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CRY's Response to the Draft Juvenile Justice, Bill 2014 circulated by Ministry of Women & Child Development

Chapter 1 – Preliminary

Section 1 (4) mentions 3 aspects: types of cases, matters & procedures related to children in conflict with law, children in need of care and protection, and adoption related procedures. In context of delinquency, reference needs to be made to standards of care, mechanisms related to prevention, and principles of restorative justice, etc

Definitions

Section 2 (a) Abandoned child – given the present definition of abandoned, the child is declared abandoned by the CWC following inquiry. This raises a query on the role of the police in filing an FIR under section 317 IPC. Would it deter the police from filing the FIR as soon as they receive the child?

Section 2 (e) Best Interest of Child: inclusion of child's opinion in deciding the best interest is a prime consideration and should reflect in the definition here.

Section 2 (i) Child in conflict with law: With reference to the Preamble, the language should be consistent within the body of the Bill. It is suggested to revert back to the older definition as given under JJ Act 2000

Section 2 (j) Child in Need of Care and Protection: CRY suggests the need for a more comprehensive definition. The additions and suggested changes to the categories included under this definition are as mentioned below:

Additions required:

1. Child likely to be trafficked or one who has been trafficked,
2. Child likely to be married or has been married;
3. Child in contact with the law who faces any form of threat due to his/ her interface with law

Suggested changes:

2 (j) (ii): Suggested revision: *"A child who is found begging, or living on the street, or working"*.

All the three situations referred to in this sub – section are indicative of a highly vulnerable situation and their being in such situations qualifies them as CNCP. Further reference to having a family or a place of abode is only adding to confusions.

JJ is an overarching bill for protection of children and any reference to CLPRA in the said definition is restricting its coverage. This should be extended to all children upto 18 years.

2 (j) (vi): Suggest dividing this sub-section into two

a) Abandoned child (as per definition under 2 (a) or surrendered child (as per definition under 2 (zx)) or orphaned (*who does not have parents and no one is willing to take care of*) (as per definition under 2 (zg))

c) Child who is missing or runaway and whose parents cannot be found after reasonable inquiry

2 (j) (viii): the definition should be expanded to include the child who may already have been inducted into drug abuse or trafficking

Section 2 (k) child friendly: the definition of “child friendly” should be elaborated to include the aspect of participation

Section 2 (p) Child Welfare Police Officer: Suggest giving detailed definition of Child Welfare Police Officer including reference to its broad roles as mentioned in sub section (2) of Section 108,

Section 2 (t) DCPU: Definition of DCPU includes “which is the focal point to take up all matters relating to children”.

DCPU is not the authority to take on all matters related to children, its role should be restricted to protection related matters.

Section 2 (u) Fit Facility: The concept of fit facility has to be qualified more clearly. While it is mentioned as a temporary facility, the time period is not explicitly mentioned. This is important since it is neither registered under JJ Bill, nor prescribes to minimum standards of care. Also, the recognition of fit facility by DCPU independently may not be appropriate. This should be based on recommendation of the concerned CWC.

Suggested definition: *“fit facility” means a facility being run by a Governmental Organisation or a registered voluntary or non-governmental organisation, that may be recognized fit by the District Child Protection Unit on the recommendation of the CWC, for temporary placement of child/ children for a specific purpose as referred to under sub-section (1) of section 51, the time period not exceeding one week. The agreement of the said facility be a consideration for its recognition as a fit facility.*

Section 2 (x) Foster Care: Reference needs to be made to section 43. Also, distinction between foster care and pre – adoptive foster care should be further clarified/ elaborated.

Section 2 (z) Habitual Residence: Reference to this term within the actual text is not given anywhere in the body of the bill and therefore can be removed

Section 2 (zg) (ii) Orphan: Delete point (ii) of this definition: “legal guardian not willing to take care ...”

