

# **CHILDREN'S PARTICIPATION AND THE JJA MODEL RULES**

The Concerned for Working Children  
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## **An overview:**

Our work experience as a private development agency that has worked for over two decades has thrown up numerous incidents where the State has failed to meet the requirements of children who need care and protection. The homes set up to care for children fall shamefully short of what is expected of them. The juvenile homes are supposed to be places that offer care and protection to children who are in conflict with law – in order to heal them and provide them a safe haven to gain life skills, education and vocational education so that they are able to realise their full potential. There are stringent norms that the Government sets up for 'fit person institution' recognition that they give to NGOs in order to achieve this. Yet, these norms are blatantly violated in the government run institutions that lack basic facilities, do not have staff with counselling skills and in many of them, the security guard is the person in charge.

The lacunae in the government run juvenile institutions have been brought to the notice of the concerned authorities a number of times over the years by children, NGOs, Child Welfare Committees and crisis help lines. However, they have been ignored. This is a clear case of non-fulfilment of responsibilities by the concerned authorities yet, the persons responsible are not held accountable by the judicial system.

Our analysis and the review of the Juvenile Justice Act – 2000 of India makes a clear and strong case to indicate that the Act clearly violates the Convention on the Rights of the Child and the Beijing Rules.

## ***Some of our key concerns with regard to the JJA and its implementation – with special reference to children's participation are:***

- The blatant violation of the CRC by the JJA, 2000: The provisions of the Act completely ignore children's right to participate in decisions concerning themselves and do not keep the best interest of children as the key consideration.
- Confinement of children and institutional care are practiced as the main remedy to assist children who need care and protection as well as those who are considered 'in conflict with law'. The institutional care places emphasis on the 'isolation' of the child as a punishment and results in the labelling and criminalising of children instead reintegration.
- The JJA does not demonstrate any understanding of the developmental milestones of children. For example adolescents require a unique set of impetus, direction and inputs in order to reach their full potential – and these needs are significantly different from the needs of children below the age of ten.
- The press totally violates children's right to privacy, care and protection in the manner of their reportage. Alleged child offender's photographs are published, names are revealed and the police hound them. While the law does not permit it, in practice they are not challenged or held accountable the JJA institutions for their violations.
- The 2006 amendment includes 'working children' in the category of children in need of care and protection. There are already examples of child labour enforcement activities taking place under the JJA enforcement – without the JJA system developing appropriate systems, in consultation with working children to meet the specialised needs of working children.
- Mechanisms to ensure safe and quick foster care and adoption of children from homes are not in place – that include effective feedback systems from children.

- The diminished role of the child help lines has left a lacuna in the lives of children who need support that does not necessarily require law enforcement.
- There is no mechanism to examine and monitor government run institutions to ensure that they are 'fit person institutions', also taking on board the views of children who are presently in the JJA system or who have moved on/out of JJA system due to a range of reasons.

### **Children's participation and the Model Rules**

- i. ***The absence of democratic norms to determine children's representation on platforms where policy decisions about children are made has resulted in having detrimental impact on children, especially those who are covered by so called 'protective' legislation relating to labour, education and children requiring state institutional care; the reason being that National Laws and more specifically the corresponding Plans of Action have not been examined with reference to Article 12 and made compatible. (A case in point is the JJA of India and the model rules that are under consideration. An analysis of the Indian Juvenile Justice Act – 2000 indicates that the Act clearly violates the Convention on the Rights of the Child and the Beijing Rules.)***
- ii. ***This is further exacerbated by the absence of mechanisms for redressing grievances by children who are adversely affected by such laws.***
- iii. ***Further, the reporting mechanisms by State Parties to the Committee do not stipulate parameters related to children's participation; such as mechanisms within the institutions to ensure children's participations; mechanisms in the judicial hearing and decision making systems to ensure that children are enabled to voice their views and experiences and be involved in decisions related to their life in accordance to their age and abilities; number of consultations held by national, state and local governments with children, the children represented, or the number of concerns raised by children that have been addressed and the budget expended on these issues; that demonstrate the required 'political will' to make Article 12 a reality for children.***
- iv. ***Even in situations where references are made to include children's representation and views being given some space, the fact that children who begin to use those spaces are vulnerable to threat and pressure is not given due consideration. The pressures children face may range from subtle hints going right up to physical violence. It is the responsibility of the State and the facilitating organisations to ensure that children are protected. This understanding of vulnerability also provides an impetus for us to create and find ways and means by which children can access decision making spaces without exposing themselves to threat. One such example is the 'Children's Post Box'<sup>1</sup>.***
- v. ***The absence of mechanisms for children to redress grievances and make complaints: It must be noted that children are their own first line of defence. Most marginalised children face exploitation from many of the systems that are supposed to protect them. For instance law enforcement agencies in many countries are among the harshest abusers of poor children. State run institutions that are supposed to protect children exploit them repeatedly as there is a dearth of mechanisms to hold them accountable. Children and their care givers need access to a complaints and grievance redressal mechanisms through which they can raise issues of violation and obtain remedies.***
- vi. ***State Run Institutions such as Observation and Remand Homes are exempt from the preview of national laws and the conditionalities that govern similar institutions run by***

