

AMENDMENTS PROPOSED TO THE JUVENILE JUSTICE (CPC) ACT
2000/2006

1. Introduction of penalty clause in case a child care institution fails to register under section 34(3) of the Act .

Remarks - As per section 34 (3) of JJ Act, all the institutions maintained by government or voluntary organizations for reception of child in need of care and protection are to be registered. Procedure for punishment and authority for the non-registered institutions to be defined in the Act. A new sub-section be inserted, after sub section 34(3) as follows ;

34(4) - Any failure to compliance , the Government or the authority empowered by the Government shall take charge of such institutions with entire premises and infrastructure along with the inmates present. Further, the management of institution shall also be liable for prosecution duly seizing all movable/immovable properties and Bank accounts etc., with them.

2. Revising the definition of CNCP.

The present definition as in Section-2(d) of the Child in need of care & protection encompass a whole range of situations / circumstances and still relevant. It may be a fact that the best place for a child is his/her family, but the capacity or the control to take care of the child is also a necessity. The sponsorship & Foster care can be extended after the issues are considered by the CWC as an alternative and in continuation of the institutional care .

As regards the child complains of abuse or neglect at Home/ from parents or a child whose custody battle is fought by parents IN Family Courts, such children are moved in to "*Child in need of care & protection*". For this the Child is not at fault. When family environment is not conducive and impair the child's growth, the CWC has right & duty to reach out to such

children in accordance with the objectives of the Act. Similarly, the victims of crime come under the purview of CNCP & dealt by CWC

It may also be noted that as per the act, CWC is a bench of Magistrates under CrPC1973 and has to adjudicate the issues in a summary or summons cases as indicated in Sec.54 of the Act keeping the best interests of the child.

3. Providing avenue for appeal against orders of CWC and building in the accountability .

The existing Section 52- Appeals (1) prescribes the methods for preferring the appeals aggrieved by the orders of the Competent authority (i.e JJB or CWC as the case may be) to the Court of Session

Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from –

(a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or

(b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.

(3) No second appeal shall lie from any order of the Court of Session passed in appeal under this section.

In this regard, the proviso may be revised for providing the opportunity for appeal against the order of a CWC; by deleting the item (b) of the above proviso and following Sub Section 4 may be inserted .

New Sub Section - 4: The appeal against the order of a CWC can be preferred by the Superintendent or any functionary nominated from the Home, Concerned NGO or the Child himself or DPO or the DCPO of the DCPS or any concerned Persons who apprehend that there is a likelihood of the abuse or neglect of the child or the incapacity of the parents .

4. Enumerating orders that may or may not be passed by CWC.

It is informed that the Section 15 of the Act prescribes the orders that may be passed regarding the Juvenile (by the Juvenile Justice Board). But, no similar provision was prescribed in respect of the orders that may or may not be passed regarding the Child in need of care & protection by The Child Welfare Committee.

Following New sub- Section as 31(3) may be inserted after the section 31(2) of the ACT:

Functions and Powers of the Committee;

The Committee shall perform the following functions:-

- (a) Take cognizance of and receive children produced before the Committee;**
- (b) Suo-moto take cognizance of cases and reach out to a child in need of care & protection ;**
- (c) Reach out to such children in need of care and protection who are not in a position to be produced before the Committee, being in difficult circumstances, with support from the District Child Protection Unit or State Child Protection Unit or State Government and the institutions of NGOs, including not registered under sec-34(3).**
- (d) Conduct necessary inquiry on all issues relating to and affecting the safety ,well being of the child, including immediate shelter; ***
- (e) Direct the Child Welfare Officers or Probation Officers or NGOs to conduct social enquiry Ensure appropriate rehabilitation and restoration, including passing necessary directions to parents or guardians or fit persons or fit institutions in this regard, Direct the Officer- in-charge of Children home to receive Children requiring shelter and care. ;**

- (f) Declare 'fit persons & recommend ' fit institutions' to Govt ;**
- (g) Declare a Child legally free for adoption ;**
- (h) Maintain liaison with the Board in respect of cases needing care and protection,**

***As already indicated above, the decision regarding custody and rehabilitation of child whose custody battle is fought by parents in family courts , victims of trafficking shall rest with the CWC only as it is a regular court for all purposes and are open for issuing summons to the concerned so far as it is beneficial to a case of a Child before it as analogous with any other Court.**

- 5. Including further provisions regarding adoption and related procedures.**

Adoption under the section 41 of the Act is perceived as a rehabilitation. In a sense that it undermines the instrument of adoption to provide an enabling environment for the Child . The procedural delays are main hurdles in Adoptions under JJ Act and the same may be reviewed and simplify the procedures for speedy & time bound clearance of the adoptions .

It would be appropriate that Courts (dealing with Adoption) may hold sittings in the Sisu grehs/ Specialised Adoption agencies / children Homes for this purpose similar to that of CWC& JJB. As far as possible, summary procedure may be adopted to avert long delays.

- 6. Expanding the scope of the act to include offences against children and defining child friendly procedures.**

Following amendments are proposed for the existing provisions and expanding the scope of the Act for offences not covered in any other Law .

Section 21: Penalty to be increased upto Rs10-00 lakhs

Prohibition of publication of name, etc., of juvenile involved in any proceeding under the Act.- (1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile be published :

Provided that for reasons to be recorded in writing the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in interest of the juvenile.

