

Recommendations on Social Audit¹

Under the

Juvenile Justice (Care and Protection of Children) Amendt Act 2006

Introduction:

The Juvenile Justice Act 1986 was amended in the year 2000 mainly to incorporate the provisions of the United Nations Convention on the Rights of the Child (UNCRC). This is an international standard, which is a legally binding treaty, ratified by India in 1992.

The Preamble also invokes Constitutional provisions, the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) all other relevant international instruments.

The preamble of the Juvenile Justice (Care and Protection of Children) Act 2000 has clearly stated the objectives of the Act. These are specified as –‘providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

The social objectives and legal standards of the Act, the Aims of Juvenile Justice as per the Beijing Rules and the rights enshrined in the Constitution as well as the UNCRC provide a strong foundation for Social Audit. The Beijing Rules, for example, aims to further the well being of the juvenile and his/her family, develop conditions that will ensure that the juvenile has a meaningful role in the community, foster a process of personal development free from crime and delinquency, and finally, mobilize all resources and community support to reduce the need for intervention under the law

The UN Convention on the Rights of the Child provides minimum standards for how children should be treated. Article 4 of the Convention requires that all State parties to the convention shall see to it that the laws and rules of the country correspond to the Convention and they shall undertake *all* appropriate measures for the practical implementation of these rights. Social Audit therefore provides a means to identify how meaningfully this Article has been implemented and whether the State in India is genuinely an ally of marginalized and excluded children in society.

The Juvenile Justice Act has attempted to provide for a progressive rights based approach to juvenile justice. Interestingly, in Section 31, which specify the powers of the Child Welfare Committee places a responsibility on the Committee to ‘provide for their basic needs and protection of human rights.’

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The administration of juvenile justice has historically been the sole domain of government. This has resulted in a situation where there is very little civil society presence in this arena. The fact that these children (both alleged offenders and those who are 'neglected') are looked at as society's rejects has added to the alienation that such children face. The State has understood its role as 'guardian' of the child to mean that all children who are housed in these institutions have to be kept in secure environments in order to prevent them from escaping from custodial settings act as another barrier to those who are interested in working the system. The confidentiality provisions in juvenile justice legislation internationally have been provided for in order to prevent labelling and stigmatization of children. However, all these factors have resulted in a highly custodial set up whereby these children are further invisibilized. It is hoped that through empirical research that clearly enumerates the statistical scenario as well as the status of such children that this issue can be placed in the public domain.

The new Act has paved the way for a clearing away of these barriers by providing for civil society organizations to get involved in the administration of these services. The Karnataka Local Fund Authorities Fiscal Responsibility Act 2003 seeks to foster a process of public engagement in fiscal policies resulting in a feedback on the performance through a 'social audit'. This legislation along with the JJA 2006 gives a basis for the social audit to be done in Karnataka.

Section 36 provides for Social Accountability systems to be set up in the administration of juvenile justice system by providing for Social Audits to be undertaken by the Central or State Government. Section 36 of the Juvenile Justice (Care and Protection of Children) Act 2000 has clearly made a provision for Social Audit to be undertaken by the State Government. 'The Central Government or State Government may monitor and evaluate the functioning of the Children's Homes at such period and through such person and institutions as may be specified by that Government.'

For an effective Social Audit process, the social auditor needs to have the right to seek clarifications from the implementing agency about any aspect, consider and scrutinize existing schemes and activities and access documents relating to all procedures. In this way it demands operationalization of the right to information. The Right to Information Act 2005 provides an excellent tool and strategy to enable effective implementation of Section 36 of the JJA which provides a legal mandate for the same. Some Social Audit processes have been ineffective because there is no legal provision for punitive action to be taken when recommendations are not followed up.

The Karnataka Rules 2002 under the JJA had specified this in greater detail. Rule Karnataka JJ Rule 27: '*The State Government shall commission professional research based social institutions or institutions working with children to audit the homes annually.*'

It is widely known that India has a plethora of very progressive laws that are emulated around the world. From the above, we may substantiate this point and conclude that at the

level of juvenile justice legislation, the Government of India has clearly operationalized its commitment to provide for the protection and care of children who are in need of State care.

