

Compatibility Study of Juvenile Justice (Care and Protection) Act 2000 with International Conventions signed by India- The Concerned for Working Children, India

Part A

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

India is signatory to a number of international instruments and declarations pertaining to the rights of children to protection, security and dignity. It acceded to the United Nations Convention on the Rights of the Child (UN CRC) in 1992, reaffirming its earlier acceptance of the 1959 UN Declaration on the Rights of the Child, and is fully committed to implementation of all provisions of the UN CRC. In 2005, the Government of India accepted the two Optional Protocols to the UN CRC, addressing the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. India is strengthening its national policy and measures to protect children from these dangerous forms of violence and exploitation. However, it still falls short of incorporating all the articles addressed in the CRC, in its much hyped Juvenile Justice (Care and Protection) Act 2000. The following are some of our observations.

1. Sections of the JJ Act violating the CRC:

- **Section 8 (3), 68 (2) iii JJA¹: Observation Homes²**

“...standards and various types of services to be provided by (State Government) for rehabilitation and social integration...”

The standards and services to be provided mentioned in section 8 (3) JJA should have been clearly defined by the JJ Act and should not be left to the discretion of the State (section 68 (2) iii JJA) leaving scope for violation. These fixed principles then again, have to be comparable to them set up in the CRC, which would be e.g.:

- Art. 2 CRC: non discrimination
- Art. 16 CRC: protection of privacy
- Art. 24 CRC: health and health services
- Art. 27 CRC: standard of living
- Art. 28 CRC: education
- Art. 37 a, c, d CRC: Prevention of torture, humanitarian treatment and right to prompt legal assistance

But neither there are any fixed principles in section 8 (3) or 68 (2) iii JJA nor have any of the principles of the CRC been incorporated in these sections of the JJ Act.

- **Section 9 (3), 68 (2) iv JJA: Special Homes³**

“...standards and various types of services to be provided by (State Government) for rehabilitation and social integration...”

We again face the problem that neither any of the principles of the CRC have been incorporated in sections 9 (3), 68 (2) (iv) JJA nor can any fixed principals been found in these sections of the JJ Act (compare section 8 (3) JJA).

¹ Juvenile Justice (Care and Protection) Act 2000

² "observation home" means a home established by a State Government or by a voluntary organisation and certified by that State Government under section 8 as an observation home for the juvenile in conflict with law

³ "special home" means an institution established by a State Government or by a voluntary organisation and certified by that Government under section 9 of the JJA

- **Section 14 JJA: Inquiry by Board regarding juvenile**

*“... Provided that an inquiry under this section shall be completed within a period of four month from the date of its commencement, unless the period **extended** by the Board having regard to the circumstances...”*

Art. 37(d) of the CRC reads: “Every child deprived of his or her liberty shall have the right ... to a prompt decision...” If there is no limit to how long the period of the inquiry is allowed to be extended by the board, this would lead to arbitrary decisions under this section and to a violation of Art. 37 (d) of the CRC.

Since the juvenile is already kept in a home during the process of the inquiry an arbitrary extension of the period of the inquiry also violates Art. 37 (b) of the CRC, which says that no child shall be deprived of his or her liberty unlawfully or arbitrarily.

- **Section 15 JJA: Order that may be passed regarding juvenile**

Section 15 (1) JJA mandates a variety of dispositions such as advice or admonition (a), group counselling (b), community service (c), fines (d), guidance (e) and supervision orders (f) and sending the juvenile to a special home (g).

Though section 15 (1) JJA does provide a variety of dispositional options as required by Art. 40 (4) CRC, these options do not operate within the CRC framework wherein detention is regarded as a deprivation of liberty and such detention is mandated only as a measure of the last resort. Instead the discretion lies with the authority to decide on any of the dispositional options.

Section 15 (1) (g) JJA: “*Juveniles in conflict with the law are directed to special homes for a period of not less than 2 years in the case of a child who is over 17 and below 18 and for other juveniles till they cease to be a juvenile.*”

This section abuses the human right of liberty and freedom and violates the Art 37 (b) of the CRC which says that detention shall only be used for the shortest appropriate period of time. Keeping a small child in a home until he ceases to be a juvenile hardly ever seems to be the shortest appropriate period of time.

