

REPORT NO.

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**PARLIAMENT OF INDIA**  
**RAJYA SABHA**

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE  
ON HUMAN RESOURCE DEVELOPMENT

**TWO HUNDRED SIXTY FOURTH REPORT**  
**The Juvenile Justice (Care and Protection of Children)**  
**Bill, 2014**

*(Presented to the Rajya Sabha on 25<sup>th</sup> February, 2015)*

*(Laid on the Table of Lok Sabha on 25<sup>th</sup> February, 2015)*



**Rajya Sabha Secretariat, New Delhi**  
**February, 2015/Phalguna, 1936 (Saka)**

Hindi version of this publication is also available

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## CONTENTS

		PAGES
1.	COMPOSITION OF THE COMMITTEE .....	4-5
2.	LIST OF ABBREVIATIONS .....	6
3.	PREFACE.....	7
4.	REPORT.....	8- 70
5.	*OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE - AT A GLANCE	
6.	*MINUTES .....	

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\*Will be appended at the printing stage.

## **COMPOSITION OF THE COMMITTEE**

*(Constituted w.e.f. 1<sup>st</sup> September, 2014)*

1. #Shri Jagat Prakash Nadda — *Chairman*
2. \*Dr. Satyanarayan Jatiya

### **RAJYA SABHA**

3. Prof. Jogen Chowdhury
4. Prof. M.V. Rajeev Gowda
5. Shri Anubhav Mohanty
6. Dr. Bhalchandra Mungekar
7. Shri Vishambhar Prasad Nishad
8. Shri Basawaraj Patil
9. Shri Sharad Pawar
10. Shrimati Sasikala Pushpa
11. Shri Tiruchi Siva

### **LOK SABHA**

12. Shrimati Santosh Ahlawat
13. Shri Bijoy Chandra Barman
14. Shri C.R. Chaudhary
15. Shrimati Bhawana Gawali
16. Shrimati Kothapalli Geetha
17. \$Dr. Ramshankar Katheria
18. Prof. Chintamani Malviya
19. Shri Bhairon Prasad Mishra
20. Shri Chand Nath
21. Shri Hari Om Pandey
22. Dr. Bhagirath Prasad
23. Shri N.K. Premachandran
24. Shri K.N. Ramachandran
25. Shri Mullappaly Ramachandran
26. Shri Sumedanand Sarswati
27. Shri M.I. Shanavas
28. Dr. Nepal Singh
29. Dr. Prabhas Kumar Singh
30. Shri P.R. Sundaram
31. Shri Ajay Tamta
32. Shrimati P.K. Sreemathi Teacher

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#Shri Jagat Prakash Nadda was elevated to Minister of Health and Family Welfare on 9.11.2014

\*Dr. Satyanarayan Jatiya nominated as a member and Chairman of the Committee *w.e.f* 26.11.2014

\$Dr. Ramshankar Katheria was elevated to Minister of State, Human Resource Development on 9.11.2014

**SECRETARIAT**

Smt. Vandana Garg, Additional Secretary

Shri N.S. Walia, Director

Shri Vinay Shankar Singh, Joint Director

Smt. Himanshi Arya, Assistant Director

## ABBREVIATIONS

1. CARA: Central Adoption Resource Authority
2. CCs: Children's Court
3. CCL: Child in Conflict with Law
4. CNCPC: Child in Need of Care and Protection
5. CrPC: Code of Criminal Procedure
6. CWCs: Child Welfare Committees
7. DCPU: District Child Protection Unit
8. HAMA: Hindu Adoption and Maintenance Act
9. ICDS: Integrated Child Development Scheme
10. ICPS: Integrated Child Protection Scheme
11. JJBs: Juvenile Justice Boards
12. LSG: Local Self Government
13. NCPCR: National Commission for Protection of Child Rights
14. NCRB: National Crime Records Bureau
15. NGOs: Non Governmental Organisations
16. NHRM: National Health Rural Mission
17. NSS: National Service Scheme
18. PTA: Parent Teacher Association
19. RTE: Right of Children to Free and Compulsory Education Act, 2005
20. SAA: State Adoption Agencies
21. SARA: State Adoption Resource Agency
22. SCPCR: State Commission for Protection of Child Rights
23. SJPU: Special Juvenile Police Unit
24. SMCs: School Management Committees
25. SSA: Sarva Shiksha Abhiyan
26. UNCRC: United Nations Convention on the Rights of the Child

## P R E F A C E

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorized by the Committee, present this Two Hundred and Sixty Fourth Report of the Committee on the Juvenile Justice (Care and Protection of Children) Bill, 2014.\*

2. The Juvenile Justice (Care and Protection of Children) Bill, 2014 was introduced in the Lok Sabha on the 12<sup>th</sup> August, 2014. In pursuance of Rule 270 relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha referred \*\* the Bill to the Committee on 19<sup>th</sup> September, 2014 for examination and report.

3. The Bill seeks to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established. The Committee issued a Press Release on 29<sup>th</sup> September, 2014 for eliciting public opinion on the Bill. The Committee received a total number of 38 memoranda in response to the Press Release. The Committee held extensive deliberations on the Bill with the stakeholders which included Secretary, Ministry of Women and Child Development, representatives of various organizations like Tulir-Centre for the Prevention and Healing of Child Sexual Abuse, Indian Alliance for Child Rights, Save the Children, Butterflies, Centre for Child and the Law and Prayas. The Committee also heard the Member Secretary, National Commission for Protection of Child Rights and Secretary, Central Adoption Resource Authority on the Bill. The Committee also took note of the written submissions of the other stakeholders. Views of the stakeholders and comments of the Department were taken note of while formulating the observations and recommendations of the Committee.

4. The Committee, while drafting the Report, relied on the following:

- (i) Background Note on the Bill received from the Ministry of Women and Child Development;
- (ii) Note on the clauses of the Bill received from the Ministry of Women and Child Development;
- (iii) Verbatim record of the oral evidence taken on the Bill;
- (iv) Presentation made and clarification given by the Secretary Ministry of Women and Child Development;
- (v) Memoranda received from organizations/individuals; and
- (vi) Replies to questionnaires received from the Ministry of Women and Child Development.

4. The Committee considered the Bill in five sittings held on 21<sup>st</sup> October and 15<sup>th</sup> December, 2014, 2<sup>nd</sup> and 28<sup>th</sup> January and 16<sup>th</sup> February, 2015.

5. The Committee considered the Draft Report on the Bill and adopted the same in its meeting held on 16<sup>th</sup> February, 2015.

6. For facility of the reference, observations and recommendations of Committee have been printed in bold letters at end of Report.

NEW DELHI  
February 16, 2015  
Magha 27, 1936 (Saka)

DR. SATYANARAYAN JATIYA  
Chairman  
Department-related Parliamentary  
Standing Committee on Human Resource Development

(iv)

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\*Published in Gazette of India Extraordinary Part-II Section 2 dated the 12<sup>th</sup> August, 2014

\*\*Rajya Sabha Secretariat Parliamentary Bulletin Part II No. 52379 dated the 22<sup>nd</sup> September, 2014

## REPORT

### I. INTRODUCTION

1.1 The Juvenile Justice (Care and Protection of Children) Bill, 2014 was introduced in Lok Sabha on the 12<sup>th</sup> August, 2014 and referred to the Department-related Parliamentary Standing Committee on Human Resource Development by the Chairman, Rajya Sabha, in consultation with the Speaker, Lok Sabha on the 19<sup>th</sup> September, 2014 for examination and report.

1.2 The Juvenile Justice (Care and Protection of Children) Bill, 2014 seeks to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

1.3 The Statement of Objects and Reasons to the Bill reads as follows:-

*"The United Nations Convention on the Rights of Children, ratified by India on 11<sup>th</sup> December, 1992, requires the State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others (c) taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

*The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for the protection of children. The Act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of the implementation of the Act, several issues arose such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions and inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, etc. which have highlighted the need to review the existing law.*

*Further, increasing cases of crimes committed by children in the age group of 16-18 years in recent years make it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000, are ill equipped to tackle child offenders in this age group. The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years have increased, especially in certain categories of heinous offences.*

*Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the above mentioned issues and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact a comprehensive legislation".*

1.4 Giving a background of the Bill, the Secretary, Ministry of Women and Child Development, in his deposition before the Committee on the 21<sup>st</sup> October, 2014, submitted that the Juvenile Justice (Care and Protection of Children) Act, 2000 was in operation for more than a decade. The Act was amended twice in 2006 and 2011 to make it more child-friendly and to remove discriminatory references to children suffering from certain diseases. In 2009-10, the Government introduced the Integrated Child Protection Scheme (ICPS) to provide financial resources to State Governments and Union Territory Administrations to implement the Act. During its implementation in the last 13 years many issues arose constraining its effective implementation. One of such issues was increase in heinous offences by the children. On a specific query regarding the problem areas noticed during the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Committee was informed of the following problem areas:-

- delays in various processes under the Act, such as decisions by Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs), leading to high pendency of cases.
- delay in inquiry of cases leading to children languishing in Homes for years altogether for committing petty offences.
- increase in reported incidents of abuse of children in institutions.
- inadequate facilities, quality of care and rehabilitation measures in Homes, especially those that are not registered under the Act, resulting in problems such as children repeating offences, abuse of children and runaway children.
- disruption of adoption and delays in adoption due to faulty and incomplete processing and lack of timelines.
- lack of clarity regarding roles, responsibilities, functions and accountability of Child Welfare Committees and Juvenile Justice Boards.
- limited participation of the child in the trial process, delays in rehabilitation plan and social investigation report for every child.
- lack of child-friendly procedures by Juvenile Justice Boards and conduct of Board sittings in Courts in many districts.
- lack of any substantive provision regarding orders to be passed if a child apprehended for allegedly committing an offence was found innocent.

- no specific provisions for reporting of abandoned or lost children to appropriate authority in order to ensure their adequate care and protection under the Act.
- non-registration of institutions under the Juvenile Justice Act and inability of the states to enforce registration due to lack of any penal provisions for non-compliance.
- lack of any check-list of rehabilitation and re-integration services to be provided by institutions registered under this Act.
- inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, ragging etc; and
- increase in heinous offences committed by children and lack of any specific provisions to deal with such children.

It was also informed that the Ministry adopted a consultative process to address these issues with the concerned stakeholders. Based on those consultations and considering the suggestions of the Legislative Department, Ministry of Law and Justice that the Act may be repealed and re-enacted due to numerous amendments proposed, otherwise it may lead to confusions in implementation, the Ministry came up with the proposed legislation.

1.5 The Secretary informed the Committee that in 2007, the Central Government had framed the model rules for implementation of the Juvenile Justice Act. These rules were either adopted in *toto* or adapted as per the requirements of the respective State Governments. As these rules lacked statutory status, they were subject to different interpretations by stakeholders. In order to bring uniformity in understanding and to ensure easy applicability of the law, several provisions of the model rules of 2007 have also been incorporated in the proposed legislation.

1.6 Highlighting key provisions of the Bill, the Secretary, Ministry of Women and Child Development cited the chapter on the children in conflict with law which contained provisions to deal with child offenders of heinous crimes in 16-18 years of age. According to him, the current provisions and the system under the Juvenile Justice Act, 2000 were not equipped to tackle such child offenders. Therefore, special provisions were being made to address heinous offences such as rape, murder and grievous hurt by children above the age of 16 years which will act as a deterrent for child offenders committing heinous crimes. This would address the issue of increased lawlessness in the society to some extent and will also protect the rights of victim to justice. If the Juvenile Justice Board, after conducting a preliminary inquiry relating to the physical and mental capacity of the child, ability to understand consequences of the offence and his circumstances, comes to the conclusion that there is a need for further trial in such cases, it has been given the

option to transfer the matter to the Children's Court, which is the Session Court having jurisdiction to try heinous offences. If after trial, a child is found guilty of committing a heinous offence by the Children's Court, then such a child is proposed to be sent to a place of safety for reformation and rehabilitation up to the age of twenty-one years. After completing the age of twenty-one years, an evaluation of the child is to be conducted by the Children's Court after which either the child is released on probation or transferred to an adult jail for the rest of the term of imprisonment. He emphasized that the Juvenile Justice System was based on the principle of restorative justice and such children during their stay in the place of safety would be provided with many reformatory measures such as education, health, nutrition, de-addiction, treatment of disease, vocational training, skill development, life skill education and counselling. The child would be transferred to a jail after completing 21 years, only if he was incorrigible and the measures in the place of safety did not result in his becoming a contributing member of the society. The Secretary also stated that as per the UN Convention on the Rights of the Child, provisions of prohibiting death sentence and life imprisonment were being retained in the proposed legislation.

1.7 The Ministry of Women and Child Development highlighted the following key provisions also:-

- In order to address high pendency of cases relating to non-serious offences by children, where it has been seen that cases against children who have committed petty offences have been pending for years altogether, the proposed legislation provides for termination of proceedings in case the inquiry of such offences remains inconclusive after a period of six months;
- In order to check abuse of children in institutions, conducting of at least one inspection visit every month of homes by Juvenile Justice Board and Child Welfare Committee has been included in the Bill which was earlier given under the Rules instead of the law. The provision of inspection committees has also been strengthened by including number of visits and reporting mechanism of the committees for the effective functioning of the homes;
- A separate new chapter on Adoption has been included in the proposed legislation. To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its functions better. The chapter includes detailed provisions relating to adoption and punishments for not complying with the laid down procedure;
- In order to bring more clarity about the roles, responsibilities and powers of JJB and CWC, detailed provisions related to these have been included in the proposed legislation, which were earlier included in the Model Rules, 2007;

- Detailed procedure for declaration of child as 'legally free for adoption' by CWC has been prescribed to include timelines for such declaration, that is two months for children who are up to two years of age and within four months for children above two years of age;
- Reporting of abandoned or lost children within twenty four hours to the Child Welfare Committee or local police or District Child Protection Unit or Childline Services has been made mandatory. Non-reporting is regarded as an offence with a punishment of imprisonment up to six months or fine of ten thousand rupees;
- The proposed legislation makes it mandatory for all child care institutions to register and proposes stringent penalty in case of non-compliance, which is missing in the existing Juvenile Justice Act;
- Detailed rehabilitation and re-integration services are proposed to be provided by institutions registered under the Act such as food, shelter, clothing, medical attention, education, skill development, life skill education, recreational activities, vocational training, de-addiction and treatment of disease where required, birth registration, etc; and
- The existing Juvenile Justice Act covers only limited offences committed against a child such as cruelty, exploitation, employment for begging, giving intoxicating liquor or narcotic drug, etc. Several new offences against children are proposed to be added, which are so far not adequately covered under any other law, such as: sale and procurement of children for any purpose including illegal adoption, corporal punishment, ragging, use of child by militant groups, offences against disabled children and kidnapping and abduction of child.

1.8 The Committee appreciates that the proposed legislation has the laudable objective of providing for proper care, protection, development, treatment and social re-integration of children in difficult circumstances by adopting a child-friendly approach. The Committee has been given to understand that a number of problem-areas pertaining to very crucial issues were being faced in the implementation of the earlier Act of 2000. Besides that, increasing trend of heinous crimes being committed by children in the recent times has also compelled a re-thinking in handling of child offenders in the age-group of 16-18 years. Committee's attention was drawn to the National Crime Records Bureau data, substantiating the Ministry's contention that there was a significant increase in the number of children apprehended for heinous crimes in the age-group of 16-18. The Ministry also highlighted the age-group and involvement of juvenile offenders in some of the publicised cases of rape in recent times which even triggered public debate in the country, as one of the reason for concluding that the present Juvenile Justice System was inadequate to address the situation. The Committee, however, takes a cautious note of the background issues that have led the Ministry to repeal the Juvenile Justice Act of 2000 and come up with the proposed legislation.

