

Juvenile Justice Newsletter

Monthly Newsletter of Activities Concerning Child Protection in Assam

Editorial

This edition of Newsletter brings to our readers the Govt. of Assam's response to the new Juvenile Justice Bill. State Child Protection Society being the nodal society for ICPS rollout in the State has provided the feedback to the Ministry of Women and Child Development, Government of India with regard to the proposed Bill on Juvenile Justice Act. Further the recent union cabinet's approval to lower the age of Juvenility has raised serious concerns and brought the issue of Juvenile Justice into the mainstream of national public debate. This issue of the Newsletter highlights some of the key recommendations to the draft Juvenile Justice Bill and also shares the concerns raised by various organisations and institutions, including that of UNICEF, with regard to the controversial decision of lowering the age of Juvenility in the proposed new Act. Also, this edition of the Newsletter covers another important initiative, that of a regional level consultation with Child Welfare Committees from participants from 4 North-eastern states, being organised by ASCPCR.

Editorial Board,
State Child Protection Society, Assam

Comments on Juvenile Justice Amendment Bill

The Ministry of Women and Child Development-GoI, introduced the new 'Juvenile Justice (Care and Protection of Children) Bill, 2014'. The bill was put-up in Ministry of Women and Child Development (MWCD's), Government of India website for public to comment. Additionally, feedbacks were sought from State Governments. The Department of Social Welfare, Government of Assam through State Child Protection Society, Assam provided the following feedback on the Bill:

- **Recommend change in the name of the Act:** Since the term 'juvenile' has been replaced with the term 'child' all through the proposed bill, the same should be reflected in the title. Further in all sections of the Bill and in all nomenclature used for bodies under the proposed bill; it is recommended that the term 'juvenile' should be changed to "child". As such Assam suggested that the name of the new Act may be 'Care and Protection of Children Act'.
- **Inclusion of the definition of Enquiry in Section 2 of the Bill:** This is suggested in light of the fact that if there is any confusion as to 'completion of enquiry' which enables the CWC to declare a child as Abandoned, the cases will get stretched for a longer duration before the committee.
- **Introducing Deputy Commissioners and Chief Medical Officer in Child Welfare Committee [Section 25 (2)]:** It was suggested that these members have multiple responsibilities and may not have adequate time towards case management which is time intensive. It would not serve the best interest of children. The DC is a chairperson of the District Child Protection Units/DCPCs which is the service delivery mechanism in ICPS at district level whereas CWC is a quasi judicial authority. This would lead to the conflict of interest. It is also strongly felt that this would impact the independence and autonomy of the Child Welfare Committees.
- **Juvenile Justice Fund may be renamed as Children's Fund (Section 106):** Assam highlighted that it's not mentioned anywhere in the Bill whether every district should open this account or there has to be one account at the State Level. Further as it is left to the State Govt. to decide as to who will directly deal with this account, there might be a confusion in this regard. It is suggested that, every District may open this account, which can be dealt by the DCPO and the DC/DM of that District.
- **In Sec. 21 with regard to 'Xerox copy of FIR shall be admissible in JJB' which are certified to be True:** Assam suggested that one more sub-section as Sub-Sec 3 may be added/inserted, because as per the prevalent practice, when a case involves both Children and Adult, the original record goes to the court. A clause should be added that in this instance the original record should be split up and certified copies of all relevant documents (that would be required to conduct a trial in the JJB) should be sent to the Board by the concerned court.
- **With respect to Section 53 (2) dealing with rehabilitation and re-integration services:** The following may be added after "and monitor the progress of every child..." : which shall submit a quarterly report on the rehabilitation and re-integration services to the District Child Protection Unit (DCPU) for all such cases during that quarter.

- **With regard to Sec 25 (6):** Assam suggested that more clarity is needed regarding the function of the CWC as a Bench of Magistrates. Specific powers as a Bench of Magistrate is to be included under this section, for example whether CWC can record statement under Section 164 of CrPC. As such detailed powers have to be laid out under this section to avoid confusion.
- **With respect to Section 108 (1) & (2):** The Bill proposed that the Child Welfare Officer should be an officer not below the rank of Assistant Sub-Inspector and that the SJPU in the District Level should be headed by an officer not below the rank of Inspector. Assam suggested that the Child Welfare Police Officer should be one not below the rank of Sub-Inspector and that the SJPU in the district level should be headed by an official not below the rank of DSP.
- **With respect to Section 49 (1) &(2):** The new bill under this section proposed that State Government may establish and maintain, in every district or group of districts, either by itself or through voluntary or non-governmental organisations "shelter homes" including short stay homes and Reception centres. Assam suggested that Short Stay Home is a scheme for women and major girls run by the MWCD, Govt of India. The objectives and target group groups are different. This is primarily for the adult women. The term 'Short Stay Home' in the Bill may create confusion among the implementers including CWCs. Hence, the difference in the concept of Short Stay Home as per the new Bill and the Scheme run by the Ministry should be spelt out.