Also making a difference between children under/over 17 years of age will lead in most of the cases to unequal results between the two age-groups. For example a ten year old child which is accused of being a thief, would have to stay 8 years in a special home while a 17 year old juvenile would only have to stay for 2 years until being released. This discrimination between the two age-groups violates Art. 2 of the CRC (Non-discrimination).

Section 15 (1) JJA at the end: “*...Board may ... reduce the period of stay to such period as it thinks fit.*”

Section 15 (1) JJA at the end on one hand may avoid discrimination in some cases but on the other hand bears the problem that the decision of reducing the period of stay is left up to the board. Since there are no fixed rules if and when yes how the period of stay is to be reduced this may lead to arbitrary or unfit decisions. Because of this uncertainty section 15 (1) JJA at the end violates Art. 37(b) of the CRC.

- **Section 33 JJA: Inquiry**

Section 33 (2) JJA: “... *the time for the submission of the inquiry report may be extended by such period as the Committee may ... determine*”

As already mentioned this clause violates Art. 37 (b) and (d) of the CRC (compare section 14 JJA).

Section 33 (3) JJA: “*The Committee may allow the child to remain in the children’s home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.*”

This clause only states that it is in the best interest of the child, in need of care and protection, if he/she is allowed to stay in the children’s home, with the content of the best interest depending on the belief systems of society. But the best interest has to be determined by the child using the principle of dynamic self-determination, meaning that the best interest principle must be read along with Art 12 CRC (right to participation).

Since Art 12 CRC is not considered at all in section 33 JJA, this section violates Art 3 CRC (Best interest for the child).

Further, children in need of care and protection are deprived of their liberty without mandating a maximum period of detention. This violates Art. 37 b CRC (compare section 15 (1) (g) JJA).

- **Section 34, 68 (2) x JJA: Children’s homes⁴**

Section 34 (1) JJA: “*The State Government may establish ... during the pendency of any inquiry ... care, treatment, education, training, development and rehabilitation.*”

Though section 34 (1) JJA does provide a variety of standards and services during the pendency of any inquiry, still not all of the standards mentioned in the CRC are named (compare section 8 (3) JJA).

Section 34 (2) JJA: “*...standards and various types of services to be provided by (State Government) for rehabilitation and social integration...*”

We again face the problem that neither any of the principles of the CRC have been incorporated in sections 34 (2), 68 (2) x JJA, nor can any fixed principals been found in these sections of the JJ Act (compare section 8 (3) JJA).

- **Section 56 JJA: Power of competent authority to discharge and transfer juvenile or child**
“*The competent/local authority may ... order a child in need of care and protection or juvenile in conflict with the law to be discharged or transferred from one children’s/special home to another ... keeping in view the best interest of the child / juvenile.*”

This section again is not comparable with Art. 3 of the CRC (best interest for the child), since Art. 3 of the CRC must be read along with Art 12 (right to participation) which is not considered in section 56 of the JJA (compare section 33 (3) JJA).

2. CRC clauses not being enacted in the JJ Act

⁴ "children's home" means an institution established by a State Government or by voluntary organisation and certified by that Government under section 34 of the JJA;

- **Art. 2 CRC, non discrimination**
Art 2 mandates, State parties shall respect and ensure the rights set forth in the present Convention without discrimination of any kind. However a non-discrimination clause has not been enacted into the JJ Act 2000.
- **Art. 3 CRC, best interest principle**
As already shown the best interest principle must be read along with Art. 12 of the CRC (right to participation). But throughout the JJ Act the content of the best interest of the child depends on the belief systems of the society. Art. 3 CRC has been completely ignored by the JJ Act.
- **Art 6, right to life**
Art 6 mandates that every child has the inherent right to life. This principle has once again not been explicitly or implicitly invoked by the JJ Act 2000.
But the Constitution of India does guarantee the right to life under Art 21 to all persons and children.
- **Art. 12 CRC, right to participation**
The child under Art 12 has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. This is one of the central provisions in the CRC which puts forward a new vision of what children's rights means. However this fundamental principle has completely been ignored too.
- **Art. 37 a CRC**
Art 37 (a) CRC notes that No child shall be subject to torture or cruel, inhuman or degrading treatment. This provision has not been incorporated in the JJ Act.
- **Art. 37 c CRC**
Art 37(c) CRC notes that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of a person of his or her age.... The JJ Act did not incorporate this general standard.
- **Art. 40 (3) a CRC**
Art. 40 (3) a CRC mandates the establishment of a minimum age below which children shall be presumed not to have the capacity to violate the penal law. However it has not been incorporated under the JJ Act 2000.
- **Art. 40 (3) b CRC**
Art 40 3 (b) notes, Whenever appropriate and desirable measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
This provision operationalizes a limited understanding of diversion, applying the concept to judicial proceedings only. The constitution of the JJB with two social workers having coequal powers does not comply with this provision as the Board still inquires into the situation instead of diverting the child away from the system.