Section 2 (zj) place of safety: The concept of ‘place of safety’ has been expanded to cover ‘or other persons’. The present bill has several references as mentioned below wherein the possibility of interface of children and adults at the place of safety is given. Recommend age appropriate / separate arrangements for children and adults (those who have ceased to be a child) alleged or found to be in conflict with law.

Section 2 (zk): pre adoptive foster care: The definition of pre adoptive foster care needs to specify the process/ stage following which a child can be given in pre-adoptive foster care (only after the legal documents for adoption have been submitted in the court).

Also, the bill to specify that rules should have detailed criteria, conditions, norms, and period for which a child may be given under pre adoptive foster care.

Section 2 (zo) public place: the definition is not required

Section 2 (zq) Registered: include a reference to all sections in the bill that contain provisions on registration. Multiple terminologies including institutions/ agencies/ facilities should not be used and if used, clearly defined.

Section 2 (zt) Special Home: The definition of special home refers to section 47 for registration whereas special home is also covered in Section 40 w.r.t. registration – the inconsistency should be removed

Section 2 (zu) Specialised Adoption Agency: Registration of a SAA should be under both Section 40 & section 61 as they run a home as well.

Definitions to be added:

Child care institutions

Fit family

Individual Care Plan

Reception Centres

Short Stay Homes

State Child Protection Society

Section 3 (3): The concept of fit family should be placed in definitions and home study and declaration of fit family should be necessarily a part of the restoration process

CHAPTER-II FUNDAMENTAL PRINCIPLES FOR CARE, PROTECTION, REHABILITATION AND JUSTICE FOR CHILDREN

The chapter makes reference to the principle of participation & diversion, but not reflected in procedures. The principle of immediacy needs to be included to ensure time bound intervention in cases of child protection.

Chapter III Juvenile Justice Board

Section 5: Constitution of Juvenile Justice Board

5 (4): This sub – section should refer to rules for tenure, term, and minimum number of sittings. The qualifications for social workers differentially in the Bill as well as rules, leads to confusion, therefore, qualifications should be clearly specified in the Bill itself. Provisions of qualifications may be same as in the JJ rules 2007. Reference to JJB selection committee needs to be institutionalized in the Bill.

5 (5) The concept of training of JJB members as well as Magistrate to be extended to include continued/ periodic training. Areas of training need to be specified in the rules.

5 (7) (iii) Uninformed Absence of CWC/JJB member from hearings for more than a more than a month should be reported and due action taken if necessary

Section 7: Powers, Functions and Responsibilities of the Board

7 (3) (d), 7(3) (f): NGO involvement may be added in these sections

7 (3) Suggested additions to the sub – section

- Take cognizance of children presently in adult jails and ensure that their cases are brought before the JJB, wherever appropriate
- Any suo moto action by the JJB

CHAPTER-IV PROCEDURE IN RELATION TO CHILDREN IN CONFLICT WITH LAW

Section 9: Apprehending of child alleged to be in conflict with law

Suggested addition: A penal provision needs to be included for cases of children not produced before the magistrate within 24 hours and placed in a lock up in the meantime.

Section 13: Inquiry by Board regarding child in conflict with law: Does this mean that if an enquiry takes more than 6 months, the person will be let off? The implication may be that lawyers will use delaying tactics and victims will never get any sense of closure. Clause of exception should be mentioned instead for very special cases

Section 14: Inquiry into specific offences by the Board: This provision is unacceptable. The principle of presumption of innocence is defeated. As soon as FIR is filed under referred sections, it is like the child has been declared as criminal.

Section 15: Review of pendency of Inquiry: The suggested membership of the high level committee under 15 (2) is difficult in operationalization. Parallel processes of review have also been mentioned here. These need to be aligned with each other

Section 17: Orders that may be passed regarding a child found to be in conflict with law

17 (1) (d) The provision for the working child to pay fine to be omitted. This is in contradiction with UNCRC as well as NPC 2013 definitions. Remove reference to CLPRA 1986 Act here as in definitions section

17 (1) (g) (ii): reference to habitual offender under 17 (1) (g) (ii) indicates usage of terminology from IPC that defeats the spirit of this law.