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<sup>1</sup> See Annexure 1

*the private sector: In many India State Homes set up to care for children fall shamefully short of what is expected of them. The juvenile homes are supposed to be places that offer care and protection to children who are in conflict with law – in order to heal them and provide them a safe haven to gain life skills, education and vocational education so that they are able to realise their full potential. There are stringent norms that the Government sets up for ‘fit person institution’ recognition that they give to NGOs in order to achieve this. Yet, these norms are blatantly violated in the government run institutions that lack basic facilities, do not have staff with counselling skills and in many of them, the security guard is the person in charge. Though children who are serviced by these institutions bear the brunt of these inadequacies and are often well aware of the situation, they do not have any safe avenues to voice their concerns and oppressions.*

*vii. During the past decade, children’s help lines have been set up to provide immediate support to children in crises keeping the children’s best interests and their rights as the frame. However, the roles of the Children’s Help Lines have now been constricted to perform like the Special Juvenile Police Units where their primary role is to link children to the Child Welfare Committees. Scope for children’s participation in these mechanisms has also been woefully inadequate.*

*viii. Right now JJA reporting mechanisms do not stipulate parameters that demonstrate the required ‘political will’ to make Article 12 a reality for children:*

*We believe that it is imperative that all the institutions under the JJA report on the implementation of Article 12 at all levels of their programme implementation. They should be required to provide information and statistics on such matters as:*

- The structures designed to enable children’s mandatory participation*
- The nature of the complaints mechanisms that have been put in place.*
- The structure of the redressal mechanism and the nature of access to children including access to National Commissions, Judicial Systems and Legal Representation*
- The degree of autonomy these mechanisms such as Children’s Committees hold - for example what is the role and the mandate of the ‘Children’s Committees’.*
- The number and nature of formal consultations held within the institution, at the district level and at the state level.*
- The number and nature of formal consultations held by national, state and local governments with children*
- The categories of children represented including gender, age groups, marginalised and differently abled in all of these consultations*
- The number of concerns raised by children and number of those issues addressed and the status of the other issues*
- The budget expended on these issues*

*The model rules should provide reporting formats for Article 12 of the CRC to these institutions that include both qualitative as well as quantitative information and cover all the parameters required.*

*ix. Making appropriate information available to children: information related to the JJA should be accessible to children who have to transact with the JJA systems. The members of the Children’s Committee need more detailed information regarding the role, rights and the responsibilities of the committee. They also require inputs and training to perform their role without utmost confidence in the most informed manner.*

