

September 14, 2010

To
The Chairperson
State Commission for the Protection of Children's Rights
Karnataka

Dear Ms. Nayak,

Subject: Juvenile Justice System reforms

The incident of molestation of young girls in the State Home for Girls by a member of the Child Welfare Committee is shocking but not surprising as this was a disaster waiting to happen.

Several NGOs and concerned individuals have been raising their voices regarding the lack of child protection and child friendly systems and procedures in the functioning of the Child Welfare Committees and the running of the State Homes for years, but these concerns have not been given due attention by the State Authorities and the Child Rights Commission.

The rather recent Juvenile Justice System and the Child Welfare Committees in Karnataka appear to have been set up without much thought regarding the protocol that needs to be followed in order to meet the standards of the United Nations Convention of the Rights of the Child (UNCRC) and be in conformity with the Articles that ensure the care and protection of children from all possible harm - including harm from the very system that professes to guard and defend them and their rights.

Now, the Juvenile Justice system of Karnataka has once again failed its children abysmally.

Balakrishna Masali, a member of the Child Welfare Committee for Girls, Bangalore (Urban) has been accused of molesting four girls who were in the care and protection of the Juvenile Justice system of Karnataka. This incident is a very shameful reminder of the many inadequacies of the Juvenile Justice system that is supposedly meant to care and protect children who need it the most.

Balakrishna Masali, a practising advocate in the high court and a magistrate in the consumer court is presently suspended from his duties as a member of the Child Welfare Committee, a post he has held since 2007. In the course of his tenure, he had access to a very large number of young girls and investigations regarding his conduct since 2007 should also be a part of the enquiry against him and given due consideration while determining the extent of his violations.

However his acts demand a much more stringent response, by all concerned, including the judiciary, than what has been witnessed so far. Legally he has violated the Indian

Penal Code (IPC) (Section 354 and 509); the Juvenile Justice Act (JJA) and the United Nations Convention on the Rights of the Child (UNCRC), and actions against him should be commensurate with the full extent of his transgression.

The relevant sections are listed below for your reference.

IPC: SECTION 354

Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman with intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years but which shall not be less than two years.

[vide A.P. Act] 6 of 1991].

IPC: SECTION 509

Word, gesture or act intended to insult the modesty of a woman: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

JJA: SECTION 23

Punishment for cruelty to juvenile or child: Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

JJA: SECTION 29

Child Welfare Committee

2) the Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if:

- a) he has been found guilty of misuse of power vested under this Act;*
- b) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;*

c) he fails to attend the proceedings of the Committee for three consecutive months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

JJA KARNATAKA RULES: SECTION 38

Emergencies

4) In the event of custodial rape and or sexual abuse, action shall be taken as follows:

i) In the case any resident or any other person has observed, knows or has reason to suspect that sexual abuse has occurred and makes a complaint through the grievance box or through child line or through any other means, or it comes to the knowledge of the officer-in-charge/Medical Officer or other staff that one or more of the following general behaviour changes has been observed in the juvenile/child, a report shall be placed before the Juvenile Justice Board for special investigation into the possibility of sexual abuse. It shall be the responsibility of all functionaries to report such suspicions immediately. The report shall be based on observations of sudden onset of behaviour changes such as: (a to e listed)

ii) The JJB shall direct the Local Police Station/ Special Juvenile Police Unit to register a case against the person/s found guilty under the provisions of the Indian Penal Code, 1860 (45 of 1860). The Special Juvenile Police Unit will conduct necessary investigations under the supervision of specialised agencies. If a functionary of the institution is suspected to be involved, the functionaries concerned shall be immediately suspended pending further inquiry.

iii)

d) Care shall be taken to ensure that the victimized child receives proper care and physical/psychological treatment and also avoid secondary victimization during investigation.

UNCRC: ARTICLE 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

UNCRC: ARTICLE 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

UNCRC: ARTICLE 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

UNCRC: ARTICLE 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

However, as organisations committed to children's rights, we feel that this incident is a manifestation of very critical problems that exist in three major areas, that we have repeatedly pointed out, substantiated by very disturbing case studies.

Unless these fundamental issues are addressed urgently, such incidents will continue to occur without check.

They are:

1. Absence of a Child Protection Code
2. Deficient Recruitment Procedures
3. Legal Representation for Children
4. Lack of Child Rights Friendly Practices
5. Violation of Existing Norms

1. Absence of a Child Protection Code:

The model rules of the JJA system in Karnataka has remained a draft for over two years. Both our organisations have been part of team that drafted the model rules for the State, but they remain useless as they have not been implemented since they have not been

passed by the State Department. They have to be finalised, while ensuring the best interests of the child, and implemented with stringent monitoring.

There is no Child Protection Code that members of the JJA system should adhere to. There are no stated punishments for the violations – some of which were blatantly violated in this incident in the full knowledge of all, such as guidelines the quorum for the Child Welfare Committee Sitings and Counselling procedures for children.

A well articulated Child Protection Code needs to be developed, including codes of conduct of members – but more importantly, rules that need to be followed during adult's engagement with children. This code should be implemented and have clear punishment clauses that should be formalised and adhered to.

2. Deficient Recruitment Procedures:

Presently, the recruitment procedures for the JJA personnel, be they Child Welfare Committee members, counsellors, DWCD staff members who interact with children – are carried out without any psychological profiling of the candidates. It is a well established fact world-wide that adults with paedophile tendencies get into spaces where they have easy access to children, especially those who are already vulnerable.

The present recruitment system does not include a rigorous background check/verification to eliminate such people from taking positions of power in close proximity with children.

The recruitment procedure needs an urgent review in this light.