17 (1)(g)(iii): Dealing a child under section 17(3) will be a dangerous proposition as it gives the discretion on the magistrate to refer the case to the regular court after making an enquiry to dealt with as per the general law. This puts to naught the principles envisaged in the JJ Act.

Section 18: Order that may not be passed against a child in conflict with law: The said section is overarching. Given the philosophy of the Act, Sections 14, 17, and 19 should be deleted.

Section 24: Provision with respect of run-away child in conflict with law:

24 (3) The Act should recognize that a child may have run away due to violation of rights/ abuse in the institution and therefore appropriate linkage may be made to redressal and steps should include prevention of further harm.

CHAPTER-V CHILD WELFARE COMMITTEE

Section 25: Child Welfare Committee

25 (1) This sub – section should refer to rules for tenure, term, and minimum number of sittings. The qualifications for social workers differentially in the Act as well as rules, leads to confusion, therefore, qualifications should be clearly specified in the Act itself. Provisions of qualifications may be same as in the JJ rules 2007. Reference to CWC selection committee needs to be institutionalized in the Act. The concept of training of members needs to be extended to include continued/ periodic training. Areas of training need to be specified in the rules.

25 (2) The inclusion of the Deputy Commissioner or District Magistrate and the Chief Medical Officer of the district as Chairperson and member respectively is against the philosophy of the act. The above two officials are Public servants and may not have any

background or technical capacity of addressing child protection issues. 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 committee. Also 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.

Also, given the nature of work of the CWC, it be provided legal support in a manner as prescribed in the rules.

25(5) (iii) Uninformed Absence of CWC/JJB member from hearings for more than a more than a month should be reported and due action taken if necessary

Section 26: Procedure in relation to Committee: 26 (2) safe custody – replace with placement in Child Care Institution/ Fit person

Section 28: CWC Functions

28 (iii) Suggested revised text: *“directing the Child Welfare Officers or District Child Protection Unit or Non-Governmental Organisations to conduct social investigation and submit a report before the Committee”.*

Insertion of 28 (iv) (a) The CWC should approve the Individual Care Plan for each in its purview. Such individual care plan should be prepared and presented by the DCPU or child welfare officer of the child care institution.

28 (vii) Suggested revised text: *“conducting regular inspection of residential facilities for children in need of care and protection (minimum one inspection visit per quarter and the frequency can be increased if the CWC deems fit) and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government”;*

Functions to be added under section 28:

- CWC to deal with cases referred by JJB under section 16 (2)
- CWC to ascertain a fit family through home study in order to assess the conduciveness of the family for the development of the child. This should be done prior to restoration of a child, specifically, when the CNCP is found vulnerable due to family context/ runaway due to abuse/ trafficking.
- 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;
- In case of a complaint of abuse of a child in any premises, the Child Welfare Committee causes an inquiry and based on the inquiry report, the committee should give direction to the following for the rescue based on the nature of abuse - Police, DCPU, Labour department, CHILDLINE as required.

CHAPTER-VI PROCEDURE IN RELATION TO CHILDREN IN NEED OF CARE AND PROTECTION

Section 29: Production before Committee: Since section 30 & 31 relate to organization/ maternity home/ nursing home/ hospital, refer them as one of the stakeholders who may a child before the CWC

Section 30: Mandatory reporting regarding a child found separated from guardian: in order to facilitate mandatory reporting, there should be mechanisms for creating awareness, such as notification vide this act; contact details of CWC members, DCPU, CCI etc

Section 33 (1): Surrender of Children: Period of reconsideration should not be reduced from 2 months to one month.