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine, which shall not be less than Twenty thousand and may extend upto Ten Lakh Rupees.

(3) When a JJB imposes a fine as mentioned in subsection 2, the JJB may, when passing judgment order that out of the fine amount such amount as may be specified in the order may be ordered to be paid directly to the concerned Child through District Child Protection Unit for utilizing same for the rehabilitation of the said children. Rest of the amount can be kept at the disposal of the State Government for utilizing for rehabilitation of children

Amendment to section 25

In Section 25, the words ‘*in a public place*’ be deleted

25. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child. - Whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor (*in a public place* to be deleted) or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner shall be

punishable with imprisonment for a term which may extend to three years and shall be liable to fine of not less than Rs.50,000/- and may extend upto Rs.5 lakhs.

Amendment to section 26

26. Exploitation of juvenile or child employee:- Subject to the provisions of The Child Labour (Prohibition and Regulation) Act, 1986 whoever ostensibly procures a juvenile or the child for the purpose of (any hazardous – to be deleted) employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine.

Punishment to Abetments and attempts to commit offences: (New Section to be inserted as 26 (a) of JJ Act)

Whoever either abets or attempts any offence under section 23 or 25 or 26 or 26 A of JJ Act shall, be punished with the punishment provided for the offence

Explanation 1- for the purpose of this section the definition of abetment and abettor are as defined under section 107 and 108 of the IPC

Explanation 2- If the parent and guardian who is actual control of the children fails or neglects the children and on account of which if offences against the children are committed as defined in section 23 to 26A of the JJ Act, such person shall be deemed to have abetted the offence.

Enhanced punishment for certain offences (New Section to be inserted as 26 (b))

Whoever, having been convicted an offence punishable under section 23 to 26A of the JJ Act, again commits offence punishable under section 23 to 26A of the JJ Act, be punished with imprisonment of either description for a term which may extend to Ten years and not less than 5 years and shall also liable to fine.

Punishment for exploiting children in electronic media [New section to be inserted as 26 (c)]

Whoever either in Television or any other electronic media -

(a) Transmits or causes to be transmitted material in any electronic or digital form which depicts children engaged in obscene or indecent conduct or

(b) creates text or employs indecent suggestive language or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent manner or any activity which may cause injury or mental agony or harm or disrespect to the self respect of children, shall be punished on conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to Five lakh rupees

Provided that this section does not extend to any electronic or digital transmission which is proved to be justified as being for the public good in the interest of science, literature, art or learning or other objects of general good.

Trial of certain offences by JJB [New Section to be inserted as 28 (a)]

If an act or omission constitute an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender shall be tried or inquired by JJB only and not by any other court.

7. Removing implication regarding age at which the child should be gainfully employed

The existing provision under Section-15(d) has to be taken in revised in tune with the provisions of The Child Labour (Prohibition and Regulation) Act, 1986. It should be ensured that children below 14 yrs of age shall not be

employer engaged in any hazardous job and their right of Compulsory Education should be safe guarded.

8. Including and introducing 'diversion' as a method of rehabilitation or CIL.

Diversion is a new concept. The Petty offenders need not come to the Observation Home and spend long periods for want of bail/or for disposal of the case by the JJB. The alternatives of Diversion as categorized in 4 varieties .

- 1. Community absorption- creation of groups of persons Like Maitri Committees or Peace Committees as a Community Support groups for bringing in harmony ,Tranquility and discipline among Children & Adults in areas for specified purposes.**
- 2. Screening- Police referring back an incident back to the family or the community. Or drop a case against a child. Here, the discretion lies with the Police.**
- 3. Pre-Trial diversion – Police instead of proceeding with the charges in the court , may move for a out of court settlement or mediation procedure.**
- 4. Alternatives to imprisonment, the Juvenile Justice Boards be asked to consider the fourth option for as it can be implemented as per the existing Section 15(c) as a continuation of the ' Community Service'**

The first three Categories of the Diversion practices are to be taken up by the Police officer/ Police Station. The Juvenile Justice System envisages that the Children should not be strictly dealt with by the Procedures of the CrPC1973. All the cases are to be dealt in a child friendly manner. The contacts of the Juvenile with the police are limited to the apprehension of the JCL & production before the JJB. The Diversion methods (1,2&3) are Police based practices and the same may

be initiated through the DCPS,DCPO or the DPO or the P.O (IC&PO(NIC) after the issues are considered by the JJB

9. Making special provisions for care of repeat offenders and children who have committed crimes of serious nature :

The traditional mode of release after admonition or spending some time in Observation Home/Special Homes are having a lenient impact of the system as there are no regular mainstreaming programs in the main stream society , some of the Children are reverting to crime and repeat offenders. The repeat offenders usually disturb the Home discipline and a bad influence over the young boys and are also causing problems to the staff of the Home. There should be a regular Scheme for taking care of such deviant juveniles in the District /State with a Psychological and Career Counsellors to motivate them and find a place/living on their own.

10. In Section 33 (1) after the word 'child welfare officer', the following be inserted:.

“Or a District Probation officer or officer concerned functioning under the Act” .

After addition, the section will be as follows:

33. Inquiry.- (1) On receipt of a report under section 32, the Committee (*) shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of section 32, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer *Or a District Probation officer or officer concerned functioning under the Act.***