national consultation and conference reports, State-level reports, books on juvenile justice, legislative acts, court orders, newspaper articles etc.*

#### 3.1.SETTING UP OF CWCs AND SUPPORT BODIES

##### 3.1.a. Number of CWCs per district and jurisdictional coverage

India, a federal union of States, comprises of 28 States and 7 Union Territories, which are further subdivided into 660 districts. Section 29 (1) of the JJ Act requires that one or more CWCs be constituted for every district in India. The State of Jammu and Kashmir (J&K) comprising of 22 districts, however, does not fall under the Central JJ Act and is therefore, excluded from the analysis.

However, a 2010 report compiled from information provided by the respective State departments/ directorates reveals the existence of only 516 CWCs across the country (the compilation excludes Uttaranchal and J&K districts), indicating that CWCs have not been formed in over 100 districts. Further, the NALSA report submitted to the Supreme Court of India in the Sampurna Behrua versus Union of India (UOI) & Others case, shows that as of August 2011, at least 8 of the 33 States/ Union Territories covered in the study (the study excludes Arunachal Pradesh and J&K) have not constituted CWCs in every district (Writ Petition (C) No. 473 of 2005).

Of the seven State studies reviewed, only three, namely Andhra Pradesh, Maharashtra, and West Bengal have CWCs constituted in every district. The table below shows the CWC strength in each of the seven States, existing at the time when the respective studies were conducted.

State/ UT	Andhra Pradesh	Delhi	Karnataka	Maharashtra	Tamil Nadu	Uttar Pradesh	West Bengal
No. of districts	23	9	28	35	32	70	19
No. of CWCs	23 (3 defunct)	6	25	35	18	9	19

Amongst the seven States, Uttar Pradesh in 2009 ranks lowest in terms of compliance with Section 29 of the Act, having constituted only 9 CWCs for a total of 70 districts, wherein each CWC handles a minimum of 4 and a maximum of 10 districts.

In Delhi, the DWCD informed the research team (Haq, 2012) that the Supreme Court has directed the DWCD to use its judgement in establishing CWCs on a 'needs-based' approach. Accordingly, post 2010, Delhi established 3 new CWCs to its existing 4, thus totalling to 7 CWCs for its 9 districts (Firstpost, 2012, October 29), stating this CWC number to be adequate for the State (Haq, 2012). Other than being a clear violation of the Act, one CWC for more than one district is noted to be severely inadequate for a State like Delhi with around 51,000 street children alone (Save the Children, 2011). Further, Delhi has been found to have a high influx rate with a number of children coming in from other States as child laborers, trafficked, runaway, abandoned or exploited children (Kamath, 2009). The case loads of the existing CWCs have been found to be very high; in 2010, a total of 2725, 2494, 1357, and 1141 were heard by each of the four CWCs (Haq, 2012). The decision to not constitute CWCs in certain Delhi districts is not supported by any research or systematic needs assessment. Therefore, it is practical to establish CWCs in each of the districts to enable a timely response and close monitoring of the CNCP.

Even within those States that comply with the Act, some concerns have emerged. 3 CWCs in Andhra Pradesh though technically constituted, have been noted to be **defunct** (HELP, 2010). A Supreme Court order dated 19/08/2011 reveals that despite State Governments having submitted various reports stating that CWCs are established in every district, several CWCs are not functional/ operational (Writ Petition (C) No. 473 of 2005).

Case load is excessive in certain districts. For instance, in Mumbai City district, Maharashtra, roughly 100 cases are produced before the CWC in each sitting, this despite conducting 5 sittings a week (Shekar & Vora, 2010). The Maharashtra study attributes the **large caseload** in areas such as Mumbai and Pune to the “vulnerability faced by children due to the phenomenon of urbanisation” (2010: 59). In order to manage such an extensive caseload, the Mumbai City CWC members are forced to meet the children individually rather than as a bench, though it is ensured by them that the final order is signed by two members and is based on a quorum of at least three members. This is not an ideal situation, however, and requires an extremely high level of commitment from CWC members, both in terms of time and energy. Considering that this is a part-time honorarium position, it may be unfair to expect this of other similar CWCs constituted.

The Karnataka State Commission for Protection of Child Rights’ report (2011) attributes the high case numbers in Bangalore urban district to high population density. In each sitting, 30-40 children are presented before the Bangalore Urban CWC, situated in the most populous district in Karnataka (Baburaj, 2010; Census of India Report, 2011). **Population density** therefore becomes another important factor to be considered when planning additional CWCs. Rationally, as seen in the case of Bangalore, the more populous districts are likely to produce larger CWC caseloads. However, despite this, the most populous district in India, i.e. Thane district in Maharashtra, with a population of over 11 million has just one CWC, the same as Sindhudurg district with a population of less than 8.5 lakh. North 24 Parganas district in West Bengal with a population of over 10 million again has only 1 CWC, similar to that of Dakshin Binajpur district with a population of less than 2 million (Census of India Report, 2011). A district with a higher population density may require additional CWCs in order to manage larger case loads.

The West Bengal study (2011), on the other hand emphasizes **vastness of certain districts, difficult geographical terrain or remote accessibility**, and the sharing of a long 2499 km **international border** with Bangladesh, Bhutan, and Nepal as the primary reasons for requiring more than one CWC in specific districts such as Jalpaiguri and Darjeeling. Cases of trafficked children and illegal migration from neighbouring States often lead to high caseloads in many districts. Moreover, difficult-to-access internal hilly areas and vast

jurisdictions render CWC visits to Children and Shelter Homes far more difficult and time-consuming. NCPDR records reveal that the State of Goa has two CWCs for its two districts. The purpose of having a CWC in each district is to facilitate the production of children. Contrary to this rationale, both the North and South Goa district CWCs have their sittings in Apna Ghar, a child care institution run by the Government which is located in the North district. The NGOs/ police/ citizens producing children in front of the South CWC are therefore compelled to travel over thirty kilometers from South Goa to the location of the South Goa CWC in North Goa district. In Bangalore, Karnataka, both CWCs are located in the southern part of the city, with no CWCs in the northern, western and eastern parts, thereby reducing accessibility to children from these other parts. Geographical location and accessibility of CWC therefore is also an important aspect to look into when considering the set-up of additional CWCs per district.

**Jurisdictional confusion** has further added to the woes. Circulars issued by the Delhi DWCD dated December 20, 2010 and July 26, 2011, state that the CWCs need to adopt the same demarcations of districts as being demarcated by police. Such jurisdictional issues often adversely affect children's immediate right to protection as they are taken from one CWC to another by the police/NGO escort, thereby neglecting their immediate need for sleep, food and protection. This also leads to frustration amongst stakeholders, especially police officers who claim that some CWC members simply state that the child is not within their jurisdiction, offering no further assistance, thus neglecting the principle of best interest of a child (Haq, 2012).

### **Current Status of Constitution of CWCs across the Country**

The latest information available on constitution of CWCs in all 34 States/ Union Territories (UTs) falling under the JJ Act, show that as of 28<sup>th</sup> February 2013, the number of States lacking a CWC in every district remains the same as it was over a year ago at 9 (when including data from the State of Arunachal Pradesh in the NALSA 2011 data). These include the following States/ UTs:

Andaman & Nicobar Islands, Arunachal Pradesh, Bihar, Chattisgarh, Delhi, Puducherry, Tripura, and Uttar Pradesh

On a positive note, however, the number of total CWCs across the country has risen to 617. This implies that the situation is gradually improving and only 22 of 638 districts (excluding J&K) currently lack a CWC and the Government has urged that these remaining CWCs be established at the earliest (MWCD Conference Report, 2013, February 28).

Even within the States reviewed above, an improvement in CWC numbers is noted. For instance, by January 2011, Uttar Pradesh had established a total of 61 CWCs i.e. 52 CWCs in a span of less than two years (Writ Petition (C) No. 473 of 2005, dated 17/01/2011). By Feb 2013, the number of CWCs constituted in Uttar Pradesh has risen to 72 for the current total of 75 districts. Moreover, both Karnataka and Tamil Nadu now have a CWC in every district. In fact, one of the districts in Karnataka has been provided with two CWCs (MWCD Conference Report, 2013, February 28). This is a notably positive trend, indicating that the process of CWC constitution is receiving its due attention post the introduction of the ICPS in 2009-10. However, some districts continue to lack CWCs and this requires to be addressed immediately by the respective State Governments.

### **3.1.b. CWC Support Bodies**

Many salutary provisions have been made in the JJ Act and the Model Rules. Section 62 of the JJ Act provides for the constitution of Central, State, District and City **Advisory Boards** to advise that Government on matters relating to the establishment and maintenance of child care institutions, mobilization of resources, provision of facilities for education, training and rehabilitation of children in need of care and protection and juveniles in conflict of law.

Section 62A, which was inserted by Amendment Act 33 of 2006, and Rule 81 of the Model Rules, 2007, provides that every State Government shall constitute a **Child Protection Unit (CPU)** for the State and Units for every District, to take up matters relating to children in

need of care and protection and juveniles in conflict with law with a view to ensure the implementation of the Act including the establishment and maintenance of child care institutions, notification of competent authorities in relation to these children and their rehabilitation and coordination with various official and non official agencies concerned.

Rule 63 of the Juvenile Justice (Care and Protection of Children) Rules 2007 requires each State Government to constitute **Inspection Committees** at the level of every city, district and state. The Inspection Committees are meant to visit and oversee conditions in the institutions and the appropriateness of the processes for safety and well being and to review the standards of care and protection followed by the institutions, enquire into incidents involving the violation of child rights etc. and give appropriate directions.

Section 63 of the JJ Act requires the State Government to constitute a **Special Juvenile Police Unit (SJPU)** in every district and city to coordinate and to upgrade the police treatment of juveniles and children. The SJPU is to comprise of at least one juvenile/child welfare officer from every police station within the district/ city.

Sadly, the information compiled by NALSA as of August 2011, indicate that an extremely high number of districts across several States have not been provided with District Child Protection Units and District/ City Level Advisory Boards by the State Government. Inspection Committees too have either not been formed or are defunct in most districts (Suo Motu PIL No. 182 of 2010; Kamath, 2009; MWCD Conference Report, 2013, February 28). SJPUs have not been formed in many States. Most of the police force at the District/ Sub-District/ Police Station level are ignorant of the objectives, existence and role of SJPU in protecting children in need of care and protection (Affidavit filed by NCPCR, 2011). Frequently, the SJPUs when constituted are a farce wherein police officers are designated as child welfare officers arbitrarily without any sensitization or distinction in role to be played (NCPCR National Consultation Report, 2010). This is a failure on the part of the State Governments to comply with the mandatory obligations under the JJ Act, 2000 and Rules framed thereunder.

## 3.2. COMPOSITION AND PROFILE OF CWC MEMBERS

### 3.2.a. Member Strength

A review of the State studies show that a majority of CWCs are complete in terms of official appointment by Selection Committees, though an average total of two to four vacancies exist in most States. Exceptions to this are West Bengal and Karnataka with about 8 and 14 vacancies respectively; and Andhra Pradesh wherein a majority of CWCs have vacant positions. Where vacant positions exist, most CWCs comprise at least 4 members including the chairman. A few CWCs have only 3 members appointed while Hooghly CWC in West Bengal is the only one that comprises of 2 members including Chairperson.

Across the studies, several instances of CWC members frequently or never attending sittings have been noted. In many cases, CWC members who are regularly absent but haven't submitted resignation letters continue to be officially listed as CWC members; their services have not been terminated, nor has there been any follow-up to ensure future attendance. As per Section 29 (4iii) of the JJ Act, the appointment of any Committee member may be terminated if s/he remains absent in sittings for three consecutive months without any valid reason or fails to attend less than three-fourth of the sittings in a year. A common complaint of many CWCs is that recruitment of vacant positions/ prolonged absentee positions are indefinitely delayed, leading to major inconvenience and the inability to have a quorum for final decisions.

### 3.2.b. CWC Gender Composition

Section 29(2) of JJ Act requires that at **least one member of a CWC be a woman**. A review of studies show that most CWCs have met this criterion. Exceptions exist in Karnataka and Tamil Nadu but these are rare. While CWCs in a majority of the States are dominated by male members, Delhi CWCs have more women than male members, including an all-women CWC in Nirmal Chhaya district (Haq, 2012) and 6 of the 8 Maharashtra CWCs are headed by a woman Chairperson (Shekar & Vora, 2010). Overall however, there are more men than women appointed into CWCs.

### **3.2.c. Eligibility of Members**

#### **i) Age**

Age is an important criterion for ensuring that the members have both experience and maturity. Rule 22 (2) of the Model Rules 2007 specifies that the Chairperson or Member of the Committee shall be a person not less than 35 years of age. Respective State rules further detail out the age requirements. This can vary, for instance, the age category in Maharashtra as prescribed by the 2002 Rules is 35-60 years, while that by the UP State Rules 2004 is 24-65 years for a member and 45-65 years for the Chairperson. Though these State Rules became void with the 2006 amendments to the JJ Act 2000 and the notification of the JJ Rules 2007, necessitating the reframing of rules by State Governments, some States continue to follow the outdated State rules (Kamath, 2009).

Most CWCs in the different States covered in this study comply with the age requirement, as prescribed by the Model/ State Rules. But in West Bengal, under-aged recruitment of CWC members i.e. below age 35 years in 2 districts has been noted (Ghosh, 2011).

In Delhi, a majority of the members were 65 years and above (Kamath, 2009). Similarly, in Karnataka, retired persons tended to view CWC as an exposure to a new arena of child affairs after their retirement. However, they were found to be unable to initiate innovative actions in rehabilitation of children (Baburaj, 2010).

#### **ii) Education and experience**

While constituting CWCs in Delhi and Maharashtra, prescribed minimum eligibility criteria was fully adhered to as defined in the State/Model Rules 2007.

In both Maharashtra and Karnataka, appointment of multidisciplinary profiles with varied educational backgrounds such as social work, psychology, child development, sociology, education, medicine, law and finance, have been found to help increase efficiency in CWC decision-making. In Delhi, on the other hand, 65% of members from four CWCs are retired employees of a single department i.e. the Department of Social Welfare (DSW). As has been rightly reflected by Kamath in his 2009 study, drawing a majority of people from one stream

is an inefficient strategy as it deprives the Committee from having people with divergent backgrounds and expertise that is required in dealing with cases of a diversified nature. On a brighter note, the two CWCs established in Delhi in 2011 are better represented, including more members from outside the government sector.

As witnessed in Karnataka, Uttar Pradesh and West Bengal, a number of CWC functionaries do not have the mandatory prior experience of seven years in their respective fields/ in child related activities, as stipulated under Rule 22 (1) of the Model Rules, 2007. For some members, their involvement in child related activities started only after joining the CWC. While there are a number of Chairpersons/members with strong academic backgrounds and several years of experience in the field of child rights and child protection, there are also a few who do not meet the required educational criteria, as prescribed in the Rules (Kamath, 2009; Baburaj, 2010; Ghosh, 2011).

Overall, a majority of CWC members and Chairpersons across the different States largely meet the minimum eligibility criteria as prescribed in Rule 22 (1) of the Model Rules 2007. However, an ideal CWC composition in terms of a diverse and multidisciplinary profile is missing. CWCs appear to be dominated by those from the social work and education sector, while people from law, medicine and psychology sectors are relatively under-represented, though they are equally crucial for the efficient functioning of CWCs.

### **3.2.d. CWC selection process**

Some **serious deviations in the selection process** have been noted in some places. For instance, in Uttar Pradesh, the Selection Committee's choice of Chairpersons and members is limited to the panel of names recommended by the respective District Magistrates (Kamath, 2009). This is a significant limitation depriving deserving individuals the chance to be impartially appointed in the CWC. This limitation has also possibly contributed to the appointment of individuals who do not meet the required eligibility criteria.

Another aberration in the selection process is noted in the selection of CWC members in Udipi, Karnataka. Only three members are appointed here. Two of these are from CWC

Shimoga who have been given an additional appointment to CWC Udipi. Due to the long tedious journey to be undertaken by these members from Shimoga, the number of sittings has been reduced from three to one in Udipi (Baburaj, 2010). Similarly, in Delhi, an individual has been appointed as member, both in the Lajpat Nagar as well as Noida CWC, and due to shortage of time, attends only half-day sittings at Lajpat Nagar. In this case, no action has been taken despite the Selection Committee bringing this to the notice of the Department (Haq, 2012). In another instance, a CWC member in Andhra Pradesh is also a JJB member (HELP, 2010). Further, in the States of Haryana and Sikkim, the Deputy Commissioners (District Collectors/ District Magistrates) have been appointed as Chairpersons. In Meghalaya, also, the District Social Welfare Officers (DSWOs), who have full-time responsibilities towards implementing various schemes/ programmes of the Government, have again been assigned the role of Chairpersons of the CWCs in the State. In the case of government officials, not only do such officers have dual functions, but a conflict of interest issue arises as well (Affidavit filed by NCPCR, 2011).

It has been found that the Uttar Pradesh Selection Committee has appointed those connected with adoption agencies as CWC members (Kamath, 2009). This is a violation of Rule 20 (30 of the Model Rules 2007 which states that while selecting the Chairperson and Members, the Selection Committee shall as far as possible ensure that none of them are from any adoption agency, a rule rightly established so as to avoid a possible area of conflict of interest.

In a related subject matter, a member each from two of the eight CWCs in Maharashtra was found to be associated with a residential child care facility within the same district. The 2009 Maharashtra study points out that this may result in a tendency for CWC members to refer children to their own institutions as funding to the child care institutions is on a per child basis. A further conflict of interest arises because CWC members are also expected to monitor the child care institutions within their district which in this case, they would themselves be associated with. This creates unnecessary complications.

### 3.3. CWC INFRASTRUCTURE AND SITTINGS

#### 3.3.a. Infrastructure

The current status of CWC infrastructure is found to be unequivocally abysmal across all studies. The NALSA study found that a significant majority of CWCs across the country do not have a permanent building of their own (NALSA, 2011: CWC S. No. 2).

Whether permanent or temporary, the **infrastructural provisions** to be provided within these settings, as guaranteed by Rule 82 of the Model Rules 2007 are glaringly absent. Rule 82 states that the CWC infrastructure should consist of a sitting hall, a separate room for the Committee, room for office staff, waiting room for parents or guardian, room for personal interaction between the child or parents and the Committee, a record room, safe drinking water facility and toilets. Nearly all the CWCs are found to be functioning in incomplete settings and some in severely insufficient settings. For instance, some CWCs in Bihar function with one cupboard, one table and some chairs. A majority of CWCs in the country are not provided with waiting rooms, room for personal interaction between the child/parents and CWC, sittings halls or record rooms. Several CWCs lack even the most basic facilities such as drinking water (NALSA, 2011: CWC S. No. 8). These findings have been reiterated by all the State studies reviewed.

#### 3.3.b. Venue of sittings

A large number of CWCs do not hold sittings in proximity to child care institutions (NALSA, 2011: CWC S. No. 5). This often inconveniences institutional staff as well as children who are to be brought before the CWC. However, child care institutions are often not centrally located creating difficulties in accessibility for the general public and other stakeholders. A strong need has hence arisen for increasing CWC sitting venues that are spread out within a particular district. This brings to the fore three kinds of sitting venue styles identified by this study that have been practiced to cater to this demand. Each presents with its own pros and cons:

**i. Practice of additional special sittings:** While CWC sittings close to or within child care institutions is considered necessary, the Delhi CWC monitoring body i.e. the Juvenile Justice

Committee (JJC), recommends that its location need not be restricted to child care institutions alone. Under the guidance of the JJC, additional special sittings have been planned and practiced by two Delhi CWCs in multiple places such as fit institutions, railway platforms and slum areas (Kamath, 2009), thereby increasing accessibility and reaching out to more children in need of care and protection. Such additional special sittings, if systematically planned, could significantly contribute to improving access to child rights in India. However, the JJ Act as well as the ICPS provides for a designated space and infrastructure for CWC functioning. This system would therefore become significantly cost-intensive as well as would require more time-commitment from CWC members.

**ii. Practice of rotation sittings:** In Karnataka, the Bangalore Urban CWC holds 16 sittings a month and all these sittings are held in South Bangalore, at a location not easily accessible by the public, thereby neglecting the northern, eastern and western parts of the city. In order to tackle this issue, the KSCPCR (2011) has suggested that the metro and town centric CWCs need to also hold sittings in other locations in the district which include locations near taluka offices to provide easier access to children and families.

Three CWCs in Maharashtra hold sittings in different child care institutions by rotation during busy months. This is desirable because in addition to improving children's access to CWC members, these CWCs also get a chance to monitor the institutions around the time of their sittings. However, some practical challenges have also been identified. For instance, CWCs in this case lack their own personnel support and are instead dependent on the staff/ PO of the given institution. Therefore, files/ registers are not transported for the sitting preventing reference to previous records. This adversely affects case decisions. In view of such practical difficulties and the expanding role of the CWCs within the district, the Maharashtra study has recommended that the DWCD relook at the practice of rotation (Shekar & Vora, 2010).

**iii. Practice of parallel sittings:** Three of the four CWCs in Delhi convene simultaneously, and in parallel, at different locations, on a fixed day of the week with a two-member quorum. While the parallel sittings were introduced based on caseload from different areas, it implied division of CWC members' attention, directly affecting quality of decision-making. A

highly serious issue that has been ignored here is that parallel sittings imply an absence of a quorum in all the places of sittings and at all times, thereby compromising on the principles of objectivity, fair hearing and justice. It affects the legality of the decisions taken, particularly where the decisions have not been ratified by the quorum on a subsequent date. Despite this, the Delhi DWCD in 2010 issued an amendment to the Delhi JJ Rules of 2009 stating that the quorum now “shall be two members attending, which may include the Chairperson or officiating Chairperson”. The legitimacy of this amendment is however questionable because it goes against Section 30 (3) of the JJ Act and the Central Model Rule 26(1), which clearly states that “The quorum for the meeting shall be three members attending, which may include the Chairperson” (Haq, 2012).

### **3.3.c. Frequency and duration of CWC sittings**

Rule 24 (4) of the Model Rules 2007 clearly mandate that the CWC shall meet a minimum of three days a week, and allows the State Government to increase the frequency of these meetings depending on case and pendency of work. This Rule is flouted by nearly all the States. Except for Delhi CWCs which hold sittings five days a week, and four States i.e. Goa, Jharkhand, Tamil Nadu and Chandigarh that hold sittings thrice a week, none of the other States have fully complied with this rule (NALSA, 2011: CWC S. No. 3).

In some States, the sittings are found to be virtually non-existent. For example, CWCs of four Punjab districts sit on a quarterly basis while the remaining meet once a month. In Tripura, CWC sittings are held either once a fortnight, once a month or else, as and when required. In Nagaland, Andaman & Nicobar Islands, and Daman & Diu, CWCs meet only as and when cases are reported. While some CWCs are found to comply with three sittings a week, a large number of CWCs in the country conduct sittings only once or twice a week (NALSA, 2011: CWC S. No. 3).

Rule 24 (7) of the Model Rules requires that every Committee member attend a minimum of four hours per sitting. A query in this regard has emitted a mixed response in the NALSA study with several CWCs stated to be complying with this requirement and several others stated as not doing so (2011: CWC S. No. 4). While CWCs may claim that they attend the

mandatory four hours, researchers who observed the CWC sittings noted that only one of the eight CWCs in Maharashtra attended the sitting for the whole duration of four hours. Despite a high caseload of 105 cases on the day which led them to attend to cases individually rather than as a bench, the Mumbai City CWC was noted to hold the sitting for only two hours (Shekar & Vora, 2010). Therefore, it appears that CWC sittings are being cut short for reasons other than low case load and this often includes other personal obligations of members. For instance, in Karnataka and Andhra Pradesh, some CWC members were found to be too busy to attend the sittings due to other work commitments, and when they did, were unable to give the full four hours (Baburaj, 2010; HELP, 2010)

This variability in periodicity and duration of sittings has been reiterated in State-level studies. These findings are extremely disturbing and provide a glimpse of the dismal functioning of CWCs in the country. When sittings are not conducted as per the provision in the law, the CWC members render themselves inaccessible, thereby denying care and protection to the children in need.

