

**Key features of the Karnataka Rules under the JJ (CPC) Act 2000<sup>1</sup>**

The Juvenile Justice Act 2000 has come into force with effect 1st April 2001. The Centre for Child and the Law (CCL), a Research Centre at the National Law School of India University, Bangalore, which has been working on the issue of Juvenile Justice (JJ) for the past few years, has examined this new statute in detail. We came to the conclusion that though invoked in the Preamble, the law does not incorporate existing international standards on child rights such as the Convention on the Rights of the Child (CRC), 1989, the Beijing Rules (BR), 1985 and the UN Rules for Juveniles Deprived of their Liberty (UNJDL), 1990. It also fails to take into account the rich experiential learning of those working on the field, be it the functionaries themselves or experts in the area of child rights. Finally it has not taken on board Constitutional norms or Supreme Court judgments. No effort whatsoever has been made to internalize principles from these various sources, let alone apply them to shape the new law.

What is surprising is that this law, the second one on this issue, does not incorporate a child-centered jurisprudence which would involve a conceptual understanding of children and its relationship to issues of crime, poverty and social and economic exclusion. It does not take into account the deeper structural causes as to why children, specifically from poorer socio-economic backgrounds, commit crime. Instead, the law prescribes general solutions which involves their interface with a system that the law calls the 'juvenile justice system' but which in reality mirrors the adult criminal justice system.

It is clear that this legislation has been enacted in haste. This has been done without the democratic debate or policy base that is necessary for social legislation such as this, which concerns a marginalized section of children, whose voices are rarely heard. Detailed discussion about this major draw back has been carried out and many activists who have been working in the field for decades feel that the new law is in fact regressive as compared to the old law. There is a clear consensus that the JJA has failed to take on board the jurisprudential shifts which have occurred in the area of child rights after the coming into force of the CRC.

Though the Act has been passed by the Central Government, the power to make Rules to the Act has been vested with State Governments since they have the responsibility to implement the law. Rules are also termed as 'delegated legislation' for this reason. Accordingly, there was an opportunity to overcome some of the deficiencies of the Act by intelligently formulating the Rules. While it is necessary that the Rules have to conform to the existing statutory framework, the space still exists to engage in creative Rule making. This effort, if undertaken in all States, can take forward India's obligations under the relevant international standards, ensuring that compliance is built into delegated legislation.

It is with this objective that CCL invited all concerned on the issue of Juvenile Justice to collectively pool their expertise and experience into this Rule making process. After a long and intensive processes, (that facilitated the participation of more than 55 people drawn from 14 NGOs, 2 Government Departments, 6 Superintendents, institutions such as the NIMHANS and NIPCCD, 2 funding organizations, one consultant from within Karnataka as well as partners from 4 other States)<sup>2</sup> the Karnataka Rules under the JJA 2000 was notified and subsequently published

<sup>1</sup> Arlene Manoharan, Centre for Child and the Law, NLSIU, Bangalore, 2003

<sup>2</sup> See Annexure IV and V of Draft Rules under the JJA 2000 that has been sent to virtually all State Government and Union Territories in the country in 2001-2002

in the Karnataka Gazette on September 26<sup>th</sup> 2002. Some of the significant features of the Rules are as follows.

**A: Progressive Concepts and constructs:** As explained below, the collective effort in Karnataka has succeeded in making the Rules more progressive than the Act itself in many ways.

**Child rights framework:** The child rights language of the Draft has been retained in many of the Rules thus ensuring that children coming under this Sector in Karnataka benefit from decisions largely governed by a child rights perspective. The Core principles of the UN Convention on the Rights of the Child, (CRC) have been retained in most places. None of these provisions have been accorded by the Act itself. It is our contention that no other legal instrument in the country today has incorporated the CRC to even this extent.

**⑩Mechanisms to ensure Protection of child rights:**

**Rule 25.6:** Inspection Committee to report all child rights violations to Competent Authority. (Though the Act provides for an Inspection Committee, the Rules call for all *child rights violations* to be reported.)