3. Conclusion

Next to many other clauses even the four main principles of the Convention on the Right of the Child, Art. 2 CRC (non discrimination), Art. 3 CRC (best interest of the Child), Art. 12 CRC (right to participate) and Art. 6 CRC (right to life) are not enacted in the JJ Act 2000.

II. UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE (BEIJING RULES)

'Child Protection' refers to protection from violence, exploitation, abuse and neglect. Violations of the child's right to protection, in addition to being human rights violations, are also massive, under-recognized and under-reported barriers to child survival and development. Children subjected to violence, exploitation, abuse and neglect are at risk of: shortened lives, poor physical and mental health, educational problems (including dropping out of school), poor parenting skills later in life, homelessness, vagrancy and displacement.

The Government's approach to child protection so far has addressed largely those children who have already missed the protective net and fallen into difficult circumstances. Unfortunately the current coverage falls short of reaching the most vulnerable because the interventions through the existing schemes do not cover all the categories of children in difficult circumstances. Even where the interventions exist, for instance, institutional care for children in difficult circumstances, there is much room for improving the infrastructure and expanding the outreach. The quality of services needs up-gradation and regional imbalances need to be addressed. The following are our observations based on the Beijing Rules.

1. Sections of the JJ Act violating the Beijing Rules:

- **Section 15 JJA: Order that may be passed regarding juvenile**

Section 15 (1) JJA mandates a variety of dispositions such as advice or admonition (a), group counselling (b), community service (c), fines (d), guidance (e) and supervision orders (f) and sending the juvenile to a special home (g).

Though section 15 (1) JJA does provide a variety of dispositional options as required by the Rules 13.2 and 18.1, these options do not operate within the framework of the Beijing Rules wherein detention is regarded as a deprivation of liberty and such detention is mandated only as a measure of the last resort. Instead the discretion lies with the authority to decide on any of the dispositional options. Because of this section 15 (1) JJA violates the Rules 13.2, 18.1 and 19.

Section 15 (1) (g) JJA: *juveniles in conflict with the law are directed to special homes for a period of not less than 2 years in the case of a child who is over 17 and below 18 and for other juveniles till they cease to be a juvenile.*

This section abuses the human right of liberty and freedom and violates the Rule 13.1 and 19 which say that detention shall only be used for the shortest possible period of time. Keeping a small child in a home until he ceases to be a juvenile hardly ever seems to be the shortest possible period of time.

2. Beijing Rules not being enacted to the JJ Act

- **Rule 4, age of criminal responsibility**

Rule 4 mandates the establishment of a minimum age of criminal responsibility, bearing in mind the facts of emotional, mental and intellectual maturity. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility. However a minimum age has not been incorporated under the JJ Act 2000.

- **Rule 7, rights of juveniles and Rule 14, competent authority to adjudicate**

Rule 7 emphasises some important points that represent essential elements of a fair and just trial, such as the presumption of innocence, the right to remain silent, the right to counsel and so on. None of these procedural safeguards find any place in the JJ Act.

- **Rule 11, Diversion**

The fundamental premise behind diversion is to hinder the negative effects of subsequent proceedings in juvenile justice administration for example the stigma of conviction and sentence. This is conceptualized in Rule 11.2, which empowers police, prosecution and other authorities to divert the child away from the system. However these rules have been ignored in the enactment.