### **Listening to Children:**

- i. *Children have the 'right to be heard in any judicial or administrative proceedings affecting (them). However, judicial settings and procedures in India are extremely intimidating and convoluted. In the best interest of the child, her/his right to be heard 'in camera' or in familiar surroundings should be emphasised.*
- ii. *Children in alternative care should have mechanisms to express their views. Most State run institutions do not have any such facilities.*
- iii. *With regard to setting up mechanisms in alternate care, there are many organisations that have good practices that State institutions can learn from. CWC's Regional Resource Centre, Namma Bhoomi (Our Land) has residential accommodation, educational and training facilities for over 100 youth (girls and boys). This centre is also a State recognised 'Fit Person Institution' according to the Juvenile Justice Act, 2000.*
- iv. *At Namma Bhoomi, children elect their own representatives to form the Namma Bhoomi Children's Panchayat which monitors the functioning of the entire Centre on a regular basis. The organisational 'Child Protection and Participation' code guides the management from personnel recruitment onwards. Children are part of the policy discussions and have jointly, with adults, developed systems of reporting they are most comfortable with – including 'special post boxes'. Children have regular weekly and monthly reviews among themselves. They invite the adults concerned if necessary. The alumni of the centre are available to children for discussions and counselling support if required. All children have direct contact with the senior management of the organisation – and the youngest of them can walk up directly to them to raise any issue that concerns her/him. These inputs from children are treated with utmost seriousness – and follow up action is immediately reported back to them.*
- v. *The inspection committee should meet children and assess the functioning of the institution in the light of the CRC.*
- vi. *Children should have secure means to access information related to the institutions and have systems where their views can be expressed in a confidential manner.*
- vii. *Children should be consulted, and facilitated with insight and great sensitivity regarding the options available to them, their pros and cons and assisted to make informed choices.*
- viii. *Children should be consulted, in secure environments during the conduction of inspections, reviews and social audits.*

### **Children's Committees:**

- i. *The inclusion of Children's Committee is a sign of recognition of children's participation in the JJA institutions.*
- ii. *It is extremely important to ensure that these Children's Committees do not end up being tokenistic or manipulated. The Rules now provide for it – but the challenge is to ensure that these committees become a mechanism that empowers children to protect themselves and to play a proactive role to determine the future course of their lives.*

- iii. *The Model rules mention that the representatives of the Children's Committee are also members of the Home's Management Committee as well as the members of the Emergency Committee when such situations arise.*
- iv. *These additional roles and responsibilities of the Children's Committee have far reaching implications on children as the Management Committee has the responsibility of monitoring the progress of every child in the institution and the Emergency Committee will be expected to function under stressful and extremely demanding conditions.*
- v. *It is very striking – and also indicative of the poor understanding of the basic principles of children's participation – that there have been no consultations held among adults and equally importantly with children themselves to discuss:*
- *Do children feel the need for a Children's Committee? If yes, why? If no, why not?*
  - *If yes, what is the role they wish such a Children's Committee should play?*
  - *What mechanisms should be in place for children in the institution to communicate, in confidence if necessary, with the members of the Children's Committees.*
  - *How will the members of the Children's Committee be accountable to the children they represent?*
  - *Who do they think should be members of the Children's Committee? What should be the criteria and method to select/elect these members? How can representation of children with different issues be ensured in the Children's Committees?*
  - *What is the support the members of the Committee require – in terms of mandate, protection, information and training?*
  - *What should be the term of the Children's Committee?*
  - *Should the Children's Committee have any direct role in the all Management aspects of the institution? If yes, why? If not, why not?*
  - *Should the Children's Committee have any direct role during emergency situation in the institution? If yes, why? If not, why not?*
  - *Should the members of the Children's Committee send representatives to the Management Committee? What is the role of these children representatives? What are the criteria to select them?*
  - *Should the Children's Committee send representatives to the Emergency Committee? What is the role of these children representatives? What are the criteria to select them?*

*Facilitative discussions with children and adults that cover areas like those listed above will provide the framework for the Children's Committees that children may effectively create and use.*

