

**Minutes of the First Meeting of NCPCR Advisory Committee
on Juvenile Justice Act, 2000 and
Protection of Children from Sexual Offences (POCSO) Act, 2012**

The Advisory Committee on J.J. Act, 2000 and POCSO Act, 2012 constituted by NCPCR vide Office Order No.54333/NCPCR-2013-14(JJ)/5718-5747 dated 24.03.2014 held its first meeting on 22nd May, 2014 at India Habitat Centre, Lodi Road, New Delhi-110003. The meeting was chaired by Smt. Kushal Singh, Chairperson, National Commission for Protection of Child Rights (NCPCR), New Delhi. The list of participants is at Annexure-I.

2. Welcoming the participants, the Chairperson, NCPCR mentioned that the purpose of setting up the Advisory Committee was to seek suggestions/recommendations of experts to effectively monitor the implementation of J.J. Act and POCSO Act in the country. She further mentioned that the scope of POCSO Act was not restricted only to the physical and sexual assault on the child but also the trauma faced by the child and the rehabilitation measures adopted. She requested the participants to give their inputs and suggestions for efficient and effective monitoring by NCPCR/SCPCRs.

3. The following agenda items were taken up for discussion.

Agenda No.1: Status of implementation of the J.J. Act and the Integrated Child Protection Scheme (ICPS).

3.1. Shri Ashi Kapoor, Deputy Secretary, Ministry of Women & child Development made a presentation on the status of implementation of the J.J. Act and the Integrated Child Protection Scheme (ICPS). While highlighting the key gaps and challenges in the pre-revised ICPS, Shri Kapoor gave detailed account of the new provisions in the revised ICPS, especially the enhanced funding support in key areas such as remuneration for CWCs, JJBs and DCPUs. Members enquired about the likely amendment proposed to be made in the J.J. Act. Shri Kapoor informed that the amendment proposals in the J.J. Act will soon be placed in the public domain and requested the members to provide their valuable comments and inputs thereafter.



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Agenda No.2: Legislation, Policy and Administration of J.J. Act and Integrated Child Protection Scheme (ICPS) - Issues and Challenges

3.2. The Child Protection Specialist of UNICEF India Country Office, Ms. Tannistha Datta made a presentation on the issues and challenges touching upon the following key concerns:

- (a) There was a need to give more attention to the preventive, rescue and rehabilitation aspects of both the children in need of care and protection as well as children in conflict with law.
- (b) The separation of child from his/her family entails both short and long-term effects. There was a need to encourage rehabilitation measures, other than the institutional care in CCIs. These measures could be adoption, sponsorship and foster care.
- (c) Since the authentic data on the number of children in need of care and protection as well as children in conflict with law was lacking, there was an urgent need to evolve a mechanism for regular assessment and upgradation of data base.
- (d) There was dearth of child professionals to manage institutions like CCIs, CWCs, JJBs, DCPUs, adoption agencies etc.
- (e) At present, the performance assessment and monitoring of child care institutions, adoption agencies etc. is weak and there is a need to strengthen the monitoring and reporting mechanisms at the national, State and Inter-Ministerial level.
- (f) The track-child mechanism developed by Ministry of Women and Child Development is not being used by all States thereby defeating the very purpose for which it was established.

Agenda No.3: Role of NCPCR/SCPCRs in regard to policy, legislative reform, administration of J.J., review and monitoring of the implementation of the Act etc. and effective measures.

3.3.1 In the open session, views/suggestions and inputs were invited from the participants. A summary of main recommendations is given below.

3.3.2 **Age of juvenile in conflict with law:**

The members were of the view that lowering of age from 18 years to 16 years will do tremendous harm to the juvenile justice system. It was pointed out that the Hon'ble

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Supreme Court in its recent judgment [arising out of SLP (Crl.) No. 1953 of 2013] in Dr. Subramanian Swamy Ors. Versus Raju thr. Member, JJB & Anr. Has, inter alia, observed as under:

“.....If the legislature has adopted the age of 18 as the dividing line between juveniles and adults and such a decision is constitutionally permissible the enquiry by the Courts must come to an end. Even otherwise there is a considerable body of world opinion that all under 18 persons ought to be treated as juveniles and separate treatment ought to be meted out to them so far as offences committed by such persons are concerned....”

In view of the unequivocal opinion of the Apex court, it was unanimously agreed that the age of juvenile as mentioned in the existing J.J. Act should not be changed. As far as the determination of age is concerned, the Members were of the view that the best mechanism is to ensure registration of birth of every child. In case the birth certificate is not available, the estimation of age shall be done in consultation with medical professionals. It was also suggested that the current age estimation standards need to be reviewed.