1.9 The Committee strongly feels that issues relating to care and protection of children are very sensitive and involve complexities. Formulation of any law in this area, therefore, needs to be tackled very cautiously and objectively, taking care of all allied aspects.

1.10 Against this backdrop, the Committee before initiating its deliberation process, decided to seek the views of all concerned. Accordingly, a Press Release inviting memoranda/suggestions on various provisions of the Bill from all the stakeholders was issued on the 29<sup>th</sup> September, 2014. The Press Release elicited a good response from the stakeholders. Out of the 38 memoranda received from the stakeholders, prominent were from the National Human Rights Commission, National Commission for Protection of Child Rights, Centre for Child and the Law, Pro-Child, HAQ, PRAYAS, CARA, India Alliance for Child Rights, Save the Children, Butterflies, CRY, Mumbai Working Group on Juvenile Justice and other groups and individuals.

## **II. CONSULTANTATIVE PROCESS**

2.1 As the Juvenile Justice (Care and Protection of Children) Bill, 2014 seeks to repeal and re-enact the Juvenile Justice Act of 2000 and provide for legal frame-work relating to juveniles in conflict with law and children in need of care and protection in addition to providing for proper care, protection and treatment of children by adopting a child-friendly approach and their rehabilitation through institutional help, the views of all the major stakeholders were very vital to make it an effective piece of legislation. The Committee, accordingly, initiated the consultative process by making specific enquiries from the Ministry in this regard.

2.2 The Committee was informed that the Juvenile Justice (Care and Protection of Children) Bill, 2014 was drafted after going through an intensive consultative process involving all stakeholders. The Ministry had held there Regional Consultations from June to November, 2011 to seek views and suggestions for amending the Juvenile Justice Act of 2000. A National Consultation was also held with the State Governments/Union Territory Administrations, representatives of civil society and other stakeholders in June, 2011. The Ministry, then, constituted a Review Committee in October, 2011, under the Chairpersonship of the Additional Secretary, Ministry of Women and Child Development which had Members from the concerned Ministries, State Governments, civil society, experts and academicians to review the existing legislation for making it more effective. This Review Committee also included Member, National Commission for Protection of Child Rights (NCPCR), nominated Members of Child Welfare

Committees from the States of Maharashtra and Uttar Pradesh, nominated Members of Juvenile Justice Boards from Delhi and Kerala, representatives of the Departments of Social Welfare, Women and Child Development from the States of Assam, Delhi, Andhra Pradesh, Gujarat and the representatives of NGOs Tulir, Salam Balak Trust, Balsakha and Concern for Working Children. This Review Committee also had special invitees from the ministries of Home Affairs, Labour and Employment, Human Resource Development, Panchayati Raj, Social Justice and Empowerment, Health and Family Welfare and Law and Justice, Department of Legal Affairs.

2.3 The Ministry had also informed the Committee that the draft Juvenile Justice (Care and Protection of Children) Bill, 2014 was also placed on its website on the 18<sup>th</sup> June, 2014 for fifteen days for inviting comments from the civil society and individuals. More than 250 Civil Society Organisations, individuals and experts gave detailed and comprehensive comments on the draft Bill. The Ministry also received comments from the State Commissions for Protection of Child rights, Child Welfare Committees, Juvenile Justice Boards and State Adoption Agencies across the country. The draft Bill was also sent to all the State Governments/UT Administrations and the National Commission for Protection of Child Rights for their comments. Thereafter, a Cabinet Note on the Bill was circulated to the Ministries/Departments of Law and Justice (Department of Legal Affairs and Legislative Department) Human Resource Development (Department of School Education and Literacy), Labour and Employment, Home Affairs, Minority Affairs, Tribal Affairs, Social Justice and Empowerment (Department of Disability Affairs), Finance (Department of Expenditure), External Affairs, Overseas Indian Affairs and the Planning Commission for their comments and suggestions.

2.4 Committee's attention was drawn to some of the major suggestions received by the Ministry from the stakeholders on the draft Bill which *inter-alia* included the following:-

- Amending the applicability of the Bill by not extending it to the State of Jammu and Kashmir as the proposed legislation falls under entry 5 of List III Concurrent List of Seventh Schedule to the Constitution;
- Considering exclusion of same sex couples from adopting children;
- Need for clarity on the kind of offences committed by children and the procedures for inquiry and trial;
- Review of provisions for children committing heinous offences;
- Deputy Commissioner or District Magistrate not to be designated the Chairperson of the Child Welfare Committee;

- Final adoption order not to be passed by the Principal Magistrate of Juvenile Justice Board, Juvenile Board is a criminal court and is meant for children in conflict with law whereas adoption is a civil matter for children in need of care and protection and is a sensitive, social, inheritance and legal issue;
- Review of the time period within which the adoption application should be disposed and enhancing the period of reconsideration given by Child Welfare Committee in case of a surrendered child;
- Inclusion of child friendly procedures for child victims;
- Onus on Central and State Governments to spread awareness on the provisions of the Act; and
- Review of punishments for offences committed against children.

2.5 From the feedback made available to the Committee by the Ministry, it was evident that the Ministry undertook a thorough consultative process with all the stakeholders, while drafting this piece of legislation. However, a closer scrutiny of the suggestions reveals that major concerns of the stakeholders right from the rationale of repealing the Juvenile Justice Act of 2000 to the constitutional safeguards and India's commitment to UN Conventions, provisions relating to children in conflict with law and their protection, rehabilitative and reformatory nature of juvenile justice system have not been given due importance by the Ministry while drafting the proposed legislation. The Committee is dismayed to note that inspite of such a huge feedback made available to the Ministry, it failed to analyse and incorporate many of the valid suggestions of the stakeholders on some crucial provisions in the proposed legislation. Keeping this in view, the Committee decided to interact with some of the major stakeholders who were also part of the Ministry's consultative process. Accordingly, the Committee heard the views of Tulir - Centre for the prevention and healing of Child Sexual Abuse, India Alliance for Child Rights, Save the Children, Butterflies, National Commission for Protection of Child Rights (NCPCR), Central Adoption Resource Authority (CARA), Maharukh Adenwalla, Supreme Court lawyer, Centre for Child and the Law and Prayas. The Committee's interaction with these stakeholders proved to be very fruitful.

2.6 The Committee, during its deliberations with the stakeholders, found that their views on some of the critical issues remained the same as they were before the Ministry. The Committee is surprised to note that many observations and suggestions of the stakeholders have not found place in the proposed legislation. According to the representative of Tulir-Centre for the Prevention and Healing of Child Sexual Abuse, it was surprising that a whole new legislation was being envisaged instead of amending and strengthening the Act of 2000. On National Crime Records Bureau data

it was observed that there have been some lacunae in the way this data was being collated, compiled and analyzed by the police and that one should be circumspect about the need to decrease the age to 16 years based on NCRB's data. Commenting on child in conflict with law, it was submitted that to send a child to an adult court required a sentencing policy which the country did not have presently. The Observation Homes or Special Homes were mini-incarceration homes affording no opportunities for children in conflict with law. In the Criminal Justice System, with few exceptions, it was the poor who was at complete disadvantage. On adoption issue, the representative opined that the surrender of a child should be in the physical presence of the Child Welfare Committee. Presently, the children's homes get surrender deed from the parents and then present it to the Child Welfare Committee which did not have the ability to ascertain from the actual surrendering parents whether they were surrendering the child. Surrendering parents should also be given information by the CWC that they have requisite amount of time to claim the child back. On the children found begging, the representative opined that such a children were presumed to be in need of care and protection and their cases should be decided in the jurisdiction in which they were found begging. Raising specific reservation on the provision in clause 75, the stakeholder opined that this provision was worrying as it needed to be looked at in relation to section 23 of POCSO Act.

2.7 The representative of Save the Children was also of the view that the Act of 2000 was good and there was no need for re-enactment. Commenting on the objective of the Bill, the representative observed that some clauses of the Bill actually violate the objective itself in addition to violating UNCRC principles and the Constitution of India. A lot of misinformation about the juvenile crimes was being spread through media which required relooking. Research has shown that adolescence was a specific stage of development where the brain is not fully developed and matured, therefore, the adolescents were more prone to reckless behaviour. A lot of children who end up offending were also the children in need of care and protection requiring extra attention. The whole philosophy of juvenile jurisprudence centred around the quality of restoration, rehabilitation and reform and not around incarceration into jails and throwing children with adults into a system where they would get further brutalized. About the NCRB data, the representative opined that juvenile crimes account for only 1.2 per cent and that this percentage had remained constant over 2012 and 2013. Even most cases of rape were either love or elopement cases where girl's parents subsequently charged the boy with rape. Thus, numerous instances of children and

younger people being falsely apprehended cannot be ignored. The representative was of the definite view that the definition of 'heinous' should be removed and also that clause 19 of the Bill may be reviewed as the Act of 2000 had a provision in section 16 to deal with children above 16 years who had committed offences of a very serious nature. Section 16 of the Juvenile Justice Act, 2000 conformed to not only the Juvenile jurisprudence but also to UNCRC, India's constitutional provisions and the Supreme Court judgements.

2.8 The representative of the India Alliance for Child Rights observed that the provisions of the proposed legislation did not cover the comprehensive rights of the children. The terms 'care' and 'protection' have also not been defined in the proposed legislation. The representative had specific reservation on clubbing the children in conflict with law with the children in need of care and protection. According to the representative, all children in situations of vulnerability should come under the ambit of law and that it should be defined in the proposed Bill. A Child born through surrogacy must also find mention in the proposed Bill.

2.9 The representative of Butterflies was of the view that the juvenile justice legislation in any country should be reformatory and not punitive. The 2000 Act was a progressive legislation and reformatory in nature. About the crimes committed by children between 2012 and 2013, the representative opined that it was just 1.2 per cent of a population of 472 million children in our country which was very small and miniscule in comparison to America. The number of children who come under serious and heinous crime was miniscule and a good number of such offences were sexual offences. Further, children involved in heinous crimes such as murder and rape were more amenable to reforms and should be given a chance of fresh start in life. Commenting on the proceeding in the JJBs, the representative observed that cases involving children were brought before them, the JJBs look into the cases, transfer and retransfer them putting a child into a psychological pressure requiring rethinking. There were no services for children in terms of counselling, case work, treatment and mediation, indicating failure of juvenile justice system. The representative further submitted that according to this legislation, a child between 16-18 would be transferred to a special home and he will remain there upto the age of 21 years. After this he would be assessed and if not reformed would be sent to an adult prison. It was emphasized that if the system has failed him once how could he be failed again. Referring to the confusion on the roles of District Child Protection Units, the Juvenile Justice Boards and the Child Welfare

Committees, the representative submitted that the District Child Protection Unit was meant for preventive things and JJB and CWC were part of the legal system, therefore, clear demarcations were required. Under the proposed legislation, the DCPU has Secretarial services and staff and the CWC and JJBs would be taking from their services which would not be practical. The CWC and JJB should have their own staff and people. The representative also opined that there should be special probationary officers only for children. The representative expressed reservation on one month time given to a parent after the parent has surrendered the child.

2.10 The representative of NCPCR pointed out that there were implementation problems at district level and due to a weak monitoring mechanism the need for the present legislation arose. Terming clause 7 of the Bill a major *lacuna*, the representative pointed out that it was contradictory of clause 3 of the Bill which contained the principle of presumption of innocence upto the age of 18 years. Referring to clauses 15 (3), 16, 19 (3) and 20 of the Bill, the representative submitted that the issue of registration of birth and issuance of certificate by the Village Panchayats or the municipality was itself questionable and that there was need to ensure registration of every birth in the country. The representative further submitted that Juvenile Justice Boards and their members were not in a position to conduct and analyse the physical and mental capacity of the child or the circumstances which led the child to commit a heinous crime. It was pointed out that if a child's case was tried by the children's court, his record would never be destroyed and this would be a huge disadvantage for the child and the whole process of reformation would take a back seat. The representative suggested that clause 46 of the Bill should be expanded to include children of families without sufficient means of subsistence, dysfunctional families, harmless children, children displaced due to various reasons and children of incarcerated parents. It was also suggested that clause 76 of the Bill, which dealt with punishment for cruelty to child, needed elaboration with classification of the crime on the basis of nature and severity for fixing of maximum quantum of punishment so that penal provisions were provided for uncaring and callous parents and guardians also. The representative also suggested inclusion of the word "traffic" in clause 82 of the Bill. Concluding, the representative of NCPCR suggested that education, health and counselling should be made mandatory for every child in need of care and protection.

2.11 The representative of the Central Adoption Resource Authority suggested changes in the definitions of the terms 'abandoned child', 'adoption', 'Child Welfare Officer', 'guardian' and 'registered'. In clause 28(4), the representative suggested three years' experience in place of seven years and in clause 28(6) it was pointed out that once the CWC members were trained it must be ensured that they worked for a reasonable period, hence' two terms each for a period of three years were suggested. The representative submitted that since the CWC also functioned as the complainant authority for any abuse or neglect of child, not only in child care institutions, but also in any family set-up, therefore clause 31(xvi) must also include 'family'. In clause 59(2) it was suggested to include the social workers of District Child Protection Unit or State Adoption Resource Agency for conducting home study for the purpose of Adoption. In clause 60(1), the representative suggested for not specifying the time period of 30 days because different criteria had been set up to address the needs of different kinds of children in the draft adoption guidelines of the Authority. In clause 60(10), the representative suggested that the prospective adoptive parents should be given custody of the child on the NOC issued by CARA. Further under clause 62(1) the NOC given by CARA for inter country adoption should be recognised along with other papers. In clause 63(2), the representative suggested inclusion of the word expeditiously' in place of four months as adoption process itself depended upon several agencies working together. Further in clause 66(4), the representative was against the hard measures in case the specialised adoption agencies defaulted. Concluding, the representative submitted that in clause 70(4) the steering Committee should meet on quarterly basis or in such frequent intervals as may be prescribed.

2.12 Maharukh Adenwalla, Supreme Court lawyer submitted before the Committee that the existing juvenile justice law was an extremely good piece of legislation for protection and promotion of children, both in need of care and protection and in conflict with law. It also conformed to our international commitments as well as constitutional provisions as contained in Article 14, 15(3) and 20(1). According to the stakeholder, our Constitution allowed for special laws for protection of children because they were vulnerable and have some special characteristics due to which they could not be attributed same culpability as adults. Referring to the report of the Indian Jail Committee 1919-1920, the stakeholder submitted that it was well settled that children should not be treated as adult offenders. Referring to figures relating to juvenile crimes, it was pointed out that only 1.2 per cent of total crimes in our country was committed by juveniles and

out of this 1.2 per cent, only 7 per cent comprised things like murder and rape. The number was extremely few which could be tackled under the current system. It was emphasised that section 16 of the Act of 2000 had a specific provision to deal with children between 16-18 years who had committed serious offences which was well within the existing juvenile system and that there was no need to push juvenile offenders into adult criminal system. Commenting on the international convention of keeping 18 years as the age of the child, the stakeholder submitted that our country accepted this and there were a number of laws where the age of child was kept at 18 years such as Contract Act, Motor Vehicles Act, etc. The stakeholder had specific objections to the provisions as contained in clauses 2(33), 2(45) and 2((54) which had divided offences into petty, serious and heinous offences and clause 7 of the Bill which were violating not only the principles of juvenile justice but also of Article 20(1) of the Constitution. Expressing strong reservation on clause 19(3), the stakeholder submitted that it was discriminatory and violative of Article 15(3) of the Constitution. Commenting on the implementation part of the juvenile justice law, the representative submitted that the institutions envisaged under the Act have not either been set up or functional in the States and there was no representation of academics in JJBs. It was pointed out that rehabilitation has not been defined in the present legislation and after care provisions have also been weakened.