There is now an urgent need to assess the effectiveness and efficiency of the Executive in this arena if we are to get a clearer picture of whether such justice is being done to children who most need it.

Model Rules 2007 related to Social Audit (Rule 64)

Social Audit. (1) *'The Central Government or the State Government shall monitor and evaluate the implementation of the Act annually by reviewing matters concerning establishment of Board or Committee or Special Juvenile Police Unit where required, functioning of Board or Committee or Special Juvenile Police Unit, functioning of institutions and staff, functioning of adoption agencies, child friendly administration of juvenile justice and any other matter concerning effective implementation of the Act in the State'.*

(2) *'The social audit shall be carried out with support and involvement of organizations working in the field of mental health, child care and protection and autonomous bodies like the National Institute of Public Co-operation and Child Development, Indian Council for Child Welfare, Childline India Foundation, Central and State level Social Welfare Boards, School of Social Work and School of Law'.*

Recommendations for Additional Rules under the JJ Amendment Act 2006:

- i) **Facilitators of the Social Audit and time frame:** The State Government shall commission recognized institutions or organizations working on issues concerning children, having the perspective and skills to facilitate a process of social audit of the homes annually.
- ii) **Process:** A participatory process involving all actors and stakeholders in the Juvenile Justice system shall be invited to partner in the Social Audit process. The process shall be conducted taking the time that is necessary for it to be undertaken meaningfully, taking note of the need to build and sustain dialogue and conversation on key issues where necessary and appropriate.
- iii) **Participatory Affirmative Appraisal Approach:** The Social Audit shall be undertaken in a constructive participatory affirmative appraisal approach and not as an external 'inspection'.
- iv) **Persons to be involved in the Social Audit:** In keeping with the Participatory Appraisal Approach the Social Audit shall necessarily ensure partnership of the *users* of the services under the Act, as well as the *service providers*. Representatives from the Children's Committees, Management Committees, Child Protection Units, Inspection Committees, Child Welfare Committees, Juvenile Justice Boards and the Advisory Boards shall also participate. Retired functionaries, representatives from families and children discharged from the JJ system and from community organizations and NGOs working on

the issue of Juvenile Justice shall also be called upon to participate in the process.

- v) **Modalities:** Appropriate Terms of Reference and MoUs shall be made out in order to enable effective collaboration and genuinely transparent auditing.
- vi) **Scope:** The Social Audit shall cover all institutions, bodies, units, authorities, services, and programmes in each District that comes under this Act and Rules. (*Note for discussion: The Performance Appraisal proposed in the Model Rules to be conducted by Child Protection Units could be included in the Social Audit. However, the scope may not include the appraisal of the administrative functioning of the competent authorities, as this would be unconstitutional and better handled by the Court of Juricature.*)
- vii) **Criteria/Parameters:** Minimum standards in the Act and Rules as well as the UN CRC and other UN Guidelines. Budget allocations and utilizations shall also be included as parameters. The UNODC Measurement of Juvenile Justice tool (2006) could also be adapted and used for the Social Audit. Focus Group Discussions shall be conducted with all the stakeholders to finalize these parameters so as to incorporate any key issues that may need to be incorporated.
- viii) **Methodology:** The Institution/organization authorized to undertake the Social Audit shall present a proposal for conducting the Social Audit which shall be reviewed and authorized by Secretary, Women and Child Development, (of each State Government), Directors or Senior Officers of the concerned Departments (Dept of Police, Dept of Prosecutions, Dept of Education, Dept of Health etc) the Advisory Board, State Child Protection Unit and individuals or organizations having the expertise on this issue. The methodology for the Audit shall include Focused Group Discussions with all actors and stakeholders including children and families, Participant Observation, Case Studies, Narratives, and study of relevant records at the level of the institution, programme, and State. Baseline data records from relevant sources shall also be sourced and studied at the beginning of the Social Audit. The State Government shall, in collaboration with recognized institutions or organizations having expertise on the issue of Juvenile Justice as well as on Social Auditing shall prepare and notify Guidelines which shall be used to undertake the Social Audit. These guidelines shall be revised periodically taking into account the insights emerging from the experience of conducting the Social Audit.
- ix) **Social Audit reports to be placed in the Public domain:** The Executive Summary of the Social Audit Report along with detailed Recommendations shall be placed on the website of the Department who has the responsibility to implement the particular service/programme. A copy of the same shall also be sent to the National and State Commissions for the Protection of Child Rights.
- x) **Action Taken Reports:** The State Government shall place on its website an Action Taken Report on the Recommendations emerging from the Social Audit within four months of the date of its completion. This will ensure that planning for the next annual Social Audit takes on board these developments as well as concerns and challenges that remain.

