

Challenges and Opportunities for civil society – state partnerships in the effective implementation of the JJA 2000 in Karnataka¹

Introduction: The new Juvenile Justice Act 2000 has made a paradigm shift while making provisions for civil society to play a more active role in the administration and delivery of juvenile justice. India, the world's greatest democracy has a long tradition of grassroots participation, from the independence movement to the well-established and widespread network of community groups, non-governmental organizations and associations of today. Its mosaic of racial, cultural and ethnic groups is governed by the democratic institutions of a secular state and its active media contribute to open and lively political dialogue. The time is right for a more constructive and yet critical relationship between the community and the state in ensuring justice to children, recognizing that the State has to take primary responsibility for children in need of state care. The challenge therefore is to collectively move away from the highly custodial and state-centric approaches that have defined the way the juvenile justice system has been working in our country, towards rights oriented child centric justice 'system'. The essential feature of such a system is that it respects the role and responsibility of all stakeholders, including children and their families.

The role of Judiciary: The Child Welfare Committee and the Juvenile Justice Board under the Act not only serves the community, but are also part of the community. The quality of its service reflects the support and understanding given it by the community. Consequently, the judicial officers should constantly aim to build partnerships between them and the citizens. This is mainly achieved through its Probation Staff and the NGO partners. There have been examples of such partnerships in various fields in different parts of the country and the world. The judiciary must have or acquire a good working knowledge of actual and potential local resources and know whether the staff is using them. The full use of the available community resources by the judiciary also requires careful examination of its role as a referring and as a receiving agency. This note aims to make a case for such collaborative ventures in the interest of all stakeholders but primarily in the interest of thousands of children who enter the juvenile justice system. It also poses a challenge to the Executive as well as the Judiciary (members appointed to the Juvenile Justice Board and the Child Welfare Committee) to identify and work with civil society representatives who may serve as partners in the common endeavor to ensure justice to children.

I. Role of civil society in the management of institutions under the Juvenile Justice Act 2000. Sections 8, 9, 34 and 37 of the JJA 2000 clearly provide for a major role of NGOs in the implementation of the Act. Annexure 2 gives a detailed analysis of other sections and Karnataka rules, which provide additional arenas for civil society action on this issue.

II: Principles for Joint Management

1. **The state has primary responsibility for the destitute marginalized:** NGOs shall not usurp the role of the state by engaging in activities/services that encourage the

¹ *Arlene Manoharan, Centre for Child and the Law, NLSIU, 2004*

state to abdicate its role. NGOs partnering with the state will therefore only value add to the basic services that have to be provided by the state.

2. **CRC principles:** The partnership should be such that it is based on a commitment to respect the core CRC principles of child participation, non-discrimination, best interests and right to life.
3. **Community participation:** The non-state partner will be a recognized representative of the community, and may or may not be a member of a recognized NGO alone, but could be a recognized person from the community with the appropriate expertise.
4. **Convergence between Child lines and the SJPU:** The existing child lines will be integrated with the SJPU and the C/JWOs.
5. **Critical and yet constructive relationship between state and non-state actors:** There will be joint management in a spirit of critical constructive collaboration between all actors and stakeholders.
6. **Accountability:** All actors and stakeholders will be held accountable to the child concerned, the community, the competent authority and the DWCD. Appropriate procedures/mechanisms such as Social Audit will be used to ensure this.
7. **Networking and drawing relevant multi-disciplinary expertise:** There will be a respect for expertise from different domains such as psychology, social work, etc. so that inquiries and assessments look at root causes and other aspects as part of the social investigation provided for in the new JJA.
8. **Effective Information sharing and management with due regard to confidentiality issues:** There will be clarity of role and responsibility of each stakeholder with clear protocols. When such clarity does not exist, efforts will be made to arrive at the same so as to facilitate efficient administration.

III. Models of Joint Management

A: NGO run State institution: NGO is recognized to manage the institution completely on its own. This is possible in the various institutions under the Act, namely the Observation Home, the Special Home, the Children’s Home and the Shelter Home

B: NGO- State Joint Management: NGO is recognized to manage the institution in partnership with the State Government, whose functionaries hold the positions provided for in similar institutions under the Act. This is possible in the Observation Home, the Special Home and the Children’s Home.