**Rule 39.1** – The Probation Officer/Superintendents shall ensure that the rights of the child are protected.

**⑩Qualifications of Competent Authority:** Rule 7: Chairperson and members of the Child Welfare Committee to have experience in the field of child rights

**⑩Child Rights training:** Rule 12.1 : Child Rights training to be given to Special Juvenile Police Unit

**⑩Protection from harassment, torture, ill treatment and from being handcuffed, corporal punishment, secondary victimization:** Rule 11.8, 11.11, 12.2.ii),12.2.vi),12.3.vi),13.3, 19.6, 37.15 a), 37.15.b), 37.15.c), 37.15.d) 38.4.d)

**⑩Right to safety, basic amenities, medical attention, counselling:** Rule 11.13, 11.14

**⑩Right not to be forced to give a confession or testimony** – [Rule12.2.ii](#)

**⑩Views of the child to be taken into account and the Best interests of the child principle** – Rule 13.23

**⑩Right against arbitrary or unlawful interference of privacy, family, home or correspondence** – Rule 37.9.d, 37.1.b)

**⑩Right to use own clothing** – Rule33.12

**⑩Right to education (attend school outside the institution)** – Rule33.14

**⑩ Right to adequate health care** – Rule 33.15 – 33.27, 37.11.a.ii)

**⑩ Right to freedom of religion** – 36.2

**⑩Child friendly procedures and environment:** Rule13.7, 13.10, 33.1,37.1.a), 37.1.c),39.4.a)

**⑩Disciplinary proceedings:** The Draft Rules on disciplinary proceedings have been retained

almost in *toto*. Rule 37.15 a) – e) impose strict guidelines that provide for humane and sensitive procedures, most of which were drafted taking into account the relevant UN Rules for Juveniles Deprived of their Liberty.

⑩**Special needs children:** Rule 40 provides for a State run home for destitute, mentally challenged children and children with disabilities. It specifies that such a home shall be a comprehensive care and rehabilitation centre involving the local community, NGOs. It shall also include specialized services with inputs from experts/academic bodies. The Rule also provides for the recognition of institutions that provide specialized care for other children with special needs such as street children, physically challenged children, sexually abused children, children with HIV/AIDS, children of prisoners, child prostitutes, children addicted to substances, terminally/chronically ill children and any others. All these children are to be covered by sponsorship under the Act.

⑩**Protection against Custodial rape and/or sexual abuse:** Rule 38.4 has retained the Draft Rules in *toto*. They provide for action to be taken based on observation of the sudden onset of certain behaviors listed in the Rules, the knowledge of abuse or even a suspicion. Children have the right to report such abuse even after discharge from the institution. The Officer in Charge/ the Medical staff or other staff shall report this to the Juvenile Justice Board who shall initiate a special investigation. The JJB shall in turn shall direct the Local Police Station/SJPU to file a case and the if the involvement of a functionary is found, he/she shall be immediately suspended pending inquiry. There has been a provision for NIMHANS to treat and counsel children who are found to be abusing other children. Care to avoid secondary victimization has also been provided for. Though the Act also lists action to be taken as regards certain crimes against children, these Rules will provide a clear mandate and procedure for children to fearlessly report such abuse, with the knowledge that specific protection and investigation mechanisms have been put in place on this issue.

⑩**Participation Rights of children:** A number of Rules have respected the child's right to participate. The Act itself has failed in this critical area. The relevant Rules are listed briefly below.

**Rule 9.3:** The Committee shall take into consideration the opinion of the child.... prior to such disposal.

**Rule 12.2.i)** The SJPU shall inform the child promptly and directly of the charges against him in the language and manner that he understands so as to ensure full comprehension of the same.

**Rule 13.6:** The child shall be given all possible assistance to enable him to fulfill his right to call any person of his choice, over the phone or otherwise.