Baseline Data and Background information: Following are a list of possible documents that could aid and inform the SA process

1. Ministry of Women and Child, Government of India study undertaken in collaboration with UNICEF in 2006-2007.
2. CRY study for Ministry of Women and Child, Government of India (2006)
3. TISS study of all the Observation Homes in the state of Maharashtra. (2005)
4. Homelink Network: The UNICEF sponsored Home Link network for Missing children data.
5. Annual Reports of the DWCD, Gok and all other concerned Departments
6. Statistical reports from recognized official sources.
7. Inspection Reports by Child Welfare Officers, Inspection Committees and any other official inspection or inquiry undertaken.

Initial Reflections to be taken into account in framing of Guidelines for Social Audit

Core Values

1. **Child rights-centered:** The SA process will respect, protect and promote the rights of all children as enshrined in our Constitution, the UNCRC and domestic law. The Social Audit process to be facilitated as a constructively critical collaboration that priorities the interest of the child and his/her family over other concerns.
2. **Open constructive dialogue and sensitive enabling of the expression of children's voices:** The SA process shall be facilitated in a manner that encourages and respects dialogue, as well as the expression of dissenting views. Users of the services as well as ground staff responsible for delivering services at all levels are entitled to voice their concerns and grievances through sensitively designed confidential processes and no person shall be victimized for having expressed the same. However, unfounded and mischievous allegations by adults will be dealt with appropriately. Complaints by children will be dealt with bearing in mind the special circumstances and developmental stages of vulnerable children.
3. **Process to be valued over Product/outcome**
4. **Confidentiality and Transparency:** During the process confidentiality will be observed where deemed to be necessary, but the Final Report and Recommendations will be placed in the public domain in order to meet the standards of transparency entailed in good governance.
5. **Value for each child as a citizen:** The SA process will value each child as a person, a citizen and a subject, whose capabilities need to be recognized, safeguarded, and promoted and whose vulnerabilities need to be addressed so that he/she is not deprived, excluded or at risk.
6. **Participation, inclusiveness and democratic processes:** The SA process will involve a collective process that entails an investment of time and respect for

- differing views. It will value people working together towards a common purpose; bridging divides between adults and children, academia and field based practice, and between state and civil society.
7. **Role of the state and civil society with respect to children and families** especially those entitled to protection and care: The SA process will recognize that civil society has the responsibility to both ensure non-abdication by the state as well as promote ownership for children within the community.
 8. **Transparency and accountability: The SA process shall recognize and demand accountability** of all persons responsible for children in the juvenile justice system, whether they are individuals, civil society groups, functionaries or officials representing the state.
 9. **Actionable outcomes:** The SA process shall result in outcomes that are clear actionable recommendations, placing responsibility where it is due and demanding results within a reasonable time frame.

Strategy

1. **Appreciative enquiry highlighting positive and promising behaviour, services and outcomes:** Replicable models, good practices and progressive work will be documented and showcased, in order that such experiences are shared and replicated.
2. **Ownership of the process by persons accountable for a particular service:** The study will be done in collaboration with all the stakeholders in a participatory manner so that the study is owned by each stakeholder as regards his/her respective domain.
3. **Strengths and Weaknesses:** The focus of the Social Audit study will be to identify areas of strength as well as areas for growth that would help in addressing root causes of ineffectiveness of the system and to ensure better delivery of justice to all children and families coming under the purview of the Act.
4. **Scientific research tools and processes:** The process will include a deeper study of organizational issues and will not only rely on data received from 'users/customers' of the services.
5. **Systemic issues to be uncovered:** There are deeper systemic issues that determine and affect the nature and quality of services provided. The root causes for systemic failure lie at various levels and in different wings of the administration. A participatory insider study of this 'system' will be attempted to identify the bottlenecks and the administrative weaknesses, so that individual staff members are not held responsible for structural and other administrative problems within the system.
6. **Emerging insights to feed into Strategy planning:** The objectives of the Social Audit and the principles that are agreed upon as part of the Memorandum of Understanding will be the guiding factors to determine further strategies.
7. **Consultation and Consensus:** Indicators for Performance Appraisal and Social Audit will be finalized after due consultation with relevant stakeholders.
8. **Priorities to be identified:** Key issues will be identified as it will not be possible to study all issues/arenas.
9. **Terms of Reference:** Clear terms of reference will be laid down to clarify the roles and responsibilities of each stakeholder in the study.