IV. Role of each stakeholder

| Area | Role of the State | Role of the civil society representative |
|---------------------------|--|--|
| Funding | Funding for basic infrastructure, staff and services | Supplementary funding to value add to basic services |
| Human resources | Basic staff to run the institution as well as a referral service to government institutions for basic health care. | Personnel with specialized expertise such as counseling, assessment, etc to supplement the services provided by government functionaries |
| Infrastructure | Basic infrastructure to be provided | Supplementary infrastructural facilities may be provided |
| Role in Management | Partner with NGO so as to be jointly responsible for the management of the institution | Partner with the State so as to be jointly responsible for the management of the institution |

V. Procedures that may be followed

1. **Legalization of Joint Management:** The Rules under the JJA should be amended to include and provide for the legal basis for such Joint Management for implementation of Model B.
2. **Memorandum of Understanding:** An individualized Memorandum of Understanding will be signed between each of the partnering organizations specifying the details of the partnership.
3. **De-recognition:** The State Government, if dissatisfied with the conditions, rules, or management of the organization certified or recognized under the Act, may at any time, giving two months notice served on the manager of the organization, declare that the certificate or recognition of the organization as the case may be, shall stand withdrawn as from a date specified in the notice.
4. **Investigation by the Advisory Board:** The decision to withdraw or to restore the certificate, or recognition of the organization may be taken on the basis of a thorough investigation by a specially constituted advisory board under section 62 of the Act. On the report of the advisory board, the officer in charge of the home shall be asked to show cause to give an explanation within 30 days.
5. **Transfer of children on de-recognition:** When an organization ceases to be an organization certified or recognized under Section 8, 9, 34, 37 or 44 of this Act, the children kept therein shall under orders of the designated officer empowered in this behalf by the State Government be either:
 - Discharged absolutely or on such conditions as the officer may impose; or
 - Transferred to some other institution established, certified or recognized under these Sections, in accordance with the provisions of the Act and Rules relating to discharge and transfer. Intimation of such discharge or transfer shall be given to the Board or the Committee as the case may be.
6. **Funding:** The state Government will continue to provide the financial resources necessary for the basic infrastructure, staffing and services to be provided by the institution.

VI: Home Committees and Joint Management

On the 16th August 2001, the Department of Women and Child Development, Government of Karnataka passed an order providing for the setting up of Home Committees in two institutions under the JJA 2000. (See Annexure 1 enclosed).

These committees have been functioning effectively over the since September 2001 and have made significant contributions towards building effective and child friendly services. On the 26th September 2002, the Rules under the Act were notified. Rule 26 deals with the Monitoring and Evaluation Committee to be set up in each institution under the Act.

Rule 26.1) The Monitoring and Evaluation Committee shall be constituted in each institution consisting of the following functionaries:

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|-------------------------------------|---------------|
| 1. Superintendent/Probation Officer | Chairperson |
| 2. Visiting Medical Officer | Member |
| 3. Teacher | Member |
| 4. Counselor | Member |
| 5. House Mother/House Father | Member |
| 6. Case Worker | Member |
- 2) This Committee shall meet periodically to consider and review:
- a) Custodial care, housing, place of work, area of activity and type of supervision required.
 - b) Individual problems of juveniles, family contacts and adjustment, economic problems and institutional adjustments, etc
 - c) Vocational training and opportunities for employment
 - d) Education, i.e. health, education, social education, academic education, vocational education and moral education
 - e) Social adjustment, recreation, group work activities, guidance and counseling
 - f) Special instructions, collecting moral information and special precautions to be taken etc
 - g) Review of progress and adjusting institutional programmes to the needs of the inmates
 - h) Planning post-release rehabilitation programme and follow up for a period of two years in collaboration with aftercare service
 - i) Pre-release preparation
 - j) Release and
 - k) Any other matters which the Officer in charge may like to bring up.

Comment: The Rules do not specifically provide for NGOs working on the issue to partner with the state as part of the Monitoring and Evaluation Committee. However Sec. 35 of the Act which deals with Inspection provides for the State Government to appoint inspection committees for the children's homes. These inspection committees *shall* (Sec. 35.2) consist of such number of representatives from the State Government, local authority, Committee, *voluntary organizations* and such other medical experts and social workers as may be prescribed.