### **3.3.d. CWC member attendance during sittings**

This is another area that has been highlighted in several State-level studies. A large number of CWC members are regular in attendance. But in Maharashtra, Karnataka, West Bengal, Uttar Pradesh, Tamil Nadu, several instances of irregular attendance and prolonged absenteeism have been noted by researchers

In Uttar Pradesh, there are a number of CWCs that do not conduct sittings even on a weekly basis, due to poor member attendance rate (Kamath, 2009). In CWC Raichur, Karnataka, none of the members other than chairman attends the sittings. Members come in and sign the proceedings file as and when they find the time (Baburaj, 2010). This brings into question the legal validity of final decisions made by this CWC. The requirement of quorum also becomes an issue in several CWCs e.g. Pune CWC, which have one or more vacant positions when an appointed member/s remains absent for a given sitting.

Some of the reviewed studies reflect that an obvious contributor to poor attendance is the

lack of monitoring mechanisms to check for compliance. Neither positive recognition for good attendance, nor reprimanding/ negative consequences for poor attendance are followed in a majority of the CWCs. Many CWCs do not even maintain an attendance register and those that do, often do not have an in and out time. In some cases, attendance registers are even manipulated. For instance, in Tamil Nadu, a general practice noted to be followed in many CWCs is that the staff of CWCs obtain the signature of members in the minutes book at the time of paying the honorarium (HELP, 2010).

Delhi appears to be the only State where attendance is not considered a matter of concern. As noted by Kamath (2009), attendance in Delhi was a serious problem in the initial phases of CWC work. Though these CWCs maintained an attendance register, there was no custodian for the same, resulting in ample scope for manipulation in attendance. But the issue of attendance manipulation has been successfully addressed here with the installation of the biometrics system (Haq, 2012), a system that should possibly be applied to CWCs in other States as well.

Being part of the Committee is generally viewed by members as being a prestigious and important position. But poor attendance persists despite this. It therefore becomes important here to analyse the other possible reasons for poor attendance.

Other professional commitments: Many of the studies reviewed repeatedly emphasize that CWC members, more often than not, have other significant work commitments. Many CWC members, in Karnataka, for instance were found to be heading or working in NGOs, serving in various government sectors or running professional consultancies such as legal/ medical services; these can be quite demanding in terms of both time and energy. Due to this, some of them are too busy to attend the sittings (Kamath, 2009; Baburaj, 2010). Rule 22 (3iii) of the Model Rules 2007 states that a person holding a full-time occupation which does not give him/her necessary time and attention to the work of the Committee, will not be considered for selection as a Chairperson or member of the CWC. From the data and qualitative information collected across State-level studies, it is clear that this requirement is not appropriately inquired into or cross-checked by the Selection Committee before confirmation of appointment into CWC.

Honorarium amount and disbursement: A second prominent factor directly determining attendance appears to be remuneration i.e. the honorarium given to Chairpersons and members on a per sitting basis. It is pertinent to point out here that Delhi CWCs which receive the highest honorarium amount per sitting in the country i.e. Rs. 1000 per sitting since December 2008, face fewer attendance issues as compared to other States with dismal attendance records, for e.g., Uttar Pradesh where no CWC member had, as of 2009 i.e. four years since CWCs were constituted, received a single sitting allowance. This issue of remuneration is explored in greater detail later on in this study.

It appears then that if the above three areas i.e., selection, remuneration and monitoring are appropriately dealt with, CWC attendance rates could significantly improve.

### **3.3.e. Management of cases during sittings**

Currently, there are no prescribed procedures in the Act or the Rules for management of cases during proceedings. The planning and organizing of sittings have been left to individual CWCs. This is not necessarily a bad thing since it provides flexibility and the possibility of using innovative procedures within CWCs based on the location. While some CWCs have embraced this freedom to effectively manage proceedings and case flow, others are seen to flounder and use inefficient/ inappropriate practices.

#### **i. Display board**

In Delhi, all CWCs have put up a board displaying names of CWC members, sitting frequency and time of sitting (Kamath, 2009). In Maharashtra, only the Mumbai City CWC puts up a notice of their sitting venue. A majority of the CWCs in the country do not appear to follow this procedure. While all the CWCs in North Karnataka have boards displaying names of CWC functionaries since 2004, their appointment period, date of retirement etc. (Baburaj, 2010), it is unclear whether sitting details such as dates and time are displayed.

The lack of display boards such as those put up in Delhi, can create serious gaps as it greatly

increases the possibility of CWC child referral sources not being aware as to where and when to present children in need of care and protection.

#### **ii. Style of sitting**

Research shows that in some CWCs, the Chairperson sits separately or with Chairperson and members sitting across from each other (Baburaj, 2010), while in some others, members attend to children individually during proceedings (Shekar & Vora, 2010). Section 29 (5) of the JJ Act states that the Committee should function as a bench of magistrates. While no specific seating arrangement is specified, some CWCs in Karnataka have been noted to follow a specific seating style wherein the Chairperson is seated in the centre with members seated on his/her left and right sides. This has been viewed as a more appropriate sitting style for the bench.

#### **iii. Management of case flow during CWC proceedings**

This includes prior preparation of the sitting plan, display of a list of cases to be heard on a particular day, the order in which the cases will come up before the CWC and a system of calling out the cases at the time of the sitting so that those attending the sitting are informed of their turn. The purpose would be to give order and structure to the CWC sitting so as to enhance the efficiency of the CWC and minimize the inconvenience faced by children and other stakeholders awaiting their turn. In this regard, the Mumbai City CWC, on its own accord, regularly puts up a list of the cases to be met in a serial order for each sitting. This is prepared by the CWC staff and shared with all the POs (Shekar & Vora, 2010). Based on a review of the available studies, a clear and simple procedure for managing case flow such as the one practiced by in Mumbai, has not been implemented by any other CWC.

#### **3.3.f. Child-friendliness**

The NALSA study reveals that most CWCs in the country are child-friendly (CWC S. No. 7). However, it does not specify the criteria by which this has been evaluated. Therefore, the given finding is questionable. The 2011 study goes on to state that in the national capital i.e. Delhi, the CWCs were found to be working in a non-child friendly manner with clerical and other staff also operating from the same room.

Rule 27 (11) of the Model Rules state that children should be provided a child-friendly environment during the proceedings of the Committee. However, 'child-friendly' is a subjective term that could be variously interpreted by CWC members or CWC monitoring bodies. In assessing whether the sitting venue had a child-friendly environment, nine different parameters were developed by the working group in the Maharashtra study. In descending order from most important to least important, these are:

- a) Adequate time given to children to understand and respond to proceedings
- b) Explanation provided to children regarding proceedings
- c) Reassurance offered to children
- d) Conversation with children to establish rapport
- e) Seating of children at the same level as CWC members
- f) Non-presence of police in uniform
- g) Well-lit room
- h) Availability of toys
- i) Attractive pictures in the room

Shekar & Vora (2010) found that the lack of physical space often poses a challenge to CWCs in playing their role as a child-friendly institution. For instance, in Amravati, the small size of the room forced children, family members and others to stand at the door while proceedings were conducted. In some other cases, CWC members seemed to be insensitive to the concept. In Pune, for instance, children sat on the floor while CWC members sat on chairs on the other side of the table. In Karnataka too, the CWCs have not made an effort to display child-friendly posters/ games (Baburaj, 2010). In Delhi, the lack of trained counselors, adequate number of trained welfare officers, lack of any assistance to overcome language barriers while interacting with children etc. have been identified as some of the resource constraints that have come in the way of establishing a child friendly environment in a CWC (Haq, 2012).

Some positive instances have also been noted such as the Nasik CWC where despite inadequate infrastructure, a cordial environment through child-friendly interaction is provided by CWC members and the Mumbai City CWC where POs prepare children and their

families before bringing them before the CWC (Shekar & Vora, 2010). There are also instances noted of CWCs collaborating with NGOs to help make the CWC premises more child-friendly (Kamath, 2009). The Bangalore Urban CWC ensured the setting up of a cubicle in one corner of the CWC room to provide privacy when members need to inquire into sensitive cases like child sexual abuse, relinquishment, marital discord etc (Nayak & Rajesh, 2007).

Overall, it is noted that Infrastructural constraints in most CWCs have also contributed to the inability to create a private space for meeting with the child. The presence of other institutional/ administrative staff and other children/ parents within the same room during proceedings in many CWCs researched, also exhibits a lack of sensitivity and a lack of privacy which in turn further contributes to a child-unfriendly atmosphere. Overall then, it appears that child-friendliness is an aspect that has been largely ignored during CWC proceedings.

### **3.4. CHILD REFERRAL SOURCES**

In this study, the term ‘child referral sources’ is used to refer to those who produce children before the CWC. Section 32 (1) of the JJ Act includes police, social workers, public spirited persons, voluntary organizations, and the child itself as child referral sources. Parents are not included in this list.

CWCs in Andhra Pradesh were unable to provide any data on referral sources as such data, even in a limited form, has not been recorded (HELP, 2010). The West Bengal study did not attempt to recover data on case referral sources or case types. The information compiled from the remaining studies reviewed provides some useful insights.

In Maharashtra, parents and other family members form the largest category of ‘child referral source’, a whopping 54.5%, many of who were guided to CWCs by NGOs. Surprisingly, children with families were found to be the largest category being brought before the JJ system, as compared to children without families. The second most frequent category of ‘child referral source’ is that of police and other law enforcement agencies, who mainly present street children, runaway children etc. before the CWC (Shekar & Vora, 2010).

Parents were also found to produce the maximum number of children before CWCs in the State of Tamil Nadu, due to various reasons such as poverty, difficult circumstances etc., followed by NGOs and police (SCOPE India & Thozhamai, 2011).

In Delhi, the key sources of referral in descending order of frequency are NGOs, police, and parents of children. In Karnataka too, NGOs are the most frequent child referral source; the police are active as a referral source in districts such as Bangalore and Mysore, while in other districts, police involvement is very limited. It is further noted that requests for admission into child care institutions by parents and other family members for education and residential purposes is a common phenomenon throughout the State of Karnataka. CWCs in Uttar Pradesh again have NGOs as their key referral source, but with police referrals being miniscule. A small number of cases in Delhi and Uttar Pradesh are referred to CWCs by the JJB and regular courts (Kamath, 2009). Public spirited persons and children themselves approaching CWCs as referral sources are extremely rare across all States reviewed.

A matter of serious concern is that a high number of children who fall in the category of CNCP are not brought before the CWC but are instead directly dealt with by other Government departments or NGOs. There are several instances of NGO-run Children's Homes/ Shelter Homes in Delhi, Uttar Pradesh and Karnataka without fit institution status who directly admit vulnerable children into their Homes without a CWC order. It is found that potential child referral sources, especially NGOs are often wary of presenting children before CWCs because they feel that the legal process is time-consuming, and are concerned about the poor rehabilitation strategies employed by CWCs, and Government Children's Homes (Kamath, 2009; Haq, 2012).

In Uttar Pradesh, it is found that children in various Government run child care institutions of the Department of Handicapped and Department of Social Welfare do not get produced before CWCs for their review or rehabilitation purposes. Most child labourers rescued by the Department of Labour (DoL) also do not get produced before the CWC. As per the DoL record, among the 1818 child labourers rescued by the DoL, only 22 (1.21%) children got produced before different CWCs functioning in the State (Kamath, 2009). A similar situation

is noted in Karnataka, though here, it's the CWCs which send child labour cases to the DoL under the false assumption that child labour cases do not come under their purview (Baburaj, 2010).

Moreover, it is evident that a large number of children who are victims of trafficking, sexual abuse/ harassment, and other forms of exploitation are not being produced before CWCs in Uttar Pradesh and Karnataka. Instead, there are instances of NGOs directly dealing with such cases even when procedurally these cases are required to be produced before CWCs. For e.g., a well-reputed NGO in Uttar Pradesh attempted to rehabilitate more than 150 cases of child physical and sexual abuse referred to them through various sources in a one-year period without producing these before the CWC. Further, due to the large jurisdictional coverage of Uttar Pradesh CWCs covering multiple districts, rarely do cases from the neighboring (but same jurisdictional) districts get produced before CWCs, except when cases are of such serious nature that they draw the attention of the media, district administration or police (Kamath, 2009; Baburaj, 2010).

The finding that public spirited persons and children themselves serving as referral sources are extremely rare across all States reviewed, points to the need for CWCs to reach out to the community and create awareness about the JJ System and the existence of the CWC as a competent authority for children in need of care and protection. It is vital that children too have access to information about the CWC in their district and how they can approach it.

Strong police and NGO involvement as referral sources in a majority of CWCs reviewed is a positive trend as it indicates improved coordination efforts between CWCs and these important stakeholders. The high frequency of parents as a child referral source however is a potentially disturbing trend that needs to be analysed in greater depth.

The available data shows that a large number of children are being brought in by parents citing economic reasons, seeking educational facilities and due to single parenthood. Thus, many children are gaining entry into the State's child care institutions even when they don't technically qualify under the CNCP categorization of the JJ Act (Shekar & Vora, 2010). Only in extreme cases will such children fall under CNCP and it is important that the JJ System be

prevented from becoming a programme for poverty alleviation. Thus, the disproportionately high number of such cases points to the need for strengthening community based alternate care programmes that can raise the capacity of the family to adequately support and retain a child, as opposed to seeking institutionalization. Active efforts are required to link the child's family to various State schemes for poverty alleviation, social protection and economic empowerment. Collaborative interventions and referrals to NGOs that provide relevant services within the district could prove helpful in strengthening the family's ability to assume full responsibility for the child

It is encouraging to note that based on the findings of the Maharashtra study, the Maharashtra DWCD developed a document titled 'Standard Operating Procedure (SOP) for CWC' in the State. Within this document, it is specifically stated "When the child comes into the JJ System, it is the role of the CWC to ensure effective 'gatekeeping' that will prevent unnecessary entry of the child into the care system, particularly institutionalization and ensure access to services for those children who are vulnerable." To help with this role, "the SOPs provide for systematic assessment of the child's situation and makes sure that all considerations and procedures are adhered to before arriving at a decision." (2009: 1,2). This is an important indication of the kind of value that even the most basic kind of data, in this case – a compilation of child referral sources for a particular period, can add to policy decisions, when it is compiled with and analysed effectively.

### **3.5. CASE CATEGORIES/ REASONS FOR CHILD REFERRALS**

The antecedents of the child is an important variable that needs to be analysed in order to better understand the overall as well as specific circumstances that force children/ stakeholders to seek care and protection for the child, from the State. The analysis of such data at a State or Country level can prove to be a rich source of information as it could reveal the prevailing trends of child vulnerabilities. This information would help the JJ System appropriately assess whether it addresses the causal factors that lead children to enter the system. Thus, data compilation of this kind is essential for developing more appropriate policy plans/ policy decisions that can cater more specifically to the well-being

of children. Unfortunately, in the CWC/ departmental records of a majority of States, such data is found to be either completely lacking or hugely incomplete.

In Maharashtra, though significant gaps were noted in recording and maintenance of case data, the researchers attempted to identify and define categories of case types in order to analyse the available data. It was found that of the 1783 children that appeared before CWCs, an overwhelmingly large proportion of 40.5% children were brought into the JJ System because they belonged to high-risk families. This included children whose parents are dead, terminally ill, have mental health problems or are incarcerated, and those who are abandoned or neglected by one or both parents. Another 29% of children were from families that are poor and unable to fend for their children's basic needs due to poor economic circumstances. However, it needs to be stated here that economic criterion is not recognized by the JJ Act as a valid category under which CNCP can be placed. 19.5% of children appeared before the CWC citing reasons of difficult circumstances, which in this case, included children who are victims of abuse and sexual exploitation, victims of economic exploitation, missing children, street children, HIV affected, victims of natural disaster etc. 2% have also been noted to enter the JJ System in order to pursue education. Once again, need for educational facilities is not recognized by the JJ Act as a valid category under which CNCP can be institutionalised (Shekar & Vora, 2010).

In Tamil Nadu, Karnataka, and Uttar Pradesh, reliable/ accurately recorded data from CWCs is not available. However, the category of 'runaway cases' were found to be very high in number in all three States, though it is not specified as to who are included within this category. In Delhi and Uttar Pradesh, 'missing children' is another category under which a large number of children who appear before the CWCs are placed. Delhi further has a high number of child labour cases as a result of numerous rescue operations conducted (SCOPE India & Thozhamai, 2011; Baburaj, 2010; Kamath, 2009; Haq, 2012).

**Lack of standardization in case type categorization** appears to be one of the factors contributing to ambiguous and unclear data records. In Tamil Nadu, of the 834 cases produced before CWCs in the year 2010, a significant number i.e. 257 (30.8%) have been categorized as 'children admitted by parents' as the basis for entering the JJ System (SCOPE

India & Thozhamai, 2011). The purpose for clubbing this within 'types of cases' either by the researcher or the CWCs is unclear as 'admission by parents' cannot be accepted as a valid case type or reason for referral. The second highest was found to be 'runaway children' with 22.2% falling under this category, followed by 'recovered children' at 19.5%. The other categories were: destitute children (7.4%), begging children (3.8%), trafficked children (3.3%), child labour (2.4%), and missing children (2%). 16.4% children did not fall under any of the categories (SCOPE India & Thozhamai, 2011). None of these categories have been adequately defined or elaborated upon; for example, it is unclear as to what constitutes 'runaway cases' or 'recovered cases'.

In Delhi, the study undertaken by Haq (2012) found that there is no clear data on 'reasons for referral', primarily because there is no standardized categorisation of cases being presented at the CWCs. For example the different nomenclatures presently being used for cases where young girls and boys run away to get married are noted to be 'love cases', 'runaway cases', 'kidnapping cases' etc. There appears to be a lot of ambiguity when it comes to using the terminology "abandoned" or "missing" children for any child that has been found by a stakeholder, whether the child got lost, or separated from parents, or ran away from his/her home. Such children therefore may not, in reality, be 'abandoned' or 'missing'. An arbitrary use of these categories results in an inaccurate picture of the types of cases being presented at any given CWC.

In addition to certain terminologies being used arbitrarily, and synonymously to describe some child cases, cases in Delhi (as may also be the case in other States) are sometimes simultaneously lumped into two, three or more different categories. This confusion is apparent in all Delhi CWCs. For example, some CWCs use the category of 'rescued child' to represent a trafficked child, a kidnapped child or a case of child labour. It then becomes imperative to decide on whether there is a need to have a sub- category/classification of cases within the category of 'rescued children'. While it is understandable that at times it becomes difficult for a CWC to clearly classify a case under any one category as a child could have been both kidnapped and raped, it is important to prevent double/ multiple counting of such cases so as to avoid confusion.

Overall, though clear accurate data is sorely lacking across most State studies, the highest number of children are found to fall under the case type categories of 'high-risk families', 'runaway', 'missing' and 'child labour'.

### **3.6. PROCESS AND NATURE OF CWC DECISIONS**

#### **3.6.a. Nature of decisions**

Decision-making in CNCP cases, keeping in mind the best interests of the child, is by far, the most important and possibly the most difficult function of the CWCs. The process of decision-making in each case is tedious and intense, requiring an exploration of various aspects surrounding the child; it begins with the entry of the child into the JJ System followed by the process of inquiry and due diligence before a decision can be arrived at. Needless to say, CWC decisions have a significant bearing on the child's life, often determining not only the immediate but also the long-term future of the child.

Decision-making in the CWC is a collective process that takes into account the views of the child, the findings of the inquiry report, and the statements of the parents and other stakeholders. It is expected that the multidisciplinary profile allows for the consideration of differing perspectives before a final order is made. The decision of the CWC is made as a bench, with the Chairperson retaining the veto power.

A case decision may be finalised, or in other words, a case may be disposed of in a number of different ways. Within the JJ Act and the rules prescribed there under, the key measures for ensuring care and protection for children are restoration, rehabilitation and social re-integration, with institutionalization being the last resort. The range of options within this include restoration of children to their family, restoration along with orders for supervision or counselling, alternative forms of care such as Sponsorship, Foster Care and Adoption, Institutional Care and After Care.

In most the studies reviewed, the most commonly used option is noted to be institutional care. The option to restore children back to their families after adequate social investigation is used but less frequently. Adoption is often considered for the abandoned, surrendered

and orphaned children, though CWCs in some States are often unclear about the appropriate procedures to be followed in such cases. Due to limited opportunities within the current institutional setup, a large number of institutionalised children are unlikely to have developed adequate skills to earn a living at the age of eighteen years. In spite of this, the option for After Care Home placement is used rarely, largely because such After Care Homes are extremely few in number and in many districts, non-existent. The option of Foster Care is used even less frequently, with many CWCs never having used this option. The option of Sponsorship has almost never been considered by CWCs.

Several factors such as unavailability of adequately functioning child care institutions, shortage of competent staff attached to the CWCs for thorough social inquiry etc challenge and delay the process of case inquiry and case disposal. CWC being the 'final authority' in this regard is therefore often unable to discharge its duty effectively and judiciously.

In many cases, it appears that CWCs are left with fewer options for disposal of cases due to the prevailing less than ideal CWC set-up and State conditions for child protection. But the data obtained from the studies show that possible alternate options that could work even within such a situation, are often not explored by CWCs either due to lack of awareness or due to rigidity in thinking that prevents the use of innovative options. It is noted that most CWCs often do not go think beyond institutionalisation, family or adoption, thereby limiting the possibilities for ensuring a dignified future to children.

Analysing the decisions made by CWCs is extremely important in order to progressively evaluate and improve the functioning of the JJ System. This requires that data on case disposals be regularly maintained and made available by each individual CWC as well as by State departments. This responsibility is unfortunately, not being taken as seriously as it should be by either party. Of the seven States studied, none of the DWCDs had complete data or accurately recorded data on CWC case disposals. Where researchers attempted to obtain such data from CWCs, many were unable to provide the same due to poor documentation. As a result, absolutely no data on case disposals is available from Andhra Pradesh, while in Tamil Nadu, the limited data available is itself found questionable by the researcher. The studies of Maharashtra and Delhi have compiled data based on partially

incomplete information, while the remaining studies have mainly provided some qualitative data. It is cautioned here therefore that the following qualitative analysis is based on the incomplete information made available through the State-level studies. Within this context, the first case disposal type that is explored here is restoration.

#### **i. Restoration to family**

In Maharashtra, a significant 34% of children have been restored during the sixmonth period in 2007 for which data was collected. While cross-border repatriation cases are known to be difficult due to extensive bureaucratic processes, 68% of such cases were repatriated through Maharashtra CWCs during the same period. These are relatively high numbers for successful repatriation and therefore an encouraging trend (Shekar & Vora, 2010). However, it needs to be pointed out here that background information concerning quality of social inquiry and whether follow-up was maintained or not for these restored cases, is not available.

If restoration to family is the primary goal of CWCs, then Delhi's performance in this regard is even better with 40% children restored back to their families during the period for which data was collected. Given the shortage of care and protection facilities for children, CWC members in Delhi are noted to have a strong tendency to restore children back to their parents/guardians irrespective of the conditions in their family/home and even 'counselling' here is focused on convincing the child to go back home. Numerous instances of hurried restorations by Delhi CWCs that worked against the best interests of children have been identified by researchers. Instances of children being restored to abusive families after a rudimentary inquiry, without even a supervision order to ensure follow-up have been reported (Haq, 2012).

In Uttar Pradesh, the existence of CWCs is found to have increased the number of children being restored back to their families, though a SATHI status report shows that there still exists several other children within the UP child care institutions who are eligible for immediate restoration. The involvement of NGOs such as CHILDLINE in CWC restoration cases has helped improve the quality of procedures followed as well as ensured post-

restoration follow-up to a certain extent. The required proof of identity of the claimant's family is usually verified prior to restoration.

In West Bengal, similar to Uttar Pradesh, CWCs have coordinated well with NGOs with regard to restoration/ repatriation efforts. Several cases of persistent efforts in complex cases, for example, two separate cases of repatriation of mentally challenged children after eight years, several interstate and international repatriation of trafficked minors etc. have been recorded. However, a majority of potential repatriation cases remain frozen due to complex/ unclear procedures and bureaucratic hurdles.

Of the 18 CWCs in Tamil Nadu, information regarding restoration disposals is available from only 3 CWCs, where 93 of 217 children i.e. about 43% of total case disposals fall under this category (SCOPE India & Thozhamai, 2011). This again is a high percentage. No further details are provided.