2.13 The representative of the Centre for Child and the Law submitted before the Committee that the existing juvenile justice system had a potential for reparation, healing and reformation which was sought to be erased by the proposed legislation. Under the existing law, if a child, in conflict with law, between the age of 16-18 years was found to have committed an offence by the Juvenile Justice Board, there was a range of rehabilitative dispositions that could be passed by the Juvenile Justice Board. These rehabilitative dispositions included admonition, community service, imposition of a fine, probation, group counselling and an extreme measure of deprivation of liberty by way of placement of the child in a special home for three years. These alternatives were in absolute compliance with UN Convention on the rights of the child. In the proposed legislation, however, the Juvenile Justice Board, a body meant to dispose cases in the best interest of children, was being obligated to decide whether a child should be pushed into the adult system on the basis of a preliminary inquiry. The representative was of the opinion that it was a highly arbitrary inquiry violating several rights under the Constitution as well as the U.N. Convention on the rights of the child. Strong reservation was also expressed on the inclusion of the term "heinous offence"

which was in complete contradiction of the UNCRC. Regarding the procedure to be carried out after a child attained the age of 21 years, it was pointed out that there were no tools available in the world to assess the mental maturity and capacity of a child. The stakeholder further pointed out that the existing juvenile justice system required greater commitment in terms of financial allocation, training and cadre-building for its effective implementation. It was emphasized that if the social investigation, individual care plan and monitoring were done effectively, it would enable the rehabilitation of the juvenile. In addition to this, the rights of the victims were also needed to be ensured.

2.14 The representative of PRAYAS submitted before the Committee that the underlying principle of the existing juvenile justice system in the country was to keep a separate system of law and justice for the juveniles. This system provided for care and protection to homeless, working, shelter-less and very poor children in the country, thus covering 95 per cent of children in need of care and protection. It was only less than 5 per cent children who commit crimes and come under juvenile system. It was further submitted that while upholding the constitutional validity of the Juvenile Justice Act, 2000, the Supreme Court concluded that there were only a few number of children committing crimes and that there was no need to reduce the age of 18 years. It was emphasized that the problem lied not with the law but its implementation. There was section 16 in the existing Act to deal with children in the age group of 16-18 years who were involved in the heinous crimes. Under the proposed legislation, these children have been sought to be treated differently without any justification. The representative expressed strong reservations on the provision as contained in clauses 16, 17, 19 and 22 and on some of the definitions in the proposed legislation. The representative was of considered opinion that children in the age group of 16-18 should not be put in adult criminal system in any circumstance.

2.15 In brief, the Committee finds the following observations of the stakeholders which have not been addressed by the Ministry, while coming up with the proposed legislation:

- India had a long legislative history of dealing with the protection of children which is being eroded by the proposed legislation. Indian Penal Code (1860), CrPC (1898-1973) distinguished amongst the children/adolescent in the age group of 7 to 12, 12-21, provided for exemptions and no punishments; Children's Act (1960), provided to deal with neglected, delinquent children, juvenile boys below 16 years and girls below 18 years, Juvenile Justice Act, (1986) replicated definition of Juvenile from the Children's Act; Juvenile Justice (Care and Protection of Children) Act, 2000 ensured

India's compliance UNCRC, provided for authorities and mechanisms to deal with juveniles in conflict with law and children in need of care and protection;

- Juvenile Justice (Care and Protection of Children) Act, 2000 was a very sound, progressive piece of legislation, reformatory in nature, only needed strengthening;
- National Crime Records Bureau data should be viewed with circumspection, as it does not reflect disposal of cases;
- number of crimes committed by children between 2012-13 just 1.2 per cent of a population of 472 million children which is miniscule, a good number of offences committed by children are sexual offences which were love affairs and elopement cases;
- research has shown that adolescence is a particular age where brain has not fully developed;
- children are more amenable to reforms;
- children cannot be attributed same standards of culpability as adults due to their immaturity;
- for children in conflict with law there needs to be a balance between sentencing, punishment, deterrence and rehabilitation;
- philosophy of juvenile jurisprudence centres around quality of restoration, rehabilitation and reform restorative justice approach is gaining international recognition across the world;
- some sections of the Bill violate UNCRC principles and constitutional provisions; and
- some sections of the Bill are regressive in nature-introduction of transfer system for children between 16-18 years alleged to have committed heinous offences to be tried and treated as an adult marks a shift from rehabilitation to retribution, introduction of heinous categories of crimes and apprehending a juvenile after completing 21 years for a heinous crime committed between 16-18 years and be tried as an adult are regressive and retributive features.

2.16 The Committee had very extensive and meaningful deliberations with all the stakeholders appearing before it. Besides that, the Committee was also benefitted by the exhaustive briefs submitted by the stakeholders. It was mainly because of this exercise, the Committee managed to get insight into some of the critical aspects pertaining to the proposed legislation. It enabled the Committee to make an in-depth and objective analysis of the Bill. **The Committee places on record its deep sense of appreciation for all the stakeholders for their contribution and for making the task of the Committee easier.**

### **III. CRITICAL ISSUES NOT COVERED IN THE BILL**

3.1 The Committee, during its interactions and deliberations found that there were a number of critical issues /areas of concern, especially relating to the provisions of children in conflict with

laws which have not been given adequate consideration by the Ministry. In the following paragraphs, the Committee has made an objective analysis in this regard. The Committee is of the considered view that all these critical issues merit serious consideration and need to be reflected appropriately in the proposed legislation.

**Applicability of the National Crime Records Bureau Data**

3.2 One of the key provisions in the proposed legislation that attracted a lot of debate from the stakeholders was relating to the children in conflict with law. The Secretary, Ministry of Women and Child Development contended before the Committee that the National Crime Records Bureau data showed that the number of children apprehended for heinous crimes, especially in the age group of 16-18 years, had gone up significantly in the recent times. From 531 murders in 2002, the figure had gone up to 1, 007 in 2013, for rape and assault with intent to outrage the modesty of women, the figures have gone up from 485 and 522 to 1, 884 and 1, 424 respectively during the same period. According to the Secretary, these were disturbing figures. The background note on the Bill submitted by the Ministry also stated that special provisions in the proposed law have been made to address heinous offences committed by children above the age of 16 years, which would act as a deterrent for child offenders committing such crimes. On a specific query regarding the number of heinous offences committed by children in the age group of 16-18 years during the last three years and the current year, the Committee was provided with the following All India figures by the Ministry:-

<b>Years</b>	<b>Murder</b>	<b>Rape</b>	<b>Kidnapping &amp; Abduction</b>	<b>Dacoity</b>
<b>2010</b>	600	651	436	105
<b>2011</b>	781	839	596	142
<b>2012</b>	861	887	704	207
<b>2013</b>	845	1, 388	933	190

Committee's attention was also drawn to the following data of the National Crime Records Bureau by many stakeholders appearing before it, which indicated the percentage of juvenile crimes to total cognizable crimes committed in India from 2003 to up 2013:-

**National Crime Records Bureau****(Crimes in India, 2013)**

Year	Total Cognizable Crimes	Total Juvenile Crimes	Percentage of Juvenile Crimes to Total Cognizable Crimes
2003	1716120	17819	1.7
2004	1832015	19229	1.8
2005	1822602	18939	1.7
2006	1878293	21088	1.9
2007	1989673	22865	2.0
2008	2093379	24535	2.1
2009	2121345	23926	2.0
2010	2224831	22740	1.9
2011	2325575	25125	2.1
2012	2387188	27936	2.3
2013	2647722	31725	2.6

3.3 Almost all the stakeholders heard by the Committee questioned the wisdom of the Ministry in relying on the NCRB data for bringing out such drastic provisions for children in conflict with law in the age-group of 16-18 years. According to the representative of Tulir-Centre for the Prevention and Healing of Child Sexual Abuse, great circumspection was required in analysing the NCRB data as the same was collated and compiled by the police. Similarly, the representatives of Save the Children and Butterflies were of the view that NCRB data itself indicated that the juvenile crimes account for only 1.2 per cent of the total crimes committed in the country and also that the figures of juvenile crimes remained constant in 2012 and 2013. Maharukh Adenwalla, Supreme Court Lawyer also submitted that only 1.2 per cent of the total crimes were committed by the juveniles in our country, a small number which could be handled within the existing juvenile system. She further submitted that of this 1.2 per cent, only 7 per cent comprised of crimes like murder and rape. According to the representative of Prayas, only a very small number *i.e* 1 to 2 per cent of children committed crimes out of the population of 42 per cent children in the country.

3.4 According to these stakeholders, the NCRB data on juvenile crimes has been highly misrepresented to re-enact the proposed law and to bring the children in the age-group of 16-18 years under the purview of the criminal justice system, a highly retrograde step likely to serve no purpose. It was emphasized that the NCRB data was based on FIR and was not about children who were found guilty but was of those alleged to have committed an offence. It was pointed out that the percentage of juvenile crimes to total crimes in India has been a miniscule 1.2 percent only and that the percentage of violent crimes committed by juveniles could even be smaller. It was

contended that there was misconception amongst the public that the number of children committing offences, more particularly violent offences, such as rape and murder, was on the increase.

3.5 The National Crime Records Bureau Report itself contradicted this conception according to which a good number of children were being acquitted every year as they were found not guilty. Committee's attention was also drawn towards the Ministry of Home Affairs publication 'Crime in India, 2012' which also showed that juvenile crime was 1.2 per cent of the total crimes committed. The Committee was apprised that the juvenile crime from the period 1990 to 2012 ranged between 0.5 to 1.2 per cent of total crimes committed in India. The average of juvenile crime to total crime during these 22 years has been only 0.8 per cent. The percentage of juvenile crime to total crime increased in 2001 when the age limit for male juveniles was raised to 18 years but it was still 0.9 per cent and had remained stabilized thereafter.

3.6 Committee's attention was also drawn towards the data pertaining to violent crimes registered against juveniles in the year 2012. The percentage of violent crimes registered against the juveniles in 2012 was only 15.6 per cent of total IPC crimes committed by juveniles in 2012 of which murder (990) and rape (1, 175) constituted only 7.7 per cent of total IPC crimes committed by juveniles (27, 936). The afore-mentioned data denotes that violent crimes, such as murder and rape, were a small percentage of crimes registered against juveniles. This has been the general trend, even after the age of juvenility was increased from 16 to 18 years in 2001.

3.7 Committee also took note of 'Crimes in India, 2013' which again showed juvenile crimes to be 1.2 per cent of the total crimes committed. Total IPC crimes committed by juveniles in 2013 were 31, 725, out of which 1, 884 were rape and (5.93 per cent of total IPC crimes) and 1, 007 murders which constituted 5.93 and 3.17 per cent of the total IPC crimes. Hence, 9.1 per cent of total IPC crimes constituted rape and murder. Further, the increase in number of rape cases in 2013 could be attributed to the Protection of Children from Sexual Offences Act, 2012 which increased the age of consent to sexual activity from 16 to 18 years. With the advent of POCSO Act 2012, sexual activity which was earlier treated as consensual was criminalised, resulting in a significant surge in rape and kidnapping/abduction cases against women.

3.8 Further, a significant number of cases of rape and kidnapping included love cases and consensus elopement where girl's parents charged the boy with rape subsequently. Numerous

instances of children being falsely apprehended by the police also could not be ignored. From this data, it is evident that juvenile crime is a miniscule proportion of total crime committed and that the same is not significantly increasing. Such small numbers can most easily be dealt with under the juvenile justice system with appropriate infrastructure and human resources. Furthermore, when we compare these numbers with the child population, it is evident that the increase is mostly hypothecated rather than a reality. Juvenile crimes were only 1.2 per cent in 2012 and 2013 as compared to the child population of 472 million in 2013. Moreover, it is important to note that a similar increase has been noted in crimes committed against women by the general population in 2013 also. The above data indicates that there is no basis to conclude that the pattern of juvenile crime in relation to overall pattern of crime in the country has altered in any significant manner.

3.9 Another area of concern highlighted by the stakeholders was the socio-economic background of the juvenile offenders in conflict with law. It was submitted that majority of juvenile offenders came from poor, illiterate families and were homeless or living without parents. The data of the National Crime Records Bureau, 2000 to 2010, denotes that about 60 per cent of juveniles apprehended came from families whose income was less than `25,000/- per annum, and 20 per cent from families whose income was between `25,000/- to `50,000/- per annum, aggregating to 80 per cent of juveniles arrested during that period. In 2010, 30,303 juveniles were arrested, out of which 6,339 were illiterate and 11,086 had studied till primary level. Hence, it is not the stringent punishment for juvenile offenders that will result in reduction of juvenile crime, attempts should be made to improve the socio-economic condition of families thereby satisfying the developmental needs of children. In 2013, 50.24 per cent of the juveniles apprehended came from families whose income was less than `25,000/- per annum, and 27.31 per cent from families whose income was between `25,000/- to `50,000/- per annum, aggregating to 77.55 percent of juveniles arrested. It was emphasized that it would be the deprived and poor children who would be arrested and thrown into jails through the proposed legal changes.

3.10 When attention of the Ministry was drawn to the reliability of NCRB data, it was admitted that there were not many cases of children committing serious and heinous crimes. However, it was also emphasized that the data maintained by NCRB revealed that the percentage of offences committed by children in the age-group of 16-18 years had increased to total crimes committed by children across all ages. It was also informed that a crime-wise review of offences committed by

children in the age-group of 16-18 years revealed that cases of assault on women with intent to outrage their modesty had increased from 154 in 2010 to 1142 in 2013 and cases of rape by such children had increased from 651 in 2010 to 1388 in 2013.

3.11 The Committee was also given to understand that the current provisions and system under the JJ Act were ill-equipped to tackle child offenders in the age-group of 16-18 years, who had committed heinous offences, with the awareness that children could get away with relatively lighter punishment under the existing Juvenile Justice system. It was also pointed out that the Delhi gang rape in December, 2012, the Shakti Mill rape case in Mumbai in July, 2013 and the Guwahati rape case in September, 2013 involving child offenders had also triggered a debate across the country about the inadequacy of punishment awarded to children who committed heinous crimes. A weak law could not be a deterrent and therefore to address the increasing trend of crimes by children, the new Bill has been introduced.

3.12 Keeping in view the analysis of NCRB data and deliberation with the stakeholders, the Committee is not inclined to agree with the following justification given in the Statement of Objects and Reasons to the Bill:

"----- increasing cases of crimes committed by children in the age group of 16-18 years in recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000, are ill-equipped to tackle child offenders in this age-group. The data collected by the National Crime Records Bureaus establishes that crimes by children in the age-group of 16-18 years have increased especially in certain categories of heinous offences."

The detailed interactions with all the stakeholders on the authenticity, viability and relevance of NCRB data in the context of the Juvenile Justice (Care and Protection of Children) Bill, 2014 has presented an entirely different scenario.

**3.13 The Committee finds the submissions of the stakeholders very valid. The Committee takes note of the view of National Commission for Protection of Child Rights that NCRB data was based on FIRs and did not provide information on the conviction of children in the age-group of 16-18 years or otherwise. It is true that FIR/complaint was merely an information regarding occurrence of an offence. The Committee is of the firm opinion that increased reporting of crime against children in the specific age-group should not necessarily lead to assumption of increased conviction of juvenile in the crime. The realistic figure of**

**involvement of juvenile in heinous crime needs to be based on completion of investigation, filing of final report by the police before the court and pronouncement of judgment.**

3.14 Statistics made available to the Committee clearly indicate that the incidence of juvenile crime only increased from 0.9 in 1999 and 2000 to 1.6 in 2001 when age of juvenility was raised to 18 years. Not only this, these figures thereafter have retained their stable proportionality, fluctuating between 1.7 to 2.3. Another related issue which cannot be ignored is that with the enactment of the Protection of Children from Sexual Offences Act, 2012 that increased the age of consent to sexual activity from 16 to 18 years, reporting of such cases also showed an increasing trend. With the advent of the POSCO Act in 2012, sexual activity earlier treated as consensual was criminalised, resulting in a significant surge in reporting of rape and kidnapping/abduction cases against women.