The existing Government order does allow for the Home Committees to continue to function. These Home Committees can continue to function alongside the Monitoring and Evaluation Committees when they begin to function. In this regard however, it is clear that the Rules do not converge with the legal provisions mentioned above in that the Monitoring and Evaluation Committees need to include suitable voluntary organizations as well as representatives from the local authority and the Child Welfare Committee (implied by the word 'Committee')

Karnataka is recognized as one of the leading states in administering child friendly juvenile justice. Organizations such as KSCCW have played an important role in contributing new ideas and schemes and paving the way for other committed organizations such as APSA, ECHO, BOSCO and Ashraya to do the same. Each of these organizations has also made their own unique contribution. The Centre for Child and the Law, NLSIU has also played a critical role at various levels. These range from contributions to research, law making, lobbying and advocacy and building collaborative

platforms between State and non-state actors as well as legal and other disciplines to work together on various programmes including Rule formulation, Training of functionaries and judicial officers from the State etc.

In order to recognize and support the contributions made by these and other new NGOs, the State Government needs to be proactive and recognize NGO representatives with the appropriate experience to be members of the Monitoring and Evaluation Committee as Counselors. They could also amend the existing Rules or pass an appropriate Government order to make it more specific. This will go a long way to consolidate the constructive atmosphere for collective efforts on this issue and would provide a legitimate forum for collective constructive joint working, airing grievances and monitoring the system along with recognized actors on the issue. Such a platform will therefore reduce the need for unnecessary bad press, litigation and public outcry and would instead enable constructive dialogue and action within the collaborative framework itself. This dialogue would set the stage for dissent which would possibly have more constructive outcomes.

VII: The Juvenile Justice Forum: At a meeting held in Feb 2003 with the Director – Mr. Jairamaraj Urs and senior officials of the DWCD, GoK, CCL’s proposal to form a Juvenile Justice Forum was accepted. As proposed, this Forum would serve as a platform for all concerned actors and stakeholders to come together in a collective spirit to contribute to progressive delivery of juvenile justice in the city. It would not be a registered body but a group of actors (both state and non-state) who would dialogue and work in partnership towards this end. In order to build broader and stronger platforms, it may be useful for all existing and potential Home Committees to band together with support from the Forum that could ultimately attempt to work towards creating an Integrated Justice system with all concerned Departments and stakeholders.

Conclusion: There is an urgent and critical need for Karnataka to draw from the rich experience in the field of juvenile justice at the international arena, to consolidate the progressive work that has been initiated in terms of partnership between the state and civil society. There are bound to be differences of opinion, variance in strategies and confrontation on certain issues. Our experience over the past few years has indicated that if there is a strong forum, a commitment to work based on the approach of ‘constructive, critical collaboration’ and the appropriate mechanisms and principles to guide its functioning, we could lay the foundation for and build a truly child friendly and rights based justice system in our State. Such a collective force will make all the difference in helping support the State in its *parens patria* role, to take complete overall responsibility for children in need of state care. Actively encouraging the effective functioning of the Home Committees will be a sure step toward this end.

Annexure 1

**Government of Karnataka Order on Home Committees
Proceedings of the Director, Dept. of Women & Child Development, Bangalore
Sub: Constitution of the Home Committees for improvement of State run
institutions-Co-management of the institutions.**

Ref: Proceedings of the meetings held on 6-8-2001 in the Chambers of Secretary, Women and Child Development, Bangalore.

Preamble: In the meeting held with the Department of Women and Child Development and NGOs on 6-8-2001 to discuss about the improvement of performance and functioning of the State run institutions, a consensus was arrived at that co-ordinated efforts are essential between the Government and the NGOs to ensure that the institutions are run well. Therefore it was decided to constitute Home Committees for Co-management of the institutions under purview of the Juvenile Justice Act, 1986 for improving the functioning of the home. It was also agreed that in the first phase Home Committees would be constituted in the institutions in Bangalore. Hence the order.

No.DWCD/PDM/HC/2001-02

Office of the Director of Women and Child Development, Bangalore

Order Dated:16:8:2001

As indicated in the preamble, Home Committees are constituted for improvement of the following institutions functioning at Bangalore under the Juvenile Justice Act, 1986.