It is true that CWCs should as far as possible, restore children to a well-functioning family environment. A high percentage of restored cases is often likely to be read as a good sign of the State providing a conducive environment for child protection. However, it is essential here to understand the situation and procedure in which the child was restored; whether an adequate social inquiry was conducted before restoration and whether a follow-up of the restored child was maintained for an adequate period post restoration. If this isn't the case, then the State (as are the CWCs) is faltering in its responsibility. CWCs need to ensure that restoration does indeed serve the best interest of the child rather than reinstate the status quo, while at the same time keeping in mind that institutionalization is not the only viable option.

The above analysis also points to the need for clearer procedures and protocols for CWCs when it comes to repatriation across borders. The transfer of children who are foreign nationals is facilitated at the level of the Commissioner and Secretary, DWCD and requires the DWCD to coordinate with other departments and the embassy of the home country of the child. Though necessary, this is a time-consuming and often frustrating process. Establishing clearer protocols for CWCs in the initial stages and during the waiting period is

necessary so that the children falling under this category are provided adequate opportunities and do not suffer.

## **ii. Exploring alternate care options**

As mentioned above, the JJ Act offers a range of additional options for care, protection and rehabilitation of children such as Sponsorship, Foster Care, Adoption and Institutionalization. Where restoration to family does not appear viable, it is important that all other possible avenues be considered and long-term Institutionalization be used as the last resort. However, the data obtained from studies shows otherwise.

In Maharashtra, all CWCs are seen to be involved in promoting alternate care options. However, this is largely limited to declaring children free for adoption. Non-institutional alternative care options were declared for only 2% of whom 1.75% were declared free for adoption and the remaining 0.25% (i.e. merely 3 of 1773 cases studied) were placed in Foster Care. The option of Sponsorship has never been considered. An overwhelming 52% of the children coming before CWCs were institutionalized (Shekar & Vora, 2010).

In Delhi, a comparative table of case disposals show that while 81 children were institutionalized, only 3 were sent to Foster Care and none were provided Sponsorship. A reasonable number i.e. 29 children were declared free for adoption (Haq, 2012).

Within Institutionalization, it is important to point out that there can be two broad categorizations made: short-term and long-term. Institutionalization orders are considered short-term when they are given for a period of one year or less, at the end of which the decision can be reviewed and extended if found necessary. Long-term Institutionalization is usually up to the time that the child attains adulthood. A short-term order is preferable for two reasons. First, it is highly possible that the circumstances of the child has changed in the interim and another more appropriate rehabilitation option such as restoration to family, sponsorship etc. has opened up. Second, short-term Institutionalization followed by a review ensures that State resources are preserved for those children who need it most at any given point in time.

Unfortunately, from the information included in the Maharashtra and Uttar Pradesh studies, it appears that long-term Institutionalization is the default option used. There are instances in Uttar Pradesh where such long-term orders have been given even prior to obtaining a Social Investigation Report (SIR). In Maharashtra, an overwhelming 82% of children from those institutionalized are given a long-term order. This scenario needs to be reversed in the least. Ideally though, the practice of regular periodical reviews for all institutionalized children needs to be regularized across all CWCs.

In India, the concept of fit person for Foster Care is new for most CWCs. An exception to this is the Bangalore CWC which has declared 50 people as fit persons to whom children are regularly sent for short stay (Baburaj, 2010). West Bengal CWCs have used the Foster Care alternative sparingly. Two such specific cases have been recorded (Ghosh, 2011). In Uttar Pradesh too, Foster Care is noted to have been rarely considered, though there appears to be an increase in the number of children being declared free for adoption (Kamath, 2009).

Under the Integrated Child Protection Scheme, Sponsorship funds have been allocated for States/UTs to claim. Under ICPS, the guidelines for Sponsorship for children focus on the out of institution rehabilitation of children in child care institutions. The ICPS Guidelines state, *“To begin with the scheme will focus on deinstitutionalisation of children already residing in child care institutions. Hence, in the first phase of the implementation of the Integrated Child Protection Scheme, ICPS will give priority to Family based sponsorship for institutionalized children, who have either both or at least one parent alive, in order to facilitate their re-unification with their biological family”* (ICPS, 2011: 2). As per the Supreme Court order dated 18/ 04/ 2011, once the CWC identifies suitable cases and orders Sponsorship for the child or placement of the child in Foster Care, a copy of the order can be marked to the District Child Protection Society (DCPS) for release of funds and to the Specialised Adoption Agency (in case of Foster Care) for periodical follow-up and monitoring reports (Writ Petition (C) No. 51 of 2006: Section 62).

Despite the many benefits and financial allocations, Sponsorship is not a popular mode of preventing vulnerability and separation of children from their parents and Karnataka is the only state that has a well-established and long-standing child Sponsorship scheme (NCPCR

National Consultation Report, 2010). It is unfortunate that most States/UTs have either not established a Sponsorship programme under the ICPS or have not asked for financial sanctions. West Bengal and Bihar have for instance not claimed any grants under Sponsorship while Uttar Pradesh, Madhya Pradesh and Rajasthan have been sanctioned Sponsorship grants for all their districts for various lengths of time but are yet to commence the Sponsorship programme. Jharkhand asked for Sponsorship grant for three districts of Gumla; Simdega & Bokaro as a pilot initiative (NCPCR, 2013).

No specific data on number of CWC case decisions of sending children to After-Care Homes, post age eighteen years is available in any of the studies, though after-care facilities have been noted to be inadequate in terms of coverage as well as facilities offered in most parts of the country.

On the whole, it is quite clear from the available data of CWCs across the different States that the alternate care option of Sponsorship is almost never considered, Foster Care and After Care are rarely considered, declaring a child free for Adoption is on the increase, while Institutionalization is the most common alternate care option utilized by CWCs.

### **iii. Case types requiring urgent procedural clarity**

Four case types require special mention as these have been noted across studies to create a high level of confusion and frustration for CWC functionaries. These include adoption, children with special needs, transfer, and child labour cases.

#### **Adoption**

Specialised Adoption agencies (SAAs) are not available in several districts. As of 2008, Adoption agencies existed in less than 15% of districts in India; these were mainly present in metros and large towns (Nayak, 2008). **Over the past five years, a significant improvement is noted in this figure. As of March, 2013, there are 254 SAAs which undertake only In-Country Adoptions and 72 SAAs which undertake both In-Country as well as Inter-Country Adoptions, totalling to 326 SAAs across the Country (CARA website). However, this implies that over 300 i.e. about 50% districts in the Country still lack SAAs.** This causes confusion and inconvenience as cases would then have to be transferred to a district that has an Adoption

Agency, leading to significant delays in declaring a child free for adoption. Further, the lack of an adoption programme in the majority of districts has led to a thriving practice of children being informally placed by hospitals/nursing homes/private health clinics directly with families thus denying them any legal safeguards.

CWCs play the vital role of declaring a child legally free for adoption thereby releasing the child for adoption placement. A number of CWCs, however, have had difficulties in conceptually understanding and dealing with the nuances of adoption procedures. For instance, abandoned babies sent to the Hubli CWC in Karnataka made no effort to follow the legal procedures for tracing the parents (Baburaj, 2010). Some CWCs in Maharashtra perceive their role even within the actual adoption process (Shekar & Vora, 2010). Lack of awareness amongst key stakeholders in this regard is also evident. For instance, there have been cases where the police in Uttar Pradesh have given away orphaned or abandoned children for adoption illegally (Kamath, 2009). In West Bengal, while a few CWCs have successfully managed adoption/ abandoned cases, a significant number of CWCs are unclear on the actual procedures to be followed (Ghosh, 2011).

Parent/s who come in to surrender their child for Adoption are rarely counselled on other options available to them such as short-term Institutionalization or Sponsorship options. More often than not, there are no follow-up mechanisms established by CWCs once a child is declared free for adoption and sent to an adoption agency. Adoption agencies are almost never visited by CWC members in order to ensure that the children are cared for and protected. Therefore, even though such case disposals are on the rise, there is lack of clarity in protocols to be followed, which can create an extremely undesirable scenario. Clear guidelines in declaring a child free for adoption and the follow-up thereafter is an urgent requirement.

### **Children with special needs**

There is a severe lack of residential or non-residential services and facilities for children with special needs. These include for example, children who are physically challenged, mentally challenged, HIV affected, addicted to drugs etc. As a result, most children are sent back to

their families without being provided any help. This is a severe failure of the country's child protection system

### **Transfer cases**

Prompt transfer of cases is a rarity. This is especially so in the case of interstate and international transfers. Extreme delays in transfer caused due to absence of a police escort is a frequent complaint of CWCs.

CWCs face as well as sometimes cause several hurdles in the transfer process. While Rule 78 (4) of the Model Rules, 2007, clearly state that case files and records of the child shall be sent along with the child, the case files sent rarely contains inquiry details and details of rehabilitation and processes followed in the case prior to the transfer. There therefore appears to be no clarity on the ownership of the inquiry and the content of documentation that is to be shared between the transferring and receiving CWCs.

In Uttar Pradesh, several instances of mass transfers of children have been conducted from one Government child care institution to another without preparing the destination child care institution, thereby inconveniencing both the destination institutional staff as well as the transferred children. In West Bengal, CWCs have indicated that the number of cross-border cases awaiting transfer to the home country is extremely high and therefore difficult to manage with the existing resources.

Cases have also been recorded in Delhi where interstate transfers have taken place without the involvement of CWCs but rather through NGO-NGO coordination. In a specific case, the transferring NGO merely informed the concerned CWC through a report after conducting the transfer (Haq, 2012). Whatever may have been the reason for an NGO to conduct such a transfer while being aware of but not informing the competent authority for this purpose, it is a matter of serious concern. It is also an indication that the civil society does not consider the CWCs capable of taking prompt action to help children in need of care and protection.

The issues surrounding transfer cases require immediate resolution. The best interests of a large number of children are being compromised due to incoherent processes that are

tedious and cumbersome. In addition to providing clearer guidelines, policy level changes at the State and Central levels may also need to be considered to smoothen the process and alleviate such lengthy delays.

### **Child labour**

Child labour cases seem to cause the most confusion amongst all case types, mainly due to confusion of roles and responsibilities between the CWCs and the labour department. For instance, since registration of a child labour case under the Child Labour (Prohibition and Regulation) Act, 1986 is primarily the responsibility of the labour department, CWCs sometimes prefer not to intervene or come in the way of the labour department.

Child labour rescue cases are not produced before the CWCs in Karnataka and Andhra Pradesh. In Karnataka, a number of CWCs believe that child labour does not come under their purview while in Andhra Pradesh, the orders issued by CWCs are blatantly ignored by the labour department.

CWC members are often not clear about the legal provisions or laws under which child labour cases can be booked. In addition to the Child Labour (Prohibition and Regulation) Act, other legal instruments such as the Immoral Traffic Prevention Act (ITPA), provisions of CrPC and relevant sections of the IPC can also be applied. Combining different laws with the JJ Act significantly expands the protective measures for children rescued not only from the labour market, but also child beggars and trafficked minors. Examples of creative approaches that have been innovated by the Mumbai City CWC are detailed below. It is encouraged that these be replicated by other CWCs and more importantly that CWCs develop such other creative processes that benefit children in need of care and protection.

#### **iv. Innovative case disposals**

The Mumbai City CWC developed a unique solution to restore child labourers back to their families, while at the same time ensuring that they do not return to the labour market, by getting a bond with a financial surety signed prior to restoration. This surety by way of a fine acts as a deterrent for employers not to employ children. Employers are also encouraged to make a contribution towards rehabilitation in the form of a National Savings Certificate that

can be accessed by the child when he/ she attains age 18 years. The amount is determined based on the age of the child and the length of employment.

In cases where parents are the employers themselves, the Mumbai City CWC includes a surety of Rs. 3000 to Rs. 5000 in the bond. If the child is found working or begging again, the bond is executed and the CWC collects the surety amount as a fine that is deposited in the treasury in the name of the child. This action serves as a deterrent for parents not to force their children into work again.

It is expected that once CWC members are provided with a basic set of guidelines to follow, it will be easier to modify and use them creatively and at appropriate times so as to accrue advantages for the child.

#### **v. Political interference in CWC decisions**

Political interference in CWC decisions such as political leaders forcefully demanding release of specific children placed in child care institutions, politicians preventing CWC intervention in illegal adoption cases etc. have been noted to severely debilitate CWC efforts at rehabilitation, in addition to also de-motivating CWC functionaries and creating a sense of helplessness. Such instances have been specifically noted in Andhra Pradesh, Karnataka, Maharashtra and West Bengal. In a majority of such cases, the CWCs have been unable to resist political pressure with the result that children get sent back to unsafe environments.

#### **vi. Time taken for decision-making and case pendency**

Rule 28(4) of the Model Rules mandate that the CWC's inquiry must be completed within four months. However, in the absence of any review mechanisms in place, data on pending cases is not available from the State studies of Andhra Pradesh, Karnataka, Uttar Pradesh and West Bengal.

In Maharashtra, 4 of 1773 cases registered in 2007 i.e. less than 0.25% cases were pending at the time of the study, indicating that these cases were pending for over two years. But a high 25.25% of the total cases had faced a delay beyond the four month period. In Tamil Nadu, an estimated 1202 of 1384 registered cases were disposed, indicating a case

pendency of about 13% (SCOPE India & Thozhamai, 2011). In Delhi, 1712 of 7717 i.e. about 22% cases were found to be pending at the end of Jan 2010 (Haq, 2012). The Delhi DWCD has recently directed its CWCs to ensure that case disposals do not exceed the time period of one week to 10 days (Deccan Herald, 2012, September 27).

Though data is limited, it appears that a majority of registered cases are usually disposed within the prescribed 4 month period. However, when approximately a quarter of the cases face delays, it is to be taken as a matter of serious concern with much scope for improvement.

In order to develop a complete picture that could help bridge the gaps, it is equally important to examine the main reasons for case pendency. Though, none of the studies have provided any specific data on pendency case types, some of the key causes for case delays/ pendency have been noted to be tedious time-consuming processes involved in interstate and international transfers, absence of a Juvenile Aid Police Unit (JAPU) Officer or police personnel to escort children and delays in obtaining SIRs from overburdened POs.

### **3.6.b. CWC orders and case procedure guidelines**

There appears to be a high level of confusion in ensuring legal validity of final case orders. Rule 26 (4) of the Model Rules mandate that the CWC order be signed by at least two members, including the Chairperson for final disposal of a case. However, CWC records show that at least in Uttar Pradesh, Delhi, Maharashtra and Karnataka, a significant number of final orders are signed only by the Chairperson, who sometimes takes a unilateral decision without ensuring a quorum (Kamath, 2009, Baburaj, 2010; Shekar & Vora, 2010, Haq, 2012), bringing into question the legality of such orders.

Numerous instances and case studies have been cited in the various State-level reports highlighting improper inquiry and decision-making procedures of CWCs, and confusion amongst CWC members regarding types of decisions/ orders that they can legally prescribe. A review of the studies show that lack of clarity on procedural requirements appears to be particularly high in child labour, transfer and adoption cases.

The Mumbai City CWC, out of about 135 CWCs reviewed across studies, is the only one which is noted to have on its own accord devised a set of basic protocols to be followed when dealing with different case types, thereby bringing a certain level of uniformity in their functioning. Though it is appropriate that each case be dealt on its merit, some baseline protocols that can act as guidelines for CWC members to execute an efficient and just inquiry process and restoration/rehabilitation plan for each child is urgently required. At the time when the State-level studies were conducted, CWCs in none of the States were given standardised case procedures to be followed.

This has evidently resulted in a severe lack of clarity amongst CWC members regarding operationalization of the different sections of the Act and procedures to be followed in order to arrive at decisions. This has not only caused significant delays during the inquiry process, but has also many a time adversely affected decisions made, at times even rendering questionable the legality of certain decisions. The Maharashtra SOPs for CWCs developed in 2009 took cognisance of this and has detailed out the procedures that are to be followed by the Maharashtra CWCs as well as provided formats for common orders. While no qualitative study has been conducted in Maharashtra post the availability of the SOPs, it has without doubt helped clarify several conceptual and procedural confusions in CWC functioning within Maharashtra. A similar step by other States is likely to prove beneficial. The Delhi and Karnataka DWCD is currently in the process of forming SOPs for different case categories.

### **3.7. FULFILMENT OF CORE CWC RESPONSIBILITIES AND FUNCTIONS**

It is outside the scope of this study to explore all CWC functions pertaining to the JJ Act mainly because only certain important aspects have been dwelled upon in the reviewed State studies. The most crucial features that have been examined by more than two State studies and that have a significant bearing on CWC efficiency and child protection are analysed here.

### **3.7.a. Case monitoring and follow-up**

The practice of monitoring and reviewing cases is often perceived as a bureaucratic requirement by CWC functionaries (Shekar & Vora, 2010). This is an incorrect perception that needs to be changed through appropriate awareness training.

CWCs are required to call for progress reports during the course of inquiry, when the child is placed in short-term care or long-term care. However, Delhi CWCs show no regularity in seeking or filing such reports. During a child's stay in institutions, Delhi CWCs are noted to be heavily dependent on verbal reports of the child's progress by welfare officers at the time of the child's production. As a result, several files lack written records thereby creating problems in understanding case continuity and progress. Since most children are also "counselled" by welfare officers, the counselling reports are mainly about the status of the child rather than the child's mental well-being. Further, in several cases, the Welfare Officers interchange progress reports with inquiry reports, which is unacceptable. Counselling and progress reports by NGO social workers, though fewer in number, are found to be far more regular and more appropriately recorded (Haq, 2012).

Appropriate follow-up in both Maharashtra and Delhi is much weaker when children are committed to long-term institutional care rather than short-term (Haq, 2012; Shekar & Vora, 2010). It is often assumed in such cases that the child's responsibility and care plan rests with the Government/ NGO institution in which the child is lodged. Therefore, CWC involvement is usually minimal here, which could prove to be a massive disadvantage that prevents children from being optimally rehabilitated.

In many CWCs of both Karnataka and Uttar Pradesh, follow-up mechanisms in several cases are found to be either absent or extremely poor. A majority of CWCs in Karnataka have never utilized the services of CWOs in police stations for conducting social inquiries (Baburaj, 2010; Kamath, 2009). A periodical review of institutionalized children's care plans are rarely undertaken or supervised.

Follow-up post restoration is extremely poor in most States due to lack of adequate number of welfare officers or lack of coordination between CWCs and NGOs. In Delhi, over 93% of restored cases are not followed up on.

Overall, if these findings are to be generalised, there is a severe lack of adequate follow-up and monitoring mechanisms followed by CWCs. Children committed to long-term institutionalization appear to be the most disadvantaged, while restored children are the most neglected. This lapse is sometimes caused due to reasons beyond the reach of CWC members such as inadequate human resources, lack of cooperation by other stakeholders etc; it could be a result of incorrect perceptions viewing review processes as unnecessary and bureaucratic; at other times, it is lack of clarity or a lack of interest in performing this role.

### **3.7.b. Ensuring availability during non-CWC hours**

Rule 27 (4) of the Model Rules state that a child may be produced before a single CWC member during non-sitting hours, so as to ensure that the child is placed in safe custody, till such time that the child can be produced before the Committee. However, the ambiguous nature of this rule has created tremendous confusion and frustration amongst all stakeholders involved.

In Delhi, police officers frequently complain that CWC members are not even available on the phone after office-hours; even though child care institutions are supposed to admit children without written orders, institutions do not easily do so without clear CWC orders. Thus, there have been cases where children have spent the night at the police station, which is a direct contravention of the JJ Act and violation of the child's right to immediate shelter and protection, a situation further worsened when the child in need of care and protection is a girl.

In Karnataka, children are not produced before the CWC during non-sitting hours. In some districts, the Chairperson or member is merely informed over the phone. In Andhra Pradesh, a majority of CWCs follow no specific procedure due to lack of clarity. But some have

developed their own methods to counter this dilemma. These include having stakeholders report to CHILDLINE, arranging for the child to be placed in appropriate institutions for temporary care and protection without a CWC order, and issuing oral instructions over the phone.

CWCs as well as receiving institutions are unclear whether CWC orders given over the phone are legitimate. At least one of the CWC members is expected to be available for children at any given point in time. Considering that members are functioning on a part-time honorary basis, this may not always be possible, or members may not always feel inclined to do so, especially when cases are produced post midnight. For such situations, the Model Rules of 2007 have given clear provisions that many of the stakeholders seem to be unaware of. Rule 27 (5) states that where none of the CWC members are accessible, a child can be taken by an NGO, CHILDLINE or police to an appropriate institution registered under the Act and placed in such institution till the time of production before the Committee. It is important to point out here that refusal of institutions to admit children in the absence of written orders from the CWC, once again is a clear violation of a child's right to immediate protection.

### **3.7.c. Police complaints and FIRs**

Rule 27 (9) of the Model Rules directs CWCs to file a police complaint and First Information Report (FIR) in cases of missing children as well as matters of violence, exploitation and abuse of children.

All CWCs in Delhi have assisted in the lodging of police complaints and FIRs. However, it is noted that FIRs have not been filed in some missing and child labour cases. The majority of CWCs in Maharashtra, Uttar Pradesh and Karnataka have also failed to direct the police to file FIRs in CWC cases falling within Sections 23, 24, 25 and 26 of the JJ Act, where prima facie there has been gross abuse of children. Filing FIRs in such cases would ensure that child victims get justice under the Criminal Justice System. It further increases the likelihood of children who are found missing or have run away being restored to their families. This role of the CWCs should therefore be highlighted during initiation trainings.

### **3.7.d. Identifying 'fit Institutions/ persons' and monitoring role of CWCs**

As per Rule 25 (k, l, p & q) of the Model Rules, CWCs have many important roles to play besides the sittings and case decisions. CWCs are the competent authorities for recommending fit institutions to the State Government and declaring fit persons within their jurisdiction. They are also to visit and review the condition of children in all the child care institutions and adoption agencies where they have sent children to, at least once in three months, and suggest necessary action where required. In addition, an extremely important role that is rarely mentioned is the monitoring of all associations and agencies within the CWC jurisdiction that deal with children in order to check on the exploitation and abuse of children. Therefore, CWCs are wrongly perceived as being only quasi-judicial bodies which hold sittings. Rule 25 makes it clear that CWCs are to spend a reasonable number of work hours being mobile in order to ensure that children are provided a protective environment throughout their jurisdiction.

Currently, a large majority of CWCs are defaulting on the above mentioned responsibilities. In fact, none of the 135 CWCs covered across the seven State studies fulfil all the monitoring responsibilities as prescribed by the Act. This is appalling considering that CWCs have been in existence for nearly a decade.

#### Recommending/ declaring 'fit' status: Institutions and Individuals

Delhi is the only State where the majority of CWCs participate in the certification process of institutions. However, these CWCs have expressed disappointment as they feel that the State department has not acted on the contents of their reports.

In Karnataka, only three of twenty five CWCs have ever recommended fit status of institutions to the State Government and only one of these have declared individuals as fit persons (Baburaj, 2010). In Maharashtra, only one of eight CWCs has participated in the process of recognition and certification of child care institutions, with none having identified fit persons (Shekar & Vora, 2010). In Uttar Pradesh, not a single fit status recommendation

or inspection report has been submitted to the State Government (Kamath, 2009). These numbers clearly signify a huge lapse in CWC responsibility.

A number of CWCs, especially in Andhra Pradesh, West Bengal, Uttar Pradesh etc. have complained about the scant existence or absence of fit institutions in their districts. For instance, over 35% districts in Uttar Pradesh do not have a single child care institution run either by the Government or an NGO with fit status (Kamath, 2009). As per a 2010 centrally compiled data obtained from State Governments, a majority of the States studied do not have a single Government Children's Home within their jurisdiction. This thereby reduces alternatives for rehabilitation of children. The lack of initiative in recognition and certification of fit status to institutions and persons across States is therefore surprising, as it could have helped alleviate this problem.

#### Monitoring of 'fit institutions' and other child-related agencies

In order to ensure that children in need of alternate care reside in institutions which provide quality standards, there is a need to register and license all institutions and monitor their services periodically. While approval of fit institution status and licensing is the responsibility of the State Government, CWCs are responsible for recommending 'fit institutions' to the DWCD and are to periodically review the performance of such institutions.