Presently surrender process is only visualized for a small child, and from the perspective of view of adoption. Since there is no mention of age for child to be surrendered, the provisions and procedures should be elaborated with respect to all age groups. The opinion of the child and his/ her consent is also paramount in the process.

In experience, a lot of surrender cases are due to financial reasons. The rules should refer to sponsorship provisions under the act or alternatives/ referral options such as the panchayat for financial support to the family.

The process of surrendering is very subjective to the views and thoughts of the CWC. There needs to be basic minimum rules to be prescribed for the same.

Section 34: Inquiry:

Add to 34 (1) The orders of CWC mentioned herein to include appropriate orders of coordination with other departments, e.g. filing of FIR, orders to the labour department, appropriate Legal Services, other bodies.

34 (1): Include NGOs, DCPU for social investigation and delete Child Welfare Police Officer

34 (4): With reference to action against the CWC due to pendency of cases, it should be taken into account that the pendency may be high due to multiple reasons, such as high case load, lack of response from other departments (medical, labour), lack of administrative support etc. and therefore reconstitution of committees in this respect is not justifiable.

Section 35: Orders that may be passed regarding a child in need of care and protection

Addition to Section 35: The final order needs to make specific reference to individual care plan, addressing specific as well as special needs of a child, if any. Reference also needs to be made vis a vis legal procedures, rehabilitation benefits to be received from the State, victim assistance, etc.

35 (c) Reception centre is a concept for temporary stay of child and therefore should not be referred to in the final order. Needs to be deleted.

Section 36: Orders that may not be passed regarding a child in need of care and protection: Add a proviso referring that the CWC should record the matter and report with or without recommendations to the appropriate court, where deemed necessary

Section 37: Procedure for declaring a child “legally free for adoption”

37 (4): Reporting from the districts to CARA seems to be unrealistic. It should be SARA and not CARA

CHAPTER-VII REHABILITATION AND SOCIAL RE-INTEGRATION

Section 39: Restoration of child in need of care and protection: The bill only refers to restoration (Intra country) and there is no reference to repatriation (inter – country). Specific reference to mechanisms for repatriation and role of concerned stakeholders (WCD, External affairs Ministry, Home Department, Embassies, BSF) needs to be included. etc

39 (2): the bill envisages that a child coming to an open shelter will be restored back to family or given for non institutional care. It is suggested that explicit mention should be made for ensuring production of case before CWC in a stipulated time period.

39 (3): Introduce the concept of fit family (refer comments in section 3(3), 28) for determining the family suitability; and institute process for the same

Section 40: Registration of child care institutions housing a child: All Institutions housing children to be registered under the provision of JJ Act. This registration should not be limited to institutions housing children in need of care and protection. There should also be a specific reference in this section to the fact that JJ Bill will supersede all other legislations for the purpose of registration of these homes. The bill should also spell appropriate mechanisms to ensure child protection in residential institutions/ hostels which house children at night, but are not in the purview of Juvenile Justice. This refers to the fact that coverage of child protection cannot be limited to CNCP and CCL.

Section 40 (6): The concept of inspection for such homes should be broadened to include all issues of violations of child rights as well as minimum standards of care.

Section 42: Open Shelter: While open shelter as a mechanism is functional for mainstreaming children there are concerns that should be addressed by the bill.

The concept refers to community based facility for children for weaning them or keeping them away from street life which means it is both preventive as well as responsive. In case it is preventive then there should be no limitation of time for association of a child. But if it is responsive the time period should specify time of association within which attempts should be made to streamline the child. There should also be a mention of referral from open shelter to CWC. Monthly reporting by the Open shelter to DCPU and CWC is mentioned but their role with respect to the Open shelter is not specified.

Section 43: Foster Care: This section on foster care does not give the basic provisions vis a vis role in the foster care process such as: who will choose the family, who will declare fit foster family, monitoring of foster care, role of foster care and sponsorship approval committee under ICPS etc. While the 43 (5) refers to rules for the same, the bill should follow similar standards as in adoption. This clarity would enable states to institutionalize foster care. The provision has existed in the act since 2000 but its non implementation is because of lack of structural understanding of its operation.