I Observation Homes

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| 1. Superintendent of the Institution | Convenor |
| 2. Assistant Director, WCD/or his representative | Member |
| 3. Representative from Ashraya | Member |
| 4. Representative from Bosco | Member |
| 5. Visiting Medical Officer | Member |
| 6. Probation Officer | Member |

II Juvenile Home for Boys and Girls

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| 1. Superintendent of the Institution | Convenor |
| 2. Assistant Director, WCD/or his/her representative | Member |
| 3. Representative from KSCCW | Member |
| 4. Representative from APSA | Member |
| 5. Visiting Medical Officer | Member |
| 6. Probation Officer, Juvenile Home for Boys | Member |
| 7. Probation Officer, Juvenile Home for Girls | Member |

The role and functions of these Home Committees are as follows:

1. The Home Committees would ensure the welfare of the children in the Home
2. The Home Committees shall work out and implement with appropriate steps for bringing about positive attitudinal change among the staff as well as children in the institution
3. Home Committees should ensure that aims and objectives of Juvenile Welfare Programmes are achieved through proper implementation, monitoring and review of programme and personnel.
4. The Home Committees shall work out mechanisms for co-opting children in decisions concerning them
5. The Home Committee shall send the periodical reports to the Director, Department of Women and Child Development once in a month.
6. The Committee shall meet once in a week

The Committees shall be in force until further orders and is liable to be altered or terminated by the Director, Women and Child Development at any time.

Sd/- Director: Women and Child Development, Bangalore

Role of civil society in the implementation of the JJ Act 2000

Legal provisions under the Act and Karnataka Rules 2002

1. GENERAL

Sec 45 of the JJA (CPC) Act 2000: The State Government may make Rules to ensure effective linkages between various Governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social integration of the child.

Rule 32.2: The Director of Women and Child Development shall permit Universities, Academic institutions, individuals, research scholars to undertake field work, research work and other related activities

Statement of objects and reasons: (2.vi) To spell out the role of the State as a facilitator rather than a doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation.

2. ASSISTANCE TO INSTITUTIONS UNDER THE ACT

Rule 32: The Superintendent of Children's Homes and Shelter Homes shall,-

- (i) Encourage the participation of NGOs, Social Workers in the various programs and activities of the Homes
- (ii) Receive any articles donated by individuals, organizations/NGOs. A donation register shall be maintained in each Home wherein entries of all articles shall be made.

3. INQUIRIES AND FOLLOW UP

Probation Officers to establish linkages: Rule 39.2.viii): Probation Officers to establish linkages with voluntary workers and organizations to facilitate rehabilitation and social reintegration of children and to ensure the necessary follow up

Producing children before Competent Authorities

a. Producing a juvenile in conflict with law before the Board

Rule 10. 2) Child line or any recognized voluntary organization, or

Rule 10.3) Any public servant

b. Producing a child in need of care and protection before the CWC:

Sec 32: Production before the Committee: Any child in need of care and protection may be produced before the Committee by Child line, a registered voluntary organization or by such other voluntary organization or agency as may be recognized by the State Government

Social Investigation Report: Sec. 33.1: On receipt of a report under section 32, the Committee or any police officer or special juvenile police unit or the designated police officer 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 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.

Rule 10.12) Preparation of social investigation report narrating the circumstances of apprehension and offence committed, and produce the child before the Board or the Police with the report

Rule 39.3.a) The Case worker/Child Welfare Officer shall make social investigation of the juvenile/child through personal interview and from the family, social agencies and other sources

Rule 19.1) Any person/Child line/Institution/Police Officer who receives a child in need of care and protection shall produce the child before the Committee with the report of the circumstances under which the child came to their notice. Efforts shall be made to trace the family and assistance of voluntary organizations or Child line may also be taken to do this.

Initial inquiry: Rule 20.1) The Probation Officer of the Children's Home shall immediately inform the parents or guardian where they cannot be contacted or if the child specifically wishes that they should not be contacted the Probation officer shall contact any other suitable person accepted by the child.

4. SUPPORT SERVICES: Rule 23.2.(iii): to establish linkages with organizations and individuals who can provide support services to children

Family tracing: Rule 20.2): Assistance of NGOs/Child line to trace and associate the family in the inquiry

Escort: Rule 14) The child may be escorted by a representative of a voluntary organization or by any other arrangement deemed appropriate by the Committee. Escort by Police shall be a measure of last resort with preference given to the Child Welfare Officers and officers attached to the SJPU.

Visitors: Rule 23.3.(i) All the Children's Homes shall be open to visitors with the permission of the Superintendent, particularly voluntary organizations, social workers, researchers, medicos, academicians, prominent personalities, and any other person, as the Superintendent considers appropriate keeping in view the security, welfare and the interest of the child

Special Juvenile Police Unit (SJPU): Rule (12.2) The SJPU shall be assisted by recognized voluntary organizations....