But monitoring of child care institutions and other child-related agencies is another area taken far too lightly by CWCs. In Tamil Nadu for instance, there are CWCs that have not visited a single child care institution within their district, and the other CWCs that have conducted inspections have usually done so only for the institution that they are attached to. In Maharashtra, none of the CWCs visit institutions within their jurisdiction to monitor their functioning.

Even more distressing is that several State DWCDs too appear to not take this monitoring requirement seriously that could greatly help prevent child rights violations within child care institutions. The NALSA 2011 nation-wide study shows that a majority of CWCs are not even provided with a list of recognized child care institutions (CWC S. No. 12). The State-level

studies have largely reiterated the absence of any such lists being provided to CWCs. This despite Rule 27 (16) of the Model Rules stating that a list of all recognized child care institutions along with their capacity and appropriate facilities, a list of all child related resource services and a list of all CWCs across the country shall be provided to each CWC by the District Child Protection Unit or State Government.

It is encouraging to note some rare positive instances. Two Delhi CWCs have worked out informal methods to help achieve its target of inspecting each child care institution on a quarterly basis; one has developed a fixed timetable for inspections along with duty chart, while another has designated the responsibility to one CWC member. However, a notice sent by the Delhi DWCD in September 2012 directs that at least two members have to visit Children's Homes for inspection and recommendations (Deccan Herald, 2012, September 27).

However, the role of the CWC in reviewing services for children within their jurisdiction such as anganwadis, hostels, 'ashram shalas' etc. that provide services to children and where there is a likelihood of child protection violations taking place, are currently completely ignored by all CWCs concerned. It is important to remember here that a key function of the CWC as per Rule 25 (c) is to reach out to children in need of care and protection who are either not produced or not in a position to be produced. It is therefore essential for CWCs to monitor these spaces to ensure that proper care and protection is being provided to these children, thereby keeping a check on and preventing any possibility of abuse and exploitation.

It is important to evaluate the possible reasons for the current situation and lapse in responsibility. A shortage in human, time and material resources is undoubtedly a significant handicap. Across the States, inspections are not planned or prioritised by members due to several factors such as high case loads, low member attendance, NGOs/ child care institutions located in distant places, lack of transportation facilities etc. and it is likely that in many cases, CWC inspections do not take place due to the lack of any pressure or directive from the district or State departments to follow through on the same.

As per NCPCR records, States such as Maharashtra and Tamil Nadu have over 1000 child care institutions. In these States, it would be nearly impossible for CWCs to fulfil its responsibility of monitoring the child care institutions even if they attempted to do so.

It needs to be pointed out however, that even where possible and non-resource intensive, both CWCs and State Governments seem to lack initiative in encouraging individuals and institutions to apply for fit institution or fit person status (Kamath, 2009). Due to this lack of awareness building amongst stakeholders and the general public, the responses of child care agencies, NGOs and individuals in applying for fit status under the JJ Act are understandably dismal.

### **3.7.e. Converging and networking with other stakeholders**

Working in the area of child rights and child protection demands that CWCs coordinate with various other stakeholders and government departments that also function within this area such as Department of Labour (DoL), Department of Social Welfare (DSW), Department of Police, (DoP), Department of Education (DoE), Department of Health (DoH), State/ District Legal Services Authority (S/ DLSA), JJB, juvenile institutions, NGOs etc. Appropriate linkages and coordination amongst stakeholders can greatly enhance the benefits and options available to children during rehabilitation and restoration processes.

**i. Quality of CWC-DWCD coordination:** Mutual and smooth coordination between the State, mainly represented through the DWCD at the local, district and state level and the CWCs is essential for optimal functioning of the State's child protection system.

DWCD support and cooperation with regard to CWC orders and requests are therefore crucial. However, the various State studies reveal that this basic and essential support is often not provided. The DWCD officials are at times non-cooperative, while at other times, they are ignorant or negligent of the needs of the CWCs. In Andhra Pradesh, for instance, the orders and requests of CWCs are not honored or implemented. In Karnataka, when a CWC on its own accord, conducted sittings in various taluka headquarters in order to improve their accessibility to children in need, the DWCD sent a letter to the CWC directing

them not to do so in the future rather than appreciating the effort. Further, the Karnataka DWCD has circulated an official order barring the CWC members from visiting child care institutions during days other than days of sitting. In Tamil Nadu, most queries and requests for clarification from the department remain unanswered. There are rare instances no doubt, where the DWCDs have been available and have provided adequate support to individual CWCs. But these are rare and far apart. While informal interactions between CWCs and DWCDs are common, there appears to be a severe lack of formal recorded meetings where specific agendas or concerns are discussed. This scenario needs to be corrected.

**ii. Networking with core child protection stakeholders:** Overall, across all the studies reviewed, active or mutual cooperation of CWCs with stakeholders is noted to be minimal with some rare exceptions. Formal meetings are rarely, if ever, conducted by CWCs with the different stakeholders, including JJBs. Generally, though not always, CWCs are noted to focus more on networking with the local police and NGOs, possibly due to easier access.

The lack of cooperation is not restricted to DWCDs alone. In Uttar Pradesh and Tamil Nadu, studies show that there have been instances of stakeholders such as DoL and DoP not cooperating with or complying with the orders of CWCs and where CWCs often feel helpless because no legal action is taken when their orders are ignored or overruled. In West Bengal, even Government Shelter Homes have refused to comply with CWC orders. These instances are a direct result of poor networking efforts

**iii. CWC-NGO networking:** CWC networking with NGOs presents a far more encouraging picture in most States. Several NGOs have partnered with CWCs to successfully improve standards of care in institutions, provide support in conducting rescue operations, facilitate successful repatriation of children to their home districts even across state and international borders, assumed responsibility as Voluntary Probation Officers for preparing SBRs (Social Background Reports) and SIRs (Social Investigation Reports), as well as linked services like counseling, legal aid etc. to support the child and his/ her family. This is especially so in the States of Maharashtra and West Bengal where nearly all the CWCs have strong NGO referral and linkage systems in place. Such practices need to be encouraged and formalized, so that

specialized NGO services can promptly be made available to children, as and when CWCs identify such a need.

The work of NGO CHILDLINE deserves special mention here as it is a vital support system and a key child referral source for several CWCs. **It is a centrally funded autonomous body which also receives private support.** Some CWCs have established strong networking links with CHILDLINE. For instance, CWC Chairpersons and members from sixteen districts in Arunachal Pradesh visited CHILDLINE services at Itanagar in November, 2012 for the purpose of information sharing and giving advice on ways to work effectively for the welfare of children in distress (The Arunachal Pioneer, 2012, November 8). Many CWCs in West Bengal too have established strong networking links with CHILDLINE and are being strongly supported through CHILDLINE services, especially in the area of child restoration activities (Ghosh, 2011).

CHILDLINE has provided extensive services in support of CWC operations within several districts/ States. In Karnataka, CHILDLINE is found to be a major child referral source, especially for the Bangalore and Mangalore CWCs, where it also provides assistance with SIRs, rescue operations, and restoration of children (Baburaj, 2010; Kamath, 2009). Most child labour rescue operations in Delhi are planned and conducted by CHILDLINE organizations (Haq, 2012). In Uttar Pradesh, CHILDLINE plays a core role in CWC functioning by sharing its database on child-centric services, conducting CWC trainings, child protection and JJS sensitization trainings/ workshops amongst stakeholders, escorting children during interstate transfers, post-restoration follow-up of cases etc. Due to the absence of administrative staff in most CWCs here, CHILDLINE also extends its help in clerical matters (Kamath, 2009). CHILDLINE has therefore emerged as a core CWC partner in many districts across the country.

### **3.8. DOCUMENTATION PRACTICES OF CWCS**

#### **3.8.a. Quarterly reports for District/ State records**

Rule 27 (10) of the Model Rules directs each CWC to send quarterly information about CNCP received by them to the District or State Child Protection Unit or State Government.

Unfortunately, most CWCs do not follow through on this responsibility, nor is any specific action taken by the State department to ensure that this rule is followed. In Maharashtra, only one of the eight CWCs sends its periodic report to the DWCD. In Andhra Pradesh, most CWCs were unaware that formal quarterly reports were to be sent to the State department, though a few were noted to send in occasional reports. In West Bengal, no formal reporting trail exists between CWCs and the State department.

Amongst the seven State studies reviewed, only the Delhi DWCD receives regular monthly progress reports from each of its CWCs. The rest of the district or State level offices are mostly unaware of even basic details such as number of CNCP children dealt with within their jurisdiction. This is extremely disturbing as it closes off any possibility of a trends analysis.

Periodic compilation and maintenance of accurate records at the District, State and Central level is necessary as it would aid in monitoring services and policy articulation. The collation of quarterly reports sent in by CWCs should ideally be able to provide an assessment of implementation of the JJ Act including the way the system has been able to deal with children in need of care and protection, form of care, protection and rehabilitation provided, assessment of the case-load and progress made, pattern of cases received, profile of children received, reasons for pendency, type of disposals etc.

### **3.8.b. Case records**

Rule 25 (i) expects that CWCs maintain a detailed case record of every case that comes before them and that every 'closed' case file should have a summary of the whole case along with the resulting final order given by the CWC. This is important as it helps CWCs track and monitor children under their care and protection, helps in the process of developing a personalized care plan for the child, as well as helps CWCs to review their own functioning periodically. Further, CWC records form important legal evidence, especially when the case includes offences committed by adults against the child. However, far from maintaining detailed case records, a large number of CWCs in the country do not even have

a record of the number of cases dealt with by them or the number of pending cases or even data/ copies of final orders issued by them.

Case records were found to have gone missing in two Maharashtra CWCs, while in another, retrieval of case files was found to be extremely tedious and time-consuming as they were carelessly stacked up in a storage room that was damp, leading to the possibility of damage and permanently losing these case records. Thus, confidentiality and safety of records is another major challenge.

Several CWCs seem to follow a rudimentary style of record keeping such as notations being made in the personal diaries of some Maharashtra CWC members, and case records being maintained in a register in the form of two columns titled topics and decisions in a Karnataka CWC (Shekar & Vora, 2010; Baburaj, 2010).

The data produced is often unreliable. In both Delhi and Tamil Nadu, different data for the same period has been recorded (Haq, 2012; SCOPE India & Thozhamai, 2011). Documentation regarding proceedings of CWC meetings, networking efforts undertaken by CWCs, home visit records etc. are virtually non-existent in a large majority of CWCs.

While documentation is no doubt a tedious exercise, it is an essential requirement. But most CWC members across the States appear to approach the process of documentation with high reluctance and with a lack of understanding regarding its actual purpose.

### **3.8.c. Case recording and reporting formats**

There is no prescribed format for record keeping provided in the JJ Act. Thus, the procedures currently followed for recording and maintaining case data vary across CWCs even within a single State.

Amongst the studies reviewed, Delhi CWCs are the only ones provided with a simple quantitative style monthly reporting format (Haq, 2012: 48). At the time of data collection

for the Maharashtra study, no case recording format was available. However, the Maharashtra SOPs that was subsequently introduced details out formats of records and registers to be maintained, although formats for the quarterly report to be sent to the DWCD have not yet been provided. The other States studied have not been provided with any recording or reporting formats.

From the above information, it is obvious that the role of record keeping and reporting is not receiving adequate attention. There is no uniformity in the manner data is maintained by the CWCs. Poor case recording is one of the biggest hurdles in the country's child protection system, presenting a chaotic and fragmented understanding of the system's functioning. This requires immediate correction.

### **3.9. PERSONNEL SUPPORT FOR CWCS**

Lack of adequate personnel support is a recurring complaint across all CWCs. This is noted to have led to severe delays in case disposals, poor recording of proceedings and orders passed, poor management of CWC sittings etc., thereby limiting the overall efficiency in the functioning of CWCs.

Rule 82 (2) of the Model Rules, 2007, direct State Governments to provide necessary human resource support for every CWC, including welfare officer, steno typist/ computer operator, peon and 'safai karamchari'. However, a large majority of CWCs have been provided with very limited or no personnel resources to support them in their daily tasks. The 2011 NALSA study reiterates this point; it reveals that a significant majority of CWCs across the country function without the promised human resource support (NALSA, 2011: CWC S. No. 9).

The State studies reveal that the Delhi CWCs are currently the best equipped in terms of personnel support with each CWC being provided with at least one PO/Welfare Officer, one steno-typist/ computer operator, one peon, one clerk and one safai karamchari. All Delhi CWCs have also been provided with a computer. Despite this, the CWC members in Delhi have expressed that they are not provided with adequate human resource support to meet the responsibilities assigned to them. The lack of CWC dedicated staff, lack of trained

counselors, inadequate number of trained welfare officers etc. are viewed by Delhi CWCs as a hindrance to effective CWC functioning (Haq, 2012).

In West Bengal, of the nineteen CWCs, only seven are assisted by a Probation Officer, one by a social worker and none by counsellors (Ghosh, 2011). Many CWCs in Andhra Pradesh, Tamil Nadu and Uttar Pradesh have not been appointed with support staff (HELP, 2010; SCOPE India & Thozhamai, 2011; Kamath, 2009). In Maharashtra, seven of the eight CWCs are assisted by POs of the child care institution that CWCs are attached to. These POs are noted to be heavily overburdened as they are required to do their duties under Juvenile Justice Act, Right to Information Act, Orphanages and other Charitable Institutions Act, the Domestic Violence Act and Probation of Offenders Act, and hence find it difficult to meet the service needs of CWCs. In order to perform with basic efficiency, CWC members here believe that at least one dedicated PO and a part-time clerical staff for each CWC is an absolute necessity (Shekar & Vora, 2010; pil-181-10.sxw). Several CWCs have further requested for a translator due to difficulties faced when a child produced before them does not speak the language of the CWC members.

Occasionally, CWCs across the country are presented with cases where the children and parents involved need legal assistance in a criminal matter pending before a court of law. In such cases, litigation may be required in addition to CWC intervention for ensuring justice and protection to the child victim and the presence of a lawyer can greatly enhance the efficiency of services provided by the CWC. In Delhi, a tie-up with the DLSA, as prescribed by Rule 27 (9) of the Model Rules has helped the CWCs refer such matters to DLSA lawyers for necessary action (Haq, 2012).

As per the ICPS manual, a budget has been allocated for hiring one dedicated assistant cum data entry operator for every CWC to assist with documentation, and help with administrative tasks such as issuing notices, summons, organizing case loads for sittings and other such tasks. The ICPS manual further states that the Children's Home where the CWC holds its proceedings shall provide the CWC with the support of a counsellor and the services of a peon on the days when they are sitting, and the DCPUs have also been directed to provide legal and counselling support when necessary (ICPS, 2010: 102). While this will no

doubt help improve the functioning of those CWCs that function within institutional premises, the CWCs which hold additional special sittings at railway platforms, taluka headquarters, prisons etc. will continue to be deprived of the provision of a counsellor and peon. The data obtained from the various studies reveal that CWCs are likely to remain understaffed even after the ICPS becomes fully operational as there is no provision for personnel such as a dedicated PO/ Welfare Officer and trained counsellor, a translator as and when required, and consultation with a legal expert/ resource group during sittings. The need for such personnel has been strongly expressed across the State studies reviewed.

### **3. 10. MONETARY CONCERNS**

The monetary resources allocated to child protection in India has always remained abysmally low. This has translated into huge gaps noted in child protection programmes, CWCs being one such victim. In light of this, the severe cutbacks in child protection budgets, announced in the recent Union Budget, are cause for concern.

#### **3.10.a. Honorarium**

Rule 23 of the Model Rules state that the Chairperson and Members of the Committee shall be paid such travel and sitting allowance, as the State Government may determine, but it shall not be less than Rs. 500 per sitting per member. There exists a huge variation in the application of this rule across the different States.

The decision on the appropriate honorarium amount is a difficult one. On the one hand, the fact that the law provides for an honorarium and not a salary reflects the respect and value attached to such a position. It automatically signals the high level of commitment expected on the job and the honour that goes with it. Therefore, ideally, the honorarium amount should not be too high so as to replace the position of a regular salary. But nor should it be so low, that CWC members feel undervalued or taken for granted. Under no circumstances should it be expected of CWC members to pay from their own pockets for fulfilling the basic responsibilities expected of them on the job. Unfortunately, some CWC members have reported having to pay out of their own pockets to cover travel costs and that of beverages during sittings.

Delhi CWC Chairpersons and members receive a relatively high sitting allowance (honorarium) of Rs.1000 per sitting. This has been raised from an Initial sitting allowance of Rs.300 in 2003, subsequently increased to Rs. 500, Rs. 600, Rs. 800 to the current Rs. 1000. The revision of sitting fees at regular intervals has contributed positively to improving CWC member attendance (Kamath, 2009). Delhi CWC members however feel that the honorarium amount needs to be increased to at least Rs. 2500 per sitting. Members further reported that honorarium disbursements were occasionally delayed (Haq, 2012).

In West Bengal, irregularities in honorarium disbursements are noted. Two rates of remuneration prevail simultaneously for CWCs, that of Rs. 150 and Rs. 500 depending upon location, with reports of members remaining unpaid for over a year (Ghosh, 2011). In Andhra Pradesh, honorarium is received only by those CWCs that work from within Government-run Children's Homes (HELP, 2010). Uttar Pradesh fares the worst in this regard as no CWC Chairperson/ member has ever been paid any honorarium amount over a four year period since its inception (Kamath, 2009).

Where allowances are disbursed by superintendents of the very Homes that CWCs are to inspect, it creates a conflict of interest as superintendents here can and have exerted a sense of authority that can prejudice CWC inspection reports (Haq, 2012, Baburaj, 2010). Superintendents of child care institutions should therefore not be appointed as the disbursing authority.

Overall, it appears that some State Governments have not standardised procedures or else have poor mechanisms for disbursement of allowances. A large number of CWC members have not received honorarium as prescribed by the law. Wherever they have received honorarium, it is often delayed.

It is important to point out here, however, that data for some of these studies were collected prior to the introduction of the ICPS in 2009-10. Since CWC allowances are now funded by the Central Government under the ICPS, it is likely that the scenario with regard

to disbursement of allowances has changed for the better. Unfortunately, more recent data for the same is currently unavailable.

### **3.10.b. Travel allowances**

It is important to note that under the ICPS of the Central Government, the travel allowance is clubbed together with the sitting allowance and is sanctioned at Rs. 500 per sitting. This would mean that States wishing to provide a higher sitting allowance or additional travel allowance for CWC Chairpersons and members would need to raise their own resources.

Here again, the Delhi DWCD has provided a relatively higher allowance for its CWCs. Chairpersons are given Rs. 9500 per month whereas other members get reimbursed on actuals at the rate of Rs. 16/km. It is unclear however, as to why such a distinction has been made between Chairpersons and members since both are expected to take on similar levels of travel. This has led to discontent amongst some CWC members in Delhi (Haq, 2012).

Many States however, have not provided for additional travel allowance. Where provided, the procedure for collecting the same is usually cumbersome with long delays, sometimes extending to over a year. This appears highly unfair; in addition to travel to the sitting venue, CWC members also have a monitoring role that requires extensive travel. In the absence of prompt reimbursement or lack thereof, CWC members are understandably reluctant to incur travel expenses. In spite of this, there have been several instances noted where CWC members have visited residential institutions of children at their own cost. However, it remains that this is an unfair expectation; CWCs cannot continue to be expected to play a monitoring role without being reimbursed or being provided with transportation.

### **3.10.c. Child-related funds and other allowances**

CWCs further complain that there is a lack of financial support for conducting meetings with other departments and sensitizing the communities /public on child protection (HELP, 2010). If CWCs are to embrace these responsibilities, States need to ensure that there are adequate financial allocations to CWCs for the same. In the Bombay High Court order dated 01/10/2010, it was noted that CWCs in Maharashtra lack the necessary infrastructure

support, manpower and vehicles; no provision is made for emergency medical funds that the CWCs may utilize for handling medical emergencies of children brought before them (Suo Motu PIL No. 182 of 2010). Under the ICPS, CWCs are provided Rs. 3000 per month for child related expenses including medicine, transportation, food etc. during the process of production of a child to the Committee (ICPS, 2010: 101). While this may help to a certain extent, the amount seems far too low to be able to provide for all necessary expenses.

Further, most CWCs are noted to be either completely unaware or else unclear on eligibility/ procedures for utilization of funds, as a result of which such funds often remain untouched. It is unclear whether the Rs. 3000 child-related expenses allocated under ICPS can be reimbursed to poor parents who come from distant places and are unable to afford the travel expenses, whether parents/ stakeholders can use CWC facilities such as photocopiers etc.

Section 61 of the JJ Act requires the State Government to create a Juvenile Justice Fund (JJ Fund) for the welfare and rehabilitation of the children dealt with under the provisions of the Act. However, CWCs are largely unaware that such a fund exists, and if aware of such a provision, are unclear on the eligibility/ processes of utilizing such a fund. The JJ Fund, which could have positively affected the lives of many CNCP, has therefore remained largely unutilized by CWCs.

Overall, the key monetary concerns of CWCs are inadequate honorarium, delay in disbursement of sitting and travel allowances, lack of adequate financial resources to cover day-to-day expenses, and lack of clarity on utilization of contingency funds for children.

### **3.11. AWARENESS ON JJS AND CORE CWC POWERS AND RESPONSIBILITIES**

#### **3.11.a. Awareness amongst CWC members**

Through Section 29(5), the JJ Act, 2000 designates the CWC to be a Bench of Magistrates having the powers conferred by the Code of Criminal Procedure, 1973, on Metropolitan Magistrates or Judicial Magistrates of the First Class. Knowledge of the JJ Act and the issues surrounding child protection is therefore a prerequisite to performing the

roles and responsibilities expected of a CWC member who is assigned as the competent authority in matters related to children in need of care and protection. However, the five member bench comprises of members from a variety of backgrounds who may not necessarily have had any exposure to the JJ Act prior to taking on the post. In the absence of adequate orientation and follow-up trainings, it is highly likely that CWC members will lack clarity on the legal aspects of cases they deal with. Each of the seven State studies reviewed show that CWC members and Chairpersons are severely inadequate in their legal knowledge.

Across the studies, it was found that while most CWC members were aware in theory that they have the powers of a magistrate of first class as a bench, the practical knowledge of what these powers mean in terms of applicability, was extremely limited. Lack of clarity on the core roles and responsibilities of CWCs combined with a limited knowledge of the JJS has resulted in inadequacies in the functioning and decision-making capacity of the CWCs.

Nayak and Rajesh in a 2007 Handbook, Justice for Children, appropriately summarised the CWC predicament which appears to hold true even today. They suggest that despite a clear-cut legislative mechanism, CWCs are unable to deal with serious child protection issues due to “self-imposed limitations, restrictions and doubts with regard to CWC’s powers and functions” under the JJ Act and due to poor expertise in legal matters (2007: 30).

### **3.11.b. Awareness amongst other child protection stakeholders**

Stakeholder awareness about CWCs is noted to be negligible and there have been very few efforts on the part of DWCD officials to spread awareness amongst other State department stakeholders or the general public on the role of CWCs as the final authority in CNCP cases. For instance, several government officials in Andhra Pradesh belonging to different departments such as the superintendents of Police, labour department officials, district collectors etc. were found to view CWC as a non-governmental organization/ a team of social workers rather than as a statutory body, due to the lack of sensitization activities. Officers within Andhra Pradesh DWCD itself such as district women and child welfare officers were noted to lack clarity on the JJS and the role of CWCs. No clear directions were

given to stakeholders to honour CWC orders. Orders issued by the CWC to the labour department to present rescued child labourers have been repeatedly ignored (HELP, 2010). There have been instances in West Bengal where even Government Shelter Homes have refused to comply with CWC orders (Ghosh, 2011). Overall, the authority of CWCs is not acknowledged.

Lack of awareness regarding the role played by CWCs amongst key stakeholders such as the police and judiciary is a matter of grave concern and is noted in several States such as Delhi, Uttar Pradesh, Andhra Pradesh and West Bengal. In West Bengal, for instance, a number of CNCP cases are dealt with in court. It has also been observed that the police, child care institutions and hospitals sometimes skip CWC procedures to directly give away children to illegal adoption (Ghosh, 2011; KSCRCR report, 2011).

