

REPORT OF THE CONSULTATION ON DRAFT MODEL RULES 2016 FOR JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2016



Organized By:

Centre for Child Rights, National Law University Odisha

Collaborative Partner:

Odisha State Commission for Protection of Child Rights

Supported by:

UNICEF, Odisha

The Ministry of Women and Child Development, Government of India formulated Draft Model Rules under Juvenile Justice (Care and Protection of Children) Act, 2015 and invited comments and suggestions from stakeholders. In this context, the Centre for Child Rights, specialized research unit of NLUO, organized a consultation on June 7, 2016 with the support of UNICEF to review draft rules and to muster opinions and comments from wide range of stakeholders. Odisha State Commission for Protection of Child Rights (OSPCPCR) was the collaborative partner for the consultation. Around ninety persons representing Government, Human Rights Institutions, International organizations, Juvenile Justice Boards, Child Welfare Committees, District Child Protection Units, Civil Society Organizations, and Child Care Institutions participated in the consultation to analyze the draft rules from macro perspective with field level experiential knowledge. The recommendations unanimously resolved at the consultation were sent to the Ministry of Women and Child Development, Gol to make necessary changes in the Juvenile Justice (Care and Protection of Children) Rules, 2016. The consultation also helped to built advocacy initiative to influence government of Odisha to formulate state rules for JJ Act, 2015.



Proceeding:

The consultation began with a welcome address by Mr. S. Kannayiram, Senior Programme Coordinator, Centre for Child Rights who welcomed all the distinguished guests and enumerated the agenda for the day.

Professor Srikrishna Deva Rao, Vice-Chancellor NLUO described UN Convention on the Rights of Child as one of the most coveted and respected conventions. As India ratified CRC, it is an obligation for central government to reform juvenile justice in conformity to international protocol.

Ms. Yumi Bae, the Chief of UNICEF field office in Odisha, spoke about the role of UNICEF in building partnership the state and national child protection machinery to carry out the functions enunciated by the law. The goal of justice for children is to see if the justice is best served when the children are in conflict with the law. Children from poor families are landed with conflict situation due to poor parental care and guidance. She mentioned that UNICEF has been collaborating with government and civil society organizations to build adequate structures and systems for the effective implementation of the JJ Act at the National and State Levels.

Mrs. Kasturi Mohapatra, Chairperson OSCPCR talked on the role child rights commission. She raised concern on the implementation of laws. She highlighted that finance is the major stumbling block for state governments to implement laws properly. She appealed all members present at the consultation to provide practical suggestions to strengthen rules.

Mr. R.P Singh, Director, Social Welfare, GoO highlighted Odisha government initiatives in child protection and for state rules for JJ Act, 2015. He claimed that the state of Odisha boasts to be ranked 4th in the child care protection index and has successfully established around 390 child care institutions. The government in accordance with other institutional stakeholders has carried out rescuing and rehabilitating operations for trafficked children. He propounded the proposal of state government to work on increasing the accountability of child care institutions and increasing their facilities and infrastructure development

Mrs. Usha Devi, Minister, WCD, GoO spoke about the government's commitment towards children and emphasized on the importance of proper implementation of JJ Act as it is the primary legislation on juvenile justice.

Justice D.P Choudhury, Judge Orissa High Court told that the framers of the Constitution of India placed duty on the State to ensure that children and childhood shall be protected against exploitation, abuse and abandonment. By also ratifying United Nations Convention on the Rights of the Child, the Government of India, in 1992, made a promise to protect the civil, political, cultural, economic and social rights of children. Justice Choudhury emphasized that success in adhering to legal obligations under the Constitution and the UNCRC requires commitment of the States, in active collaboration with civil society partners to implement children related laws in letter and spirit. This commitment is dependent on and determined by the collective ability of all stakeholders to perform their roles and responsibilities with diligence and sense of mission.

Overview of the Juvenile Justice (Care and Protection of Children) Rules, 2016

The Juvenile Justice (Care and Protection of Children) Act, 2015 has come to enforcement with effect from 15th January 2016 and it repealed the JJ Act 2000. By virtue of the powers conferred by Section 110 (1) of the 2015 Act, the central government formulated model rules. The Rules have 124 rule and nine chapters as follows.

- I. Preliminary
- II. Child in Conflict with law
- III. Procedure in relation to children in conflict with law
- IV. Child Welfare Committee
- V. Procedure in relation to children in need of care and protection
- VI. Rehabilitation and social reintegration
- VII. Adoption
- VIII. Offences against children
- IX. Miscellaneous

Ms. Nina Nayak, former member NCPCR provided a critical overview of the JJ Act, 2015 and the draft model rules. She spoke about various aspects where changes have been brought

by the new Act and also elaborated on the discrepancies in the theoretical and practical aspects through stories, personal experience as a former Chairperson of the Child Welfare Committee. . She discussed a few negative aspects of the new law. A juvenile until he/she reaches the age of eighteen shall not be sent to the prison as was mentioned in the previous Act, and this age has now been increased to twenty one years in the new Draft Rules of 2016. But there has been no such update or change in the prison manual or prison laws. The new Rules introduced a post for rehabilitation-cum- placement officer but budget has not been increased according to the creation of the new post neither has any training module been provided to train such people with the required skill. Instead every case should be analyzed on an individual basis; the background of the child should be taken into consideration so as to find out the reason of the child getting into conflict with law. She also emphasized on the need to increase awareness about these laws among the people and adequate steps to be taken to coordinate with more and more NGOs and use their resources. Institutionalization of the child should be a last resort and it must be ensured that the child be kept in family environment. She told that CWC should maintain a close working relationship with the JJB and the DCPU so that all the implementation can be done efficiently.