Various Other Suggestions Given by Civil Society Organisations:

- **Section 2 (c) "aftercare"- Recommendation:** The definition of After Care should be limited to children leaving institutional care but must include all children who have been through the juvenile justice system. It is suggested that "Aftercare" should mean provision or financial support or otherwise, to young adults, who have completed the age of eighteen years but have not completed the age of twenty one years, and have left institutional care or the child justice system (Juvenile Justice System).
- **Section 2 (j) (ii) "Child in need of care and protection"-** The Juvenile Justice (care and protection) Act supersedes all legislation related to children. As such the definition of Children in the Juvenile Justice Act also supersedes that of any other legislation. It is recommended that any reference to the Child Labour (prohibition and regulation) Act, 1986 must be removed from Section 2 (j) (ii) and any other subsequent references to other legislations related to children may also be removed.
- **Section 2 (zx) 'Surrendered Child':** A minor change in the definition was proposed as "surrendered child" means a child who is relinquished by the parents or guardian to the competent authority, on account of physical, emotional and social factors beyond their control, and declared as such by the competent authority.
- **Section 2 (x) 'Homeless Child':** A minor change in the definition was proposed as "homeless child" means a child who is without a permanent place to live.
- **Section 2 (y) 'Abandoned Child':** A minor change in the definition was proposed as "abandoned child" means a child who is abandoned by his/her parents or guardian to the competent authority, on account of physical, emotional and social factors beyond their control, and declared as such by the competent authority.
- **Section 2 (z) 'At risk Child':** A minor change in the definition was proposed as "at risk child" means a child who is at risk of being exploited, abused, neglected or discriminated against, or is in danger of being so treated.

Cabinet approved the lowering of Age of Juvenility under the proposed Juvenile Justice Bill in India

The Union Cabinet recently cleared crucial amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000 which will now empower the Juvenile Justice Board to decide whether a juvenile aged between 16-18 years is to be tried in a regular court for having committed a heinous crime that carries a punishment of seven years or more. "Under the new provisions, the Juvenile Justice Board will decide on whether juveniles who are 16-18 years of age and commit heinous crimes like rape or murders need to be tried by ordinary criminal courts. However, according to the Bill, in no case the juvenile involved in a heinous crime will be sentenced to death or life imprisonment either when tried under the provisions of JJ Act or under the provisions of IPC."

UNICEF, India and various other Civil Society Organisations working in the area of Child Rights have said that, this recent cabinet approval constitutes a real setback. The United Nation's Convention on the Rights of Children(UNCRC) Article 40.1 states that children who are accused of offences should be tried separately from adults "in a manner consistent with the child's sense of dignity and worth". This is further supported through international standards like the Beijing Rules and the Riyadh Guidelines laying out procedures for the administration of juvenile justice and prevention of juvenile delinquency.

UNICEF India's Country Representative Mr. Georges Arsenault stated that "Worldwide, evidence shows that the process of judicial waiver or transfer of juvenile cases to adult courts have not resulted in reduction of crime or recidivism. Instead, investments in a working system of treatment and rehabilitation of children have shown to lead to better results in reducing recidivism". UNICEF India Country Office through an official communique issued by its Media Centre (can be accessed through this link: www.unicef.org/india/media_8969.htm) confirmed its continued support to the Government of India in strengthening its juvenile justice system. This includes advocating for reformatory measures for all children up to the age of 18, irrespective of the nature of their offence and ensuring clear regulations on maximum sentences for children with guaranteed periodic reviews of sentences and revision of orders ■

2

Regional Child Welfare Committee Consultation at Guwahati

National Commission for Protection of Child Rights, New Delhi requested Assam State Commission for Protection of Child Rights to organise a 1 Day consultation for Child Welfare Committees with participants from Assam, Sikkim, Meghalaya and Tripura. This consultation was held at Guwahati on 24th July, 2014 in collaboration with UNICEF, Assam Field Office. The objective behind this regional consultation was to explore the key challenges and issues faced by the CWCs across the four participating states and come up with key recommendations to address the challenges as faced by CWCs.

The consultation was attended by participants from Child Welfare Committees, representatives of State Commission for Protection of child Rights (SCPCRs), Senior Officials from the Department of Social Welfare, representatives from Child-Line and representatives from State Child Protection Societies were present. The consultation was attended by more than 120 participants representing the four states.

The inaugural session of the consultation was attended by Mr. Jitesh Khosla IAS, Chief Secretary to Government of Assam, Ms. Kushal Singh, Chairperson, National Commission for Protection of Child Rights (NCPCCR), New Delhi, Dr. Tushar Rane, Chief of Field Office, UNICEF Assam, Ms. Runumi Gogoi, Chairperson, Assam SCPCR and Chairpersons of SCPCRs from Sikkim, Meghalaya and Tripura. The following are the key recommendations to strengthen the work of CWC under JJ Act which came out from this one day regional consultation :