One specific instance of low sensitivity with regard to the JJ Act and rejection of a CWC order by an Assistant District Magistrate (ADM) court in West Bengal deserves mention here. An 11 year old child found begging was sent to an NGO-run Shelter Home by the CWC. A 45 year old woman who claimed to be the child's mother was refused custody as the child denied this and informed the CWC that the woman had forced her into begging. The lady then approached the ADM court and was given custody of the child despite the CWC order being presented in court by the Shelter Home. Thus, the CWC order, as was the best interests of the child was overruled in this case (Ghosh, 2011). In Karnataka, an appeals case was filed against CWC Hassan in the lower court of Hassan (Baburaj, 2010). This, despite Section 52 of the JJ Act stating that appeals against CWC decisions can only be made at a court no lower than the level of sessions court. The lack of child sensitivity or awareness on children-related legal aspects within the judiciary itself is highly appalling.

Awareness building on the JJS has to date, received low priority. In Uttar Pradesh, some efforts to achieve this goal has been attempted by Child Line and some select CWCs and NGOs through interactions, workshops, dialogues etc. to sensitize different stakeholders on JJ Act, JJS and the Convention on the Rights of the Child (CRC). The Visakhapatnam CWC in Andhra Pradesh conducted seminars for the police, the judiciary, the NGOs and the general

public. Such efforts are commendable and need to be encouraged in other CWCs/ States as well.

### **3.12. TRAININGS AND CAPACITY BUILDING**

The Chairpersons and members appointed into the CWC rarely have any prior exposure to the Juvenile Justice System which is vast and complex. Short orientation trainings therefore only serve as a very basic introduction into this highly nuanced system. Periodic ongoing trainings for updating procedural skills, case management strategies, legal and Government scheme updates are found to be extremely rare across State studies.

Rule 20 (4) of the Model Rules direct the State Government to provide for training and orientation in child psychology, child welfare, child rights, national and international standards for juvenile justice to all members of the CWC as it considers necessary. It is noted that on an average, most CWCs have been provided with one-three day orientation trainings by the respective State DWCD. However, these have been found to be largely inadequate with CWC members requesting additional training, particularly with regard to procedural and legal input. But there has been little effort made by the State departments to further build on the basics through training/ workshops.

Some CWCs, especially in Andhra Pradesh, Karnataka, and Uttar Pradesh have also undergone trainings through NGOs such as HELP, SATHI, NIPCCD and CHILDLINE. It was however found that absenteeism was high in many of these trainings due to either lack of interest or a busy schedule of CWC members having other personal/ work commitments (HELP, 2010). Thus, it may be that not only should more trainings be provided but also that attendance to such trainings be made mandatory with a high benefit value attached to it including the assurance of State support.

A successful effort in extending State support and enhancing CWC knowledge was undertaken by the Karnataka State Commission for Protection of Child Rights (KSCPCR) in collaboration with SATHI through a two-day workshop in June 2011 to deliberate upon challenges faced by CWCs in adjudicating cases of child rights violations as well as to strengthen the knowledge base of participants. The 60 participants included CWC

Chairpersons and members as well as district-level representatives of the DWCD from across the State. On the basis of this interactive workshop, several challenges were identified for which recommendations were developed by the KCPCR. The success of this workshop is mainly evident from the collaborative activities undertaken post the workshop. Since June 2011, the KCPCR began working closer with CWCs including them in district review exercises, inquiry visits, as well as providing advice on specific cases. Complaints received by the KCPCR are also passed on to the CWCs with a request to submit reports after disposal of cases, thus resulting in smoother functioning of the child protection system in the State (KSCPCR report, 2011). Simple efforts such as these can go a long way as in addition to capacity building, it indicates to CWCs that they have State support and guidance, thereby increasing motivation and the possibility of cooperative activities; it provides the opportunity for periodic dialogue with stakeholders so that difficulties can be discussed and cross-learning can take place. Other SCPCRs and DWCDs should take note of these benefits and replicate such workshops on an annual basis.

### **3.13.AUTONOMY OF CWCS AND THEIR MONITORING**

CWCs are bodies that are quasi-judicial in their functioning; the decisions of the CWC as the designated final authority with respect to protection and rehabilitation of CNCP are judicial decisions. Yet, unlike the JJBs, they do not fall under the purview of the High Court for their functioning and monitoring. The JJB being a judicial body is not answerable to the DWCD, and even the pendency of JJB cases is not reviewed by the DWCD as is the case for CWCs. The CWC has not been assigned any monitoring structure of its own. While the Act requires CWCs to present quarterly reports to the DWCD, these are for the purpose of creating centralised records rather than for monitoring and evaluation purposes.

The absence of a well-defined monitoring authority for CWCs has led to several inconsistencies in the functioning of the system. Every single study on CWC functioning that was referred to for this paper alluded to the absence of a specific monitoring body for CWCs as one of the strongest factors contributing to the existing confusion and lack of accountability within the child protection system, thereby hampering its efficiency.

The practice of internal reviews conducted by individual CWCs is highly desirable but rarely adhered to. The Mumbai City CWC, on its own accord, conducts a quarterly evaluation of procedures and decisions to improve the functioning of its own members and this has proven to be highly effective (Shekar & Vora, 2010). Many West Bengal CWCs also engage in internal review meetings where administrative issues and difficulties faced in execution of cases are discussed, and where case-related information and experiences are shared (Ghosh, 2011). Most other CWCs across States have not had a single internal review meeting.

Inconsistencies in CWC autonomy ranges from CWCs in Delhi reluctant to cooperate with requests/ directives from Government appointed national bodies such as the NCPCR (Haq, 2012) to a CWC in Andhra Pradesh reporting to the JJB (HELP, 2010) and CWCs in Karnataka requiring prior permission of the DWCD for conducting emergency sittings (Baburaj, 2010).

It is noted that the Delhi CPCR/ NCPCR sometimes receives complaints from NGOs or the public regarding CWCs. As per Section 13 (1) (j) (iii) of the Commissions for Protection of Child Rights Act, 2005, the Commission is mandated to inquire into complaints and take suo motu notice of matters relating to non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring protection of child rights, and to provide relief to such children. Taking cognizance of complaints received, the Commission has requested for action reports to be submitted or for explanations for certain decisions taken by CWCs. While this is broadly viewed by the Delhi CWCs as unauthorised interference on the part of the Commission, CWCs in States such as Karnataka are more accepting of such requests/ directives, possibly due to more effective networking between Karnataka CWCs and KSCPCR.

The monitoring authority is frequently assumed to be the Department of Women and Child Development. But here again, the lack of any statutory mandate or otherwise to this end has led to CWC members questioning the right of DWCD officials or other bodies to demand explanations for decisions made or procedures followed by CWCs. Enormous confusion therefore exists around the issue of whether CWCs are autonomous self-sufficient bodies that can function unsupervised as per the existing law, or whether it is self-implied that

State Governments and other Government constituted bodies such as NCPCR, NALSA etc. have a responsibility for monitoring the functioning of CWCs.

Currently, there is no complaint mechanism set up to deal with complaints received against CWC members. However, some very disturbing instances have been noted that would have gone unchecked and caused further harm had a state or national authority not intervened. The most serious of this occurred in Karnataka when a Bangalore CWC member was alleged to have molested several minor girls that appeared before him during CWC sittings. The matter was reported by an NGO to the Karnataka SCPCR which issued appropriate direction after an inquiry (The Hindu, 2010, September 9).

Similarly, appropriate intervention by the Delhi DWCD in September 2012 has potentially protected the interests of many CNCP. Two CWC members were terminated and a show cause notice was issued to one CWC Chairperson due to misuse of power and unauthorised absence from duty. One CWC official was pulled up for refusing help from NGOs to follow up on children after their rescue. Due to complaints received, the DWCD, in consultation with former CWC Chairpersons developed a protocol for functioning of CWCs which includes that CWCs are to meet every week to analyse and review their work (Deccan Herald, 2012, September 27; Rashtriya Sahara, 2012, September 27). In this case, the Delhi DWCD took positive action against erring CWCs due to complaints received. But such instances also highlight that in the absence of clear monitoring mechanisms in place, there is a strong possibility that gross negligence and aberrations in CWC functioning are going completely unnoticed. This may especially be so in districts where civil society engagement is poor as a result of which complaints against CWCs are unlikely to be registered.

The question that arises next is whether the DWCD is an appropriate monitoring body for evaluating the work of CWCs. It is important to point out here that while the CWC is an independent body with judicial powers, it is located administratively within an executive body of the State i.e., the DWCD, making it dependent on the DWCD to a certain extent for administrative matters. However, CWCs have monitoring responsibilities which require members to identify gaps and concerns in the quality of services provided by the State such as in government child care institutions or community based alternate care services.

Friction or compromises can therefore occur between the CWCs and the DWCD, leading to the possibility of unfair evaluations which should be best avoided in the interests of the children involved. Hence, it is not advisable to appoint the DWCD as the monitoring body.

Two separate court orders for setting up external monitoring practices for CWCs have been passed. These were a result of inefficiencies in the system's functioning being brought to the notice of the judiciary.

In light of poor JJS functioning, the Delhi High Court, in 2008, set up a three-member Juvenile Justice Committee headed by the sitting judge of the high court to monitor the implementation of the Juvenile Justice Act in Delhi. The JJC holds regular CWC review meetings based on the monthly progress reports submitted by the Delhi CWCs through the concerned metropolitan magistrates. This Committee has undertaken many initiatives to help systematize the implementation of the JJS. One of its focus areas is to ensure streamlining of processes and measures undertaken by the CWCs in the implementation of the law for CNCP (High Court of Delhi Website, 2013; Haq, 2012; Kamath, 2009).

The JJC is noted to have strengthened the system by improving coordination and linkages between stakeholders through meetings arranged, increasing CWC availability and reach, enhancing documentation quality and reducing the number of pendency cases. Prior to the JJC taking over the monitoring role, it is pointed out that CWC procedural mechanisms were far weaker than they currently are (Kamath, 2009).

Another significant order in terms of CWC monitoring has been passed on 18/04/ 2011 by the Supreme Court of India in the Bachpan Bachao Andolan v/s Union of India & Others case (Writ Petition (C) No.51 Of 2006). In this Public Interest Litigation (PIL), the Supreme Court mandated a court-monitored mechanism wherein the performance of the CWCs will be reviewed by the High Court with a Committee of not less than three Hon'ble Judges and two psychiatrists (Para 42i; 63). The court ordered for a compliance report to this effect to be filed by the Chief Secretary of each State.

## CHAPTER 4

### FINDINGS: KEY GAPS AND CHALLENGES

#### 4.1. OVERALL FINDINGS: GAPS AND CHALLENGES IN CWC FUNCTIONING

*The previous chapter presented and analysed a comprehensive data compilation on CWC functioning from studies spanning several States as well as from a range of other literature including government reports, court orders, newspaper articles etc. This section presents the issues, gaps and challenges in CWC functioning as identified within each of the broad sub-sections explored in Chapter 3.*

##### 4.1.1. INADEQUATE NUMBER OF CWCs AND SUPPORT BODIES

CWCs have not been constituted in a number of districts and jurisdictional aberrations create confusion resulting in a large number of vulnerable children not being able to access their right to protection. Vastness of district area, difficult geographical terrain or remote accessibility, case overload due to district child profile, high population density, and long stretches of international borders warrant the setting up of additional CWCs within certain districts.

Many salutary provisions which have been made in the JJ Act and the Model Rules such as District/ City Advisory Boards, District Child Protection Units, State/ District/ City Inspection Committees, and Special Juvenile Police Units have either not been constituted or are defunct in a vast majority of districts.

##### 4.1.2. IRREGULARITIES IN CWC COMPOSITION AND MEMBER SELECTION

Majority of CWCs reviewed have a complete five-member composition in terms of official appointment by Selection Committees. Poor attendance is however a concern. This extends to prolonged absenteeism in some cases. Where vacant positions/ prolonged absenteeism exist, recruitment is indefinitely delayed, sometimes leading to the inability to have a quorum for final decisions. Overall, more men than women are appointed into CWCs. A majority of CWC members and Chairpersons across the different States largely meet the

minimum eligibility criteria. However, an ideal CWC composition in terms of a diverse and multidisciplinary profile is missing. CWCs appear to be dominated by those from the social work and education sector, while people from law, medicine and psychology sectors are relatively under-represented.

Serious deviations and concerns have been noted in the CWC recruitment process, including the appointment of government officials as Chairpersons; dual appointment of CWC and JJB membership and dual CWC membership in two separate CWCs. CWC recruitments that could lead to potential conflict of interest such as those who are associated with a residential child care facility being appointed as CWC members within the same district have also been noted.

#### **4.1.3. POOR INFRASTRUCTURE AND IMPROPERLY MANAGED CWC SITTINGS**

Nearly all the CWCs are found to be functioning in incomplete settings and some in severely insufficient settings. The concept of child-friendliness has not yet been defined within the JJ System. Its implementation has been largely ignored in both the CWC set-up as well as during CWC proceedings.

A single fixed CWC sitting venue has been insufficient to reach out to all children in need of care and protection within the district. To cater to this problem, three kinds of sitting venue styles practiced by some CWCs across the country have been identified. These are additional special sittings, rotational sittings and parallel sittings. But each has its own pros and cons.

There is extreme variability in periodicity and duration of sittings conducted by CWCs. While some CWCs are found to comply with the mandatory three sittings a week, a large number of CWCs in the country conduct sittings only once or twice a week. There are also CWCs that hold sittings once a fortnight, once a month or else, as and when required. Most CWCs do not hold sittings for the minimum four hours per sitting, as required by law. CWC sittings are being cut short for reasons other than low case load and this often includes other personal obligations and work commitments of members.

Irregular member attendance and prolonged absenteeism is a frequent occurrence among many CWCs, the key reasons for this being the lack of foolproof attendance monitoring, other professional commitments of members and inadequate sitting allowance.

Currently, there are no prescribed procedures in the Act or the Rules for management of cases during proceedings. While a few CWCs effectively manage proceedings and case flow, others are seen to flounder and use inefficient/ inappropriate practices.

#### **4.1.4. CONCERNS RELATED TO CWC CHILD REFERRAL SOURCES**

The categories of current active child referral sources are very few and is usually limited to parents, police and NGOs. A significantly high number of children are produced by parents citing economic reasons, educational facilities and single parenthood. Thus, many children gain entry into the State's child care institutions even though they don't technically qualify under the CNCP categorization of the JJ Act. Public spirited persons and children themselves as referral sources for CWCs are extremely rare across all States reviewed.

A large number of children who fall in the category of CNCP are not brought before the CWC but are instead directly dealt with by other Government departments or NGOs. Where CWCs cover large geographical areas or multiple districts, rarely do cases from far-away areas or the neighboring (but same jurisdictional) districts get produced before CWCs, except when cases are of such serious nature that they draw the attention of the media, district administration or police.

#### **4.1.5. ISSUES SURROUNDING CWC CASE TYPES AND CATEGORIZATION**

Reasons for referral or case type is an important variable that needs to be analysed in order to better understand the overall as well as specific circumstances that force children/ stakeholders to seek care and protection for the child, from the State. The analysis of such data at a State or Country level can prove to be a rich source of information as it could reveal the prevailing trends of child vulnerabilities. Only then can the JJ System be appropriately assessed to see whether it addresses the causal factors that lead children to enter the system. But data on case categorization or reasons for child referral is found to be

either completely lacking or hugely incomplete in the CWC/ departmental records of a majority of States.

Lack of standardization in case categorization is one of main the factors contributing to ambiguous and unclear data records. Though accurate data is unavailable, the highest number of children appear to be categorised under 'high-risk families', 'runaway', 'missing' and 'child labour'. But many of the case types used are ambiguous in meaning; for example, it is unclear as to what constitutes 'runaway cases' or 'recovered cases'. In addition to some categories being used arbitrarily, cases are sometimes simultaneously lumped into two, three or more different categories.

#### **4.1.6. PROCESS AND NATURE OF CWC DECISIONS: GAPS AND CHALLENGES**

**Issues around decision-making:** Of the seven States studied, none had complete data or accurately recorded data on CWC case disposals due to poorly maintained data records. From the obtained data, the most commonly applied decision is noted to be institutional care, though this is ideally to be used as the last resort. The option to restore children back to their families after adequate social investigation is used but less frequently. Adoption is often considered for orphaned/ abandoned children though many CWCs are unclear about the appropriate procedures to be followed in such cases. Even though the need is high, the option for After Care Home placement is used rarely, largely because such Homes are extremely few in number and in many districts, non-existent. The option of Foster Care is used even less frequently, with many CWCs never having used this option. The option of Sponsorship has almost never been considered by CWCs, except in the State of Karnataka. Occasional political interference in CWC decisions has sometimes resulted in children getting sent back to unsafe environments.

Children who need to be declared free for Adoption, children with special needs, child labour cases, and children who need to be transferred, are noted to create an elevated level of procedural confusion and frustration for CWC functionaries. Adoption agencies are not available in several districts. Many CWCs tend to view the process of declaring a child free for Adoption as a mere technicality and parent/s who wish to surrender their child for

Adoption are rarely provided with adequate counselling by CWCs on other possible options. There is a severe lack of residential or non-residential services and facilities for children with special needs. As a result, most children are sent back to their families without being provided any help, revealing a severe failure of the country's child protection system

Though still inadequate, reasonably high numbers of restoration/repatriation to families is an encouraging trend. However, background information concerning quality of social inquiry or whether follow-up was maintained or not for these restored cases, is not clear. Children have sometimes been hurriedly restored back to high-risk or exploitative families. Coordination with NGOs, where attempted, has often improved chances of successful repatriation.

The limited data available shows that a majority i.e. approximately three-fourth of registered cases are usually disposed within the prescribed 4 month period, but this still indicates that about a quarter of the CWC cases face significant delays. Several factors such as unavailability of adequately functioning child care institutions, shortage of competent CWC staff for a thorough social inquiry etc. challenge and delay the process of case inquiry and case disposal.

**Absence of urgently required guidelines:** There is some level of confusion in ensuring the legal validity of final case orders. At the time when the State-level studies were conducted, CWCs in none of the States were given standardised case procedures to be followed. This evidently resulted in a severe lack of clarity amongst CWC members regarding operationalization of the different sections of the Act and procedures to be followed in order to arrive at decisions. This has caused significant delays during the inquiry process, adversely affected decisions made, at times even rendering questionable the legality of certain decisions.

#### **4.1.7. SEVERE GAPS IN FULFILMENT OF CORE CWC RESPONSIBILITIES AND FUNCTIONS**

**Poor case management and follow-up:** When findings are generalised, there is a severe lack of adequate follow-up and monitoring mechanisms followed by CWCs. In terms of follow-up, children committed to long-term institutionalization appear to be the most disadvantaged, while restored children are the most neglected.

**Unavailability of CWCs during non-CWC hours:** Children and stakeholders are being severely inconvenienced in the absence of clear guidelines regarding case production during non-CWC sitting hours. Child care institutions do not easily admit children without clear CWC orders. CWCs as well as receiving institutions are unclear whether CWC orders given over the phone are legitimate.

**Lack of CWC assistance in filing police complaints and FIRs:** Many CWCs do not facilitate the filing of FIRs as required of them by the law, including the filing of FIRs in some missing and child labour cases.

**Absent/ inadequate monitoring activities by CWCs:** None of the 135 CWCs covered across the seven State studies fulfil their monitoring role as per Rule 25 (k, l, p & q) of the Model Rules.

Recommending/ declaring child care institutions or persons as 'fit': There is scant existence or absence of fit institutions in many districts. Most CWCs have never recommended 'fit institutions' to the State Government or performed the role of declaring 'fit persons'. Both CWCs and State Governments lack initiative in encouraging individuals and institutions to apply for 'fit institution' or 'fit person' status.

Monitoring: Monitoring of child care institutions is an area taken far too lightly by both CWCs and DWCDs. A majority of CWCs are not provided with a basic list of recognized child care institutions. Currently, the role of monitoring of associations and agencies within the CWC jurisdiction that deal with children such as residential schools, anganwadis, children's

hospitals, crèches etc. is completely ignored by all CWCs concerned. There are several possible reasons for the existing lapse in responsibility. A shortage in human, time and material resources is a significant handicap. Across the States, inspections are not planned or prioritised by members due to several other factors such as case load of the day, low member attendance, NGOs/ child care institutions located in distant places etc and it is likely that in many cases, CWC inspections do not take place due to the lack of any pressure or directive from the district or State departments to follow through on the same.

### **Poor efforts towards stakeholder convergence and networking:**

CWC-DWCD coordination: DWCD support and cooperation with regard to CWC functioning is often missing. While informal interactions between CWCs and DWCDs are common, there is a severe lack of formal recorded meetings where specific agendas or concerns are discussed.

Networking with core child protection stakeholders: Overall, active or mutual cooperation of CWCs with stakeholders is noted to be minimal with some rare exceptions. Formal meetings are rarely, if ever, conducted by CWCs with the different stakeholders, including JJBs. CWCs are often noted to focus more on networking with the local police and NGOs, possibly due to easier access. Government stakeholders such as DoL, DoP, and Government Shelter Homes sometimes do not cooperate or comply with the orders of CWCs, often a direct result of poor networking efforts. CWCs feel helpless and de-motivated because no legal action is taken when their orders are ignored or overruled.

### **4.1.8. POOR CASE DATA RECORDS AND REPORTING PRACTICES**

**Quarterly reports for District/ State records**: Most CWCs do not send quarterly information about CNCP received by them to the State Government, as is mandated by the law, nor is any specific action taken by the DWCD to ensure that this rule is followed. District or State level offices are mostly unaware of basic details such as number of CNCP children dealt with within their jurisdiction, closing off any possibility of a trends analysis.

**Case records:** Most CWC members across the States appear to approach the process of documentation with high reluctance. Several CWCs follow a rudimentary style of record keeping such as notations made in personal diaries. Far from maintaining detailed case records, many CWCs in the country do not even have a record of the number of cases dealt with by them or the number of pending cases or even data/ copies of final orders issued by them. The limited data produced is often unreliable. There are instances where case records have gone missing; confidentiality and safety of records are also a concern. Documentation other than case records such as data regarding CWC conducted meetings, networking efforts, home visit records etc. are virtually non-existent in a large majority of CWCs.

**Case recording and reporting formats:** Most CWCs are not provided with recording or reporting formats. There is no uniformity in the manner data is currently recorded and maintained by CWCs even within a single State.

#### **4.1.9. INADEQUATE PERSONNEL SUPPORT**

A large majority of CWCs have been provided with very limited or no personnel resources to support them in their daily tasks. In addition to the support staff as prescribed by law through the JJ Act and the ICPS, the need for a dedicated PO/ welfare officer, a trained counsellor, a translator as and when required, and consultation with a legal expert during sittings has been strongly expressed across the State studies reviewed.

#### **4.1.10. MONETARY CONCERNS**

Extensive variation in honorarium amounts is noted ranging from nil to Rs. 150, Rs. 500 to Rs. 1000. Many States have not provided for additional travel allowance. Where provided, the procedure for collecting the same is usually cumbersome with long delays, sometimes extending to over a year. In the absence of prompt reimbursement or lack thereof, CWC members are often reluctant to incur travel expenses. CWCs further complain that there is a lack of financial support for conducting meetings with other departments and sensitizing the communities /public on child protection.

Overall, the key monetary concerns of CWCs are absent/ inadequate/ delayed receipt of CWC sitting and travel allowance, and lack of adequate financial resources to cover day-to-day expenses. There is also a lack of clarity on utilization of child-related funds as a result of which such funds often remain untouched.

#### **4.1.11. POOR CWC ROLE CLARITY AND INADEQUATE LEGAL AWARENESS**

**Amongst CWC members:** While most CWC members are aware in theory that they have the powers of a magistrate of first class as a bench, the practical knowledge of what these powers mean in terms of applicability, is extremely limited. CWC members and Chairpersons are also severely inadequate in their legal knowledge. This has resulted in CWC functioning and decision-making that is far from adequate.

**Amongst other child protection stakeholders:** Stakeholder awareness about CWCs is noted to be negligible with very few efforts on the part of DWCD officials to spread awareness amongst other State department stakeholders or the general public on the role of CWCs as the final authority in CNCP cases. Officers within the DWCD itself are sometimes noted to lack clarity on the JJS and the role of CWCs. Lack of child sensitivity or disregard for children-related legal aspects has occasionally been noted even within the judiciary. Lack of awareness as also a lack of acknowledgement of CWC authority has led to police, child care institutions and hospitals sometimes skipping CWC procedures to directly take CNCP to court or give away children in adoption which is illegal.