**3.15 The Committee would also like to point out that an increase has also been noted in 2013 in crimes committed against women by the general population (adults) - a 32.1 per cent increase regarding rape, and a 35.6 per cent increase in registration of cases regarding kidnapping and abduction of women and girls. Thus, it would not be wrong to conclude that the pattern of juvenile crime in relation to overall pattern of crime in the country has altered in any significant manner. There is a similar trend of increase in crimes committed against women in both the juvenile and general population. Lastly, one must also not forget that it is only natural that the highest age-group will contribute the largest to the total of crime committed by juveniles. The objective analysis of the data of the National Crime Records Bureau placed before the Committee makes it abundantly clear that the percentage of juvenile crimes in India *i.e* 1.2 per cent of the total child population of the country is quite low. Secondly, some incidents of juvenile crime, though a cause of serious concern should not be the basis for introducing drastic changes in the existing juvenile justice system. The Committee would like to draw the attention of the Ministry to the Salil Bali vs. Union of India (2013) where the Supreme Court has very aptly observed**

**"There are, of course, exceptions where a child in the age-group of 16 to 18 may have developed criminal propensities, which would make it virtually impossible for him/her to be re-integrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society,**

**rather than to allow them to develop into hardened criminals, which does not augur well for the future."**

**3.16 One must not forget that juvenile justice law is based on a strong foundation of reformation and rehabilitation, rather than on retribution. Therefore, drastic changes proposed in some key areas of the existing system of juvenile justice need very deep introspection. It is all the more surprising that the Ministry has very comfortably chosen to ignore the views of all the major stakeholders in this regard. As rightly pointed out by some of the witnesses, better implementation of the Act and more public awareness were required to be focussed upon to curb the recent cases of juvenile crime.**

### **Violation of constitutional provisions**

3.17 Almost all the stakeholders heard by the Committee were of the considered opinion that some of the provisions of the proposed legislation were violative of the constitutional provisions as contained in Articles 14, 15 (3), 20(1) and 21. It was specifically pointed out by Save the Children, Prayas, Centre for Law and Child and Maharukh Adenwalla, Supreme Court Lawyer that provisions of clauses 2(33), 2(45), 2(54), 7, 16, 19(3) and 20 of the proposed legislation seeking to bring major changes in juvenile justice system were in contravention of these constitutional provisions.

3.18 Article 14 of the Constitution obligates the State not to deny to any person equality before law or equal protection of laws within the territory of India. It was pointed out that in India the concept of equality was not the formal equality as was observed in USA but was that of proportional equality which recognised that everyone was not equal and that the State was obligated to enact laws in favour of the weak and disadvantaged section of the society. Proportional equality was based on that of right to equal treatment in similar circumstances and that the persons who were unequally circumstanced could not be treated at par. It was submitted that through Article 14, it was recognised that weaker and vulnerable sections required special/additional protection. Further, Article 15(3) of the Constitution permitted the State to enact special laws for the protection of children.

3.19 Thus, it can be concluded that the Constitution recognised that children being vulnerable, have special needs requiring special protection and care. Based on these two Articles, many laws have been enacted for the benefit of women and children and one such legislation was the Juvenile

Justice (Care and Protection of Children) Act, 2000 which was based on a premise that the juveniles have some characteristics intrinsic to their age, requiring both differential treatment and opportunities for reformation and rehabilitation. Even before this Act the juvenile justice jurisprudence in the country had always accorded differential treatment to the juveniles recognising their peculiarities and need for reformation.

3.20 Committee's attention was also drawn to two chapters of the Report of the Indian Jails Committee 1919-1920 to emphasize that the juvenile justice system in the country had always recognised the fact that the ordinary healthy child criminal was mainly the product of unfavourable environment and that he was entitled to a fresh chance under better surroundings. Further, that a child who committed crime could not have the same full knowledge and realization of the nature and consequences of his act as an adult. Another observation said that familiarization of these young offenders with prison life and their possible contamination by older offenders was to be avoided. Another observation stated that special efforts should be made to bring them under reforming influences and to improve their minds by education both general and special as well as by religions and moral teaching. It was difficult to provide such special treatment in an ordinary jail.

**3.21 From the above, the Committee can only conclude that the existing juvenile system is not only reformatory and rehabilitative in nature but also recognises the fact that 16-18 years is an extremely sensitive and critical age requiring greater protection. Hence, there is no need to subject them to different or adult judicial system as it will go against Articles 14 and 15(3) of the Constitution.**

3.22 It was also brought to the notice of the Committee that clauses 7 and 21 of the proposed legislation were also unconstitutional and contrary to the established principle of juvenile justice. It is the characteristics inherent in a child that requires child offenders to be treated differently from adult. Therefore, it would be the age of the person on the date on which the offence was committed that would determine whether such person was to be dealt with under the juvenile justice system or the criminal justice system. Clause 7 of the Bill allows for a person who was a juvenile on the date of offence to be dealt with under the criminal justice system if arrested on completion of 21 years of age. This provision violates Article 20(1) of the Constitution which provides that no person shall be convicted of any offence except for violation of a law in force at

the time of the commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Hence, under clause 7 of the Bill, a person would be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

3.23 Clause 21 of the Bill, which allows the Children's Court to transfer a child in conflict with law on attaining 21 years of age from a place of safety to jail is also violative of not only Article 20(1) but also of established principle of juvenile justice which prohibits co-mingling of a child offender with hardened criminals. It was forcefully contended by the stakeholders that why should treatment of a child become harsher on crossing a particular age. When our system does not allow a child below 18 to drive, vote, enter into contracts, engage a lawyer, sue and take legal action, marry or own property why that child be allowed to go to adult criminal justice system. The Committee also notes that introducing children into the criminal justice system amounts to violation of Article 21 (Protection of life and personal liberty) as the procedures contained therein are not commensurate with the requirements of children. The juvenile justice system has child-appropriate procedures keeping in mind the best interest of the child.

3.24 Furthermore, there were provisions in the Act of 2000 itself i.e Section 16 to deal with children between 16-18 who have committed serious crime which were within the juvenile system and there was no need to push those children into adult criminal system, a move which could be described as retributive only.

3.25 When the issue of violation of constitutional provisions in the proposed legislation was taken up with the Ministry, it was strongly contested. Contention of the Ministry was that the children below the age of 18 years are proposed to be treated equally. Hence, there was no violation of Article 14[Equality before law]. Only exception was that in case of children in the age-group of 16-18 years, who commit heinous offences such as rape or murder, a detailed treatment was proposed in the Bill. It was also mentioned that in case of heinous offences committed by children between the age-group of 16-18 years, a longer reformatory period was required. Similarly, no provision of the Bill was violative of Article 15 [Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth] and Article 21 [Protection of life and personal liberty].

**3.26 The Committee is not convinced by the clarification given by the Ministry. As an example, clause 7 of the Bill is in clear violation of Articles 14 and 20 of the Constitution. An artificial differentiation between children apprehended before 21 years and those apprehended after 21 years of age is proposed to be created. The Committee strongly feels that this categorization has no rationale. A person who was a child when the offence was committed will be treated as an adult on account of a failure on the part of the investigating agencies in apprehending him/her. The existing system that allows all juveniles to be treated within the juvenile justice system does not offend the right to equality under the Constitution. Altering the existing system under the guise of promoting the rights of victims of the right to equality is, therefore, highly suspect.**

**3.27 The Committee takes note of serious reservations/apprehensions voiced by majority of stakeholders with regard to certain provisions of the proposed legislation not being in conformity with a number of Articles of the Constitution. The Committee has been given to understand that in the Act of 2000, there was no such contravention. The Committee would like to point out that such changes may lead to uncalled for situation in future. This becomes all the more worrisome as the most vulnerable section of the society, our children are likely to be adversely affected. The Committee is, therefore, of the firm view that all the relevant clauses of the Bill need to be reviewed in the light of constitutional provisions and modified so as to adhere to the Constitution.**

#### **Violation of UN Conventions**

3.28 Committee's attention was drawn to some of the international conventions which recognised that a child who had committed an offence required rehabilitation and should be dealt with differently than an adult offender. It was pointed out by Save the Children, Prayas, Centre for Law and Child and Maharukh Adenwalla, Supreme Court Lawyer that the UN Declarations, Rules, Conventions and General Comments adopted/issued on the international platform denoted the progressive realization of the right of a child, being a person under 18 years, to be dealt with by the juvenile justice system without any exception. It was emphasized that UN Convention on the Rights of the Child was built on the principle that all children were born with fundamental freedoms and all human beings had some inherent rights. Reference was also made to United Nations Standard Minimum Rules for the Administration of Juvenile Justice known as Beijing

Rules, which entailed that a child or young person who had committed an offence should be treated by the law differently from an adult.

3.29 Committee's attention was also drawn to the Convention of the Rights of the Child which were acceded to by the Government of India in 1992. Article 1 of the CRC defined a child to mean every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. The Majority Act, 1875 provided that the age of majority for those domiciled in India was 18 years. The stakeholders were of the considered opinion that many provisions of the proposed legislation were in contravention of the UN Convention on Rights of the Child. Some of these provisions are indicated below:-

<b>Violative Provisions of the Bill</b>	<b>UN Convention on the Rights of the Child</b>
Transfer system: Clauses 15(3), 19(3), 20(1), 20(3) and 21	Article 2 : prohibition on non-crimination read with General Comment No. 10 on juvenile justice. Article 3 : best interest considerations (rehabilitation, re-integration, and restorative justice objectives) must outweigh considerations of the need of public safety, sanctions and retribution.
Institutionalization under clauses 20(3) 21(2) and 22	Article 37(b): deprivation of liberty to be a measure of last resort and for the shortest possible period of time. Article 6 : Right to life All forms of life imprisonment to be abolished.
Preliminary inquiry under clause 16(1)	Article 40(2)(b)(i) : Presumption of innocence which also prohibits the prejudging of the outcome. Article 37(b) : Arbitrary deprivation of liberty.
Clause 21(1) : Evaluation by Children's Court whether child has undergone reformation and can make meaningful contributions to society.	Violation of the prohibition on arbitrary deprivation of liberty under Article 37(b).
Clause 19(1) : Exclusion of children between 16 and 18 years found to have committed a heinous offence from rehabilitative dispositions that can be passed by JJB.	Violation of the principle of deprivation of liberty to be a measure of last resort under Article 37(b) and requirement of alternative dispositions under Article 40(4).
Clauses 19(3) and 20(1) : Transfer by JJB of a child in conflict with law to the Children's Court and trial and sentencing by a Children's Court.	Article 40(1) : Right to be treated with dignity and which reinforces the desirability of promoting the child's re-integration.
Clauses 20(3) and 21(2)(ii) : Transfer to prison	Article 37(c) : Separation of juveniles from adults which does not mean "that a child placed in a facility for children has to be moved to a

	facility for adults immediately after he/she turns 18."
Clause 7 : Trial as adults of children apprehended after completion of 21 years for committin serious or heinous offences.	Violation of the prohibition on no retroactive juvenile justice under Article 40(2)(a) + Article 15, ICCPR.
Clause 25(3) : preservation of records of juvenile sent to jail by the Children's Court.	Violation of the right to privacy under Articles 16 and 40(2)(b)(vii) which applies to "all stages of the proceedings" including "from the initial contact with law enforcement up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty."

3.30 It may not be out of place to take note of the concluding observations of the Committee on the Rights of the Child : India (dated 23<sup>rd</sup> February, 2000) which says-

"Definition of the child - 26. In the light of article 1, the Committee is concerned that the various age limits set by the law are not in accordance with the general principles and other provisions of the Convention. Of particular concern to the Committee is the very low age of criminal responsibility under the Penal Code, which is set at seven years: and the possibility of trying boys between 16 and 18 years as adults. The Committee recommends that the State party review its legislation with a view to ensuring that age limits conform to the principles and provisions of the Convention, and that it take greater efforts to enforce those minimum-age requirements."

Administration of juvenile justice (articles 37, 40 and 39) - 79. The Committee is concerned over the administration of juvenile justice in India and its incompatibility with articles 37, 40 and 39 of the Convention and other relevant international Standards. The Committee is also concerned at the very young age of criminal responsibility - 7 years - and the possibility of trying boys between 16 and 18 years of age as adults. The Committee is further concerned at the overcrowded and unsanitary conditions of detention of children, including detention with adults. The Committee recommends that the State party review its laws in the administration of juvenile justice to ensure that they are in accordance with the Convention, especially articles 37, 40 and 39 and other relevant international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The Committee also recommends that the State party consider rising the age of criminal responsibility and ensure that persons under 18 years are not tried as adults.

3.31 On being asked to clarify the status of the proposed legislation vis-a-vis the International Conventions, it was categorically stated by the Ministry that the Bill was not in contradiction with the International Instruments to which India was signatory. Attention of the Committee was drawn towards the various provisions of the Bill which were in consonance with such International Instruments.

3.32 It was also pointed out by the Ministry that with regard to differential treatment of children in the age group of 16-18 years who committed heinous crimes, it was noted that the international

instruments did not specify any age limit. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) under the section on "Scope of the Rules and definitions used" does not prescribe the age limit for making determination of a juvenile of offender. It only states that a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. The United Nations Convention on the Rights of Child (UNCRC) has set a clear age limit in only two articles. These two articles are article 37, which states that no child under the age of 18 years should be given capital punishment or life imprisonment without the possibility of release and Article 38, which states that no child under the age of 15 years should be recruited into the armed forces or participate directly in hostilities. In two more articles, the Convention urges countries to set a minimum age and gradually raise that age. These are Article 32 on child labour and Article 40 on criminal responsibility. Article 40 does not state that the age of criminal responsibility should be 18 years. Given the reality that children tend to mature faster and at much younger age, it is important to define the age of criminal responsibility at a level which is in tune with the current scenario.

3.33 It was also emphasized by the Ministry that India was a sovereign country and the laws of the country were made by the Parliament. It was true that India had ratified several international instruments and due importance was given to the principles of these instruments and they were being incorporated in the policies and laws as far as feasible. However, lot of societal changes had taken place since the General Declaration of the Rights of the Child was signed in 1924, Declaration of the Rights of the Child signed in 1959 and UN Convention on the Rights of the Child signed in 1992. The Committee was also informed that clause 16 of the United Nations Rules for the Protection of Juvenile Deprived of their Liberty, 1990 stated that Rules were to be implemented in the context of the economic, social and cultural conditions prevailing in the country.

3.34 The Committee, while taking note of the observations of the stakeholders about the commitments of the country in the context of various international conventions and the compliance status as indicated by the Ministry, would like to emphasize that the universal truth which nobody can dispute is that a child who has committed an offence requires protection and treatment differential from that of an adult. CRC states that a child is a person who has not completed 18 years of age. With the advent of CRC, on the international platform, persons under 18 years have

been recognized as children. Ambiguity, if any, has been ended vide the General Comment No. 10 which categorically states that principles relating to juvenile justice should apply to all persons below 18 years of age, without exclusion.

3.35 In this context, the Committee made an attempt to trace the compliance of UNCRC on juvenile justice in the country. It was in 2000 that the CRC Committee had criticized discriminatory definition of Juvenile in JJ Act, 1986. JJ Act, 2000 was subsequently, was enacted and the term 'juvenile' was defined to mean all persons below 18 years. Thereafter, urged India was also asked by CRC Committee to clarify that the date on which offence was committed and not when the juvenile was apprehended was relevant. Accordingly, JJ Act was amended in 2006 to clarify that the date of reckoning would be the date on which offence was committed. Then in 2007, CRC Committee's General Comment No. 10 on juvenile justice expressly recommended countries to change laws that allowed the treatment of juveniles aged 16-17 as adults to ensure non-discriminatory application to all children below 18 years. UN Committee has also expressed concern about the proposed JJ Bill, 2014 and urged to ensure that age of criminal responsibility in the Rules was respected and that children were not detained with adults.