10. **Action oriented:** The insights from the study will feed into action plans in the areas that are identified through mutual consultation.
11. **Transparency to promote Good Governance:** The final report of the study will be placed by the concerned Department responsible for the implementation of this Act on its official website after whetting the same in consultation with all the concerned actors and stakeholders. A Public Hearing will be held in order to facilitate a dialogue and debate on the Report, and to trigger ongoing processes and action to effectively achieve the objectives of conducting the Social Audit.
12. **Participation:** Participation is broadly is of three types – voluntary participation without any external support and force, participation because of some mandate and official endorsements and participation because it is compulsory and its violation will invite legal action. It is desirable that social audit is undertaken in a manner that the response lies somewhere between the spontaneous and the sponsored. The participation of children shall be facilitated by experts.

Concerns and Challenges

1. All stakeholders are not equal, either in the closeness of the relationship with the organization or in terms of the power they have over decision making. The Social Audit process needs to be designed sensitively enough to enable weak stakeholders to voice their opinions and make decisions that previously were made only by the managers/officials. This is especially important for children and families who would like to air grievances but fear reprisals.
2. The JJ system in anything but a ‘system’. Instead it is a fragmented set of State responses that is offered to children who are not able to question the quality of these services due to the fact that they are both vulnerable and dependant on the State itself. JJ has been a domain that has historically been closed to the public and civil society, Moreover, media and some civil society organizations have almost always highlighted the negative when it comes to reporting on juvenile justice. Government officers at various levels therefore do feel under resourced and unable to act on a number of issues, due to legitimate concerns that cannot be aired in the public domain. This could increase the level of defensiveness and reluctance to engage in such processes that demand transparency and accountability.
3. There are a number of vested interests who have an interest in maintaining the status quo. These groups can obstruct processes and changes and would there fore warrant sensitive skills and strategy on the part of the social auditor.
4. The success factors for social auditing are not generally present in Indian local governance context, less so in the arena of juvenile justice which is a highly custodialized and criminalized setting. The process needs to be operated from within all the concerned Departments at the level of State Government who should own the process but who may be facilitated by the institution/organization facilitating the Social Audit process.
5. The JJA 2000 has made social audit a mandatory requirement. However, though this is a strong advantage, it is not enough to enable a genuinely participatory and transparent process, something that can only emerge through the sensitive and skilful facilitator who has internalized the values, principles and vision for this extremely complex, challenging and sensitive process.

6. As part of the preparatory phase, information needs to be made accessible to local stakeholders in a form that is understood easily. The difficulty with this is that currently there is very little empirical research or official data that is being maintained in an effective manner.
7. There is a need to institutionalize skills in social audit into the juvenile justice system so that this is done regularly (as the Karnataka Rules 2002 required that it be done annually).
8. It is important that the Rules lay down detailed procedures for the conduct of social audit so that its processes effectively translate identified principles relevant to ensuring democratic participation, transparency, good governance and accountability.
9. Participatory evaluation normally implies bringing together the various service providers to assess the service. In social audit the partnership includes this type of participatory processes but more importantly necessitates partnership between the user of the service and the service providers.
10. The penalties for non-implementation of the Recommendations emerging from the Social Audit need to be identified.
11. SA reverses the role of the manager to that of a facilitator who is responsible not so much for directing but for facilitating groups of stakeholders to discuss and make decisions about the direction they wish to take.