#### **4.1.12. INADEQUATE STATE EFFORTS TOWARDS CWC CAPACITY BUILDING**

On an average, most CWCs have been provided with one-three day orientation training by the respective State DWCD. However, these have been found to be largely inadequate with CWC members requesting additional training, particularly with regard to procedural and legal inputs. But there has been little effort made by the State departments to further build on the basics. Periodic ongoing trainings are found to be extremely rare across State studies. A few CWCs have been provided additional trainings through NGOs but absenteeism was found to be high in many of these trainings. Multi-stakeholder District or State level CWC

workshops that can greatly enhance possibilities of collaborative initiatives amongst stakeholders has only been attempted once, in Karnataka.

#### **4.1.13. ABSENCE OF CWC MONITORING**

The absence of a well-defined monitoring authority for CWCs has led to several inconsistencies in the functioning of the system. It is currently considered as one of the strongest factors contributing to the existing confusion and lack of accountability within the child protection system, thereby hampering its efficiency.

The practice of internal reviews conducted by individual CWCs is desirable but rarely adhered to. Most CWCs have not had a single internal review meeting. Excluding Delhi, the absence of any legal directive regarding external monitoring of CWCs has led to CWC members questioning the right of DWCD officials or other bodies to demand explanations for decisions made or procedures followed by CWCs. Enormous confusion therefore exists around the issue of whether CWCs are autonomous self-sufficient bodies that can function unsupervised as per the existing law, or whether it is self-implied that State Governments and other Government constituted bodies such as NCPCR, NALSA etc. have a responsibility for monitoring the functioning of CWCs.

There is currently no complaint mechanism set up to deal with complaints received against CWCs members. However, some serious CWC aberrations would have gone unchecked and caused further harm had a state or national authority not intervened. In the absence of clear monitoring mechanisms in place, there is a strong possibility that gross negligence and irregularities in CWC functioning are going completely unnoticed.

## **4.2. POSITIVE EFFORTS AND INITIATIVES**

*The following section presents select positive examples within CWC functioning that can be replicated by other CWCs/ States:*

### **4.2.1. Innovative case disposals**

The Mumbai City CWC developed a unique solution to restore working children back to their families, while at the same time ensuring that they do not return to the labour market, by getting a bond with a financial surety signed prior to restoration. This surety by way of a fine acts as a deterrent for employers not to employ children. Employers are also encouraged to make a contribution towards rehabilitation in the form of a National Savings Certificate that can be accessed by the child when he/ she attains age 18 years. The amount is determined based on the age of the child and the length of employment.

In cases where parents are the employers themselves, the Mumbai City CWC includes a surety of Rs. 3000 to Rs. 5000 in the bond. If the child is found working or begging again, the bond is executed and the CWC collects the surety amount as a fine that is deposited in the treasury in the name of the child. This action serves as a deterrent for parents not to force their children into work again.

It is expected that once CWC members are provided with a basic set of guidelines to follow, it will be easier to modify and use them creatively and at appropriate times so as to accrue advantages for the child.

### **4.2.2. Extending State support and capacity building**

A successful effort in extending State support and enhancing CWC knowledge was undertaken by the Karnataka State Commission for Protection of Child Rights (KSCPCR) in collaboration with SATHI through a two-day workshop in June 2011 to deliberate upon challenges faced by CWCs in adjudicating cases of child rights violations as well as to strengthen the knowledge base of participants. The 60 participants included CWC Chairpersons and members as well as district-level representatives of the DWCD from across the State. On the basis of this interactive workshop, several challenges were identified for

which recommendations were developed jointly by the participants of the workshop and KSCPCR. The success of this workshop is mainly evident from the collaborative activities undertaken post the workshop. Since June 2011, the KSCPCR began working closer with CWCs including them in district review exercises, inquiry visits, as well as providing advice on specific cases. Complaints received by the KSCPCR are also passed on to the CWCs with a request to submit reports after disposal of cases, thus resulting in smoother functioning of the child protection system in the State (KSCPCR Report, 2011).

Simple efforts such as these can go a long way as in addition to capacity building, it indicates to CWCs that they have State support and guidance, thereby increasing motivation and the possibility of cooperative activities; it provides the opportunity for periodic dialogue with stakeholders so that difficulties can be discussed and cross-learning can take place. Other SCPCRs and DWCDs should take note of these benefits and replicate such workshops periodically.

#### **4.2.3. Ensuring the availability of alternate care options**

The Bangalore CWC in Karnataka has declared 50 people as 'fit persons' to whom children are regularly sent for short stay (Baburaj, 2010). In order to encourage families to apply for 'fit person', the Karnataka State Council for Child Welfare opted for novel ways. It pictorially depicted a half open front door of a home and a six year old standing before it, displaying slides of this image in theatres and on the rear panels of public transport, and inviting families to consider opening their homes to older children in need of alternate care.

Karnataka is also the only State that has a child Sponsorship scheme (NCPCR National Consultation Report, 2010). The Karnataka DWCD introduced the Sponsorship scheme in 2006 (Govt Order No MAMAE/83/MAMAAA/2006(1) DT: 28/7/2006). In this scheme, the sponsorship support in the form of a cash transfer ranging from Rs. 250-500/month is provided to a child for over a period of 3 years to support children and his/her family to get the child back to school, link the child to vocational training courses and provide healthcare. The Child Welfare Committees (CWCs) in the district plays the key role in assessing children for sponsorship and implementation of the scheme effectively at district level. Several

vulnerable children have benefited through this alternative care provision. 1078 vulnerable children have benefited through this provision during 2009-10 & 1308 children during 2010-11 in Karnataka. Rs.22.77 lakhs in 2009-10 & Rs. 34.82 lakhs in 2010-11 has been spent for this purpose (EveryChild, 2012).

These are highly commendable efforts; showing that it is possible for such efforts to be replicated by other CWCs as well. Institutional care tends to isolate children from the community and often fail to prepare them adequately to lead fulfilling independent lives. Even if half the amount as that spent on institutionalization per child is provided to families as Sponsorship or Foster Care funds, it would enable children to remain in a family environment. With appropriate social work intervention, families can be further empowered to provide the nurturing care that all children should be entitled to.

#### **4.2.4. Effective CWC-NGO networking**

Several NGOs have partnered with CWCs to successfully improve standards of care in institutions, provide support in conducting rescue operations, facilitate successful repatriation of children to their home districts even across State and international borders, assume responsibility of Voluntary Probation Officers for preparing SIRs, as well as link services like counseling, legal aid etc. to support the child and his/ her family. This is especially so in the States of Maharashtra and West Bengal where nearly all the CWCs have strong NGO referral and linkage systems in place. A number of CWCs have established particularly strong networking links with CHILDLINE organizations. CHILDLINE has thus gradually emerged to become a vital support system for CWCs in several districts across many States. Such networking needs to be replicated in all CWCs, so that specialized NGO services can promptly be made available to children, as and when CWCs identify such a need.

#### **4.2.5. Internal CWC review meetings**

The Mumbai City CWC, on its own accord, conducts a quarterly evaluation of procedures and decisions to improve the functioning of its own members (Shekar & Vora, 2010). Many West Bengal CWCs also engage in internal review meetings where administrative issues and

difficulties faced in execution of cases are discussed, and where case-related information and experiences are shared (Ghosh, 2011). The practice of internal reviews conducted by individual CWCs is highly desirable as it provides an opportunity for self-evaluation and cross-learning. This is a practice that can easily be replicated across all CWCs in the country.

### 4.3. SPECIFIC ISSUES THAT REQUIRE CLARIFICATION

*In addition to the requirement for procedural clarity at the entry, inquiry, disposal and follow-up stages of various categories of CNCP cases, some other specific issues require clarification. These are presented below:*

- Under the ICPS, CWCs are provided Rs. 3000 per month for child related expenses including medicine, transportation, food etc. during the process of production of a child to the Committee (ICPS, 2010: 101). It is unclear whether this budget can be used to reimburse poor parents who come from distant places and are unable to afford the travel expenses, whether parents/ stakeholders can use CWC facilities such as photocopiers etc.
- Section 61 of the JJ Act requires the State Government to create a Juvenile Justice Fund for the welfare and rehabilitation of the children dealt with under the provisions of the Act. However, CWCs are largely unaware that such a fund exists, and if aware of such a provision, are unclear on the eligibility/ processes of utilizing such a fund.
- CWCs across States are unclear on what kind of legal action can be undertaken when CWC orders are defied by other agencies, when JJBs pass orders regarding CNCP without involving the CWCs, when stakeholders such as police, hospitals and child care institutions skip CWC procedures to directly take CNCP to court, transfer children to residential institutions across State borders, or give away the child to illegal adoption.
- Responsibility related to repository of documents for abandoned and surrendered children needs to be clarified, so as to mitigate problems of access to documents for adopted children seeking root search through CWCs/ SSAs.
- The roles, responsibilities, and sitting allowance of the Chairperson are currently the same as that of the members. Clarity is required on what are the responsibilities that differentiate the functioning of the CWC Chairperson from its members.
- In the absence of a legally sanctioned monitoring body for CWCs, and given the sweeping powers and functions of CWCs under the Juvenile Justice Act and Rules, CWCs are

unclear on whether SCPCR/ NCPCR can scrutinise the functioning of CWCs by asking for reports/ explanations.

The following are some specific queries that have arisen from the Delhi study on CWC functioning (Haq, 2012):

- Some CWCs file FIRs under section 317 IPC for infants found abandoned in hospitals and in the cradles of institutions in order to increase the chance of locating parents and to further tighten the procedure for declaring a child legally free for adoption. However, in cases where people abandon babies in cradles run by adoption agencies under the Government's cradle baby scheme, the legality of getting a case booked under this section is being questioned. Clarity is required on this issue.
- CWCs are often unclear on legal procedures to be followed when metropolitan magistrates mark guardianship or parental custody cases to CWCs.
- Since the Constitution of India guarantees freedom of religion as well its practice, it has been questioned whether institutions that take in children of only certain religious faiths should be recommended by CWCs for 'fit status' or allowed to register under the JJ Act since such practices undermine the secular character as assured by the constitution.
- Based on the fact that CWCs function as a bench of magistrates, CWCs in Delhi have requested clarity on whether CWC members can be summoned to appear in a court just as any other witness or whether they should be called in by the Magistrates to their chamber for recording the witness statement.

## CHAPTER 5

### RECOMMENDATIONS: THE WAY FORWARD

*The key aim of this study is to enable evidence-based policy decision-making that will help strengthen CWC mechanisms and overall functioning. The recommendations in this chapter are based on the key gaps and challenges identified within Chapter 3 and presented in Chapter 4. They are largely presented in the same order as the subsections in the previous chapters so as to enable easy reference.*

#### 5.1.ENSURE OPTIMAL CONSTITUTION OF CWCSAND SUPPORT BODIES PER DISTRICT

**5.1.1. Number of CWCs per district and jurisdictional coverage:** Inadequate number of CWCs and jurisdictional aberrations results in a large number of vulnerable children not being able to access their right to protection. Section 29 (1) of the JJ Act requires that one or more CWCs be constituted for every district in India. However, a Supreme court order dated 11/03/2011 allowed for submission of an affidavit in which reasons can be specified by the concerned State department, if it is felt that a particular district does not require setting up of a CWC (Writ Petition (C) No. 473 of 2005). This study, however, strongly recommends that constituting at least one CWC per district, as per the 2006 amendment of the JJ Act, should be made an indispensable requirement that should not be taken lightly, and no State should be provided leniency in this regard, unless there is well-researched and well-documented data that suggests otherwise.

Vastness of district area, difficult geographical terrain or remoteaccessibility, case overload due to district child profile, high population density, and long stretches of international borders are circumstances that warrant the setting up of additional CWCs and thus, serious consideration should be given to the option of constituting more than one CWC for such districts. The Maharashtra 2009 study recommends that an additional CWC be established within a district if the caseload for a given CWC exceeds 300 new cases a quarter. While 300 per quarter appears to be an appropriate benchmark, the present study cautions that caseload should be just one of the factors, and not the sole factor for using the one or more

CWCs per district provision of the Act. In this regard, it is also important to note that a CWC with a current low caseload does not necessarily imply that the district has fewer children in need of care and protection. Stronger linkage efforts amongst concerned stakeholders, higher literacy levels in the district and/ or effective child-rights awareness activities, as is the case in Mumbai City and Bangalore Urban Districts, can also set the stage for higher numbers of child referral agencies and cases referred. In the absence of such awareness and linkages, a large number of children in need of care and protection are likely to be missed rather than being brought before a CWC.

Any existing jurisdictional aberrations should be formally dealt with by the concerned State departments on an urgent basis. Further, Section 56 of the JJ Act allows for transfer of cases from one jurisdiction to another, i.e. from one CWC to another. Thus, based on the principle of best interests of the child, a child brought before a CWC from an area outside their jurisdiction should be provided the necessary immediate protection, post which the CWC can transfer the child.

**5.1.2. Ensure functioning of allied structures within the JJ Act:** Many salutary provisions which have been made in the JJ Act and the Model Rules such as District/ City Advisory Boards (D/CABs), District Child Protection Units (DCPUs), State/ District/ City Inspection Committees, and State Juvenile Police Units (SJPUs) have either not been constituted or are defunct in a vast majority of districts. The respective State Governments should be pulled up for this failure to comply with the law and should be given a legal directive to constitute the required bodies within their jurisdiction with immediate effect.

In order for CWCs to be able to reach out to as many CNCP as possible, the constitution of adequate number of Child Protection Units (CPUs) that collectively have a wide geographical reach is a key requirement. CPUs can be the eyes and ears of the CWCs as their role mandates a particularly high level of interaction with children at the grass-roots community level. A close collaboration between CWCs and District/ Block/ Village level CPUs can therefore be hugely beneficial in connecting CNCP to CWCs.

The Goa Children's Act, 2003, can be considered a relatively progressive legislation in this regard. Section 8 of this Act mandates the constitution of a Village Child Committee by each Village Panchayat, which will coordinate with departments of the State Government in the implementation of child protection programs, thus ensuring that child protection facilities are made equally available to children across the entire district. On similar lines, seven years later, the ICPS, a Government of India scheme, provides for the setting up of Block and Village level Child Protection Committees by the DCPUs for the effective implementation of child protection programs. As per the ICPS, "every village shall have a Child Protection Committee under the Chairpersonship of the village level elected representative (Head of the Gram Panchayat) to recommend and monitor the implementation of child protection services at the village level. The Committee shall include two child representatives, a member of the DCPS, anganwadi workers, school teachers, auxiliary nurse midwives, as well as respected village members and civil society representatives" (ICPS, 2010: 55). The current status of Block/ Village level CPUs is however, not available. This information needs to be made available at the earliest by the Central Project Support Unit of the ICPS. Where such Committees have not yet been constituted, immediate action must be taken by the respective DCPUs/ SCPUs for ensuring provision of the same.

In order to ensure smooth functioning of the JJS, all CWC support bodies should conduct internal meetings at least once every quarter to review the situation of the implementation of the JJ Act and functioning of the JJS within their respective jurisdictions and to design well-informed plans for the next quarter.

DCPUs and DABs should share their meeting minutes, child profile analysis, and quarterly plans with the CWCs. Advisory Boards should, in addition, propose appropriate remedial measures to concerned authorities. The minutes of the meetings of all State Advisory Boards (SABs) and State Child Protection Units (SCPUs) should be marked to NCPCR for perusal.

## 5.2. CORRECT IRREGULARITIES IN CWC COMPOSITION AND MEMBER SELECTION

**5.2.1. Maintain five-member strength:** Recruitment of vacant positions within CWCs is often indefinitely delayed, leading to major inconvenience and sometimes, the inability to have a quorum for final decisions. It is necessary to maintain the 5-member composition of CWCs at all times by ensuring that vacant positions are filled in within a maximum period of one month. This is the responsibility of the respective State Selection Committees. These Committees must maintain a reserve list of candidates for CWC Membership so that vacancies can be quickly filled up.

**5.2.2. Gender parity:** On an average, more men than women are currently appointed into CWCs. While Section 29(2) of JJ Act only requires one member of a CWC to be a woman, it is imperative that every CWC have at least two women members inclusive of the Chairperson. This would help avoid an all-male member panel in case the female representative remains absent in a given sitting. Women members are likely to be better able to empathize with and counsel for example, young mothers wishing to surrender their children for adoption, girls who have been physically/ sexually abused etc. However, to ensure gender parity in the composition of CWCs, all-women CWCs such as the one constituted in Nirmal Chhaya, Delhi is also not acceptable. In such cases, there is a need to appoint at least two male members in the panel. While women may largely be considered to have a sensitized understanding of children's issues (Shekar & Vora, 2010), a Committee that ensures gender equality in its composition is likely to be more effective and well-rounded in its interactions with other stakeholders including children and parents.

**5.2.3. Eligibility of Members:** Most CWCs in the different States studied comply with eligibility requirements though occasional inconsistencies have been noted. Therefore, it is recommended that the eligibility criteria as set by the Model Rules 2007 be followed. With regard to age, many Chairpersons/ members are aged 65 years and above and noted to be unduly cautious in initiating innovative actions in rehabilitation of children. In view of this, an upper age limit of 60 years, as has been done in the case of the Maharashtra State Rules, may be considered.

**5.2.4. CWC selection process:** Serious deviations have been noted in the selection process, including the appointment of those who hold responsible government posts or are otherwise engaged in other full-time professions within the JJ system, for instance, the appointment of Deputy Commissioners and District Social Welfare Officers as Chairpersons of CWCs. Instances of dual appointment of CWC and JJB membership and dual CWC membership in two separate CWCs within different districts have also been noted.

The Act mandates the participation of civil society as members of the CWC. Moreover, Rule 23 (3)(iii) of the Model Rules, 2007, clearly states that no person shall be considered for selection as a Chairperson or member of the Committee, if he is holding such full-time occupation that may not allow him to give necessary time and attention to the work of the Committee.

In view of this, there is a requirement for the law to specify that any given CWC member should be appointed at any given point in time, to one CWC only and he/ she cannot also be a JJB member. In the case of government officials, not only do such officers have dual functions, but a conflict of interest issue arises as well. The respective Selection Committees should therefore immediately replace government officials with dedicated and experienced persons from civil society as Chairpersons/ members of CWCs. It is also strongly recommended that CWC members be so selected that they reside within the same district as their CWC jurisdiction, in order to avoid time-consuming and inconvenient travel that could result in frequent absenteeism.

Rule 20 (3) of the Model Rules 2007 which states that while selecting the Chairperson and Members, the Selection Committee shall as far as possible ensure that none of them are from any adoption agency, a rule rightly established so as to avoid a possible area of conflict of interest. CWC members associated with a residential child care facility within the same district are also likely to present with a similar conflict of interest; they may benefit by referring children to their own institutions as funding to the child care institution is on a per child basis. A further conflict of interest arises because CWC members also monitor the child care institutions within their district which in this case, they would themselves be associated

with. The Bombay High Court, in a suo motu PIL dated 11/03/2011 (Suo Motu PIL No. 182 of 2010) also highlights this issue stating that members running child care institutions cannot be expected to discharge their duties impartially as there would be obvious conflict of interest. Keeping these conflicts of interest in mind, it is hereby recommended that Rule 20 (3) of the Model Rules be modified to state, "The Selection Committee, while selecting the Chairperson and Members of the Committee, shall as far as possible ensure that none of them are from any Adoption Agency, Children's Home, or Shelter Home."

The selection process of CWC members can be made far more effective. In addition to the above suggestions, clear Guidelines need to be framed for the functioning of the Selection Committee in selecting Members and Chairpersons. Rather than merely reviewing applications, interviewing potential members should be made mandatory so as to be able to assess knowledge, skills, commitment and overall competency. A short objective type test to gauge the level of expertise on child protection issues and the JJS should be administered on all short-listed candidates, as also an aptitude/ personality test to determine if the individual has the social and emotional capacity that such a position would entail. If a short-listed candidate has had limited exposure to child protection issues and is unable to clear the objective test, then he/ she must clear a written test on the JJ Act through a month-long distance education course on Child Protection made available by either Indira Gandhi National Open University (IGNOU) or National Institute of Public Cooperation and Child Development (NIPCCD), before being reconsidered for selection. Apart from ensuring that all members and Chairpersons meet the eligibility requirements, the Selection Committee should also attempt to maintain gender parity and diverse vocational profiles within CWC compositions.

A short list of standby candidates to fill in vacancies created due to termination or resignation of Chairpersons and Members should also be maintained to ensure that there is no disruption of CWC functioning due to lack of quorum. Further, a short overlap period of about one-two weeks between the old and newly appointed CWCs should be planned so as to help smoothen the transition of individual cases and other CWC member responsibilities. Reappointment of Members/ Chairpersons for a second tenure should be made permissible only on the basis of satisfactory performance during the first tenure,

which should be evaluated through a performance appraisal conducted by the respective Selection Committee.

In order to attract more competent and passionate people to send in applications, the vacant positions should be more actively advertised. For example, local radio/ television ticker tape advertisements announcing such vacancies should also be introduced for wider reach. The selection process should be made more transparent by disclosing details such as number of applications received from each district on the official department website and State/ District office notice boards.

### **5.3. IMPROVE INFRASTRUCTURE, MANAGEMENT AND FUNCTIONING OF CWC SITTINGS**

**5.3.1. Infrastructure:** Physical infrastructure and a child friendly environment are the most basic requirements in constituting a CWC but nearly all the CWCs are found to be functioning in severely deficient settings. It is necessary that CWCs be immediately provided with an infrastructure that meets all the requirements as laid down in the provisions of the JJ Act. It is essential for the MWCD to share with the States and UTs a few sample floor plans incorporating minimum infrastructure for CWCs on similar lines as that of anganwadis functioning under the Integrated Child Development Scheme. This would ensure that the CWCs project a child friendly ambience and have the basic infrastructure and amenities to function optimally.

**5.3.2. Venue of sittings:** It is highly desirable that CWCs conduct sittings in multiple places such that it covers vulnerable/ high-risk areas which are prone to child neglect, exploitation and abuse, across the entire district including villages distant from the original sitting venue. Under the ICPS, CHILDLINE collaborative organizations have been given the responsibility of identifying high-risk areas where vulnerable children are found (ICPS, 2010: 77). CHILDLINE should therefore assist CWCs in locating the areas of high child vulnerability hotspots.

Sittings in multiple venues such as railway platforms, schools, prisons etc. can be achieved in the form of special additional sittings, parallel sittings or rotational sittings in order to

increase CWC availability to CNCP. It is however cautioned here that under the present CWC conditions of inadequate infrastructure/ personnel support, this causes significant practical difficulties and therefore should be implemented only after careful consideration and impeccable planning. The basic provisions as mandated by the JJ Act needs to be provided in order to ensure that children in need do not suffer in the hands of overworked or demotivated CWC members lacking a basic support system.

In parallel sittings, at least one of the two Committees will comprise of only two members. CWCs should ideally operate as a full bench; a two-member Committee that brings into question the legality of decisions made should be strictly avoided. The provision of a five member Committee is given in the law so as to allow the child to receive a fair hearing that results in a well-informed decision comprising of opinions from a range of experts in the field. If however, a two-member parallel sitting is unavoidable; such sittings should also be accompanied by a clearly planned schedule and system for ratification by a quorum. The 2010 amendment to the Delhi Rules 2009 allowing for two Members to form a quorum needs to be revoked.

**5.3.3. Frequency and duration of CWC sittings:** There is a need to ensure that all CWCs hold sittings a minimum of three days a week and for a minimum duration of four hours per sitting, as prescribed by the law, which a majority of CWCs are currently not complying with.

**5.3.4. CWC member attendance during sittings:** Far too many instances of irregular attendance and prolonged absenteeism have been noted within CWCs, severely hampering its functioning. Lack of an appropriate monitoring mechanism to detect and address this, and inappropriate sanction/ disbursement of sitting allowances are found to be significant factors contributing to this inefficient situation. The following are some recommendations that could help rectify this:

- Ensure that the Act is strictly complied with when it comes to selection criteria of CWC members and the permissible minimum sitting allowance, and that they are in accordance with the Model Rules 2007 or the respective State Rules, if one has been developed post the JJ Amendment Act, 2006. The respective State departments/ DWCDs need to ensure that

efficient operational procedures are put in place for timely disbursement of honorariums on a monthly basis.