**3.36 The Committee finds no merit in the contention of the Ministry that lot of societal changes have taken place with the signing of UN Convention the Rights of the Child in 1992 and relook at our laws was required so as to revise them as per the current needs. The Committee is somewhat surprised to note the apparent contradiction in the above position and the following paras of the proposed of the Preamble in the Bill:**

**"AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country. Adoption (1993), and other related international instruments."**

**The Committee can only conclude that as per the well-established practice, the proposed legislation has to contain provisions which adhere to all the enumerated objectives in the real sense.**

## **Violation of Supreme Court Judgements**

3.37 The Committee was given to understand that there were minimum five judgements of the Supreme Court, namely Rohtas (1978), Raghbir (1981) Abujar Hussain (2012), Salil Bali (2013) and Subramaniam Swamy (2014) which have been set aside by the proposed Bill. In each of these judgements, it was categorically provided that all children should be dealt with under the juvenile justice system.

3.38 The Committee notes that in 2013, in Salil Bali vs. GOI, the Supreme Court, while upholding the constitutional validity of the Juvenile Justice (Care and Protection of Children) Act, 2000 had observed that the Act of 2000 was in tune with the provisions of the Constitution and the various declarations and conventions adopted by the world community represented by the United Nations. Recognising children's vulnerability in the same judgement, the Supreme Court had held that children were amongst the most vulnerable sections in any society. Upholding 18 years as the age of juvenility, it was also observed that the age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural pattern and that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. Acknowledging rehabilitative spirit of the juvenile justice legislation, it said that the essence of the Juvenile Justice Act, 2000 and the Rules framed thereunder in 2007, was restorative and not retrobutive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society. Opining that the difficult cases of children between 16 to 18 years should also be dealt with within the juvenile justice system, it clearly observed that there are exceptions where a child in the age group of 16-18 years may have developed criminal propensities, which would make it virtually impossible for him/her to be reintegrated into mainstream society, but such examples were not of such proportions as to warrant any change in thinking, since it was probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals.

3.39 The Committee observes that in Dr. Subramaniam Swamy & Ors vs, Raju & Other (2014) case also, the Supreme Court had observed that there was a considerable body of world opinion that all persons under 18 ought to be treated as juveniles and separate treatment ought to be meted out to them so far as offences committed by such persons were concerned. The avowed object was

to ensure their rehabilitation in the society and to enable the young offenders to become useful members of the society in later years. India has accepted the above position and legislative wisdom has led to the enactment of the Juvenile Justice Act, 2000 in its present form.

**3.40 From the above, the Committee can conclude that the underlying principle of the juvenile justice system has always been to treat all children who have committed offences within the juvenile justice system and differential treatment or sending the child to the adult criminal justice system had always been excluded by the Supreme Court. The Committee is constrained to observe that observations/judgements of the Apex Court of the country have simply been ignored. The Committee takes a serious view of this development.**

#### **Implementation of the Juvenile Justice Act, 2000**

3.41 The Committee had the opportunity to interact with a number of NGOs working at the grass-root level with children and closely associated with the implementation of the JJ Act, 2000. The one disturbing fact which kept on emerging during these discussions was the very discouraging status of implementation of the JJ Act, 2000.

3.42 The Committee was given to understand that while some states like Delhi, Maharashtra (Mumbai), Karnataka (Bangalore), Andhra Pradesh (Hyderabad) and few other districts within these States implemented the legal provisions for children well, most other states and districts lagged behind. States that pro-actively pushed for greater convergence with NGOs, police, Administration capacities of child protection structures and making them effective. However, in states like UP, Bihar and Madhya Pradesh, Statutory bodies, i.e. CWCs and JJBs were not in place, accountability mechanism of these bodies was poorly defined and there was no monitoring or performance appraisal of these bodies and other support mechanisms for building their capacities were absent. Rehabilitation facilities were very poor and psychological counselling and treatment were practically non-existent.

3.43 The Committee also took note of the view of the National Human Rights Commission on the implementation aspect of the Act which stated that there had been gross failure in the existing juvenile justice system primarily because its provisions, in particular those relating to rehabilitation, vocational training and social reintegration, had not been implemented in d letter and spirit. The need of the hour was to give effect to the provisions contained in the Juvenile Justice Act, 2000 and Rules framed thereunder so that children in conflict with law as well as

those in need of care and protection were provided the requisite infrastructure, prescribed standards of care in institutions, education, counselling, vocational training, individual care plan, as per their development needs and best interest.

3.44 Committee's attention was drawn to the following implementation flaws:-

- **Insufficient Investments:** Juvenile Justice covers almost 40 per cent of national population (0- 18 years) but the investments made to develop infrastructure, recruit qualified staff, restoration, rehabilitation, education of CNCPC and CCL children are woefully inadequate. The budget for child protection has always been least 'Out of total union budget, only 0.04% are allocated for the child protection'. This covers Juvenile Justice System, child labour and provision for orphan and street children. These low investments result in different financial outlays in different states. The training support is not uniform and the secretariat support to CWC and JJB is limited and most importantly the investment into developing infrastructure is negligible. The percentage share of children's budget within the Union Budget has been reduced from 4.76% in 2012- 13 to 4.64% in 2013-14. Worryingly, maximum cuts have been made in the component of child protection, especially at a time when the Centre is pushing for the implementation of the Juvenile Justice Act and the Protection of Children from Sexual Offences Act. The total expenditure for the Integrated Child Protection Scheme (ICPS) has been reduced from Rs. 400 crores to Rs. 300 crores this year, which is a 25% cutback, as against the backdrop of the 12th Planning Commission having estimated the need for operationalization of child protection programmes at Rs. 5300 crores over the Plan period i.e. Rs. 1060 crores per year.
- **Lack of adequate number of JJB's and CWC's:** Inadequate number of CWCs and JJBs, and many JJBs and CWCs exist only on paper, and are not functioning. Further, the more populous districts are likely to produce larger CWC caseloads and need additional CWCs. However, despite this, the most populous district in India, i.e. Thane district in Maharashtra, with a population of over 1.1 crores has just one CWC. This is the same as Sindhudurg district with a population of less than 8.5 lakh. One CWC for more than one district is noted to be severely inadequate for a State like Delhi with around 51,000 street children alone. The case loads of the existing CWCs have been found to be very high; in 2010, a total of 2725, 2494, 1357, and 1141 were heard by each of the four CWCs. It is also found that many of the state governments are yet to start a separate girls and boys observation homes in every district. The CWC has limited teeth as they can only raise the issue with the Child Welfare department but the department is their monitoring authority and the Head of department is also the Head of Advisory Board in most of the states, hence monitoring is not effective.
- In the absence of common guidelines in the states, appointments of CWC and JJB members have been made without following norms. There were also long delays in making these appointments that rendered these statutory bodies ineffective during those periods. The uniform understanding on the functions and deliverables amongst the appointed members suffered in absence of orientation and regular trainings.
- **Lack of Homes:** Despite the fact that there are several homes being run by the government and other civil society organisations, there is still dearth of homes to

accommodate both CNCP and CCL. A study conducted by Ministry of Social Justice and Empowerment, GoI clearly stated that “the proportion of homes where children in conflict with law and those in need of care and protection live together is about 20% of the total sample”<sup>5</sup>. The lack of institutional infrastructure and trained manpower in the states has blunted the whole objective of this legislation.

- **Lack of Monitoring:** There is no Institution nominated either at state level or at national level to monitor the progress and provide support to the child protection structures. The JJ Act requires concurrent training and capacity building of CWC, JJB, Police, Child care institution officials and other stakeholders. However there is no such training institution at the state level. The central training institution of NIPCCD provides capsule courses of two days, which is inadequate as all the members are not sufficiently trained. The National Rural Health Mission that came into existence much later in April 2005 successfully developed different training modules for “Asha/Sahiya” that built the capacities of the field staff, but there are no such uniform, standardised training efforts made to build capacity of stakeholders dealing with JJ Act.
- **Constitution of Special Juvenile Police Units (SJPU)** – The crucial appointments of child welfare officers in police stations have not been looked into seriously. In most states, it is observed that the second officer at police station is assigned or designated as “Child Welfare Officer”. In the absence of structured trainings, these designated officers were constrained to perform and meet the needs of their new role. *‘There are number of incidences of violation of procedures of handling of juveniles by the police. Infact the indifference of police towards this law is one of the most disappointing features. The basic idea of this law has not been internalized by the police due to insufficient training and orientation. The instances of changing the age of juvenile into adult range while writing the FIR by the police are often heard. Handcuffing and keeping the juvenile in police lockup is not unusual’.*
- **Lack of coordination:** Effective coordination among the various statutory bodies, their accountabilities, performance appraisals, training and capacity building, infrastructure support services, poorly defined terms of references for the statutory bodies or their roles are the major challenges in operationalization of this law.
- The implementation of CWC and JJB orders by the authority has been limited and delayed. The CWC and JJB have no financial authority or human resources and are dependent on state government or district administration. Due to lack of infrastructure or specific funds, follow up action has been delayed and limited.
- many States fall short of structures like the Child Welfare Committees, children's homes or shelter homes, every State is expected to constitute CWCs in every district, many states have only few CWCs serving the care and protection needs of the entire State. Similar is the case with homes which leave many children uncared, unprotected and victimised;
- there are no institutional facilities, qualified and experienced personnel for the care of mentally ill especially abandoned and destitute children;
- many institutions have serious staff shortages and the appointed staff lacked the mandated qualifications, most homes lack satisfactory number of trained professionals;

- in several institutions strategic decision making positions and front line positions are filled by inadequately qualified and inexperienced personnels. There is no provision for their training also;
- capacity building of care givers and other staff is not accorded adequate priority. Many of the issues that affect children's lives also affect the staff especially the poor quality of infrastructure facilities;
- though the Act of 2000 and JJ Model Rules, 2007 envisaged periodical inspection of homes by the inspection Committees to monitor the functioning of the homes, it is found to be rare and in cases where such visits occurred their effectiveness is unknown. In most cases it is perceived to be a norm fulfilling exercise;
- the alternative care options like adoption, foster care and sponsorship requires to be streamlined and strengthened. Procedural delays in adoption cases require to be addressed effectively.
- the components of foster care should include recruitment and training of foster carers, matching foster carers to children, on-going care planning and work towards reintegration, monitoring placements, on-going support for children and foster carers and support for care leaving.
- most homes lack spacious dormitories causing congestion, inadequate number of toilets leading to health and hygiene issues, lack of recreation facilities, life skill education including vocational training, counselling, mental health programmes, socio-cultural activities etc;
- there is no study available on the children who have been reintegrated/rehabilitated in the society after they have left child care homes.
- no separate cadre of officials under JJ Act *i.e* probation officers, superintendents, care takers, counsellors, care workers, vocational/educational teachers and therapists;
- observation homes/special homes have inadequate infrastructure;
- lack of constructive programmes for detainees who are left to drift; and culture of homes similar to junior jails.

**3.45 The Committee is constrained to observe the very discouraging implementation status of the JJ Act, 2000. The Committee strongly feels that along with amendments in the JJ Act, focussed attention has to be given to the implementation of the Act, as envisaged. Otherwise like the JJ Act, 2000, proposed new legislation will virtually remain on paper. The Committee is of the firm view that the Ministry, being the nodal authority at the centre, can play the role of a motivator and facilitator in coordination with all the implementing agencies at the state level. The Committee is also of the view that if the systems envisaged in the Juvenile Justice Act, 2000 are given effect to by the respective agencies *i.e* the Central Government, the State Governments and other institutions involved in the juvenile justice system, then the system itself can achieve the intended outcome *i.e* to provide for**

**justice, care and protection of children in conflict with law and children in need of care and protection. The Committee, accordingly, recommends that the systems and procedures contemplated under the existing Act need to be uniformly established by all the stakeholders.**

### **Public Awareness for Child Care and Protection**

3.46 During the course of the deliberations on the Juvenile Justice (Care and Protection of Children) Bill, 2014, Committee's attention was constantly drawn to the lack of public awareness about the rights of the child and issues relating to their care and protection. On specific queries in this regard from the stakeholders, it emerged that the society was not very receptive to the issues relating to child care and protection, as childhood was not considered as a separate phase in the life of a human being and care and protection was based on dominant ideas in different socio-cultural contexts in the country. As a result, children were treated as private property of their parents. Sometimes child care and protection were ignored in the name of 'socialisation'. It was the considered opinion of the stakeholders that concentrated efforts were required to be taken by the Government including local self-government, non-government organizations, religious bodies/institutions, educational institutions and other civil society movements to sensitize society on issues related to child care and protection. To achieve this end, the scope of the definition of child care and protection may also be widened. A right based approach reaffirming UNCRC and Constitutional provisions should be followed in the process of defining childhood. Contribution of experts in the area of child rights and childhood are vital for widening the definition. Massive campaign programmes may also be undertaken to sensitize the family and society print, visual and social media could be used for campaigning. Role of Local Self Government (LSG) is crucial in empowering families to take care of their children in collaboration with other institutions in the neighbourhood. Linking the families to various schemes/programmes of Government is also necessary to help them to get their entitlements. ICDS, SSA programme, NHRM/UHRM, Ladli scheme etc should be made part of this programme. The model of kinship care practiced in the State of Mizoram could also be advocated.

3.47 The stakeholders also highlighted that training programmes on prevention, detection and response towards issues related to child care and protection be organized for parents, children, teachers, LSG members, community/religious leaders, police personnel, health professionals, media professionals and government functionaries on regular intervals. Collaboration with

voluntary organizations, NGOs and School of Social Work could also be helpful in conducting training programmes. In addition to the training programmes on child care and protection issues, sessions on parenting skills need to be conducted for parents. Schools should make an attempt to reach to the parents and children through their engagement in School Management Committee (SMCs), Parent Teacher Association (PTA) and NSS programmes. The suggestion of RTE, *i.e* 50 per cent of members of SMC should be from economically and socially disadvantaged communities need to be implemented. This would be beneficial in reaching to more parents from disadvantaged sections, thereby increasing retention level and learning outcomes of children. Furthermore, it sensitizes teachers about the social realities of children from poor disadvantaged communities. Religious institutions and resident welfare associations should reach to the people with this message. Seminars and workshops could be organized in universities and colleges to sensitize the student community. NGOs, voluntary organizations and other civil society movements could anchor programmes like exhibitions, rallies, public meetings, seminars, street plays, competitions etc. on various themes related to child care and protection.

**3.48 The Committee finds the above suggestions of the stakeholders to be very crucial for achieving the goals of care and protection for children. The Committee feels that some of the suggestions could prove to be preventive in nature, especially in the case of children in conflict with law.**

### **Monitoring**

3.49 Bringing any piece of legislation into force starts with issue of Gazettee Notification. Real work starts thereafter by getting it implemented at different levels, Implementation can be effective if all the concerned agencies work in coordination with each other. However, it is often seen that this most crucial area generally remains the most neglected. Laws which are mandated to impact issues like care and protection of the most vulnerable section of our society need to have a very effective and vibrant monitoring mechanism.

3.50 The Committee made an attempt to have an idea of the efficacy of the JJ Act, 2000. However, its interaction with all the stakeholders presented a very discouraging scenario. The Committee was given to understand that majority of the child care institutions were marred by complaints of poor infrastructure, and staff behaviour and high rates of abuse perpetrated by adults

in homes/institutions. Child Care institutions, instead of giving proper care and protection have often left children vulnerable and resulted in their exploitation.