**Rule 14.23:** The order issued by the Board shall take into account the views and the best interest of the child...

**Rule 20.1:** Where a child's parents or guardian cannot be contacted or if the child specifically wishes that they should not be contacted, the PO shall contact any other suitable person accepted by the child.

**Rule 25.4.d)** The purpose of the Inspection Committee is to interact with the children and determine their well being

**Rule 25.6:** Any facts discovered by an Inspection Committee that appear to indicate that a violation of legal provisions concerning the rights of children has occurred shall be communicated to the Competent Authority for further investigation

**Rule 25.7.** Each institution shall maintain a grievance box that is freely accessible to children to deposit anonymous complaints. Children shall maintain a grievance box that is freely accessible to children to deposit anonymous complaints. Children shall not be subjected to any punishment

for having accessed these grievance redressal systems.

**Rule 27:** Social Audit (which in principle implies the active engagement of all stakeholders primarily the user of the service – i.e. Children themselves to audit the services provided.)

**Rule 28.5.e:** No child above seven years who can understand and express her/his opinion shall be placed in adoption without his consent.

**Rule 31.4.e:** There shall be provisions for a Peer counselor for After Care Homes who will be in regular contact with these children to discuss the rehabilitation plans...

**Rule 37.1.c:** The immediate needs and apprehensions of the child such as the need for urgent medical care and the need to contact parents shall be attended to in a prompt, efficient and nurturing manner.

**Rule 37.1.e:** A copy of the Rules to be given to the child, and if illiterate the matter should be conveyed in a manner enabling full comprehension.

**Rule 37.5.b:** Children should be consulted while determining their care plan.

**Rule 37.12.g:** Marriage for the girl may be arranged but written consent must be obtained from her.

**Rule 38.4.iii.b:** If the child reports sexual abuse/rape after leaving the institution to any person the person shall bring the same to the notice of the JJB who will then institute an inquiry

**Rule 23.2.ii:** Provision of Child line and emergency outreach service - a free phone facility for children

**Form X:** Pre-release report: 12) Opinion of the child to be taken into account

**2)Mitigating the negative impact of Police intervention:** The Rules have in much detail outlined the role, responsibility, procedure and principles which are to guide the Police intervention as regards children under the Act. Rules 11 and 12 have retained most of the standards under the CRC and the UNJDL in this regard. Moreover, every SJPU *shall* be assisted by recognized voluntary organizations, thereby providing for some degree of Joint Management that could provide the critical checks and balances at this sensitive stage of interaction between the child and the representatives of the State.

**3)Forms:** The Act has provided for a Social Investigation Report to be made either through a Probation Officer or a recognized Voluntary organization. This provision encourages the collection of information about the child from other sources and contributes to a more informed decision on placement. Form IX has incorporated most of the suggestions mentioned in the Draft and is an example of a more analytical framework rather than a mere statement of facts. It is a happy thing that at least in one of the forms, (Form X – The Pre-release Report) the opinion of the child is to be taken into account.

**4)Provision for a manual:** Rule 45 provides for additional guidelines to be put forth in a Manual. This provides the space as well as the challenge to all those who are committed to a high standard in juvenile justice administration to evolve context specific practical guidelines that are centric, sound, realistic and current. Our submission is that these Rules and Guidelines should be reviewed formally on an annual basis and must be treated as an ever evolving document that is responsive to change. Finally, these guidelines should take into account the rights of children as well as the genuine needs of staff responsible for their care. It is when the Rules are really grounded on basic realities, child rights principles and the needs of care givers that there is a greater possibility of compliance as well as it being used as a tool to bring about grass root change.