- There is a possibility for the Chairman to be absent during some sittings due to illness, important personal obligations etc. Since the Chairperson of a CWC enjoys a position of higher authority and responsibility, the absence of the Chairperson is bound to affect the functioning of the CWC unless clearly provided for. It is therefore recommended that the Selection Committee designate one of the members to officiate as the Chairperson for such sessions in order to ensure smooth functioning of the CWCs.

- While an attendance register is a desirable practice to regularise attendance, one needs to be aware that this can be manipulated and has in fact, been done so by some CWCs. The introduction of a biometric system to monitor attendance for all CWCs across the country, as has been done in the case of Delhi CWCs, is recommended. The biometric system is reliable and far more difficult to manipulate.

-It is recommended that the Selection Committee be mandated to conduct six-monthly reviews on attendance. Members found to regularly attend sittings for the mandated period of time should be given due recognition, while Members found to be frequently absent or those who are non-compliant with the 4 hours duration per sitting requirement should be sent a warning. If during such bi-yearly reviews, any member is found to flout the attendance requirement as mandated by Section 29 (4iii) of the JJ Act, s/he is to be immediately disqualified and a new member appointed in his/ her position.

**5.3.5. Case management during sittings:** It is necessary that a minimal level of direction in case management be included in the Model/ State Rules to ensure smooth functioning of CWCs.

-It is imperative that display boards stating CWC sitting venue, days and time of sitting, and names of CWC Chairpersons and Members, are displayed in all Child Care Institutions and Shelter Homes, CWC halls, DWCD offices and any other place where CWC services are likely

to be required such as children's hostels, hospitals and crowded inner city areas such as bus stands, railway stations etc. within the district.

- It is important to emphasize that the CWC function as a bench of magistrates. In order to prevent sitting styles that are inappropriate or lack legal validity, a sitting style can be specified wherein the Chairperson is seated in the centre with members seated on his/her left and right sides.

-As per a notice issued by the Delhi DWCD to all CWCs in the State in September 2012, Chairpersons of all CWCs are to create and follow a timetable to ensure that sufficient time is given to all cases. **Prior to the sitting, CWC administrative staff are to prepare the list of cases to be dealt with in a serial order, with a specific time allotted to new cases that are produced for the first time** (Deccan Herald, 2012, September 27; Navbharat Times, 2012, September 27). Similar directives should be given to CWCs across the country so as to better manage case flow. Ideally, this should be the responsibility of the CWC support staff. However, where such staff is not available, a CWC member on a rotational basis or the assigned PO could be made responsible for creating this list.

**5.3.6. Child-friendliness:** Child-friendliness is undoubtedly an important component of the JJ Act, which is unfortunately being ignored.

One possible reason for this is that being a subjective term, it is variously interpreted and therefore can be easily misconstrued. Neither the Act, nor the Rules specify as to what constitutes child-friendliness. It is therefore important that the procedural definition of this concept be detailed out. The nine parameters developed in the Maharashtra study (2010: 77) could be used as initial reference for this purpose. Once the procedural functioning of this concept is defined, it would greatly help in providing clarity to CWC members, in turn improving their efficiency.

A second reason is the constrained physical space that most CWCs operate from. However, even within this, an attempt should be made to make the CWC space as child-friendly as possible by ensuring that adequate time is spent in building rapport with each child to

alleviate anxiety/ discard misperception, and to explain the reason for his/ her presentation before the CWC. Further, case disposal discussions amongst CWC members should never be held in front of the child; in sensitive cases, especially those related to sexual abuse/ severe physical abuse, it is necessary to ensure the presence of a counsellor, preferably a woman or else, a person trusted by the child.

The ICPS grant for setting up and maintenance of CWCs provides a small budget of Rs. 5000 that can be used for creating and maintaining a child friendly environment including painting of rooms, indoor games etc. (ICPS, 2010: 101). The sitting room should be furnished with low tables and regular non-imposing chairs, with seating of the children such that they are at eye-level with the CWC members. The waiting area, where children await their turn and receive orientation on what is going to take place when they are presented before the CWC, should include child-friendly items such as children's picture books, posters, crayons, paper, games etc. A space for private meetings with children/ stakeholders, even if it is makeshift, should be created so as to ensure confidentiality during interactions when required.

#### **5.4. ENSURE A WIDE RANGE OF APPROPRIATE CHILD REFERRAL SOURCES ALONGWITH EFFECTIVE GATEKEEPING BY CWCs**

The categories of current child referral sources are limited. The need to expand the network of child referral stakeholders to include other Government departments, the JJB, public spirited persons, schools etc. through improved and active networking is evident from the available data.

The finding that public spirited persons and children themselves as child referral sources are extremely rare across all States reviewed, points to the need for CWCs to reach out to the community and create awareness about the JJ System and the existence of the CWC as a competent authority for children in need of care and protection. It is important that children too have access to information about the CWC in their district and how they can approach it. This can be accomplished by putting up informational posters about child rights and

CWCs in schools, playgrounds etc, CWC visits to schools, CWC street plays in communities in collaboration with NGOs, radio and television programmes etc.

A large number of children who fall in the category of CNCP are not brought before the CWC but are instead directly dealt with by other Government departments or NGOs. Regular networking and awareness-building with stakeholders, along with transparency in proceedings, will help build trust and confidence in CWC capabilities. This is likely to drastically reduce NGO and other stakeholders' non-compliance with the Act with regard to presenting CNCP before the CWC.

The available data shows that a large number of children are being brought in by parents citing economic reasons, lack of access to educational facilities and single parenthood. Thus, many children are gaining entry into the State's child care institutions even though they don't technically qualify under the CNCP categorization of the JJ Act. It is important that the JJ System be prevented from becoming a programme for poverty alleviation.

CWC members need to be trained to better discern between the child in need of care and protection and the child in need for welfare services. Gate keeping within the mandate of the JJ Act is required, so that children in need of care and protection are accepted into the JJ System and children or families in need of other support are referred to welfare services as required. For those children who are found to require long-term care, it is important to improve coordination mechanisms with other State departments and exhaust all other options of mainstreaming children into schools/ hostels run by the DoE/ DSW, because unlike the JJ child care institutions, these services are not 'custodial' in nature (KSCPCR report, 2011). Developing SOPs that clearly delineate the process for systematic assessment of the child's situation, as was attempted by the Maharashtra DWCD (2009), could go a long way in improving the CWC's gate-keeping capacity.

The disproportionately high number of parent-referred cases point to the need for strengthening community based alternate care programmes that can raise the capacity of the family to adequately support and retain a child, as opposed to seeking institutionalization. Active efforts are required to link the child's family to various State

schemes for poverty alleviation, social protection and economic empowerment. Collaborative interventions and referrals to NGOs that provide relevant services within the district could prove helpful in strengthening the family's ability to assume full responsibility for the child.

## **5.5. RESOLVE ISSUES SURROUNDING AMBIGUOUS CASES AND CATEGORIZATION**

There is a strong need to define and standardize as far as possible case type categories that depict reasons for child referral to CWCs. The Maharashtra Standard Operating Procedures (MSOP) document (2009) could be a good initial reference source for this purpose. The MSOP clearly defines which children can be included under twelve specific categories such as surrendered child, working child, abandoned child, missing child, street child, child who is a victim of abuse etc. However, there is scope for further developing these definitions or else creating sub-categories. For example, the category of 'runaway children' is not defined in the MSOP and is instead included under street children.

An effort made towards developing standardised categories of cases along with clear definitions for CWCs across the country will significantly enhance the efficiency of CWC case assessment and reduce ambiguity in CWC data records. It is emphasized that the main purpose of classification/categorization of cases is to assess the real problems, the cause of the problems and the situation of children in order to develop appropriate child care plans or to decide the way in which the cases need to be disposed. A secondary purpose that is also very important is maintenance of accurate data for policy purposes. State Governments hold the responsibility for preventive action which includes the provision of community-level programmes for strengthening the protective environment for children. Since every district may present unique circumstances that make children vulnerable such as seasonal migration, trafficking, high incidence of child marriage etc, it is important for the State Government to identify these through accurate CWC child referral records and develop specialised preventative programmes that bring about long-term benefits in the State's child protection system.

If it is unavoidable for complex cases to be recorded under two or more categories, a clear note to this effect must be made in the recording, so as to avoid double/ multiple counting.

## **5.6. IMPROVE CWC DECISION-MAKING PROCESSES AND OUTCOMES**

Though long-term Institutionalization should ideally be used as the last resort, the most commonly used disposal option amongst CWCs is noted to be institutional care. Within institutionalization, there are two broad options: short-term and long-term. From the data available, it appears that long-term Institutionalization is the default option used. Where restoration to family or other alternate care options do not appear viable, a short-term order is preferable for two reasons. First, it is possible that the circumstances of the child has changed in the interim and another more appropriate rehabilitation option such as restoration to family, sponsorship etc. has opened up. Secondly, short-term institutionalization followed by a review ensures that State resources are preserved for those children who need it most at any given point in time. Ideally, the practice of annual reviews for all institutionalized children should be regularized across all CWCs.

Currently, the alternate care option of Sponsorship is almost never considered and Foster Care is very rarely considered. These options need to be more frequently utilized by CWCs, especially since the ICPS provides support for the same through the Sponsorship and Foster Care Fund available with the District Child Protection Society.

In cases where children are being considered for Foster Care, especially those children who are orphaned/ surrendered by parents, CWCs need to make efforts to locate the next of kin and motivate them to foster these children, with financial support where required. Adult siblings, cousins, and grandparents in their fifties or early sixties are good resources to provide Foster Care as they also help maintain the continuity of relationships. Their non-availability must be ruled out before considering unrelated Foster Care. For those children without any known relatives, there is a need to move beyond kinship Foster Care to locate non-related foster families. However, unrelated Foster Care is a new concept in India and a cautious approach is required until the system has in place trained professionals who can

work with children and foster families to ensure that the programme benefits the child (Nayak, 2012).

The alternate care option of Sponsorship if provided at a critical time can prevent separation of children from their families, child labour, trafficking of children for economic purposes; child marriage of girls etc. Sponsorship can ensure that children are enrolled and retained in school. It can also play an important role in helping families of children affected by HIV/AIDS to cope with the financial burden associated with HIV treatment. Therefore, in order to enable families to retain guardianship of their child under trying circumstances, there is an urgent need to implement the Sponsorship scheme across all Indian States. A large-scale awareness campaign is essential to inform the general public on the Sponsorship scheme as an effective provision to support vulnerable children and their families. Once the scheme is implemented, CWCs need to ensure effective monitoring and follow-up of sponsored children, and parents of such children should be provided regular guidance and support on the use of Sponsorship funds. This will ensure optimal benefits for the child from the scheme.

There is a need to ensure the setting up of Specialised Adoption Agencies (SAA) in a phased manner in every district of the Country and thereafter at the taluka level, as mandated by the JJ Act. This is likely to curb the trafficking of children from hospitals/nursing homes since families wishing to adopt would have easier access to Adoption Placement Agencies.

Further, many CWCs have tended to view the process required to be followed for adoption cases as a mere technicality, often declaring a child free for adoption without even ensuring an adequate social investigation of the case or providing adequate counselling to parent/s who wish to surrender their child for adoption. Sec 2 (aa) of the JJ Act defines Adoption as “the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.” Thus, when CWC members declare a child free for adoption, they are essentially terminating parental rights on the child. CWCs need to be made aware of this huge responsibility, the need for thorough social investigation, and the need for sensitive and responsible handling of

adoption cases through empathy-building workshops and trainings on basic counselling skills.

In cases where parent/s wish to surrender their child for Adoption, CWCs need to first counsel the parent/s to retain the child including referring them to welfare organizations which provide supportive services. An important point to note here is that 7% of mothers in Karnataka who relinquished their children during a three-year period returned to reclaim their children within the 60-day reconsideration period (Nayak & Rajesh, 2007). If there however, continues to be a lack of willingness to retain the child, then other alternate care options such as kinship Foster Care (foster care by relatives) or Sponsorship should be explored with them as well. Where adoption is the only viable option, CWCs should clearly explain to the parent/s the long-term consequences and finality of the adoption process, as well as inform them about the two months reconsideration time given to biological parents after such surrender.

In cases of abandoned/ missing infants or children, announcements need to be put up in high circulation newspapers, to increase the chances of parents finding the child. When information on State/ language spoken by the child is available, announcements in local language newspapers should be made mandatory; for example, announcements are to be made in local Kerala newspapers if the child is noted to speak the Malayalam dialect.

There is an urgent need to create institutional and non-institutional care alternatives for children with special needs and their families. This should be seen as a policy priority by the State Government and civil society/ NGOs should also be encouraged to contribute towards this effort.

Approximately a quarter of the cases face delays beyond the prescribed four month period. In order to prevent case delays and high case pendency, it is important to resolve issues surrounding tedious time-consuming processes involved in interstate and international transfers, absence of a JAPU officer or police personnel to escort children and delays in obtaining SIRs from overburdened POs. These involve policy-level changes at the State and Central level and the provision of adequate personnel support.

Further, as per Section 52 of the JJ Act, appeals against CWC decisions can only be made in a court of law, no lower than the level of Sessions Court. In cases where decisions of the CWC are grossly in opposition to the best interest of the child or are against the laid statute, small civil society organizations or parents are reluctant/ unable to approach courts for challenging their decisions. A more accessible option for filing appeal petitions therefore needs to be considered.

Develop Standard Operating Procedures (SOPs): There is an urgent need to develop SOPs at the entry, inquiry, decision-making, and follow-up stages for all CWC case types. Though every case is unique and should be dealt on its own merit, it is essential that basic protocols are implemented and followed by all CWCs. This is currently not the case. Therefore, step-by-step guidelines/ SOPs for common CWC case types such as working child, child beggar, child marriage, trafficked child, child affected by HIV/ AIDS etc., as was provided by the Maharashtra DWCD in 2009, should be developed for all States. This would promote a comprehensive and uniform understanding of CWC procedures, greatly reduce the existing case irregularities and significantly improve the efficiency of CWC functioning.

SOPs are especially required for adoption, child labour and transfer cases as these case types create the most confusion and frustration amongst CWC functionaries. Establishing clearer protocols for CWC interventions in the initial stages and during the waiting period for time-consuming interstate/ cross-border transfer cases is necessary so that the children falling under this category are provided adequate interim rehabilitation opportunities and do not suffer. CWCs should also have clear SOPs in place to appropriately deal with serious traumatic or distressing events such as severe bullying, physical/ sexual child abuse, or suicide attempts by a child while in institutional care or while pending case disposal.

Further, it is highly likely that many of the CWC procedures of inquiry and case disposal can be generalised across the country. Therefore, it is recommended that the Central Government constitute a Committee to develop Model SOPs on a priority basis by using the Maharashtra SOP (as well as Delhi and Karnataka SOPs, if these have been finalized) as an initial reference and expanding on the same. Similar to the system followed with the

notification of the JJ Model Rules 2007, the Model SOPs can be utilised by CWCs across the country until such a time that individual State Governments complete the process of formulating their own respective SOPs based on the Model SOPs. This would enable CWCs to start implementing the correct procedures expeditiously, while waiting for individual State Governments to comply with the Central directive. It is also strongly recommended that as far as possible, SOPs, CWC data records and order formats be kept uniform across the country as it would minimize confusion, especially in interstate transfer cases. An additional benefit of keeping central records largely uniform is that a more frequent and accurate analysis could be conducted for policy purposes.

## **5.7. ENSURE FULFILMENT OF CORE CWC RESPONSIBILITIES AND FUNCTIONS**

**5.7.1. Case management and follow-up:** Children committed to long-term institutionalization appear to be the most disadvantaged, while restored children are the most neglected in terms of CWC monitoring and follow-up. It is recommended that awareness training be provided which explains the potential benefits of the child review process and negates the common view amongst CWC and institutional staff that review processes are an unnecessary bureaucratic requirement.

CWCs need to ensure that well thought-out long term individual care plans as well as short-term monthly care plans are being prepared and implemented for every case brought before them. The involvement of the child, and where possible, his/her parents is essential when developing these plans. A quarterly review by CWCs of individual care plans should be made mandatory.

**5.7.2. Case production during non-CWC hours:** Removal of ambiguity in case production during non-CWC sitting hours is urgently required since children and stakeholders are being severely inconvenienced in the absence of clear guidelines. It firstly needs to be established whether CWC orders given over the phone in such cases are acceptable. This study considers that orders given over the phone are likely to be pointless as it would be nearly impossible for the CWC member to evaluate a case without seeing or interacting with the

child. It would therefore not serve the purpose for which such a rule was created and would instead end up being perceived as a bureaucratic hurdle.

It is reiterated that if a CWC member is unreachable during non-sitting hours, children be directly taken to Shelter Homes or drop-in centres without a CWC order. The Model Rules of 2007 have given clear provisions that many of the stakeholders seem to be unaware of. Rule 27 (5) states that where none of the CWC members are accessible, a child can be taken by an NGO, CHILDLINE or police to an appropriate institution registered under the Act and placed in such institution till the time of production before the Committee. Under no circumstances should a child be made to wait at a police station for lengthy periods of time which in addition to violating the law, could be psychologically harmful for the child. In turn, institutions should be clearly directed to accept children even in the absence of a CWC order. Stern consequences should be imposed on those institutions that refuse to do so, for e.g., revoking of licence for a specific period of time if the number of such complaints cross a pre-established threshold.

**5.7.3. Police complaints and filing of FIRs:** Many CWCs do not facilitate the filing of FIRs as required of them by the law, including the filing of FIRs in some missing and child labour cases. This needs to be immediately addressed as it can greatly impede the child's chances to be restored to his/her family. CWCs should be made aware of their role to assist children or their families in the filing of FIRs in all required cases including matters related to violence, exploitation and abuse of children. This role of the CWCs should be highlighted during initiation trainings.

**5.7.4. Identifying 'fit Institutions/persons' and monitoring role of CWCs:** It is important that CWCs respect their role not just as a sitting entity but also embrace the monitoring role which requires them to be periodically mobile. CWCs need to make unannounced visits to all locations where children reside or are provided services or where there is a possibility of children being neglected or exploited. In addition to Child Care Institutions and Shelter Homes, these may include hostels/ residential schools run by other departments of the Government such as DoE, DoL or by NGOs, paediatric units of hospitals, anganwadi centres etc.

In order to ensure that all child care institutions and other child-related agencies such as **anganwadis, hostels, 'ashram shalas' etc.** are inspected and reviewed in a timely manner, a given CWC could perhaps set up its own time table for conducting inspections. This could take on various forms such as setting aside a specific day of the week for visits, assigning one or two of the five members on a rotational basis for conducting visits pre or post sittings so that quorum is not affected during sittings etc. It needs to be highlighted here that even if a two-member team makes a single visit just once per **fortnight**, a total of **over fifty CWC visits** can be completed by the end of the year. If CWCs take the effort to create a well-planned visits schedule, these visits can easily be incorporated without disrupting the efficiency of sittings. It is emphasized here that these monitoring/ supervisory visits should not be restricted only to areas surrounding the CWC sitting venue but should be equally distributed across the entire district. **CWCs should report the performance status of child-related institutions/ agencies visited, along with their observations, to the District Administration or the SCPCR. These visits could bring to the fore instances of child rights violations, if any. Coming from a statutory body, reports of such violations would receive a serious ear by the concerned authorities.** Such visits would also bring the CWC closer to the people and children in general, and enable them to spread child rights literacy.

Several CWCs have complained about the scant existence or absence of fit institutions in their districts. Further, in order to ensure that children reside in institutions which provide quality standards, there is a need to register and license all such residential institutions and monitor their services periodically. Respective State departments and CWCs need to put in sincere efforts to build awareness and encourage eligible non-government child care institutions, shelter homes and capable individuals to apply for 'fit institution' or 'fit person' status under the JJ Act. In addition to awareness-building through media and through workshops/ trainings, some other innovative methods could also be applied. For instance, using the principles of behavioural public policy, non-monetary incentives could be provided to such certified child care institutions. This could include incentives such as a prominent listing on Government websites for those child care institutions that have been certified as 'fit institutions', an annual local newspaper announcement congratulating the specific institutions that have been certified for the first time as well as those that have been

successful in renewal of certification etc. This kind of visibility is likely to motivate well-meaning agencies and individuals to come forward and apply for fit institution status.

Where child care institutions and facilities are extensive such as in the case of Maharashtra and Tamil Nadu with over 1000 child care institutions in each of these States, the creation of a separate Centre for Residential Care Services needs to be set up by the State to lay down quality standards and monitor the functioning of these institutions. It would be nearly impossible for CWCs or Inspection Committees to fulfil its responsibility of monitoring such a large number of Homes even if they attempted to do so. It may also do well for these States and the Central Government to look into this unchecked proliferation and excessive sanction of child care institutions as there is a possibility of children being unnecessarily 'pulled' into institutional care instead of being cared for within families and in the community. It would also go against the principle of using institutional care as the last resort. This is not to wish away child care institutions. They are a necessity to provide temporary care for children in difficult circumstances who, after appropriate intervention, can transit into family or community based care.

It is interesting to note that while some districts have several child care institutions, there are others where there is not have a single safe shelter to refer children to for transit care. A vast and more appropriate coverage of Children's and Shelter Homes is necessary for the safe custody of children in need.

There is a strong need to map and develop a comprehensive list of all the organisations and institutions working with children such as schools, crèches, child mental health services, institutions and services for physically challenged children (by type of disability), adoption agencies, foster care providers, sponsorship programmes, drug de-addiction services etc. As per the ICPS, the District Child Protection Society (DCPS) is the authority made responsible for putting together such a resource list and updating it on a regular basis (2009: 48). This information was to have been made available on the DCPS database but unfortunately no such comprehensive database has yet been created. The fulfilment of this ICPS provision must gain top priority. Once completed, it could prove to be an invaluable resource for

CWCs to access as well as monitor various service-providers and ensure that children are adequately cared and protected for even outside of Children's Homes and Shelter Homes.

As of now, it appears that only in extremely rare cases do CWCs take suo moto action and they usually do so only when cases are brought to their attention through media reports. CWCs need to play a more proactive role not only in regular monitoring of child-related agencies and organizations, but also invest time in ensuring that readily accessible mechanisms are in place for children and families to seek redressal of grievances or to report on inability to access rightful entitlements such as scholarships, medical attention, supplementary nutrition etc. under various schemes of the government. This would contribute greatly to improving the status of child protection within each district.

**5.7.5. Converging and networking with stakeholders:** As per Section 31 (1), the JJ Act has conferred "final authority" to CWCs for the disposal of all cases related to the care, protection, treatment, development and rehabilitation of children. Thus, there should be clear instructions to all stakeholders concerned to respect and implement the CWC orders. The consequences for not following through on such orders should also be put down and clearly communicated.

DWCDs should be encouraged to play a more supportive role in CWC functioning. For instance, as was the case with a Karnataka CWC, when CWCs extend efforts to improve their availability to children who would otherwise find it difficult to access their services by setting up sitting venues in taluka headquarters, such efforts need to be appreciated and possibly replicated where possible rather than discouraged. It is also important that DWCDs initiate networking ties between CWCs and the concerned stakeholders, particularly those stakeholders belonging to other Government departments. Once stakeholders are introduced and networking ties are established, it would be the responsibility of individual CWCs to connect periodically and maintain such ties. Additionally, the DWCD could conduct annual meetings of all stakeholders to ensure connectivity and sharing of relevant information and updates.

CWCs must participate in the DCPU monthly review meetings held by the District Magistrate/ District Collector / District Child Protection Officer where the CWC Chairperson could share information on specific challenges faced by children in the district and get an opportunity to build linkages with district heads of all other departments which provide child centric services such as DoL, DSW, DoE, Youth Affairs and Sports, Revenue, and Health and Family Welfare. This will result in more effective convergence of child rights services/ schemes within the district.

Networking with NGOs: Section 25 (s) of the Model Rules, 2007, requires NGOs to liaison and network with NGOs for social inquiry, restoration etc. Wherever CWCs have partnered with NGOs, this has largely resulted in successful child protection outcomes such as restoration, child-rescue, high-quality SIRs etc. Such practices need to be encouraged, so that specialized NGO services can promptly be made available to children, as and when CWCs identify such a need.