3.51 On a request of the Committee, the Ministry shared the state-wise details of the Child Welfare Committees and the Juvenile Justice Boards. The details were as indicated below:

S. No.	Name of State/UT	No. of Districts	CWCs	JJBs
1	Andaman & Nicobar island	3	1	1
2	Andhra Pradesh (including Telangana)	23	23	23
3	Arunachal Pradesh	17	16	16
4	Assam	27	27	27
5	Bihar	38	38	38
6	Chandigarh	1	1	1
7	Chhattisgarh	27	27	17
8	Dadra & Nagar Haveli	1	1	1
9	Daman & Diu	2	2	2
10	Delhi	9	7	2
11	Goa	2	2	2
12	Gujarat	26	26	26
13	Haryana	21	21	21
14	Himachal Pradesh	12	12	12
15	Jammu & Kashmir	22	--	-
16	Jharkhand	24	24	21
17	Karnataka	30	31	30
18	Kerala	14	14	14
19	Lakshadweep	1	1	1
20	Madhya Pradesh	50	50	50
21	Maharashtra	35	35	35
22	Manipur	9	9	9
23	Meghalaya	7	7	7
24	Mizoram	8	8	8
25	Nagaland	11	11	11
26	Orissa	30	30	30
27	Puducherry	4	3	4
28	Punjab	22	22	22
29	Rajasthan	33	33	33
30	Sikkim	4	4	4
31	Tamil Nadu	32	32	32
32	Tripura	8	4	8
33	Uttarakhand	13	13	13
34	Uttar Pradesh	75	72	72
35	West Bengal	19	19	19
Total		660	626	612

3.52 The Committee was also informed of the following State-wise pendency of cases in the Child Welfare Committees and the Juvenile Justice Boards:

<b>(b): State-wise Pendency of Cases in Child Welfare Committees</b>					
<b>Sr. No.</b>	<b>State</b>	<b>01.04.2011</b>	<b>01.04.2012</b>	<b>01.04.2013</b>	<b>30.09.2014</b>
1.	Andhra Pradesh (including Telangana)	163	155	293	123
2.	Assam	156	189	409	330
3.	Chandigarh	-	-	-	0
4.	Chhattisgarh	-	-	161	663
5.	Daman and Diu	-	-	0	0
6.	Delhi	-	2432	1533	1759
7.	Gujarat	-	861	833	115
8.	Haryana	-	118	118	226
9.	Himachal Pradesh	-	-	-	25
10.	Kerala	-	-	-	992
11.	Karnataka	-	-	773	-
12.	Madhya Pradesh	-	321	-	-
13.	Meghalaya	-	-	34	39
14.	Mizoram	4	4	30	48
15.	Nagaland	-	-	25	-
16.	Odisha	-	-	255	1194
17.	Puducherry	3	3	4	3
18.	Punjab	-	-	-	1
19.	Rajasthan	1987	893	484	1657
20.	Sikkim	1	1	1	6
21.	Tamil Nadu	935	1317	838	818
22.	Tripura	-	-	105	211

<b>(a): State-wise Pendency of Cases in Juvenile Justice Board</b>					
<b>S. No.</b>	<b>State</b>	<b>01.04.2011</b>	<b>01.04.2012</b>	<b>01.04.2013</b>	<b>30.09.2014</b>
1.	Andhra Pradesh (including Telangana)	315	341	516	55
2.	Assam	1592	1703	1812	1852
3.	Chandigarh	-	-	-	12
4.	Chhattisgarh	-	-	6394	6840
5.	Daman and Diu	-	-	0	9
6.	Delhi	-	338	370	9
7.	Gujarat	-	10778	11707	12831
8.	Haryana	-	1714	1925	2035
9.	Himachal Pradesh	-	-	-	507
10.	Kerala	-	-	-	1047
11.	Karnataka	-	-	1547	-
12.	Madhya Pradesh	-	13783	-	-
13.	Meghalaya	-	-	22	143

<b>(a): State-wise Pendency of Cases in Juvenile Justice Board</b>					
14.	Mizoram	80	135	92	42
15.	Nagaland	-	-	46	-
16.	Odisha	-	-	591	4735
17.	Puducherry	35	57	63	61
18.	Punjab	-	-	-	1299
19.	Rajasthan	6813	6776	5174	8647
20.	Sikkim	35	41	28	14
21.	Tamil Nadu	2811	3300	3586	5066
22.	Tripura	-	-	18	54

From the above details, the Committee notes that out of 660 districts in the country, 626 have Child Welfare Committees and 612 Juvenile Justice Boards in existence. However, if the pendency of cases both in the Child Welfare Committees and the Juvenile Justice Boards is looked into a disturbing scenario emerged. Delhi had maximum number of cases pending in the Child Welfare Committees followed by Rajasthan, Nagaland, Kerala, Tamil Nadu and Chandigarh. All these States had district wise CWCs and JJBs, except Delhi which had 7 and 2 CWCs and JJBs respectively for 9 districts. Similarly, Gujarat had highest number of cases pending in the Juvenile Justice Boards followed by Rajasthan, Chhattisgarh, Tamil Nadu and Odisha. Again with the exception of Chhattisgarh all the States had district wise CWCs and JJBs. From the above details, the Committee can only conclude that CWCs and JJBs were not fully functional. Reasons for this could be lack of funds, inadequate facilities and absence of trained manpower. In addition, procedural delays could also not be ignored.

3.53 Committee's attention was drawn to the following gaps in the monitoring of Child Care institutions:

- Framework of monitoring under the JJ Act has actually not been brought into practice across must states.
- The structural framework of monitoring has gaps as there are parallel monitoring mechanisms through CWCs, district officials, inspection committees with no flow of information or convergence between them on the inspect framework.
- Generally, inspect committees randomly ask questions to children about their lives and abuse within home in the presence of others and many a times do more harm than good.

As per the information made available to the Committee, as on 2012, out of the 35 States/UTs in the country, in 16 States/UTs, the Inspection Committees were either not constituted or no information was available. Besides that, constitution of Inspection Committees in 4 States was in

process. There were also States, where although the Inspection Committees were constituted, but no details about inspections done by them were available.

3.54 On being asked about suggestions for an effective monitoring mechanism, following worth-noting initiatives were given by the stakeholders:

- Constitution of an independent monitoring authority having representatives of SCPCR, Human Rights, Experts of Child Care and Protection;
- the Principal responsibility of monitoring institutions should be that of the District Women and Child Development Officer;
- A local visitors Body must be attached to each Home for children. It must visit the home at least once a month or immediately on receipt of a complaint;
- A State Rapid Action Team to be drawn from mental health, medicine, disability and child rights experts, social work, academic and law that would be empowered to visit and investigate all centres throughout the State;
- All child care institutions should be placed under a nodal department which holds responsibility for implementing the JJ Act and ICPS so that uniform standards of care are ensured;
- At the national level, a centralised knowledge centre and monitoring unit needs to be created;
- Mechanism of inquiry for cases of abuse reported from institutions should be standardized; and
- Mandatory periodic assessment of child care institutions by a team of independent experts.

**3.55 The Committee would appreciate if all the above suggestions are taken note of by the Ministry and implemented in the right spirit. The Committee notes that the National Commission for Protection of Child Rights is assigned the role of examining reviewing the safeguards provided by or under any law for the protection of child rights and recommend measures for the effective implementation. The Committee hopes that monitoring of all the agencies/bodies involved in the implementation of the Act is taken up in the right earnest and all the bottlenecks noticed/identified in the JJ Act, 2000 are eliminated.**

**3.56 The Committee observes that the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted after the Juvenile Justice Act, 1986 was repealed. Likewise, the Act of 2000 is sought to be repealed by the Juvenile Justice (Care and Protection of Children) Bill, 2014. The Committee was given to understand by some of the stakeholders that required amendments in the Act of 2000 would have served the purpose and there was no need of**

**bringing in a new law. The Committee, however, on a comparative analysis of the Act of 2000 and the proposed law finds that the Bill is a comprehensive legislation when compared with the Act of 2000. The Bill provides for general principles of care and protection of children, procedures in case of children in need of care and protection in conflict with law, rehabilitation and social re-integration measures for such children and offences committed against children.**

IV. The Committee observes that there are quite a few new provisions in the Bill which will go a long way in fulfilling its objectives. Broadly speaking, the Committee welcomes the proposed law. However, there are certain very critical areas/aspects in the context of some of the provisions in the Bill which need to be relooked. The Committee makes the following recommendations/observations on such provisions of the Bill.

#### **CLAUSE 1: SHORT TITLE, EXTENT AND COMMENCEMENT**

4.1.1 Sub clause (1) of Clause 1 dealing with the title of the Act reads as follows:

*“(1) This Act may be called the Juvenile Justice (Care and Protection of Children) Act, 2014.”*

4.2 Objections were raised on the title of the Bill by many stakeholders which included many State Governments as well as NGOs. It was pointed out that whereas the words ‘juvenile in conflict with law’ have been replaced by ‘child in conflict with law’, in the entire text of the Bill, title still continues to include the words ‘Juvenile Justice’. It was felt that the word ‘juvenile’ generally has negative connotations.

4.3 On this issue being taken up with the Ministry, it was clarified that the change in nomenclature has been made from ‘juvenile’ to ‘child’ or ‘child in conflict with law’, as necessary, across the Act. This has been proposed as it was felt that the word ‘juvenile’ carries a negative connotation and has been used for children committing crimes and resulting in stigma for children in conflict with law and also hampering their social re-integration. It was also submitted that similar change had not been proposed in the title of the Bill as it was felt it would be inappropriate to change the title, which after a decade of implementation is well understood by most of the stakeholders such as police, legal authorities, Child Care Institutions, institutions under the Act and the civil society. A new title may result in confusion in the field and may hamper effective implementation of the Bill.

**4.4 The Committee is somewhat surprised by the contradictory stand taken by the Ministry. In spite of agreeing that the word ‘juvenile’ carries a negative connotation and used for children committing crimes, the Ministry is not ready to suitably modify the title. The Committee would like to point out that the main objective of the Bill is to make the law relating to children alleged and found to be in conflict with law and also children in need of care and protection. Common usage of the word ‘juvenile’ is *vis-à-vis* a child who has committed an offence. Apparently, the existing title gives an impression that this Act deals with children who have committed offence. The title of the Bill should reflect the child-friendly approach. The Committee recommends the title of the Bill to be changed as Justice for children (Care and Protection of Children) Bill, 2014.**

## **V CLAUSE 2: DEFINITIONS**

5.1 Clause 2(2): This sub-clause deals with the definition of the word ‘adoption’.

*“Adoption means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a legitimate child.”*

5.2 Objections were raised to the use of word ‘legitimate’ in the context of a child. It was felt that the use of language that classifies children as legitimate or illegitimate was not in the best interests of children. **The Committee, accordingly, recommends that the words ‘legitimate child of his adoptive parents’ may be read as ‘lawful child of his adoptive parents’ and the words “that are attached to be legitimate child’ may be read as ‘that are attached to a biological child.’**

5.3 Clause 2(5): This sub-clause deals with the definition of the word “aftercare” and reads as:

*“Aftercare means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society.”*

5.4 The Committee observes that social re-integration and rehabilitation of children in need of care and protection as well as children alleged and found to be in conflict with law are the most crucial areas of proposed legislation. Experience of grass-root level NGOs has been that aftercare

is the most important programme for the juvenile/young offenders and also for the children in difficult circumstances and considering the fact that majority of them happen to be extremely poor and deprived in the age group of 16-21 years they need to be guided and protected. The Committee observes that the definition of ‘aftercare’ restricts its availability to only persons between 18-21 years who have left institutional care. It was also possible that a child may leave an institution before he/she attains the age of 18 years and be in need of after-care services.

**5.5 The Committee notes that the Bill provides a narrow definition and is a digression from internationally recognised and recommended concept and principles of aftercare. Rehabilitation of children who are in need of care and protection or those in conflict with law cannot always end by the age of 18 and who have left any institutional care or the Child Justice System to join the mainstream of the society as this would also provide for children out of institutional care for their rehabilitation. The Committee, accordingly, recommends that the definition of the term ‘aftercare’ may be modified as follows:**

**“Aftercare” means making provision of support, financial or otherwise, to persons, who have not completed the age of twenty-one years and have left any institutional care to help them integrate with society.**

5.6 Clause 2(14)(i): This sub-clause gives definition of the term “child in need of care and protection” as a child who is found without any home or settled place of abode and without any ostensible means of subsistence.

**5.7 The Committee feels that a child does not first have to become a victim and then be in need of care and protection. Both care and protection rights exist before the point of affliction and a vulnerable child is always in need of both the safeguards. The Committee, accordingly, recommends that this definition may be made more clear and specific.**

**5.8 Clause 2(14)(ii): As per this sub-clause, a child found working in contravention of labour laws for the time being in force or is found begging, or living on the street would be considered to be in need of care and protection. It was pointed out to the Committee that a reference to labour laws would restrict the extension of care and protection measures to only those children who come under the protection ambit of labour laws. As a result, children between 14 and 18 years engaged in labour would be deprived of rehabilitation measures available under the Bill. Agreeing with the apprehension of the stakeholders, the Committee**

**recommends that the words “in contravention of labour laws for the time being in force’ may be deleted from the definition.**

5.9 Clause 2(14)(viii): As per this sub-clause, a child who is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts would be considered to be in need of care and protection.

**5.10 The Committee notes that this sub-clause leaves those children who may have been abused in the past. The Committee feels that children who have been abused may face stigma, trauma and may be in need of support, as well as linkages to services. The Committee is of the view that this sub-clause should apply to both children who have been abused or may be abused at any point of time. The Committee, accordingly, recommends that the words ‘ has been’ may be added after the word ‘ who’.**

5.11 Clause 2(35): The word ‘ juvenile’ has been defined to mean a child below the age of eighteen years.

**5.12 The Committee is of the view that when the definition of the word ‘ child’ has been included under the definition clause, and the word ‘ juvenile’ is considered not to be appropriate because of the element of negativity involved in its meaning, the definition of the word ‘ juvenile’ may not be included under the definition clause.**

## **VI. CLAUSE 4: JUVENILE JUSTICE BOARD**

6.1 This clause provides for constitution of one or more Juvenile Justice Boards by the State Government for every district for exercising the powers and discharging the duties conferred under this Act. It provides for the composition of the Board as indicated below:

*“ A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years of experience and two social workers from two different reputed non-governmental organisations selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class.”*

It also states that no social worker shall be appointed as a member of the Board unless the person has been actively involved in health, education or welfare activities pertaining to children for at

least seven years or is a practicing professional with degree in child psychology, psychiatry, sociology or law.

6.2 A comparative analysis of the composition of the JJ Board as envisaged in the proposed legislation with that provided in the JJ Act, 2000 indicates no significant change as in both the Boards, Metropolitan Magistrate/Judicial Magistrates of the first class and two social workers of whom one being a woman would be there. The only difference is that while the Metropolitan/Judicial Magistrate will have to have at least three years of experience, the two social workers will have to be from two different NGOs. Further, the social worker will have to be actively involved in health, education or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

6.3 These additions in qualifying criteria of social workers for being members were not found acceptable by majority of the witnesses appearing before the Committee. The Committee finds merit in their reservations. It is true that the proposed legislation restricts the appointment of social workers as members of the Juvenile Justice Board to only representatives of non-governmental organizations. By this limitation, academics and other professionals not associated with non-governmental organizations are excluded, thereby depriving a child of inputs from this sector. The Committee was given to understand that juveniles in conflict with law have benefited from the experience and expertise of social work members who are academics, mental health professionals, etc.

