

Submitted by

Vikram Srivastava, Advocate and Founder, Independent Thought

Ex CWC Member, New Delhi and Central District, NCT of Delhi

Section specific suggestions / comments including that of Additions

Chapter 1 Preliminary

- **Section 1(4)(iv)** – an additional mention “as to matter related to selection, function and powers of the “Judge” and “Court of Justice” as defined under Section 19 and 20 of the Indian Penal Code, 1860 respectively with regard to members of and ‘Child Welfare Committees’ and ‘Juvenile Justice Boards’.” **(should be added)**
- **Section 2(ja)** child who is a victim or witness under any other law **(should be added)**
- **Section 2(jb)** child who is a mother through wedlock, without marriage or rape **(should be added)**
- **Section 2(jc)** “**Child in Danger**” means a child whose parent and guardian are likely to use their parental / guardianship rights over such child and force them in to marriage, labour or sexual exploitation in name of family tradition and honour; or on pretext of cultural or religious norms; which demands immediate rescue and long term rehabilitation through State intervention **(should be added)**
- **Section 2(s)** “**Corporal Punishment**”, for disciplinary purposes, **or otherwise..... (should be added)** (with a reference to SC/ST act)
- **Section 2(sa)** “**Deputy Commissioner**”**or known by any other name (should be added)**
- **Section 2(t)** “**District Child Protection Unit**”instead of focal point to take up;it should be **facilitative body among agencies within the district (should be replaced)**
- **Section 2(u)** “**fit facility**”**power of recognition to DCPU**should be with CWC **(should be replaced)** (by CWC due to lack of capacity and experience at DCPU Staff level)
- **Section 2(zg)(ii)** “**Orphan**”**is not the right provision and will provide scope for legal guardians to shrug responsibilities**
- **Section 2(zq)(a)** “**repeated offender**” **(should be added)**
- **Section 2(zq)(b)** “**serious offences**” **(should be added)**
- **Section 2(zv)** “**Sponsorship**”**there is a need to define the word “family” (should be added)**
- **Section 2(zx)** “**surrendered child**”**those who can relinquish should include “a child who is a mother” through wedlock, unwed or rape (should be added)**
- **Section 3(2)**place of safety....**but not in Jail for adults (should be added)**
- **Section 3(3)**shall remain in children’s home**but separately from other children below 18 years (should be added)**

Chapter II Fundamental Principles for Care, Protection, Rehabilitation and Justice for Children

- **Section 4 (xvii) Principle of Parens Patriae and Guardian Ad Litem (should be added)**

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- *State in its capacity as the legal guardian of persons not sui juris and without natural guardians as the heirs to persons without natural heirs, and as the protector of all citizens unable to protect themselves.*
- *Provisions must be made for guardian Ad litem, legal aid and other such assistance through legal services at State expenses*

Chapter III Juvenile Justice Board

- *Section 5(5)..... is provided within two months of notification and before the said member take formal charges (should be added) [we cannot leave children at mercy of untrained individuals]*
- *Section 5(7)(iii)..... fails to attend the board for consecutive one month without any valid reasons (should be replaced)*
- *Section 6(1a)..... that the DCPU provides a venue which is child friendly within the premises of (should be added)*

Chapter IV Procedure in relation to Children in Conflict with Law

- *Section 9(1)..... apprehended by police..... Intimation should be immediately sent to DCPU; and such child shall be placed (should be added)*
- *Section 11(1)..... with surety(should be removed)*
- *Section 11(3)..... the board, it shall, make a order, after recording the reasons in writing of such denial..... (should be added)*
- *Section 12(1a) the DCPU immediately at the time of apprehending and seek their support (should be added)*
- *Section 14 read with Section 17(3)created a new jurisprudence of its own with little support or rationale – there are serious lacunae in the way its has been proposed. It simply hints towards transferring the case from juvenile justice system to normal criminal procedures without any safeguards. Something which should be discussed, debated and then decided. The normal course of action of JJB would be just to transfer and lessen their pendency and children, between age 16-18 will suffer due to the vices of our present judiciary especially pendency in the regular courts.*
- *Section 17(1)(d)should be completed deleted*
- *Proviso is misplaced and contrary to Section 79 of the draft law and against the judgment of Delhi High court which makes JJ Act applicable against child labour till the age of 18 years*
- *Section 17(1)(g) Proviso*
- *The board may order.....place of safety and in such manner.....but not being a Jail (should be added)*
- *Section 17(3)pass an orderor transfer such case to the court.....(should be removed)*