- vi. ***The Model rules suggest that local voluntary organisations shall support the Children's committees to: ' Select their leaders; conducting the monthly meetings; developing rules for the functioning of children's committees and following it; maintaining records and children's suggestion book and other relevant document; any other innovative activity'.***
- vii. ***In effect, the entire onus of setting up the Children's Committees and supporting them has been 'handed out' to local voluntary organisations without clearly defining the mandate of the Children's Committees and the value that will be given to the issues raised by the Committee.***
- viii. ***A well developed capacity building programme has to be developed to assist children and the adults to ensure that the Children's Committees are able to play their role to the optimal impact and result in creating child rights friendly institutions for all children.***
- ix. ***The facilitative role (either by adults or by children) must include enabling children to review the relevance and validity of their views – as they too may be influenced by prejudices and misleading assumptions. Equally importantly, children should be provided support and protection to express their views without fear and anxieties related to retaliatory action by those who may cut a sorry figure in the M and E assessment.***
- x. ***Children need access to facilities where they can access immediate help in times of crisis. The presence of adults such as Makkala Mitras (Each Makkala Panchayat selects a Makkala Mitra or Children's Friend, an adult whom they feel they can trust and whom they can depend on for support within the Task Force<sup>2</sup> and in the community. The Makkala Mitra's role is to take immediate action in cases where children request help individually or collectively.) and toll free telephonic children's crisis helplines in every village or city are examples of such facilities. However, these are not yet mainstreamed and strengthened enough to assist children in a comprehensive and sustained manner.***
- xi. ***The mandate of the Children's Committees vis the Management Committees has to be well defined. The Management Committee will have to report to the Children's Committee regarding the status of the issues that are placed before it by the members of the Children's Committees.***
- xii. ***All the children in the institutions should have regular updates regarding the functioning of the Children's Committees as well as that of the Management Committees***

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<sup>2</sup> A tripartite body, devised by CWC, comprising of children's representatives; government officials and elected representatives; and community based organisations. This body was set up link the children councils with the local government and focuses primarily on issues related to children that are raised by the children's council.

## **Annexure 1**

### **Makkala Anche Pettige (Children's Post Box)**

Makkala Anche Pettige is a facility for children to write about problems they face physically, mentally, educationally that they cannot express with the Makkala Mitra<sup>3</sup> directly. Children can also write about their experiences to other children. They can even use this facility to share their skills with others. The Makkala Panchayat<sup>4</sup> shall place this post box in each Ward/area.

#### Why Makkala Anche Pettige?

- To find solutions to personal problems that cannot be shared in public
- To write about issues and put them in the box
- To write stories, poems and put in the box
- To solve problems like eve-teasing
- To find solutions to educational and other problems faced by children

#### Where should Post Box be placed?

- It should be placed in each Ward where it can be accessed by all children
- Children should decide on the actual location of the Post Box
- The elected members of the respective Ward are responsible for the operation of the Post Box
- It should be opened every week

#### Who will open the Post Box?

- Makkala Mitra should open the Post Box
- Makkala Mitra should keep the names in the letters confidential
- Children can also give a letter directly to the Makkala Mitra

## **Annexure 2**

### **Makkala Mitra** **(Children's Friend)**

#### Responsibilities of Makkala Mitra

- To rescue children in dangerous situations without any delay and solve their problems
- To solve the problems of children who have dropped out of schools and help them to get an education
- To listen carefully to children's problems. When the problem solving process gets started, the children concerned should be involved.

<sup>3</sup> See Annexure 2

<sup>4</sup> A children's Village Council or parallel government of children, set up jointly by Bhima Sangha and the Concerned for Working Children presently in 56 Panchayats in Udipi. It is a forum for all children to participate in decision-making and governance at the Panchayat level.

- The best interests of the child should be the most important consideration while solving their problems
- To participate in children's programmes
- To keep the names of the children in the letters got through Post Box confidential, in the best interests of the child
- To pay attention to children's problems and address them with seriousness
- To keep records of the complaints made by children
- To get appropriate training to equip herself/ himself to deal with the issues of children
- To have deep knowledge about Bhima Sangha and Makkala Panchayat
- To treat all children like her/his own children
- To help children identify their mistakes and correct them
- To help children get opportunities to speak at different meetings and platforms
- To encourage children to participate
- To give information about different organisations to children
- To provide protection to children who are in difficult situations
- To help children gain opportunities to take part in various cultural programmes
- To pay equal attention to all children
- To look into matters such as teachers cheating children by collecting more money from them etc.
- To pay special attention to girls
- To help children participate in all forums where discussions on children's issues take place
- To have a good rapport with the parents of Makkala Panchayat members
- To visit schools and Anganwadis frequently and understand children's problems and issues

*(Excerpts from the 'Protocol of the Makkala Panchayats', developed by members of Bhima Sangha and members of Makkala Panchayats, published by The Concerned for Working Children, 2006) (Refer to **Annexure 9** for a full text of the Protocol of Makkala Panchayats)*