Comments by Ms. Ninan Nayak on Draft Model Rules

- 1) Several new provisions – no suggestions for budget allocation as in JJ Act 2015
- 2) Puts constraints on CWC to hear only one child at a time
- 3) CWC monitoring of individual Foster Care cases – not plausible
- 4) Strengthening families – basic to preventing institutional care and supporting restoration barely touched upon
- 5) Right to Family Life as a principle could have been included
- 6) Kinship Foster Care not highlighted
- 7) Adoption of children placed in foster care allowed only after 5 years?
- 8) Clearing child legally free for adoption of mentally ill mothers gives room of misuse. Reference to Mental Health Act a must
- 9) No reference to wide gamut of residential services supported/run by other Ministries/Depts and NGOs for children in difficult circumstances such as hostels for SC, ST, BCM, Madrasas, Residential Bridge Centres, SCLP/NCLP, Madrasas Hindu Endowment Homes (T. Nadu and some other States) Integrated Homes (Tamil Nadu and other States)
- 10) Horizontal movement/mainstreaming of children to hostels and other less custodial form of residential care (which maybe in closer proximity to family) not mentioned
- 11) Linking Aftercare to NGOs..per child costs could have been included
- 12) Child Protection Policy has no mention
- 13) Social Audit replaced by Evaluation – weak terminology!
- 14) Skill building of personnel especially social workers in alternate care not elaborated such as accreditation
- 15) Need for linking with Jail Manual to ensure special provisions for CICL transferred therein on reaching age of 21 years
- 16) Need to elaborate on Monitoring Role of NCPDR and SCPCRs

Review and Recommendation

Participants were divided into four groups to review the draft model rules in a brainstorming exercise. Comments and opinions emerged from the group presentations were consolidated as follows and that had been sent to the Ministry of Women and Child Development, Government of India jointly by NLUO and OSCPR.

Rule No.	Provision in Draft Model Rules, 2016 under the Juvenile Justice (Care and Protection of Children) Act, 2015	Proposed Change	Rationale for Suggestions/ Comments
2 (ii)	“Case worker”	It is necessary to define the registered voluntary or non-government organizations. Whether the organization further registered under the Juvenile Justice (care and protection of children) Act from where case workers would be drawn.	There is ambiguity at the definition. Organizations are registered under various statues like Society Registration Act, Trust Act etc. To avoid ambiguity, it is necessary to delineate the specification of the organizations from which case worker shall be drawn.
2 (iv)	“ Child Study Report’	Delete the social background and social status from the definition and add biometrics details as far as practicable such as blood group	The word social background may have an effect on personal life of the child in future
2 (xv)	‘Social background report’	This is not required.	Only definition provided but not used elsewhere in the act. It is the repetition of Social Investigation report.
3 (2)	The two social workers,	The act mentions a state level selection committee but rules suggest something else.	Presence of ambiguity, to be deliberated.
4 (5)	Any vacancy in the Board.....	Time period within which vacancy should be filled has not been mentioned. Suggested time period- 3 months.	A reasonable time period necessary for filling the vacancy in the board.
6 (2)	The Board shall..s.	The person who has an interest in the child may be allowed to attend if it is in the best interest of the child.	To ensure transparency, possible future involvement of the particular person in the case.
6 (6)	The decision of the Board.....	Final disposition order should be given by majority but order with	The Act speaks that in the absence of the seating of

		regard to age or preliminary assessment single member of the board can be allowed to take decision instead of majority.	the Board, child shall be produced before individual member who may pass any order on the production of the child before him. If individual member is not empowered with power to determine the age of the child then purpose of producing child before individual member would be defeated.
8 (2)	Any such direction issued by the Board.....	Should be deleted.	Rules cannot create a new offence. Contravention of a judicial order is already an offence.
9 (16)	Ensure that the Legal	It is not necessary to mandate Legal-cum- Probation Officers to provide legal services to the children. Legal services for the children shall be left with the Legal Services Authority.	The Legal Services Authority is the statutory body to provide legal service to certain categories of person involving children also.
10 (4) (vii)	Not compel the parents.	The provision may be restructured as "the parents/ guardian of the child or whoever the child has trust shall be present during the interview of the child by the police.	The child should not feel isolated.
11 (1)	the "Case worker"..	Delete the term "case worker from a voluntary or non-government organization."	Due to presence in ambiguity in the definition of case worker.
13 (1)	the Board.	Include the order under section 12 as well along with the orders under sec 17 & 18, which have already been mentioned.	This inclusion would confirm the provision with the UNCRC norms.
13 (5)	In cases of heinous offences.....alleged to	A copy of the statements and the documents submitted by the police shall be given to the child/ his parents shall be incorporated under this provision	
13 (9)	The Board may.....	The term "may" should be replaced by "shall".	This makes the provision mandatory instead of directory and is necessary in the interest of the child.
14 (5)(i)	For the purpose of conducting a preliminary assessment,	The term "may" should be replaced by "shall".	This makes the provision mandatory instead of directory and is necessary in the interest of the child
14 (6)	The gravity of the	This provision should delineate the	The term preliminary