6.4 The Committee was further informed that a large number of children were languishing in various reform homes because of delay in decisions by the Juvenile Justice Boards. The reasons for pendency of cases include inadequate sittings of the Board, Principal Magistrates having additional charge of JJBs, less sensitivity of JJB towards children (and therefore treating them at par with adult), posting of Principal Magistrates as JJB chairperson against their wishes. It has also been observed that in many cases Principal Magistrates lacked adequate experience and sensitivity in dealing with juvenile crimes. It was also emphasized that metropolitan Judicial Magistrates being over-burdened with too many responsibilities, had their own limitations so far as mandate of JJB was concerned.

**6.5 The Committee is of the view that in order to strengthen the functioning of JJB, it is necessary that the Chairperson is in a position to give adequate time and attention to his**

responsibilities. **One suggestion which has come to the Committee is to have a retired District and Sessions Judge as the Chairperson of JJB. Secondly, the Committee also feels that restricting the nomination of social workers from reputed NGOs only and that too having seven years' experience would be a very restrictive provision. The Committee, accordingly, recommends that the composition of JJB needs to be reviewed and required changes made.**

6.6 Committee attention was also drawn to the fact that while the Bill lays down certain eligibilities and disqualifications for members of CWCs and JJBs, but it does not lay down any provision for constitution of a selection committee to select the members and its procedures etc. Different States follow different selection procedures. As a federal republic, States are free to frame their own Rules with respect to the juvenile justice legislation and most matters concerning children. While some States set up a Selection Committee, others do not, thereby compromising on a fair and transparent selection process. **The Committee, accordingly, recommends that it will be prudent if the Bill establishes the importance of ensuring a proper, fair and transparent selection process and clearly lays a complaints-cum- oversight mechanism for functioning of individual members, including requirement for constitution and functioning of a Selection Committee or a Selection-cum-oversight mechanism and a fair process of selection. The Committee would appreciate if the provisions related to the composition of the Selection Committee and the Selection Process are included in the Bill so as to ensure uniformity and transparency which can be easily replicated from Rules 91 and 92 of the Juvenile Justice (Care and Protection) Rules, 2007 with appropriate modifications.**

6.7 **The Committee was also given to understand that in some cases, there has been found to be a conflict of interest, as members also hold positions in the management of child care institutions in the very district for which they have been appointed. If that be so, the Committee feels that a provision needs to be included requiring members to resign from an office of profit on being appointed a Member of the Board.**

## **VII. CLAUSE 6: PLACEMENT OF PERSONS, WHO COMMITTED AN OFFENCE, WHEN THE PERSON WAS BELOW THE AGE OF EIGHTEEN YEARS.**

7.1 This clause deals with the placement of persons, who committed an offence, when the person was below the age of eighteen years. The clause reads as:

*“(1) Any person, who has completed eighteen years of age, but is below twenty-one years of age and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.*

*(2) The person referred in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.*

*(3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act.”*

7.2 It was pointed out by some stakeholders that this provision allowed differential treatment of a person who has completed eighteen years of age but is below twenty one years of age for an offence committed when he/she was below the age of 18 years simply because the state machinery was unable to bring him into the juvenile justice system when needed and would amount to a violation of all constitutional guarantees and other national commitments. Further, there is no legal or constitutional obligation on any person to surrender before the police for an alleged offence. It arbitrarily presumes that the delay in production of such person before the Court is caused by the accused. Also, obligation of the State Parties under Article 40 of CRC means “that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.”

7.3 The Committee understands that the intention of clause 6 should be to ensure that a person who has crossed the age of juvenility should not be allowed to mingle with children in an observation home as he may have a detrimental effect on them. On the other hand, owing to psychological reasons, such person may require concerted specialized treatment which may not be available or possible in the observation home. The Committee also observes that the intention cannot be that all persons apprehended between the age of 18 and 21 years should be placed in a place of safety and not an observation home and such decision should be left to wisdom of the Board. The fact remains that a child in conflict with the law is defined as a person who is alleged or found to have committed an offence and who has not completed the age of 18 years as on the date of commission of the offence. Allowing any exceptions would amount to a violation of this definition and the principles of juvenile justice.

**7.4 The Committee agrees with views of the stakeholders that age on date of committing of the offence should determine whether the person should be dealt with under the JJ system or criminal justice system. The Committee recommends that such a person who is not a**

**juvenile should not be allowed to mingle with children in an observation home and should be kept separately. The words ‘but is below twenty one years of age’ may be deleted from clause 6.**

**VIII. CLAUSE 7: PLACEMENT OF A PERSON ABOVE AGE OF TWENTY-ONE YEARS FOR COMMITTING ANY OFFENCE WHEN HE WAS A CHILD.**

8.1 This clause provides that if any person, who is apprehended after completing the age of twenty one years, for committing any serious or heinous offence when such person was between the age of sixteen to eighteen years, then, he shall, subject to the provisions of this Act, be tried as an adult.

8.2 Besides the general issues, the Committee had the opportunity to interact at length with the stakeholders on the various provisions of the proposed legislation. The Committee notes that, besides modifications of existing provisions in the JJ Act, 2000, certain new provisions form part of the Bill. Clause 7 is one such provision. Very strong objections and apprehensions about the likely impact of this provision were voiced by all the stakeholders appearing before it. Deletion of clause was emphatically advocated by them.

8.3 On being asked about the rationale for having such a provision, the Ministry classified that under clause 7, it was proposed that persons above the age of 21 years were to be apprehended for committing a serious or heinous offence when he was a child, then he was proposed to be tried as an adult. It would encourage persons to come forward and inform about the offences committed so that they remained under the Juvenile Justice System. The Committee was also given to understand that during the implementation of the JJ Act, 2000, it was seen that adults who had committed an offence when they were below the age of 18 years were kept along with children in Observation Homes or Special Homes. This had resulted in abuse and exploitation of children by adults. It was felt that keeping in view the best interest of children, it was necessary they were separated from adults. Accordingly, anyone above the age of 21 years apprehended for committing an offence when he was a child be treated and kept under the adult criminal system.

**8.4 The Committee views with serious concern the kind of argument put forth by the Ministry, while justifying the inclusion of a provision like clause 7. The Committee fails to comprehend as to how could such a provision would encourage persons to come forward and inform about the offences committed by them so that they could remain under the Juvenile**

**Justice System.** The Committee would like to point out that unless a person is proved guilty, he cannot be treated like an offender. Secondly, the perception that a person in the age-group of 16-18 years alleged to be committing a serious or heinous offence would be mature enough to come forward to inform about his offence so as to ensure his remaining under the Juvenile Justice System seems to be far from convincing.

**8.5** After analysing all the facts placed before it, the Committee is left with no other alternative but to conclude that concerns expressed by all the stakeholders are very genuine and cannot be ignored. The Committee is also of the view that clause 7 is in clear violation of Article 20(1) of the Constitution which states that:

*“No person shall be convicted of any offence except for violation of the law in force at the time of the Commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”*

A plain reading of clause 7 clearly indicates that a person who was a child when the offence was committed will be treated as an adult on account of failure on the part of the investigating agencies in apprehending him/her. Besides this, the Committee also observes that this provision is also in complete violation of the right to equality under Article 14 which states that:

*“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”*

Again, clause 7 creates an artificial differentiation between children apprehended before 21 years and those apprehended after 21 years of age. The Committee finds no rationale in such a categorization.

**8.6** The Committee was also informed that this provision would also violate Article 15 of the International Covenant on Civil and Political rights, a non-derogable right under the convention which reads as follows:

*“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.”*

The Committee also takes note of Supreme Court judgments in Umesh Chandra (1982), Arnit Das (2000), Arnit Das (2001) and Pratap Singh (2005). The five judges Constitutional Bench of the Supreme Court in Pratap Singh held the age on the date of offence to be determinative of the application of the Juvenile Justice Act. The observation of the Supreme Court in its judgement (SLPC(vi) No. 1953 of 2013) in Dr. Subramanian Swamy Vs. Raju, Member, JJB pointed out that

*“.....If the legislaure has adopted the age of 18 as the dividing line between juveniles and adults and such a decision is constitutionally permissible, the enquiry by the Courts must come to an end. Even otherwise there is a considerable body of world opinion that all under 18 persons ought to be treated as juveniles and separate treatment ought to be meted out to them so far as offences committed by such persons are concerned.”*

8.7 Keeping in view the very specific constitutional provisions, international conventions and Supreme Court judgments, the Committee simply fails to comprehend the absurdity and the arbitrary nature of clause 7. The Committee finds no logical reason why persons apprehended after they have crossed 21 years should face serious disadvantage or how this severe provision furthers the goals of criminal justice. The Committee also takes note of the fact that there have been several legal controversies surrounding this very question. The JJ Act, 2000 was amended in 2006 precisely in order to clarify that the date of reckoning will be the date on which the offence was allegedly committed and not when the juvenile was apprehended.

8.8 The Committee is of the firm opinion that clause 7 is discriminatory in itself, undermines the constitutional provisions as well as international commitments and ignores the Supreme Court directives. The Committee, accordingly, recommends that such a provision should not be a part of the proposed legislation and be deleted.

#### **IX. CLAUSE 15: INQUIRY BY BOARD REGARDING CHILD IN CONFLICT WITH LAW.**

9.1 Clause 15(3): The clause deals with the procedure for inquiry by JJ Board with regard to a child in conflict with law :

*“ A preliminary inquiry in case of heinous offences under section 16 shall be disposed of by the Board within a period of one month from the date of first production of the child before the Board.”*

9.2 The Committee notes that this sub-clause requires JJB to conclude a preliminary inquiry in case of heinous offences within a period of one month from the date of first production of the child before the Board. During its deliberations with stakeholders, the Committee was given to understand that in normal course of crimes committed by adults, no chargesheet can be filed within the stipulated period. However, as per this sub-clause, JJB is required to take a decision of transferring such a child to the Children’s Court within a period of one month without a proper investigation by the investigating agency or before such investigation is completed and the child is prima facie found to have committed such heinous offences. **This provision proceeds on the assumption that the alleged offence has been committed by the child and is contrary to the presumption of being innocent till proved guilty. It thus violates Fundamental Rights guaranteed under Article 14 and 21 of the Constitution by directing JJB to inquire into the culpability prior to prima facie establishment of the guilt. The Committee, accordingly, recommends that the period of preliminary inquiry by JJ Board may be suitably enhanced.**

**X. CLAUSE 16: PRELIMINARY INQUIRY INTO HEINOUS OFFENCES BY THE BOARD.**

10.1 This clause reads as:

*“(1) In case of a heinous offence committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary inquiry with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 19:*

*Provided that for such an inquiry, the Board may take the assistance of experienced psychologists, psycho-social workers and other experts.*

*(2) Where the Board is satisfied on preliminary inquiry that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973.*

*Provided that the inquiry under this section shall be completed within the period specified in section 15.”*

10.2 This clause specifically deals with cases of such children who have completed or are above the age of sixteen years and have committed a heinous offence. Procedure regarding holding a preliminary inquiry in such cases has been enumerated in this provision. In other words, a distinction is sought to be made between children below and above sixteen years of age in the context of gravity of an offence. The Committee notes that such a provision was not part of the JJ

Act, 2000. Very strong views were expressed by all the stakeholders appearing before the Committee about the viability of a provision which prime facie seemed to be very discriminatory.

10.3 The foremost flaw pointed out was that this provision required JJB to assess whether a child above sixteen years of age who has committed a heinous offence has the physical and mental capability to commit the offence, along with circumstances in which he has committed the offence. In other words, it implies an assumption that the child has already committed the alleged offence. This enquiry in an essence would be a sentencing decision that is arrived at even before the guilt is established. It was emphasized that such an action would denote complete violation of the presumption of innocence, a central tenet of the juvenile justice as well as the criminal justice system. Also, such an arbitrary and irrational procedure clearly contravenes the fundamental guarantees made under Articles 14 and 21 of the Constitution.

10.4 Differential treatment of children who have completed or are above 16 years and below the age of 18 and are in conflict with law as a result of commission of heinous crimes are to be tried as an adult under the criminal justice system was also in complete contravention to the UNCRC and the Bill's stated purpose of adopting a child friendly approach in the adjudication and disposal of matters in the best interests of children. It was further pointed out that in fact the subsequent trial shall also not be a fair trial as the preliminary inquiry has already labelled the child as "capable of committing crime".

10.5 Another significant deficiency brought to the notice of the Committee was that the assumption that an accurate assessment of mental capacity/maturity for the purpose of transfer of the trial of the care to the Children's Court was possible when this was not true. Not only this, such an assessment would be fraught with errors and arbitrariness and would allow inherent biases to determine which child was to be transferred to an adult court. The very presumption that persons between 16 and 18 years were competent to stand trial just as adults was also not free from very genuine doubts.

**10.6 The Committee also takes note of the fact that this clause binds Juvenile Justice Board (JJB) to conduct a 'preliminary enquiry within one month in respect of heinous offences committed by children above 16 years regarding their mental and physical capacity and understanding of consequences, etc. and pass orders under section 19 including, transferring the child for trial by children's court or the sessions court in the absence of**

children's court. The Committee would like to point out that considering the fact that large number of innocent children are being involved in crimes, which was evident from the decisions of JJBs across the country, it is impossible to conduct such a complex enquiry within a period of one month. Such a provision will amount to complete denial of fundamental rights, justice, fair and discriminate proceedings and also the negation of basic principles and provisions of Juvenile Justice (Care and Protection) Act, 2000 itself.

10.6 The Committee is of the view that all children below 18 years are amenable and should be treated in the same manner because of the fact that their involvement in offending acts was primarily due to either environmental factors or their unique developmental features such as risk taking nature, less future orientation, adventurism, etc., or both. The Committee would also like to point out that the process suggested for treating 16-18 years children involved in heinous offences, *i.e* preliminary inquiry by JJB and professional team, then based on their decision to Children's Court (CC) then decision by CC regarding where to be tried, then sending the child back to JJB for trial would lead to multiple and repeated trials before different authorities that would psychologically drain him/her. The Committee, accordingly, recommends that this entire process needs a relook and review.

10.7 Lastly, the Committee also observes that the clause envisages that the Juvenile Justice Boards shall conduct a preliminary inquiry with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence, with the assistance of experienced psychologists, psycho-social workers and other experts. One can not ignore the fact that there is a severe shortage of competent psychologists, psycho-social workers and other experts and this will adversely affect the quality of inquiry and timely disposal of cases.

10.8 The Committee is in full agreement with the very comprehensive views of the stakeholders that clause 7 is discriminatory and all children below 18 years should be treated as children. The proposed legislation is meant for children alleged and found to be in conflict with law. And the definition of both the terms 'child' and 'child in conflict with law' mean a person who has not completed eighteen years of age. Accordingly, the question of envisaging a differential treatment for children above sixteen years of age should not arise.

**Such a move would lead to contravention of international laws and also the stated purpose of the Bill.**

**XI. CLAUSE 19: ORDERS REGARDING CHILD FOUND TO BE IN CONFLICT WITH LAW.**

11.1 This clause reads as:

*“1)Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—*

*(3) Where the Board after preliminary inquiry under section 16 comes to the conclusion that there is a need for further trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences”*

11.2 All the stakeholders appearing before the Committee voiced their concerns about the differential procedure envisaged for children between 16-18 years under the inquiry to be conducted by JJ Board. It was emphatically advocated that the distinction made between heinous and other offences in the Bill would deny children between 16 to 18 years of their rights under the juvenile justice system. The discretion to pass any of the rehabilitative orders for children between 16 and 18 years as listed under clause 19(1) and 19(2) as compared with 19(3) of the Bill was discriminatory in nature. The Committee was given to understand that the juvenile justice system which had evolved under the international child rights law was based upon the fact that mental, cognitive and emotional capacity of the child was not sufficiently developed till he/she attained the age of 18 years and, therefore, should not be held responsible for the omissions/commissions made. There was a need to continue with the differential approach and treatment adopted towards children in conflict with law as being followed presently. However, implementation of sub-clause (3) would lead to automatic transfers of several children aged 16 and above, alleged to have committed a heinous offence, to the adult criminal justice system. These children would thus be denied of orders aimed at care, protection, development, treatment and social reintegration, a legislative commitment stated in the Preamble of the Bill itself.