Section 44: Sponsorship: The reference to sponsorship in the bill is very generic. Broad components like competent authority, period of sponsorship, accountability of sponsorship should be referred to. Even areas where rules need to be developed should be specified.

Section 45: After Care of young adults leaving institutional care: The concept of after care in this section as well as 2 (c) should not be limited to children leaving institutional care but must include all children who have been through the juvenile justice system. Registration of organizations providing after care services cannot be the sole approach to after care.

Section 46: Observation Homes: The bill is ambiguous and confusing on whether the registration would be under Section 40 or under section 46.

Section 46 (2): There is a significant lack of clarity with respect to institutions that may be registered by the opinion of the state government. The sub - section leads to an implication that any existing institution can be converted to an observation home. Further, the sub section does not even refer to temporary registration (as in the concept of fit facility). It is strongly recommended that provision of registration be limited to sub section (1).

Section 47: Special Homes: The bill is ambiguous and confusing on whether the registration would be under Section 40 or under section 47.

Section 47 (2): There is a significant lack of clarity with respect to institutions that may be registered by the opinion of the state government. The sub - section leads to an implication that any existing institution can be converted to a special home. Further, the sub section does not even refer to temporary registration (as in the concept of fit facility). It is strongly recommended that provision of registration be limited to sub section (1)

Section 48: Place of Safety: The reference to sub section made is incorrect. Refer to comments on place of safety under definitions.

Section 49: Shelter Home: With respect to children's homes, including short stay and reception centres, there needs to be mention about preparedness in case of emergency

situations wherein number of cases coming to an institution may be much larger than its capacity – refer kerala 600 children/ raids under child labour rescue etc

Section 51 (1): Fit facility: There is complete ambiguity on the concept and purpose of “fit facility”. While the definition refers it to be a long term or short term facility, this section refers to it as a temporary facility. It is strongly felt that it is justified to have a fit facility for a very interim period after production of the child till further decision is taken, especially because all districts do not have shelter homes or observation homes. It is also justified to have such a facility for an interim period for purposes like accommodating children after a process of rescue. Fit facility has been referred to in section 11 (1), 17 (1) (f), 28(v), 29(2), 34(1), 34(3), 35(c), 38(2), 38(3), 93, 97, 105 (1).

The concern thereby is that this section should not be in any case used to accommodate long term care facilities not following the norms as mentioned for CCI’s/ not registered under this Bill. We recognize the existence of child care institutional facilities (innovations such as SOS homes) which do not fit under the framework of CCI’s as in this bill. We therefore suggest specific provisions for such facilities in the bill.

Children coming directly to fit facility as first point of reference are most traumatized. The quality of care required is optimum at that point of time.

Section 54: Inspection Committees: Bill/ rules to specify distinction between role of state and district level committees, and therefore constitution of committee and periodicity of inspection. CWCs are also expected to have a role in inspection of CCI’s under Section 28 (7). There should be a point of coordination between inspection committee and CWCs. An alternative mechanism for social audit under Section 36 of earlier JJ Act 2000 is not reflected in the present bill. Audit and inspection are not interchangeable terms and have their respective importance.

Section 55: Evaluation of functioning of structures: There are too many monitoring agencies for one institution. There is no direct control or authority. What would be the purpose and objectives of such an evaluation?

CHAPTER-VIII

ADOPTION

Section 58 (2): Principle magistrate as defined under this bill is the Magistrate of the Juvenile Justice Board, with criminal jurisdiction (see section 5 (3)). Also, the functions and powers mentioned under the said section are purely in reference to CCL. It is important to consider that adoption is a civil issue and all related matters like custody, guardianship, adoption under HAMA etc. are dealt by the civil court. While we principally agree to the need of expediting the process of adoption, removing it from the continuum of similar services as detailed above is not reflective of a clear policy and is likely that there may be

many cases where there will be confusions across the principal magistrate and the civil court.