Since CHILDLINE provides specialized emergency child protection services through its toll free 1098 number, provides rescue operations for children in distress, has a nationwide presence through its 450 odd partners located in around 250 districts, has a high-quality child protection database, and is linked with CWCs under the ICPS, formal partnerships between CWCs and CHILDLINE organizations need to be mandated by law, similar to that which has been mandated in the case of DCPUs and CHILDLINE under Rule 81 (n) of the Model Rules, 2007. A formal linkage could prove to be mutually beneficial by necessitating more effective information sharing as well as increasing the possibility of more effective engagement of CHILDLINE supportive services by CWCs, with the view of eventually providing the maximum benefit for CNCP.

## **5.8. IMPROVE DOCUMENTATION AND REPORTING PRACTICES**

Poor case documentation and reporting by CWCs, and disinterest in compilation of relevant data by State departments in a large country with an extensive CNCP population is one of the largest obstacles to improving the country's child protection system. As of today, nearly a decade after CWCs have been established, only a chaotic and fragmented understanding is

available of the system's functioning. Policy decision-making in India is immensely handicapped in the absence of adequate or reliable data. An urgent correction to the current situation is therefore necessary.

**5.8.1. Quarterly formats:** It is recommended that simple non-time consuming quarterly reporting formats be developed, as has been done by the Delhi DWCD. Such formats along with the flexibility to provide additional information if required would ensure that all relevant information required for monitoring and review purposes will be collected, without leaving it to the subjective judgements of individual CWCs. As far as possible, the quarterly reporting formats should be kept uniform across the country, so as to enable a more well-developed and accurate analysis for policy articulation.

As opposed to the current system of relying largely on bulky hardcopy case files, it is important that all case records and reports be computerised to allow for easy access, storage and retrieval, and to prevent loss of data due to damage of paper files. Under the ICPS, the grant for setting up CWCs has budgeted for one computer with webcam and UPS and one printer cum scanner for each CWC, and the salary of an assistant cum data entry operator (ICPS, 2010: 101). These facilities, if diligently provided, are more than adequate for regular computerised documentation by CWCs.

**5.8.2. Effective and innovative use of technology:** Child protection is an extensive area that includes several stakeholders and Government departments besides CWCs and DWCDs. This would mean that child protection data is spread across several different State departments and non-government agencies. Poor knowledge and access of CWCs to the full range of available child centric services, including governmental and non-governmental organizations, obstruct the optimal utilization of existing services for prevention of violation and protection of children. Here, innovative use of technology can contribute towards achieving CWC objectives by ensuring high-quality inputs and access to data records; it can also boost convergence and effective coordination of CNCP services. Possible ways to achieve this are explored below.

**i. Mobile/ web-based applications:** Each CWC needs to have access to a thorough resource directory compiled by each DCPU with address, service provided and contact information. Decision-making time can be reduced and efficiency in developing rehabilitation plans can be greatly enhanced if this resource directory can be converted into an easy-to-use online resource tool that promptly pulls up service/ resource options for request commands such as 'vocational training services for physically challenged children in Hubli district'; 'list of individuals with fit person status in Nagpur district'; 'schools for special children in Srikakulam district' etc.

Similarly, online or mobile applications can be created in order to generate awareness, increase child referrals and improve convenience for child referral stakeholders such as NGOs, police, public spirited persons and children themselves. For instance, by entering in the name of a location e.g. 'Worli, Mumbai', the online/ mobile application could be so coded that it will sms back the location of the closest CWC along with sitting days and time. This will ensure that stakeholders are not made to unnecessarily travel from one location to another in order to present a child before the CWC.

**ii. A collaborative and interactive child protection website with MIS:** In order to create a meaningful impact and develop appropriate policies, it has become increasingly important to set up a collaborative mechanism including a Management Information System (MIS) to collect records centrally at the District, State and Central levels in order to simplify and streamline documentation and reporting activities as well as coordination and collaborative efforts amongst the various stakeholders. It is recommended that this be done in the form of a collaborative website which could involve all relevant stakeholders within child protection including CWC, JJB, SJPU, DWCD, DSW, DoL, DoH, DLSA/ SLSA/ NALSA etc, which could each be responsible for specific tasks such as putting up quarterly reports based on simple formats regarding child data and their interventions in the area of child protection during the quarter, current performance on Government schemes, updating new schemes/ circulars issued by the Government etc.

In addition to being the central all-inclusive database of children within the JJ System, this website could also serve as a platform for sharing of best practices as well as a platform for

sending requests/ queries/ advice/ complaints, all of which can be set to be automatically recorded in a specially designed and easy to refer format. Where travel is time-consuming or difficult, online networking meetings could also be scheduled and conducted through this website, so that data on collaborative meetings are automatically added to the database. If required, some pages of the website such as ongoing collaborative interactions, case-specific queries/ requests, case details etc. could be made member password specific thereby keeping it closed to the public to guarantee confidentiality.

The authority most appropriate for taking on the responsibility of developing this collaborative website and MIS is the Central Project Support Unit (CPSU) of the ICPS that falls under the Ministry of Women and Child Development, GOI. Under this, the State Child Protection Committee (SCPC) would be responsible at the State level and the District Child Protection Committee (DCPC) at the District level. Under the ICPS, the DCPCs have already been entrusted with the responsibility of compiling relevant information from all child protection stakeholders (ICPS, 2010: 48). Such an MIS could even be outsourced to a professional group with MWCD providing resources and playing the monitoring role. A think tank of professionals could initially be set up to work on the modalities and deliverables for creating an expression of interest document which would solicit applications from interested parties for finalisation of service provider.

With regard to CWCs, this website should include all relevant and regularly updated details such as district-wise lists of names and contact details of CWC members, CWC sitting venues and timings, lists of child care institutions and community child related services; quantitative CWC quarterly reports; child-related Government schemes, child-related laws etc. Thus CWCs can have easy access to information, as well as periodically update their records and share best practices when required. Interactive systems that can enhance CWC functioning could also be established within the website such as an exclusive page for interactive options between CWC members and DLSA legal aid lawyers to clarify legal doubts/ arrange for legal aid, options to interact with other CWC members across the country etc.

Such a website also opens up opportunities for developing built-in non-monetary incentives. Incentives that utilize behavioural public policy principles are often used in countries such as

the US and UK for improving efficiency and accountability of workers, without imposing legal penalties. Specific CWCs that are regular in reporting and attendance, have developed innovative strategies or best practices etc. can be highlighted on the website along with the names of the respective CWC members. On the other hand, CWCs that have significantly defaulted on their responsibilities can be red-flagged as a form of warning by the respective SCPCR / SCPC/ DWCD or the respective monitoring authority, as the case may be. Since these pages will be visible to the general public, it will serve as a strong motivator for well-meaning CWCs as well as a strong deterrent for CWCs that do not take their responsibilities seriously.

In essence, the key purpose of this collaborative website and MIS that is resource-friendly and cost-effective would be to make available all relevant child protection data and information within a single space, prevent loss of records due to damage of paper files, prevent duplicity of efforts, enable efficient coordination and cooperation amongst the various child protection stakeholders, ensure transparency, and encourage innovative strategies/ best practices. This would greatly enhance the functioning of the JJ System at the District, State and National level.

**iii. MWCD's Child Tracking System - 'TrackChild':**The Ministry is in the process of setting up a National Portal for missing and found children, namely 'TrackChild', which is envisaged to be implemented by all the States/ UTs shortly. In addition to the facility for matching of 'missing' and 'found' children, this portal will also have a component for maintaining the details and progress of children who are availing benefit under the Integrated Child Protection Scheme of the Government of India. Thus, proper monitoring and welfare of the children under the Scheme would also be ensured through the portal. All the information on the portal will be real time. In order to ensure accurate and updated records, the MWCD has directed that all child care institutions, CWCs and JJBs are to upload real time data of children on the national portal(MWCD Conference Report, 2013, February 28). CWCs therefore need to be made aware of this responsibility through circulars sent in by the respective State Departments.

## 5.9. PROVIDE ADEQUATE PERSONNEL SUPPORT

CWCs are currently functioning with very limited or no personnel resources to support them in their daily tasks and duties. Considering that the expected level of responsibilities to be undertaken is very high, there is an immediate requirement for CWCs to be provided with adequate support staff as prescribed by law, through the JJ Act and the ICPS. In addition to this, the need for a dedicated PO/ welfare officer, a trained counsellor, a translator and consultation with a legal expert has also strongly emerged from the State studies reviewed. Such support would free CWC members to use their skills and powers for providing protection to children far more efficiently. The following are the recommendations that follow from this:

-The ICPS budget should provide for the salary of at least one dedicated CWC Probation Officer.

-The DCPU must make available at least one trained counsellor for each CWC during sittings and provide for translators as and when required. Counsellors and translators may be sourced through NGOs where possible.

-In its 2010 vision document, the All India Legal Aid Cell under NALSA, has undertaken the responsibility of providing access to legal aid and advice to all Government Departments or bodies across the country. The District Legal Services Authorities, should therefore be requested to make available at least one lawyer for each CWC during the course of the sittings to assist them in executing their magisterial powers.

-As promised in the vision document, DLSA has now made available a 24 hour helpline number i.e. 12525, put up on the DLSA website to make legal aid advice accessible to all at no cost (<http://dlsa.nic.in/>). However, as of Feb-March 2013, this toll-free number has been found to be invalid. This is an important service for families of children who have been abused/ exploited as well as a service that can be utilized by CWCs in clarifying doubts surrounding legal aspects of cases. This service therefore needs to be reinstated immediately.

-As proposed by the KSCPCR (2011), the Central Project Support Unit of ICPS should initiate distant learning certificate programmes to promote alternate care services, such as preparing home studies, preparing children for alternate care, follow-up visits etc. to build a cadre of resource persons for CWCs.

## **5.10. ADDRESS AND ALLEVIATE MONETARY CONCERNS**

**5.10.1. Honorarium:** Irregularities in honorarium/ allowance amounts are noted. CWC allowance amount should be at least Rs. 500 per sitting, as prescribed by the law. It is recommended that this allowance amount be periodically increased on an annual basis.

**5.10.2. Travel allowances:** Under the ICPS of the Central Government, the travel allowance is clubbed together with the sitting allowance that is sanctioned at Rs. 500 per sitting. Many States have not provided CWCs with additional travel allowance. The ICPS budget must be modified to include additional travel allowance. If this is not immediately possible, all State Governments need to include a travel allowance budget in order to ensure attendance and to support CWCs in carrying out their monitoring role efficiently. In the absence of such travel allowance, the State department should provide each CWC with a vehicle and driver for undertaking ground level inquiries and conducting inspection or monitoring visits.

There is a strong need to alleviate delays caused in disbursement of CWC allowances which often leads to de-motivation and frustration amongst CWC members. Each State Department needs to establish non-cumbersome and prompt allowance disbursement mechanisms. Under no circumstances should the disbursing authority be superintendents of child care institutions due to the potential conflict in interests that can influence CWC monitoring results of these very institutions.

**5.10.3. Child-related funds and other allowances:** There is an urgent requirement for clarity on child eligibility and procedures for utilization of children's funds by CWCs. These include the child-related expenses allocated under ICPS and the Juvenile Justice Fund. This is

important especially in the absence of any specific budget at the disposal of CWCs for welfare and rehabilitation of children.

The current maintenance grant provided under the ICPS of Rs. 3000/ month for child-related expenses and Rs. 1500/ month for contingencies are too low to cater to the efficient protection of children and day-to-day functioning of CWCs. It is recommended that the ICPS re-evaluate and enhance this grant amount by budgeting additional grants for CWCs of larger districts and those with heavy caseload.

### **5.11. STRENGTHEN PUBLIC AWARENESS AND ADVOCACY EFFORTS**

There is a need for the CPSU under the ICPS, Ministry of Women and Child Development and the SCPUs under the respective State DWCDs to increase awareness amongst stakeholders regarding the role and authority of the CWC. This could be done through street plays in collaboration with NGOs/ anganwadis, flex banners displayed at schools, Government department offices at State/ district/ taluka levels, bus stands, railway stations, hospitals etc. Newspaper announcements, radio jingles, television ticker tape etc. could also be used for wider reach.

The Government must issue clear directives to all concerned stakeholders to honour CWC orders and provide support wherever possible. Child rights and protection should be included in the induction training of all police personnel and judicial officials. The CPSU should disseminate a short write-up of the role played, kind of child-centric expertise, child-related responsibilities and services available from the different child protection stakeholders including CWCs, JJBs, and the various related Government Departments. This will help both CWCs as well as other stakeholders better understand and pursue networking/ coordination possibilities, as well as avoid overlaps/ interference, so as to improve the overall service available to CNCP.

There is a general lack of awareness of the JJ Act amongst the police with most of the police force at the District/ Sub-District/ Police Station level being ignorant of the objectives, existence and role of police in protecting children in need of care and protection.

Frequently, police officers are designated as child welfare officers arbitrarily without any sensitization or distinction in role to be played. The Delhi police has issued guidelines for the functioning of police when dealing with children, under the guidance of the JJC. Leading from this, there is a need for the Home Ministry to issue similar Model guidelines on the functioning of Child Welfare Officers and on how the police should deal with issues and aspects surrounding children in need of care and protection. This is important because the police, in addition to being an important child referral source for CWCs and recording FIRs in child victim cases, also play an important supportive role by escorting CNCP children in transfer cases, implementing the process of age verification based on CWC orders etc. The guidelines will greatly contribute to role clarity amongst the police, which will in turn result in more effective coordination between the police and the CWCs.

The reviewed studies reveal that CWC Members and Chairpersons often lack expertise and are severely inadequate in their legal knowledge. In addition to this, there is poor role clarity amongst members. When combined, it results in a lack of confidence in decision-making that is unbecoming of a statutory body with the status of a 'final authority'. More importantly, even if well-intentioned, it can lead to a less than optimal disposal of cases that may not be in the best interests of the child. Further, it is important to note that the entry of CWCs have collided with the powers of some other stakeholders such as the DoL, resulting in a disturbance in overall child protection mechanisms. In view of these, it is suggested that the extensive powers of the CWC as the final authority on all types of CNCP cases be relooked into. At the very least, a body to monitor CWC functioning needs to be established at the earliest, so as to ensure timely intervention and guidance when required.

The roles, responsibilities, and sitting allowance of the Chairperson are currently the same as that of the members. This has occasionally resulted in confusion and friction between Members and Chairpersons regarding hierarchy and responsibilities. There is a need to delineate additional responsibilities for Chairpersons. This should include activities such as planning and conducting monthly internal review meetings and networking meetings with stakeholders, creating and implementing weekly schedules for monitoring of child care institutions, collating and sharing information with concerned authorities/ stakeholders, planning child rights and child protection sensitization activities etc. This mandated increase

in responsibilities can be supplemented by a 50% higher sitting allowance than that obtained by other members.

A draft code of professional ethics for CWCs has been developed by NCPCR (Nayak, N, 2013). This code which details out the ethical responsibilities of CWC members towards children, colleagues, employees, and civil society and which is to be signed by Members and Chairpersons at the time of induction, could be given due consideration by the Ministry. This code will not only facilitate more ethical functioning of CWCs, but will also help provide additional role clarity to CWC members on appropriate and ethical practices that are expected of a person assuming this position.

#### **5.12. PROVIDE HIGH-QUALITY SPECIALISED TRAININGS AND WORKSHOPS**

The Chairpersons and members appointed into the CWC rarely have any prior exposure to the Juvenile Justice System which is vast and complex. The one-three day induction trainings which provide some orientation on the JJS only serve as a very basic introduction. Periodic trainings that provide updates on different legislations and alternative child care options are lacking in nearly all States. Since CWC members across States have expressed the need for additional trainings especially with regard to legal aspects and procedural skills and since the Act mandates the State Government to provide all required trainings, these specialised on-going trainings are to be made available to CWCs.

In order to ensure quality, accurate information and standardization of procedures within CWCs across the country, it is essential that a specific body be appointed for the purpose of developing training manuals and monitoring quality dissemination of the same. **Under the ICPS, the NIPCCD has been given the nodal responsibility for training and capacity building on all child protection issues at the national and regional levels (ICPS, 2010). However, taking into account the key training requirements expressed by CWC Members and the existing vision document of the All India Legal Aid Cell on Child Rights, a second body appropriate for undertaking CWC trainings is the All India Legal Aid Cell on Child Rights, established by Delhi Legal Services Authority (DLSA) and NGO Bachpan Bachao Andolan (BBA) under the aegis of the National Legal Services Authority (NALSA) at the Central level,**

State Legal Services Authority (SLSA) at the State level and District Legal Services Authority (DLSA) at the District level. A working collaboration between the NIPCCD and the Legal Services Authorities with clear delineation of roles and responsibilities should therefore be established for the purpose of CWC trainings. NIPCCD could perhaps be given the responsibility of certifying the courses as well as licensing master trainers, while SLSAs could be made responsible for the dissemination of the trainings. NGOs could possibly be included in the training dissemination process under adequate supervision and monitoring by SLSAs.

In the vision document prepared by the All India Legal Aid Cell on Child Rights (2010), it is stated that “DLSA in coordination with NALSA and BBA shall organize the training and sensitization programs, skill enhancement and orientation programs from time to time for legal aid counsels of the cell, executive police, and other agencies responsible for enforcement of laws relating to child rights”. Within this document, the training methodology and subjects to be covered have also been detailed out, both of which seem appropriate and highly useful for CWCs as well. As per the vision document, trainings will be conducted by child rights experts from various fields and the mode of training will be theoretical as well as practical including paper presentations, power point presentations, field assignments, case assignments etc. The subjects include:

- a) Ongoing work on child rights
- b) Information regarding child labour and child trafficking issues
- c) International law focussing on child rights
- d) National legal framework, including legislation and judicial cases
- e) Interviewing skills
- f) Network of legal aid and assistance throughout India
- g) Management of administrative matters.

The All India Legal Aid Cell, clearly has the expertise that CWCs lack most and have specifically requested for i.e. training on legal aspects of CNCP cases. Moreover, they already have detailed guidelines and training mechanisms established that are appropriate for all child protection stakeholders. Perhaps, a slightly modified and a more specialised training module can be created for CWCs that is updated periodically. Other themes that

can be included in this CWC training module are awareness-building on CWC powers and responsibilities, developing customised individual care plans, creating and maintaining data records, and an understanding of how different laws can be effectively combined with the JJ Act to accrue maximum benefits for CNCP. The orientation training should include team-building including collective decision-making exercises; empathy-building and basic counselling skills for handling of sensitive cases such as child abuse, surrender of children by parents etc; as well as field visits/ interactions with other CWCs, DCPU, SCPCR, CHILDLINE etc. Once the Model SOPs are formulated and the MIS system/ documentation formats are ready for use, training on how to use these can also be included in the training module. The efficiency of CWCs will be greatly enhanced through trainings developed, disseminated and monitored by the Cell.

Additionally, it is suggested that these trainings be held on a quarterly basis and offer opportunities for sharing best practices and challenges. These field challenges and best practices can then be tackled/ incorporated within the training module, thereby ensuring that the module is continually evolving, while at the same time reflecting CWC ground realities.

Since absenteeism is common in the few trainings that have been provided to date, a rule needs to be established that all CWC members are to attend at least 75% of the trainings provided within the District/ State annually in order to avoid disqualification.

Multi-stakeholder District or State level workshops such as those conducted by the KSCPCR and NGOs are encouraged as these can provide specialised inputs as well as greatly enhance possibilities of collaborative initiatives amongst stakeholders.

### **5.13. ESTABLISH CWC MONITORING AND REVIEW MECHANISMS**

**5.13.1. Internal CWC review mechanism:** The Delhi DWCD in 2012 made it mandatory that each CWC in the State meet every week to analyse and review their work (Deccan Herald, 2012, September 27). This is a practice that should be standardised across all CWCs in the country. Internal reviews provide a safe space for cross-learning, self-evaluation and

correcting any discrepancies in procedures being followed. This can help alleviate contradictions that can often arise amongst team members during case adjudication. Such internal meetings can further contribute to team-building and collective decision-making on follow-up and rehabilitation plans for children, thereby vastly enhancing CWC efficiency in the long-run.

**5.13.2. External CWC monitoring mechanism:** The absence of a well-defined monitoring authority for CWCs has led to severe inconsistencies in the implementation of the JJS. An exception is the State of Delhi which has a specified monitoring authority for its CWCs in the form of the JJC, though this performs a more administrative role and confusion persists even here as to whether other bodies such as the DWCD or NCPCR can also demand explanations from the CWCs. In order to bring about efficiency in the working of the CWCs, it is necessary to constitute a competent monitoring body that has the necessary expertise, is hierarchically superior in structure, yet has a balanced and sensitive approach to child-related issues. Once established, it is also extremely important to provide complete clarity to CWCs on who they should report to and what kind of reports/ directions they are expected to respond to, so as to avoid duplicity, frustration and/or overburdening of CWCs

The active involvement and support of the DWCD is indeed necessary for smooth functioning of CWCs, especially in administrative matters, networking and awareness building. However, from the analysis presented in this study, it is clear that when DWCDs assume a monitoring role, it creates a conflict of interest that may work against the best interest of CNCP. Thus, the DWCD by itself cannot be appointed as the monitoring body.

Since the decisions of the CWC are judicial in nature, it is strongly recommended that CWCs too, like the JJBs be brought under the purview of the High Court. Despite an order being passed to this end by the Supreme Court nearly two years ago, it has not yet been complied with by individual States.

The judicial Committee proposed by the Supreme Court in its order dated 18/ 04/ 2011 includes a team of not less than three Hon'ble Judges and two psychiatrists (Writ Petition (C) No.51 Of 2006). The current study suggests that that the composition of this Monitoring

Committee be re-examined as the value added due to the presence of two psychiatrists in the Monitoring Committee is unclear. Psychiatrists, even if they are child psychiatrists may not necessarily have an adequate understanding of existing child protection issues and appropriate methods of working with the same.

Instead, it is recommended here that CWCs come under the judicial supervision of the High Court with the CWC Monitoring Committee headed by the Chief Justice of the State High Court, and the four members could include the Executive Chairman of the SLSA, the Chairperson of the SCPCR, the Secretary of the DWCD (as also Chairperson of the State Child Protection Committee i.e. SCPC), and one civil society representative who has commendable experience in the field of child rights and child protection. Inclusion of high-level representatives from the SLSA, SCPCR and DWCD rather than psychiatrists will ensure the presence of strong and varied expertise as well as ensure detailed background information on CWC past and present functioning, leading to review discussions that are likely to remain more focussed; the presence of the civil society representative will ensure a more transparent and balanced perspective.

With regard to frequency of review meetings, each of the individual bodies i.e. the SLSA, SCPCR and DWCD should hold monthly review meetings on CWC functioning with their respective district level officials for performance updates and review of implementation of previous monitoring directives. The judicial Monitoring Committee should hold a review meeting at least once every quarter and issue orders, provide guidance and directives as necessary. A quarterly report needs to be prepared and publicly disseminated by the CWC Monitoring Committee through the integrated website. This report could include performance ratings on a scale of 1-10 of individual CWCs in the State based on specific evaluation criteria developed by the CWC Monitoring Committee.

For monitoring purposes as well as for increasing procedural clarity for CWCs, the JJ Model Rules for children in need of care and protection could be translated into simple checklists of minimum legal standards to be followed.

All CWC-related complaints including complaints against specific CWC members can be addressed via letter to the CWC Monitoring Committee (or the NCPCR/ SCPCRs, as mandated by Section 13 (1) (j) of the Commissions for Protection of Child Rights (CPCR) Act, 2005) which will take the necessary action after appropriate inquiry. CWCs should be clearly mandated by law to respond to all queries, case disposal explanation requests etc. that has been issued by this Monitoring Committee as a whole or that has been requested by individual Monitoring Committee members.

Moreover, Section 44 (1) of the Protection of Children against Sexual Offences (POCSO) Act, 2012, which recently came into force on 14<sup>th</sup> November 2012, mandates the NCPCR/ SCPCRs to monitor the implementation of the provisions of the POCSO Act. Further, Rule 6 of the Central Government POCSO Rules, 2012 clearly state that the NCPCR/ SCPCRs may call for periodic reports from a CWC on action taken by the CWC in cases reported under the Act; they may also call for a report on any specific case of child sexual abuse falling within the jurisdiction of the CWC concerned. CWCs therefore need to be made aware of this provision in the law through circulars sent in by respective State departments, so as to ensure that requests for such reports by the Commissions are immediately responded to.

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