

Ms. KUSHAL SINGH
Chairperson



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

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

24730

Dated: 3rd July 2013

Dear *Shri Aggarwal*

Kindly refer to Ministry's letter No.1-3/2012-CW-II (Pt.) dated 18.06.2014 seeking comments and suggestions of NCPCR on the draft Bill on 'Repeal and re-enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000'. Following six major reasons for the repeal and re-enactment of the Act have been cited:

- i. Increase in reported incidents of abuse of children in institutions, families and communities;
- ii. Inadequate facilities, quality of care and rehabilitation measures in Homes;
- iii. Delays in various processes under the Act, such as decisions by CWCs and JJBs leading to high pendency of cases;
- iv. Delay in adoption process;
- v. Inadequate provisions to deal with offences against children; and
- vi. Provisions related to juveniles in conflict with law, in the age group of 16 to 18 years.

2. In this context, it is mentioned that NCPCR had organized consultative meetings on 26th and 27th June, 2014 with representatives from JJBs, CWCs, NGOs and individual experts to examine the issues arising out of the proposed Bill. Based on the inputs and suggestions received during these consultations as well as NCPCR's own experience and learnings, the suggestions/comments are offered on the proposed Bill in the Annexure.

With *regards*

Yours sincerely,

K Singh
(Kushal Singh)

Shri Shankar Aggarwal
Secretary to the Government of India
Ministry of Women and Child Development
Shastri Bhawan, New Delhi – 110 001

01/2
[Signature]
3/7/13

Suggestions and Comments of NCPCR on the
Draft of the Proposed Juvenile Justice (Care and Protection of Children) Bill, 2014

The Commission welcomes that an attempt has been made toward progressive reform by including number of positive and forwarding looking provisions in the Bill such as:

- The inclusion of Fundamental Principles for Care, Protection, Rehabilitation and Justice for Children to be followed and guided by reiterates the commitments towards children.
- More terms have been included in the definition with greater clarity and the definition of Child in need of care and Protection has been expanded by including children living on the street, or working in contravention of Child Labour (Prohibition and Regulation) Act, 1986, irrespective of whether the child is living with or without a family or in any home or settled place of abode; will be considered CNCP. This will increase coverage and reach of the JJ system for categories of children who are currently unaddressed or excluded due to procedural / operational barriers.
- The Commission is particularly happy to note that provision of punishment for cruelty has been redefined with inclusion of the word 'Abuse' in definition of cruelty and with enhanced punishment. It is believed that this will act as a deterrent to child abuse. Similarly recognition of corporal punishment as a punishable offence is a positive step.
- Stress has been given to non-institutional care of children by strengthening the status and role of CARA which is an apex body for adoption and also elaborating the definition and provisions of foster care.
- Registration of Child Care Institutions has been made mandatory with penal provision.

Alongside the above provisions, there are also some critical provisions in the Bill having wide implications on policy priorities which need to be re-examined and reconsidered.

1. The very reason that there is a need to repeal the present Act is a clear indication that the provisions in the existing Act have failed to fulfill the purpose of ensuring care, protection and treatment in a friendly approach to the child in need of care and protection as well as children in conflict with law. It will, therefore, be prudent to analyze the gaps in the existing Act through a systematic analysis/study before repealing and enacting a new law.

2. It has been stated by the Ministry that there is an increase in the incidence of abuse of children in institutions, families and communities. This, in turn, indicates that, even after 14 years, the existing Act has failed to curb such incidents. Nevertheless, it is not clear whether the measures suggested in the proposed Bill provide for a foolproof mechanism that guarantees protection to child from abuse by institutions, families and communities.

3. Similarly, there is no research or analytical study on the reasons for inadequate facilities, quality of care and rehabilitation measures in Child Care Institutions (CCIs). Are these deficiencies due to incompetence or lack of commitment on the part of Govt. functionaries and

NGOs; or lack of funds; or apathy of duty bearers; or corruption and other malpractices in the system? The question is whether the provisions proposed in the draft Bill take care of all these concerns or not? This needs careful examination so that the past mistakes are not repeated and precious years of children are not lost.

4. The reasons for high pendency of cases in JJBs and CWCs due to delay in decision making by them needs thorough examination as well. Whether the proposed amendments in the Bill adequately address these issues? Our understanding is that the CWCs and JJBs suffer due to various factors including inappropriate selection process, irregular sittings, lack of facilities/infrastructure and support from State and inadequate training and orientation.

The proposed composition of the Child Welfare Committee will not serve the purpose of constituting a Committee. The proposal that the Deputy Commissioner/District Magistrate should chair the Child Welfare Committee will not only delay the decision making process (due to preoccupations and work overload of DC/DM), but will also be against the independent functioning of CWC.

The experiences of the past of having Deputy Commissioners/District Magistrates as Chairperson of the Committee have not been encouraging. For example in states of Haryana and Sikkim the Committees were headed by District Collector and District Magistrates respectively and District Social Welfare Officer in Meghalaya who had fulltime responsibilities towards implementing various schemes/programmes of the State Government, having also been assigned the role of Chairperson of the CWCs. Consequently, it was observed that such officers are not able to devote sufficient time for the CWC work.

5. The provisions of enquiry under section 14 and section 17(3) of the proposed Bill are retrograde in nature and against the principles of reformative and restorative justice. They will defeat the intent and purpose of the juvenile justice system which states that irrespective of the nature of crime or any other factors, the case of a child alleged to be in conflict with law shall be dealt with by the child-friendly juvenile justice system. Incorporating section 14 and 17(3) will be an admission of the fact that the child care protection system has failed in its responsibility and duties. Instead of improving the system and holding the stakeholders responsible, the Bill proposes to impose harsher punishment on the child. The Commission is of the view that there should be stricter penalties for all stakeholders including family, community, institutions who fail in their responsibility towards the care, protection and treatment of the child at stages of development.