58 (3) The time period referred to is not pragmatic at all and may lead to dilution of procedure in a sensitive issue.

58 (4) the executive does not have the power to take action against principal magistrate

Section 59: in case of adoption by relatives - If the adoption is happening under the JJ Bill, the role of the CWC should remain the same as for others in declaring the child free for adoption

Section 61 (2) suggest revision to 61 (2): all orphan, abandoned, or surrendered children, subject to their consent. Role of SAA needs to be further elaborated, esp. the coordination between districts, state level and thereafter CARA

Inspection of SAA is also an important component that has not been addressed by the Bill. Since DCPUs are the registering authority, there will be a conflict of interest if they are made the inspecting authority. There should be an independent authority entrusted with the task of inspections/ vigilance.

Section 62 (1) reference to “all orphan without close families willing to take care of them” is very loosely mentioned. There should be a clear reference to a category of children who can be given in adoption.

Section 64: It is not feasible for every district to write directly to CARA. What would be the role of SARA if all communication is written directly to CARA?

Section 65: Mechanisms of vigilance to be specifically incorporated to ensure the implementation of this section.

Section 72: Greater clarity on monitoring of CARA required

CHAPTER-IX

OTHER OFFENCES AGAINST CHILDREN

Section 74: In some cases journalists don't directly disclose the child's details, but give out information such as locality, names of family members, their details etc which means that immediate neighbourhood of child is well aware of what's going on, leading to stigmatization – suggested revision – *“any other particular of the child/ family/ neighbourhood”*

Section 79: Reference to CLPRA 1986 should be deleted. This provision should be for all children up to 18 years as presently the law at least addresses children in domestic work upto 18 years who have been kept under adverse circumstances.

Section 86: Ambiguity in language

Section 87 (1): There is a concern here that this section will deter people from reporting and therefore should be deleted

Insertion of new section: The offences here mentioned should include induction of children into crime

CHAPTER-X MISCELLANEOUS

Section 93: in this case rather than sending child to a hospital – calling the hospital itself as fit facility – it would be better to assign a custodian or fit person who can be accountable for the child’s care

Section 94: CWC may not have the required clarity and understanding of mental illness – there should be a provision for expert inputs for this decision

Section 95: the bill should lay down a uniform procedure for age determination in the Bill itself instead of leaving it to the Rules

Section 96: The concerned CWC should complete all inquiry steps, case management, completion of legal procedures, forming individual care plan, getting home study conducted and so on before sending the child to the competent authority in the child’s home district that shall only be responsible for restoration. Plus, the child’s consent should also be taken into account. There is no rationale for sending the child to the capital of the state as it would increase the number of stakeholders interfacing the child as well as the trauma faced.

Section 108: The CWPO to be engaged for full – time under these responsibilities and not to be deputed additional to Law and order duty of the Police.

Section 109: Power to make rules

Reference to rule making also has to include the following:

1. Rules of procedure of CWC/JJB should include provisions for the board to
 - a) pass interim orders pending inquiry;
 - b) record keeping to be maintained for measuring progress of the child;
 - c) Recording child’s behavior during period of stay in the institution;
 - d) Mental & psychological assessment of the child;

e) interim production pending inquiry and periodic production of children living in CCI's during the period of placement

Reference w.r.t. steps to be taken for development of child in interim orders

2. Every state should institutionalize criteria/ numbers of probation officers to ensure that at least one PO is attached to the JJB.

9. Rules/ procedures for violations within CCI's

11. Rules should include guidelines for inter –country repatriation as well

12. Norms of escort as well as child escort ratio should be provided within rules

13. Rules should also specify constitution and role of SJPU/ similar bodies vis a vis other police/ military forces likely to interface with children eg GRP, BSF, RPF etc