3.3.3 **Skill development and capacity enhancement of professionals engaged in child care and protection:**

It was agreed that the skill development and capacity building of functionaries under JJ system and ICPS structure was critically important as many such functionaries have been recruited without proper training and competence. It was, therefore, necessary to develop specific courses in Universities and institutions to enhance the existing capacity of functionaries under JJ system. It was decided that NCPCR/SCPCRs should take the responsibility of assessing the existing skill and capability of the staff of CCIs, conduct gap analysis and evolve suitable capacity building program in consultation with universities and professional institutions. The NCPCR/SCPCRs should develop standardized training modules and a list of resource persons. If required, a task force may be constituted to examine the content and approach of the training module for child protection personnel.

3.3.4 **Inadequate data on children in need of care and protection:**

Members were of the view that every district should create a data base and map the children in need of care and protection. It was desired that NCPCR may consider conducting a research study in this regard. The representative of Ministry of WCD, Shri

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Ashi Kapoor informed that funds have also been earmarked under ICPS for assessment and mapping of children in need of care and protection. NCPCR and SCPCRs can take up this matter with the State Governments and complete the district-wise mapping in a time-bound manner.

3.3.5 Care and protection of disabled children:

NCPCR should take up the issue of care and protection of disabled children especially the ones with mental disabilities. There is a need to set up dedicated institutions to take care of children with disabilities.

3.3.6 Harmonization of legislations:

NCPCR should examine the contradictions in various legislations pertaining to child rights/protection and recommend measures to harmonize them.

Agenda No.4: POCSO Act : Status of implementation; key issues and challenges; and role of NCPCR/SCPCRs in effective monitoring and implementation of the Act.

3.4.1 Advisor to Chairperson, NCPCR made a presentation on the POCSO Act, 2012 highlighting the initiatives taken by NCPCR in monitoring the implementation of the Act. Chairperson, NCPCR emphasized that the role of the Commission was limited to monitoring aspect only and has no inquiry/investigation role. She invited suggestions from the members for improving the effectiveness of monitoring by NCPCR/SCPCRs. The members made the following suggestions in this regard.

3.4.2 While some members expressed reservations on the mandatory reporting of offences and consequent punishment for failure to report, others were of the view that these provisions were kept after careful consideration. It was agreed that the provisions under Chapter 5 of the POCSO Act may be reviewed by experts. Chairperson, NCPCR requested the participants to review the various provisions including that of Chapter 5 of the Act and send their considered views. It was agreed that Dr. Achal Bhagat of SAARTHAK and NGO TULIR will coordinate the preparation of a Position Paper in this regard in collaboration with the 'Save the Children' NGO. The NCPCR will then initiate a debate to evolve a consensus on the issue.

3.4.3 The participants desired that there should be a designated source for funding the Victim Compensation Scheme. Chairperson, NCPCR informed that data in this regard was

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being collected from the State Governments and the same will be shared with all after an analysis done with NALSA.

3.4.4 The provision to conduct medical examination of a girl child victim by a lady doctor may delay the necessary medical treatment in the event of non-availability of a female doctor. This aspect needs to be reconsidered.

3.4.5 A mechanism for convergence of efforts by medical professionals, police authorities and judiciary for providing speedy and effective relief to child victims was urgently needed. Chairperson, NCPCR agreed for organizing common workshops for these professionals/authorities.

3.4.6 Standard procedures may be developed to avoid trauma to the child victim due to multiple enquiries.

3.4.7 The monitoring format developed by the Maharashtra SCPCR may be considered for adoption by NCPCR and other SCPCRs for monitoring the implementation of POCSO Act.

3.5 **Other suggestions**

3.5.1 A resource centre on good practices, case studies, research papers etc. is required to be set up in NCPCR. The data should be made available on the website for use by all concerned. The data should be updated regularly by all concerned.

3.5.2 There is need to sensitize police to register sexual offences against child under the provisions of POCSO Act only.

3.5.3 NCPCR should recommend to Medical Council of India (MCI) to incorporate child protection issues in their training programmes for health professionals.

3.5.4 NCPCR should organize frequent Inter-Ministerial meetings to take stock of ICPS.

3.5.5 NCPCR and SCPCRs should take up the pendency of cases in JJBs and CWCs with the concerned Ministries/Departments.

3.5.6 NCPCR and SCPCRs should ensure that every district shall have sufficient children homes as well as observation homes.

3.5.7 NCPCR and SCPCRs should address the rehabilitation concerns of the children in CCIs after they attain the age of 18 years.

3.5.8 The Commission should have a simplified proforma for monitoring of POCSO cases based on the monitoring guidelines in consultation with Lawyers Collective.



3.5.9 Monitoring of functioning of District Child Protection Units should be taken up by NCPCR/SCPCRs.

3.5.10 UNICEF will share tools and guidelines on safe school with NCPCR for further circulation. It will also coordinate with NCPCR to put training videos on NCPCR website.