The principle of equality and non-discrimination has been recognised as one of the fundamental principles which are critical to the understanding and implementation of the Act and all Competent Authorities or agencies, as the case may be, shall abide and be guided by these Principles to apply, interpret and implement any provision related to Care, Protection, Rehabilitation and Justice for Children, under this Act". Categorisation of children on the grounds of the nature of offence or any such grounds violates the same principle.

6. At present, the appeal against the decision of CWCs and JJBs lies with the Sessions Court. Many a time the aggrieved parties are not able to file an appeal in the judicial courts for various reasons. In the interest of justice for children, it will be appropriate that the aggrieved

() party is given an opportunity to first approach the SCPCR for review of the decision of CWC/JJB. If the SCPCR is of the view that a review petition is necessary, then it should either facilitate or take up the matter by itself before the Sessions Court.

7. The role of the DCPU as per the provisions of the new Bill is contradictory. On the one side the DCPU will be the implementing agency for the orders issued by the CWCs relating to care and protection of children. At the same time the DCPU has also been assigned the task of monitoring the CWCs in the new Bill. An implementing agency will not be in a position to monitor the authority whose direction it is required to implement.

It may be mentioned here that one of the drawbacks of the existing system is that no formal provision for monitoring/performance assessment mechanism for the CWC and JJB has been provided. Although some monitoring mechanism has been introduced in the new Bill, we still feel that a better monitoring of the functioning of the CWCs, JJBs, SJPU, etc. is required. While the CPC Act has given authority to the NPCR and SCPCRs to monitor juvenile justice system, no such provision has been included in the new Bill. It is recommended that the NCPCR/SCPCRs should be given a clearly defined monitoring role in the Act (as given in the POCSO and RTE Acts.) It would be pertinent to mention here that the Supreme Court in the matter of WP (C) 473/2005 in the case of Sampurna Behrua vs. Union of India and others, and WP (C) 51/2006 in the case of Bachpan Bachao Andolan vs. Union of India and others has held NCPCR responsible for monitoring the Juvenile Justice Act.

8. Currently, the adoption order is passed by the family court. The proposed Bill gives this power to Principal Magistrate with a view to expedite the adoption process. The JJBs have been established for dealing with cases of children alleged to be in conflict with law. The orientation and experience of JJBs is different from that required for dealing with adoption cases. The Commission is, therefore, of the view that adoption cases should be delinked from the Principle Magistrate and instead be entrusted to Children Courts.

9. NCPCR has come across several instances where children have been lodged in jails in clear defiance of the provisions of JJ Act. This not only takes away the precious time for growth and development of the child but also stigmatizes them (legally and socially) jeopardizing their future. It is, therefore, important that the machinery responsible for wrongful confinement of children must be severely punished and the affected children are duly compensated.

10. Children with special needs are highly vulnerable to neglect, abuse and abandonment. Therefore, there is a need for special provisions for such children. The draft Bill should take care of this issue.

11. It is suggested that the Act should be as concise as possible and procedural parts may be incorporated in the Rules. The advantage would be that the Rules can be amended on the basis of the feedback received from time to time.

12. There are large number of child protection and care entities that have been established at the State and District level viz.,

State Level: - SCPCR, State Advisory Council (RTE), State Advisory Board and Child Labour technical Advisory Committee;

District Level: - Juvenile Justice Board (JJB), Child Welfare Committee, Children's Court, Special Court for POCSO, Special Public Prosecutor, Child Labour Inspector and Child Marriage Prohibition Officer, Special Juvenile Police Unit (SJPU), Child Welfare Officer (Police Station)

There is urgent need to ensure convergence between and amongst these units for better efficiency, coordination and decision making. It is therefore proposed that a single statutory authority at district level, namely **Child Care & Protection Unit (DCCPU)** headed by a Senior Officer be constituted accordingly and given the responsibility to control, coordinate and monitor various child care institutions including homes that provide care and protection to the children. It will be the responsibility of the District Child Care & Protection Unit to ensure that-

- (a) Every birth, infant mortality, under-five mortality, disability, under-eighteen mortality, school registration, school dropout, child migration, etc. is updated on the district child website. Failure to do so beyond 30 days should invite penal measures.
- (b) Similarly JJBs, CWCs will regularly visit and monitor, in addition to their normal duties, the child care institutions and update the SCPCR about their state of affairs. Failure to monitor beyond 30 days should invite penal measures.

RECOMMENDATIONS

The Commission has raised the above issues and concerns relating to the policy matters in the new Bill. However, there are several discrepancies/contradictions between the provisions and various sections in the Bill which need to be studied in depth. Due to the fact that only 15 days have been given by the Ministry for sending our views on the new Bill, we have restricted ourselves to highlighting only the policy issues relating to the new Bill. As the proposed Bill will have far-reaching implications on the rights of the children, the NCPCR strongly recommends that the issue requires wider consultation with the stakeholders and should not be rushed through without such a consultation. It will be appropriate to devote some more time to introspection and genuine analysis of the issues in order to ensure that the present lacunae in the existing law are addressed appropriately.

We would also like to point out that while the principle of participation of children has been included in the Fundamental Principles in the new Bill, it does not appear that the views of the children on the new Bill have also been heard.

In the covering letter inviting comments on the new Bill it has been pointed out that discussions with the States/UTs and civil society organisations have been held. In this regard we would like to point out that the earlier discussions, in which NCPCR had also participated, related to the amendments in the existing Juvenile Justice Act. The proposal to repeal the existing Act and bring a new Act has not been discussed earlier. We would like to reiterate that the views of the State Governments, CWCs/JJBs and other implementing agencies may be obtained before the new Bill is finalised.