3. Absence of Legal Representation for Children:

There is no autonomous, independent legal support for children in any of the JJA Homes in the State. In many districts, there are no counselling support systems for them. Organisations that offer such support are often denied access to children. There are no safe spaces for children to express their views. In totality there are no child friendly mechanisms for children to raise their issues and concerns on a regular basis without fear. Even in this incident, without the support from APSA who identified that something was amiss, it is unlikely that the first child would have come out with information about molestation. That revelation opened the Pandora's Box and three more kids came out to speak up. Undoubtedly these cases are only a tip of the iceberg.

On the other hand, the few good practices that are carried by some of the Child Welfare Committee or JJB members are not recognised, and their attempts to reform the system do not get support from within the system.

We demand that the State facilitates the setting up of a autonomous legal bench of pro-bono lawyers well versed in all the relevant statutes, the rights of children and with knowledge of child psychology to inform and guide the children and their families and to appear on their behalf at all JJ hearings at the Children's Homes as well as at the Juvenile Justice Board. The Bench should ensure that the interpretation of the provisions of the

JJA is not left to individual members of the benches and committees set up under the JJA, but are clearly laid out.

The Bench should work in close collaboration with the High Court Judge who may be nominated by the Chief Justice of the State to oversee the condition and functioning of the observation homes/state homes established under Juvenile Justice (Care and Protection of Children) Act, 2000¹.

It should be set up through a consultative process that involves affected children, their families, activists and legal experts.

4. Lack of Child Rights Friendly Practices:

The procedures being followed by the Child Welfare Committee's are woefully short of being 'child rights friendly'. There are no clearly articulated procedures for ensuring that the hearing is a positive, non-threatening and safe experience for the child, rather than one in which she feels scared and tentative.

Often, Probation Officers present cases of children without even presenting the child for hearing. This and other similar practices are antithetical to the concept of a Child Welfare Committee, whose function and responsibility it is to engage with children in need of care and protection, and together with the child identify appropriate future actions for her life. These processes and procedures at the hearings that violate basic norms of child rights practice need to be investigated and changed immediately.

In many cases, when they do make an appearance, children are not made to feel comfortable during their hearing session. They are brought in herds and asked to sit on the ground, or stand, while the Committee members speak to other children. During their hearings too, they are often made to stand and face the members, at times they are audience to their parents and guardians being shouted at and being treated as second class citizens. The hearings also take place in the presence of several other office staff, other children and their guardians, and at times, different members talk to different children, simultaneously. None of these enable a child to feel safe, respected or comfortable.

Hearings usually involve a conversation between the Committee member and the child's Probation Officer. The child may be asked a few perfunctory questions from time to time, but there is, in most cases, no real discussion about the child's lived situation, her opinions, her needs and her wants. The thought process behind the decision made by the Committee members is not communicated to the child and there is no room for incorporating the child's objections or concerns regarding any decision that is taken. By presenting the rationale of lack of time, Committee members single-handedly go through cases in a speedy manner. This is neither conducive to actually understanding the child's situation, neither does it respect the child's right to a fair and free hearing. Thus, the Committee hearings present a stark violation of children's right to self determination, through their informed and meaningful participation. We strongly demand that

¹ "From the desk of Chief Justice of India" by Chief Justice of India Shri. Y. K. Sabharwal, Dated 3 April 2006

procedures be set in place so that hearings truly uphold the child's right to participate, and decisions do not become the outcome of a conversation between adults, well-meaning as they may be.

Finally, there are no mechanisms in place to ensure the validity and reliability of the placement and rehabilitation decisions taken by the Committee members. We demand that child rights friendly procedures for conducting the hearings by the Committee members be put in place immediately. We insist that processes should be set up to ensure accountability of the Committee members for the decisions reached during their hearings.

Any transgressions in this regard should be acted against swiftly.

5. Violation of Existing Norms:

It is now public knowledge that the Committees have been running for several months without full quorum, and without the legally mandated number of women on the Committee. This is in violation of the procedures established in the JJ Act.

Further, even if more than one member is present at a hearing, in some cases, single members have been deciding cases without any inputs from other members. This process is deeply flawed, from the point of view of both the letter and spirit of the law. The reason for a multi-member, balanced Committee, in which all members discuss one child's case at a time and only then jointly arrive at a decision, is to ensure that the best interests of the child are paramount in any decisions made. With just one person at the helm, or with single members handling cases single-handedly without consultation with other members, the decisions will be unilateral and arbitrary at best, and harmful at worst.

Several Committees are under the pressure of a huge delay and back-log in cases. As per the law, a new case needs to be presented before the CWC within 24 hours of a child entering the home or in the next hearing. This seldom happens, and cases can be delayed even up to a year or more. In the situation of irregular hearings the delay is even longer. These violations of the Act need to be investigated and appropriately addressed.

We demand that these blatant violations of the norms mandated in the JJ Act be addressed immediately. We also demand that the appropriate action taken against those responsible for allowing such a situation to continue for so long without correction.

As institutions set up to defend the rights of children, we urge you to act with the urgency the situation demands, not just to punish the accused in the most recent case, but even more importantly to set right a system that is replete with serious maladies.

Looking forward to a speedy response.

Thanking you.

Nandana Reddy/
Kavita Ratna

P. Lakshapathi

The Concerned for Working Children Association for the Promotion of Social Action

To be sent also to:

To
The Chairperson
State Commission for Protection of Children's Rights
Karnataka

To
The Chairperson
National Commission for Protection of Children's Rights
Karnataka

To
The Chairperson
National Human Rights Commission
Karnataka

To
The Chairperson
State Human Rights Commission
Karnataka

To
The Minister
Department of Women and Child Welfare
GOK

To
The Secretary
Department of Women and Child Welfare
GOK

To
The Director
Department of Women and Child Welfare
GOK

To
The Lokayukta
GOK