3.5.11 Child protection system processes will be mapped out by CHILDLINE India Foundation.

3.5.12 NCPCR and UNICEF should map the existing work being done and develop videos on capacity building, to be uploaded on the website, accessed by anyone, translated into multiple languages. NLSIU Bangalore has this material which they will share with NCPCR. Also, copy of material relating to POCSO available with NLSIU, Bangalore will be obtained by NCPCR.

3.5.13 NCPCR and SCPCRs should provide platform to the children for voicing their opinions and suggestions in all matters concerning child rights.

4. The meeting ended with a vote of thanks to the Chair.



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Annexure-I : List of ParticipantsNCPCR

1. Smt. Kushal Singh, Chairperson, National Commission for Protection of Child Rights, New Delhi.
2. Shri Asheem Srivastav, Member Secretary, National Commission for Protection of Child Rights, New Delhi.

Ex Officio Members

3. Shri Ashi Kapoor, Deputy Secretary, Ministry of Women and Child Development, Govt. of India, New Delhi

Chairpersons of State Commission for Protection of Child Rights (SCPCR)

4. Dr. Sruti Mohapatra, Chairperson, Odisha SCPCR
5. Ms. Savitri Dhaka, Chairperson, Haryana SCPCR
6. Shri H.R. Umesh Ardhya, Chairperson, Karnataka SCPCR
7. Ms. Shayama Dogra, Chairperson, Himachal Pradesh SCPCR
8. Ms. Nisha Jha, Chairperson, Bihar SCPCR
9. Dr. Rameshwari Pandya, Chairperson, Gujarat SCPCR
10. Smt. Usha Chaturvedi, Chairperson, Madhya Pradesh SCPCR
11. Smt. Roop Laxmi Munda, Chairperson, Jharkhand SCPCR
12. Shri Ashokendu Sengupta, Chairperson, West Bengal SCPCR
13. Shri Arun Mathur, Chairperson, Delhi SCPCR

Authorities

14. Ms. Asha Menon, Member Secretary, National Legal Services Authority

Institutions

15. Ms. Kalpana Purushothaman, Senior Counsellor Researcher, Centre for Child & the Law, National Law School University of India, Bangalore.
16. Prof. Krishna Deva Rao, Professor, National Law University, Delhi
17. Prof. Mrinal Satish, Associate Professor, National Law University, Delhi
18. Dr. Rajeev Seth, Chairperson, IAP-CANCL Group

UN Agencies(a) Representing UNICEF

19. Ms. Tannistha Datta, Child Protection Specialist, UNICEF, India Country Office, New Delhi.
20. Ms. Vandhana Kandhari, Child Protection Specialist, UNICEF, India Country Office, New Delhi.
21. Ms. Dora Gussi, Child Specialist, UNICEF

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(b) Representing UN Women

22. Ms. Anju Pandey, ERAW Specialist, UN Women, New Delhi

Non-governmental Organizations

23. Ms. Harleen Walia, Deputy Director, CHILDLINE India Foundation.
 24. Ms. Vidya Reddy, Executive Director, TULIR- Centre for the Prevention and Healing of Child Sexual Abuse, Chennai.
 25. Shri Mohammad Aftab, Head, Chief Protection, Save the Children, New Delhi.
 26. Shri Tushar Anchal, Adviser, Child Protection, Plan India, New Delhi
 27. Ms. Gayatri Sharma, Research & Advisory Officer, Lawyers Collective, New Delhi.
 28. Dr. Neelam Singh, Chief functionary, Vatsalya, Lucknow
 29. Ms. Atiya Bose, Director, Aangan Trust, Mumbai
 30. Shri Zaved N. Rahman, Director, Programmes, Butterflies, New Delhi

Individual Experts

31. Prof. B.B. Pande, Former Chairperson, Drafting Committee of J.J. Rules
 32. Dr. Bharti Sharma
 33. Dr. Meera Alva, Consultant, Bangalore
 34. Dr. Achal Bhagat, Chairperson SAARTHAK, New Delhi

Other Participants

35. Ms. J. Sandhya, Member, Kerala, SCPCR
 36. Shri Sunil Kumar, Member, Jharkhand SCPCR
 37. Shri Sanjay K. Mishra, Member, Jharkhand SCPCR
 38. Ms. Divya J. Tijya, Child Counsellor, Jharkhand SCPCR
 39. Dr. Ramanath Nayak, Senior Technical Expert (JJ), NCPCR, New Delhi
 40. Shri Janakiraman, Consultant (POCSO), NCPCR, New Delhi
 41. Shri J.B. Oli, Technical Expert (JJ), NCPCR, New Delhi
 42. Shri Amit Mane, Junior Technical Expert (JJ), NCPCR, New Delhi
 43. Ms. Tanya Uke, Consultant, NCPCR, New Delhi



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