Chapter V Child Welfare Committee

- *Section 25(1)..... is provided within two months of notification and before the said member take formal charges (should be added) [we cannot leave children at mercy of untrained individuals]*

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- **Section 25(2)...the Provision for making DC/DM and CMO as Chairperson and member is completely misplaced. The work of CWC is a 24X7 job and people have to dedicate their full energy towards children. Looking at the preoccupations of DC/DM and CMO, their involvement at CWC is unrealistic. There is a serious flaw in terms of conceptualization.**
- **A simple data as to the actual frequency of DCPU meetings being conducted at districts as prescribed under ICPS will reflect the concern and time available for children.**
- **Instead there should be made part of judicial services creating a cadre of dedicated Juvenile Justice Experts.**
- **Section 25(5)(iii)..... fails to attend the board for consecutive one month without any valid reasons (should be replaced)**
- **Section 26(4) Proviso..... including chairperson..... (should be deleted)**
- **Section 28(vii) inspection of residential facilities for CNCP, including Open Shelters..... (should be added) – as referred in Section 2(m)**
- **Section 28(xi) including the chairperson..... (should be deleted)**
- **Section 28(xiii) reach out to “Child in Danger” to provide support against forced child marriage, labour or sexual exploitation; and act against the exploitative and abusive parent and guardian (should be added)**

Chapter VI Procedure in relation to Children in Need of Care and Protection

- **Section 33(1) Proviso..... may do so in the presence of minimum two members(should be added)**
- **Section 37A: Provision with regard to run-away child in need of care and protection:** Notwithstanding anything to the contrary contained in any other law or the Act, the Child Welfare Committee, before which a runaway child has been produced, should look into the reasons of his/her running away from home, school or Institution; and should order appropriate actions, against parents, guardians, teachers, caretakers or any other, if they found them committing any of the offences mentioned under Sections 75 to 85 under the present Act, or under Protection of Children from Sexual Offences Act, 2012 or any other law. **(Should be added)**

Chapter VII Rehabilitation and Social Re-Integration

- **Section 40(3): Proviso.....will stand cancelled and provisions of sub-section (5) and Section 41 shall apply (Should be added)**
- **Section 42(5): the relationship between Open Shelter and Committee in terms of reporting, administrative functioning and their role in restoration and rehabilitation of children should be governed by as prescribed under the rules (Should be added)**
- **Section 43(2): Provided that keeping in mind the emotional and social needs of the child and family; the financial status and non availability of tangible things with the family / parents should not be the guiding reason for not selecting parents for foster care (Should be added)**
- **Section 44(3): Families identified for sponsorship should work out as a criteria of eligibility for other governmental schemes benefiting the family and child as prescribed by State Government (Should be added)**
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- **Section 45(2)**
- **(a):** every registered child care institution under the act should prepared individual care plan within one month of receiving the child and should submit and finalize in consultation with the Committee and the Child. **(Should be added)**
- **(b):** every registered child care institution under the act should prepared a Individual After Care Plan once the child has reached the age of 16 years and should submit and finalize in consultation with the Committee and the Child. **(Should be added)**
- **Section 46(1):** or group of districts**(Should be removed – should be in every district)**
- **Section 49(1):** or group of districts**(Should be removed – should be in every district)**
- **Section 51(1):** The DCPU shall in consultation with Committee recognize ... **(Should be added)**
- **Section 52(1a):** The Committee should keep a list of such fit persons and keep DCPU updated about them. The list of fit persons should be shared by DCPU / Committee during DCPC / DCPS meetings informing SJPU and Others about their existence. **(Should be added)**
- **Section 53(1):** **Proviso... children till the age of 18 years** the provisions of right to free and compulsory education act, 2009 shall be followed **(Should be added)**
- **Section 53(4):** the Committee shall while restoring back a orphan child to extended families or while ordering rehabilitation and reintegration services in institutions registered under this Act; shall ensure that the legitimate rights of that Child in their ancestral and other property is ensured be it in its natural family or adoptive and for this purpose legal aid ad proper follow-up is provided **(Should be added)**