**B: Process of arriving at Policy clarity as the basis for the Rules**

**ⓄCollective and reflective discourse among a diverse group of stakeholders, bridging theory with practice:** The concept of Participatory Action Research (PAR) has been a major

The Rules reflect some of the intense discussions that took place during the drafting period between a diverse group of stakeholders such as Superintendents, NGO practitioners and researchers at CCL. The detailed Rules on child friendly procedures for First Contact (See Rule 11 and Rule 19). The sensitive drafting attempts to take into account the experiential learning as well as the principles and standards outlined in the relevant international standards. Similar attempts at integrating Grounded policy insights were made while drafting Rules on Adoption and Foster Care, the functioning of the SJPU etc. during consultations with experts from the field.

⑩ **Information sharing with other States:** Action Aid had requested CCL for a training for senior level staff on JJ and the process of Rules making. They subsequently facilitated some amount of collective work in Andhra Pradesh and Chattisgarh, using our Draft Rules for discussion. CCL of course decided to cull out the key insights that emerged from these consultations to produce another Draft. The CCL team also responded to a request of the Government of Madhya Pradesh to assist them in the process of drafting their Rules. Finally, we sourced a copy of the Tamil Nadu Draft Rules as well. Insights from all these documents were culled out and incorporated into the Fourth Draft. The Draft Rules therefore attempts to harmonize all these efforts to the maximum extent. To achieve this we naturally suggested the deletion of some Model rules so that internal consistency was maintained, and also to clarify our stance on certain issues.

CCL also sent the Draft Rules to every State in India with the offer to engage more closely in drafting context specific Rules.

### **C: Limitations of the Rules**

⑩ **Child Participation in the drafting process:** Ideally, a group of children who had experienced the juvenile justice system would have been part of the resource team that framed the Rules. While some initiating steps towards this was attempted through Focused Group Discussions, Theater in Education exercises, and a few narratives, limitations of resources prevented us from enabling their full and genuine participation in the process.

⑩ **Core Principles:** It is unfortunate that the General Principles in the Draft outlining the Core principles were deleted while finalizing the State Rules. This would have ensured that a Child Rights framework is fundamental to the interpretation and implementation of the Act. However, as indicated above, a significant slant towards respecting the views, special needs and basic rights of children has been retained in most of the Rules.

⑩ **Systems analysis:** Though this was conceived as integral to arriving at good and relevant policy, we have not been able to undertake a comprehensive systems analysis to throw light on how a realistic system reform can be put in place.

⑩**Standards of care:** Though Rule 33 claims to list standards to be maintained by Children's Homes, these Rules are in reality a mere listing of services that are necessary. Much more detailed work is necessary to arrive at a set of standards which include performance based indicators and expected outcomes.

⑩**Discrepancies:** Finally, the Rules need to be refined as there are some errors as well as discrepancies that are evident. These seem to have been caused because of the fact that the Law Department and the Department of Women and Child Development did not circulate the edited draft for public debate before notification. For example Rule 29.d relating to Foster Care says that the period of temporary foster care shall not exceed five years and if after this time the child cannot return to the biological family, s/he shall be given in adoption to the foster family. CCL hopes to engage in an ongoing process of refining these Rules as well as bringing out a Manual through a similar collective exercise.

**Conclusion:** It must be said that the Karnataka Rules clearly indicate a paradigm shift in that it has moved from an overly protectionist, State centric and *just desserts* legal regime towards genuinely incorporating a child rights framework.

The fact that a significant amount of the collective work has been retained in the Rules, indicates that the space for democratic engagement in producing such delegated legislation is possible. This space needs to be claimed more actively by concerned actors from all relevant disciplines. The challenge continues to be to create and sustain spaces for democratic dialogue through which laws that genuinely incorporate universally accepted norms and grounded policy are constructed through participatory and people friendly processes. This is one way that we can begin to ensure that there is a sense of citizenship both in the evolution as well as the implementation of the law.

Further, we need to pool our collective energies to advocate for the effective implementation of these Rules, in order to achieve a more progressive Juvenile Justice system in the State.

Of course the ultimate challenge to empower children to participate more effectively in such processes needs to be urgently addressed so that both the process and the product reflect the child centredness that is being advocated in principle.