11.3 Committee's attention was drawn to the fact that transferring cases of children in conflict with law to Children's Court would not be different from putting them under the formal judicial proceedings. Children's Courts were the sessions courts where cases of children coming in contact with law were dealt with. These were not dedicated courts dealing exclusively with children cases and were in the same premises of the regular criminal courts. The procedure followed was according to CrPC which did not consider juvenility and impact of trial on children's physical, mental and emotional condition. Also referring such cases to Children's Courts was against the international instruments adopted and ratified by India and against the principles of the constitution.

11.4 The general consensus was that the Board should have the jurisdiction to make orders with respect to all children in conflict with the law and no such child should be subjected to any other judicial authority. The transfer of children above 16 years alleged to have committed a heinous offence would deprive them of the right of rehabilitative orders under clause 19(1) and the right to equality. The preliminary inquiry would go against the “principle of presumption of innocence”, and the trial before the Children’s Court would compromise the “principles of dignity and worth, best interests, positive measures, non-waiver of rights, non-stigmatizing semantics, equality and non-discrimination, and institutionalization as a measure of last resort”, all of which are “fundamental” to the understanding, interpretation, implementation, and application of the Bill under clause 3. For instance, the principle of best interest required that “all decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.” A decision to transfer a child to the Children’s Court or to an adult jail was not justified in the light of this principle.

**11.5 In view of the above, the Committee recommends that clause 19, especially clause 19(3) needs to be reviewed. Committee's observation is substantiated by the fact that the concept of Children's Court was specifically designed to try offences against children and not offences by them. These courts were essentially Sessions Courts that have been given the additional task of ensuring speedy trials of offences against children. Therefore, by all interpretations they were courts for adults. The Committee would like to point out that the objective of creating a separate Act for children was to have a separate system for children in conflict with law and not include them in the criminal justice system. There is no doubt**

**that this sub-clause diminishes the distinction between child victims and children in conflict with law by entitling the courts under the Protection of Children from Sexual Offences Act, 2012, the jurisdiction to adjudicate the cases involving children in conflict with law.**

**11.6 The Committee also recommends that all relevant clauses (clauses 6, 7, 16, 19, 20) dealing with Children's Courts and differential treatment of children between 16-18 years of age need to be reviewed in that light of its observations and recommendations.**

## **XII. CLAUSE 28 : CHILD WELFARE COMMITTEE**

12.1 This clause deals with the Child Welfare Committee Sub-clause 28(8) provides that the District Magistrate shall conduct a quarterly review of the functioning of the Committee. **The Committee notes that the Child Welfare Committee is a quasi-judicial body whereas the District Magistrate is the executive. Thus, subjecting CWC to a review by the District Magistrate would lead to infringement of its powers. The Committee feels that since CWC is appointed by the State Government, it is appropriate for CWC to report to and be accountable to the State Government. The review of the functioning and pendency of cases before CWC, if vested in its appointing authority will also facilitate addressing bottlenecks for its efficient functioning, including the decision to set up additional CWCs, if required. It is important to note that under the JJ Act, 2000, the process to review pendency of cases before the CWC is with the State Government (section 33(3) of the Act, 2000 refers). Clause 37(4) regarding submission of a quarterly report on the disposal/pendency of cases to the District Magistrate by CWC may also be amended accordingly.**

## **XIII. CLAUSE 36: THE CLAUSE DEALS WITH THE SURRENDER OF CHILDREN.**

13.1 This clause reads as:

*“(1) A parent or guardian, who for physical, emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee.*

*(3) The parents or guardian who surrendered the child, shall be given one month time to reconsider their decision and in the intervening period the Committee shall either allow after due inquiry, the child to be with the parents or guardian under supervision, or place the child in a Specialised Adoption Agency, if he or she is below six years of age, or a children’s home if he is above six years.”*

13.2 It was pointed out that the period given to the parent / guardian to reconsider their decision to surrender the child for adoption has been kept at one month. Thus, a child is to be declared

legally free for adoption by the Child Welfare Committee within one month of such child being surrendered. It was submitted that while recognizing that the adoption process should be completed expeditiously, it was also imperative to recognize that the welfare of the child was paramount. One must not forget that every child has a right to be brought up in a nurturing family environment-and not be separated from his/her birth family. Chances were there that parents surrendering/relinquishing the child could be taking the decision under compelling circumstances and under immense emotional and social pressure. In the best interest of the child, a child should be separated from biological family only in exceptional circumstances.

13.3 It was emphasized that adoption permanently severed the child from his biological parents, therefore, sufficient opportunity should be given to the parent to reconsider the decision to surrender the child for adoption. It was, therefore, suggested that the period to reconsider such a decision should remain at 60 days as contained in the JJ Act 2000 and the CARA Guidelines.

**13.4 Committee's attention was drawn to the fact that the existing legal framework provided for two months' re-consideration period for a woman intending to surrender her child, and this should be retained. The time period of one month was considered to be insufficient, given that the woman needed to recover from the physical and emotional stress of delivery first, before she was able to even think clearly about what to do with her baby. Agreeing with the view of the stakeholders, the Committee recommends that time period of sixty days should be kept for surrender of a child.**

#### **XIV. CLAUSE 47: THIS CLAUSE DEALS WITH CHILDREN LEAVING CHILD CARE INSTITUTION.**

14.1 This clause reads as:

*“Any child leaving a child care institution on completion of eighteen years of age may be provided with a onetime financial support in order to facilitate child's re-integration into the mainstream of the society in the manner as may be prescribed.”*

14.2 The Committee notes that the concept of aftercare has been reduced to one time financial care for children leaving institutions. This is very limiting both in sense of its coverage to all children in need of care and protection as well as conflict with law as well as in terms of nature of the programme. The said provision in real sense defeats the very objective of aftercare. It will leave out a large number of children (as critiqued in the definition of aftercare). Also providing

one time monetary support without counselling, psycho-socio-legal aid, follow up, training/ education support, residential support, mentoring etc. would not solve the purpose of aftercare. **The Committee strongly feels that that aftercare should be visualized as a full-fledged programme which includes a range of services towards enabling mainstreaming of young adults who have been children in need of care and protection or children in conflict with law. The programme should be in consonance with the financial norms laid down by the Integrated Child Protection Scheme (ICPS). Rightfully, aftercare includes shelter, education, vocational training, apprenticeship and life-skills education to be able to integrate into the community as a self-reliant/independent individual.**

**14.3 The Committee also takes note of the fact that the JJ Act, 2000 and ICPS have both conceptualized aftercare as a programme with multiple activities. Since the law provides for other forms of non-institutional care also, children placed in family as well as such alternative care may also require after care. The Committee, accordingly, recommends the provisions contained in Section 44 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 38 of the Juvenile Justice (Care and Protection of children) Rules, 2007, should be retained.**

## **XV. CLAUSE 57: ADOPTION**

15.1 Sub-clauses (1) and (2) of this clause read as follows:

*“(1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.*

*(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.”*

15.2 It was pointed out that there was no uniform law in India for adoptions, only personal laws were prevalent i.e. Hindu Adoptions and Maintenance Act 1956, which concerned the adoption of the children by Hindu adoptive parents. The proposed change in the J.J. Act for inter-religious adoptions was a step in the right and secular direction towards a Common Code, and also complying with the observation made by the Supreme Court in Writ Petition (Civil) no. 470 of 2005, wherein it had been ruled that any person can adopt a child under the JJ Act, 2000 irrespective of the religion he/she follows and even if the personal laws of the particular religion

did not permit it, the Act was a secular law enabling any person to take a child in adoption irrespective of the religion. The proposed law, which was in line with the recent ruling of the Supreme Court as mentioned here in above would give right to adopt a child to Muslims, Christians, Jews, Parsis and all other communities. As of now, Muslims, Christians, Jews and Parsi community have the legal competence of only guardianship under the Guardianship and Wards Act, 1890, wherein one possesses only legal right on the child till he/she turns an adult, and the biological parents have a right to intervene during that period.

15.3 The other view - point which was put forth before the Committee was that clause 57 (2) would cause confusion with respect to similar adoptions allowed under the Hindu Adoption and Maintenance Act. In case of Hindi Adoption between relatives, there was a completely different set of procedures referred to in HAMA. It was pointed out that the Bill contained a non-obstant clause in the very beginning making JJ Act the over-riding law in all matters concerning adoption, rehabilitation and reintegration of children in need of care and protection and section 5(1) of HAMA makes all adoption of a Hindu Child by a Hindu void if carried out under any other law. This Bill also does not provide clarity on the procedures that shall be followed in case of adoption between relatives and whether and how section 58 and other related sections of the Bill on adoption shall be applicable in such cases. It was suggested that following proviso may be added to clause 57(2).

*“Provided that adoption of a Hindu child by a Hindu relative shall continue to be governed by HAMA.”*

**15.4 The Committee takes note of divergent views coming from stakeholders about clause 57 and viability thereof. The Committee would appreciate if this clause is reviewed, in the light of the implications and also sensitivity involved once this provision comes into effect.**

**XVI. CLAUSE 60: THE CLAUSE DEALS WITH PROCEDURE FOR INTER-COUNTRY ADOPTION OF AN ORPHAN OR ABANDONED OR SURRENDERED CHILD.**

16.1 This clause reads as:

*“(1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the joint effort of the specialized adoption agency and State Agency within thirty days from the date the child.”*

16.2 This clause provides that if an orphan or abandoned or surrendered child could not be placed with an Indian prospective adoptive parent or NRI, despite the joint effort of the specialized adoption agency and State Agency within thirty days from the date the being declared legally free for adoption, then the child shall be free for inter-country adoption. Details of the procedure for such adoption have also been included under this provision which were not there in the earlier Act.

16.3 During its deliberations with different stakeholders, one serious objection which was raised again and again was the time-line of thirty days for setting a child free for inter-country adoption. It was pointed out that in the best interest of the child, preference should be given to place a child in in-country adoption. To achieve this aim, it was required to give the Special Adoption Agency and the State Agency sufficient time to identify prospective adoptive parents within the country. It was emphasized to extend the time line from thirty to sixty days.

16.4 Committee's attention was drawn towards multiple procedures to be followed before the papers for adoption may be ready for submission in the court. Such procedures included child study report, additional medical examinations as permissible to parents, matching with Prospective Adoption Parents (PAP) wherein each would have its own response time, followed by procedural documentation. Also, many children are transferred across districts to a State Adoption Agency (SAA) only after being declared legally free for adoption. Therefore, the time taken by the State Adoption Agency (SAA) may even be higher in these cases.

16.5 On this issue being taken of with the Ministry, the Committee was given to understand that the existing adoption guidelines were under revision and it was envisaged that there would be less role of recognized adoption agencies in adoption placement. Adoption process was proposed to be made entirely online through the CARINGS (Child Adoption Resource Information & Guidance System), a web-based IT application which would be under the direct control of the Central Adoption Resource Authority. The prospective adoptive parents would be able to match online and adoption procedure would be further simplified. In case, the adoption agency did not consider a parent eligible for adoption, it had to give justification for its decision. Further, the activities of adoption agencies shall be monitored on-line by State Adoption Resource Agency (SARA) and CARA (Central Adoption Resource Authority). The Guidelines also provide different timelines for different categories of children, i.e. normal, physically and mentally challenged children, older children and siblings. Efforts would be made for every child to get a family with resident Indians

and NRIs before they were considered for inter-country adoptions. The intention was to facilitate expeditious de-institutionalization of children through adoption.

**16.6 The Committee is of the view that children need a permanent family/home and would prefer domestic adoption rather than inter country adoption. The emphasis should be on domestic adoption and only where such domestic adoptee parents are not available should inter- country adoption be considered.**

**16.7 The Committee also agrees with the stand of the stakeholders about thirty days period being too short. The Committee strongly feels that adherence to this above mentioned period of thirty days is like an enabling process, to let majority of children to be opted for inter-country adoptions and hence requires a review. The Committee would also like to point out that the period of thirty days as provided for in the clause 60(1) of the Bill contradicts the period of two months provided for the courts to finalize adoption under the proposed Section 62(2).**

**16.8 The provision 60(1) of the Bill that allows the child for inter country adoption after one month is unacceptable. Inter country adoptions may be resorted to only in cases when there is a problem in finding suitable prospective adoptive parents due to special needs of the child. The Committee would like to suggest that in the event an adoption agency cannot find an Indian parent on their wait list roster, there should be a mechanism to intimate other adoption agencies about the availability of a child in their adoptive centre. All efforts should be made to give a child to an Indian parent. Moreover, the inter-country adoption should be made only by ensuring that it is used appropriately through proper regulation, and, importantly, the ratification of the Hague convention.**

## **XVII. CLAUSE: 69 CENTRAL ADOPTION RESOURCE AUTHORITY**

17.1 This clause provides that the Central Adoption Resource Agency existing before the commencement of this Act, shall be deemed to have been constituted as the Central Adoption Resource Authority and also enumerates the functions to be performed by the Authority.

**17.2 The Committee observes that at present there is no general adoption law in India. CARA which is expected to function as a regulatory authority has not been able to discharge its mandate effectively as a registered society under the Societies Registration Act, 1860. The**

**Juvenile Justice (Care and Protection of Children) Act, 2000, providing a machinery to ensure the welfare of children in need of care and protection or in conflict with law, made a brief provision for adoption. The Committee finds that the emphasis of the proposed legislation is on non-institutional care of children by strengthening the status and role of CARA which is envisaged to be an apex body for adoption. CARA is mandated to monitor and regulate in-country and inter-country adoptions. It is also required to act as a clearing house for information about children eligible for adoptions, develop PR campaigns; undertake research and evaluation; monitor and regulate the work of recognized and associated agencies; liaison with the other Central Authorities and foreign missions and ensure post-adoption follow-up and care for the adopted children. The Committee welcomes this initiative and hopes that this will lead to streamlining the adoption procedure and removing the complexities involved therein at present.**

#### **XVIII. CLAUSE 106: JUVENILE JUSTICE FUND.**

18.1 This clause reads as:

*“ (1) The State Government may create a fund in such name as it thinks fit for the welfare and rehabilitation of the children dealt with under this Act.*

*(2) There shall be credited to the fund such voluntary donations, contributions or subscriptions as may be made by any individual or organisation.*

*(3) The fund created under sub-section (1) shall be administered by the Department of the State Government implementing this Act in such manner and for such purposes as may be prescribed.”*

18.2 **The Committee welcomes the proposal for creation of a Juvenile Justice Fund by each State Government. Funds collected under such a Fund are to be used for the welfare and rehabilitation of children dealt with under the Act. The Committee would like to point out that while the objective of such a fund is laudable, every effort would need to be made by all concerned to administer the fund objectively with the interest and welfare of needy children remaining the top priority.**

#### **XIX. CONCLUSION**

19 **The Committee accepts the remaining provisions of the Bill. The Committee is of the view that with modifications recommended by it in respect of some clauses, the proposed legislation can be considered a very comprehensive law mandated for care and protection of children as well as to provide justice to children in conflict with law. The Committee,**

however, has a word of caution. Concerted efforts at all levels by all the implementing agencies will have to be made vigorously so as to ensure that the proposed law does not remain confined to notification stage.

**20 The enacting formula and the title are adopted with consequential changes.**

**21 The Committee recommends that the Bill may be passed after incorporating the amendments/additions suggested by it.**

**22 The Committee would like the Ministry to submit a note with reasons on the recommendations/suggestions which could be incorporated in the Bill.**

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