Children with special needs to be referred for specialized care: Rule 40.2)

Children can be placed with suitable organizations for apprenticeship: Rule 37.12.i)

Place of safety: Definition (q) of the JJA: means any place or institution (not being a police lock up or jail), the person in charge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority may be a place of safety for the juvenile

Fit Person or Institution: Sec. 60 and Rule 36: Individuals and organizations may be recognized.

Identification and Recognition of Referral institutions providing specialized services Rule 40.2): The Competent Authority shall identify and recognize institutions providing specialized services to children with special needs and refer the children to these institutions so that their particular needs are met. (See Rule 40.3)

5. MANAGEMENT OF HOMES UNDER THE ACT

Observation Homes: Sec. 8 and Rule 15.2) The State Government shall permit voluntary agencies to run Observation Homes

Special Homes: Sec. 9 and Rule 17.2) Voluntary organizations permitted to run Special Homes

Children's Homes: Sec. 34 and Rule 22.2) Voluntary organizations permitted to run Children's Homes

Shelter Homes: Sec. 37 and Rule 24.1) The State Government shall recognize non-government organizations, having a minimum of two years experience in dealing with children in difficult circumstances for running Shelter Homes for children in urgent need of care and protection such as destitutes, street children and run away children

After Care: Sec. 44 and Rule 31.1: Voluntary organizations permitted to run after care organizations

6. RESTORATION

Adoption: Rule 28.3: Whenever intimation is received by the police about an abandoned infant, the police shall with the assistance of NGOs take charge of the infant and arrange to provide immediate medical assistance and care. Subsequently the child shall be placed in an adoption agency or in a pediatric unit of a Government hospital..... fit person/fit institution

Temporary Foster care/Group Foster care: Rule 29.1 and 29.2.d)

Sponsorship: Rule 30.1 Encourage individuals, NGOs, financial institutions, corporate sector and public to support or sponsor children.....

7. CARE PLANS AND CHILD CARE

Linkages with NGOs to be made as part of the Child Care plan:

Rule 37.5.c) Based on the care plan appropriate linkages may be established with specialists and community based welfare agencies, psychologists, psychiatrists, local doctors so as to access the best appropriate care for each child

Counselors: Government Order regarding appointment of one Trained Counselor per institution (depending on the number of residents)

Missing Children: Rule 41: The State Government shall set up a Missing Children's

Bureau to document and publicize information relating to them. Attempts shall be made to network with all other similar facilities set up around the country so as to facilitate speedy scanning and transmission of information about such children.

8. HOME COMMITTEES: Government Order concerning the involvement of NGOs in Home Committees in Karnataka

9. ADMINISTRATION:

Inspection Committees

Sec. 35.2: The Inspection Committee shall consist of such number of representatives from the State Government, local authority, Committee, voluntary organizations and such other medical experts and social workers as may be prescribed.

Rule 25.3.e) NGO to be decided by the Deputy Commissioner

Monitoring and Evaluation Committee (MEC): The MEC shall be constituted in each institution consisting of the Superintendent/PO, Visiting Medical Officer, Teacher, Counselor, House Mother/Father and Case Worker. (See Rule 26)

Board of Management to administer the JJ Fund: Rule 42.1 d) iii) Three non-official members who are representatives of voluntary organizations, corporate sector or academicians

Advisory Boards: Sec. 62.2: The Central or State advisory board shall consist of such persons as the Central/State Government as the case may be, may think fit and shall include eminent social workers, representatives of voluntary organizations in the field of child welfare, corporate sector, academicians, medical professionals and the concerned Department of the State Government. The purpose of the Advisory Board is to monitor and oversee the functioning of the Homes and administration of Juvenile Justice in the State.

Rule 43.1.xi) Such number of non-officials not exceeding seven to be nominated by the State Government from among the corporate sector, academicians, medical professionals, social workers from voluntary organizations

Social Audit: Sec. 36: The Central or State Government may monitor and evaluate the functioning of the Children's Homes at such period and through such persons and institutions as may be specified by that Government.

Rule 27: The State Government shall commission professional research based social institutions or institutions working with children to audit the Homes annually.

Making policy contributions to the Manual on the JJ (CPC) Act 2000: Rule 45: Additional guidelines with regard to the functioning of the Homes and implementation of the Act shall be followed as specified in the Manual on the Juvenile Justice Act, 2000

10. RESOURCE MOBILIZATION: Donations to the JJ Fund: Rule 42.1.a)