Chapter VIII Adoption

- **Section 60(Proviso):** while deciding on adoptive parents due consideration should be given to the emotional and other needs of the child and best interest of child should be paramount. As far as possible childless couples of Indian origin should be the first preference. **(Should be added)**
- **Section 62(3):** all such institution should keep DCPU informed along with the Committee about the status of every child ensuring that DCPU becomes the repository of all information in concern to children in the district and seek their help in building linkages with specialized adoption agencies **(Should be added)**
- **Section 70(1a):** the CARA shall work in a transparent manner and make available updated status of SAA, children free for adoption and prospective parents etc through suo moto public disclosure as provided under the right to information act as prescribed **(Should be added)**

Chapter IX Other Offences against Children

- **Section 75 (Proviso):** Provided that provisions under this Section are in addition to the punishments provided under the Protection of Children from Sexual Offences Act, 2012 **(Should be added)**
- **Section 76 (Proviso):** Provided that where such activity is part of a racket or family occupation the Committee should take serious view of the same, bring the issue under

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discussion at the DCPS / DCPC meetings, under ICPS and take strict action against the offenders and provide for long term rehabilitation for the child. (Should be added)

- **Section 77(2):** *Whoever gives or psychotropic substance, for the purpose of mis-using the child or utilize their services for some premeditated and organised crime or picking dead-bodies from railway tracks or other places etc; should be punished rigorous imprisonment for a term which may extend to ten year and shall be liable to fine up to rupees one lakhs or both. (Should be added)*
- **Section 81:** *..... term which may extend to ten years (Should be added)*
- **Section 81(Proviso):** *..... term of imprisonment shall not be less than ten years which may extend to life imprisonment (Should be added)*
- **Section 82(2)(Proviso):** *for the purpose every DCPU should maintain a data bank of child offenders or child rights violators and such data should be collated at the State and National level. (Should be added)*
- **Section 83(1)(Proviso):** *Provided that, where the person committing the offence of ragging is a child, such child should be dealt as per the principles of restorative justice. Restorative justice will focus on the needs of the victim, offender and the community as a whole rather than just seeking some form of punishment. (Should be added)*
- **Section 86:** *....., and this is certified by a medical practitioner..... (Should be deleted)*
- **Section 88:** *....., where such courts have not been designated, by a competent court..... (Should be deleted)*

Chapter X Miscellaneous

- **Section 94(1):** *..... removal.....(Should be changed with “transfer”)*
- **Section 95(5):** *State government shall make rules defining the procedures in cases of fixing the exact date of birth in cases where the Child age is determined through ossification tests; as necessary for various procedures under the Act and otherwise in best interest of the child. (Should be added)*
- **Section 96(1)(Proviso):** *In all cases of Inter District or Interstate transfers the coordination should be undertaken with support and assistance of DCPU / SCPS as constituted u/s 107 (Should be added)*
- **Section 96(5):** *In such cases, provisions should be made for child friendly travel and reserved tickets on urgent basis within the Railways / State Transport etc (Should be added)*
- **Section 99(3)(Proviso):** *Provided that the Committee has again reconsidered the changed circumstances and does not feel the need to review its previous decision under Section 104 of the Act (Should be added)*
- **Section 108(1):** *...in coordination with the police, voluntary and non-governmental organization, Childline, DCPU, Committee and Board. (Should be added)*

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