	offence by itself shall not be sole determining factor for taking a decision based on the preliminary assessment.	other determining factors for the preliminary assessment otherwise it would be subjective and at the discretion of the Board. Further the same proviso has been repeated at the rule 18(7).	assessment has been defined satisfactorily in sec 15 (1) of the act and unnecessary mention is not required here.
18 (6) (1)	For the purpose of conducting the assessment,.....	The child shall in addition be represented through his counsel and the submission on behalf of the child shall be considered.	The presence of legal counsel on behalf of the child is necessary to form legal opinion at the course of preliminary assessment.
18 (11)	Where appeal.....	Should be deleted.	The children's court is not entitled to hear appeals.
18 (15) (iv)	The proceedings.....	The proviso may add that if the court finds someone in the best interest of the child, he/she shall be allowed to attend the proceeding.	
18 (16)(iv)	The proceedings shall be conducted in camera		
21	Selection, Training and term of members of the Committee	The chairperson and members shall have a maximum term of two times	The Act stays silent on the number of terms a member/chairperson can hold.
21 (3) (vi)	The person.....	Clause to be deleted	An insolvent person could have the necessary experience and skills to be fit for the position.
22 (1)	The chairperson.....	Allowances shall not be less than Rs. 2000.	As person to hold the position of chairperson or members of the committee is not permitted to hold other occupation where he would devote more time there, there should be increased allowance for the chairperson and members of the committee so that qualitative persons would be involved to strengthen JJ system
23 (4)	The Committee shall hear only one child at a time.	The committee with more than one additional member shall hear only one child at a time.	Technical matters require expertise of more than one person in the committee.
23 (5)	At least one member	The role of Special Juvenile Police should be specified and officers should be appointed not designated as the present system offers.	Special Juvenile Police should be a non-uniformed specially trained unit specifically

			trained for child care purposes.
26 (3)	In case of a child less than two years of age,.....	Addition of 'report to the nearest police station' by any individual/ organization coming in contact with the child.	The facilitation and procedures provided in the section may not be available with every person or organization coming in contact with the child.
26 (7)	In the case of abandoned/lost/orphaned child,.....	The committee, "after" passing an order granting.....information regarding such child "is to be" uploaded.....	The language of the provision lacked practicality.
27 (4)	The committee ...	To include CWC coordinating with DCPU's to ensure social security measures necessary to strengthen family integration plans.	Rehabilitation procedure should involve the institutional stakeholders.
27 (7)	The committee,.....	If document or id proof is not there, affidavit must be there.	Availability of other available options in case id proof is not there.
27 (12)	In all cases.....	Children aged less than 2 and half years should not be produced before the committee repeatedly.	The children aged less than 2 and half years are not able to give the consent on their choice.
27 (13)	In all cases	Addition clause: at the same time rehabilitation cards should be issued.	Necessary steps of rehabilitation should be followed in accordance with the other provisions of the act which starts with the issuance or cards.
27 (18)	While holding the	For inter-state and foreign transfers of rescued children, proper protocol should be followed through concerned CWC and Ministry of External Affairs.	The act says silent on the rescue operations involving inter-state and foreign rescue of trafficked children.
38 (8)(7)	Educator/ Tutor 3 (Part time) 2 (Part time)	CT for primary and B.ED for upper primary should be mentioned as essential qualification for Educator/ Tutor	Teaching needs skills which may be available with the trained persons.
40 (2)	Any facility for....	There should clear cut delineation of 'basic standards' and 'basic services' by the rules.	The quality of the basic standards and basic service shall be at par with human rights standards.
40 (11)(iv)	The	The provision shall include 'age appropriate and development specific education'	The quality of education by the fit facility shall be standardized as per the RTE norms.
42 (A) (7)	Special infrastructural	Special children should be transferred to special schools with residential	Not all CCI have the expertise to handle the

	facilities.....	facilities.	challenges posed by a child with disability.
42 (B) (3)	In every “hospital” attached to the institution	In every “Recovery room” attached to the institution	The hospital has wider implication. This is more feasible.
42 (B) (9) (5)	Mosquito repellent	Include window net /mosquito net	More appropriate and eco-friendly
43 (1) (vii)	Sufficient number....	For every “five” children	Elsewhere it is mentioned as one per 5 children.
44 (3)	An annual mandatory medical check-up for each child shall be got conducted.	To be replaced by quarterly mandatory medical check up	Children are highly vulnerable to seasonal diseases. So Quarterly checkup is desirable.
48 (4)	Mainstream i.....	The word ‘Bridge school’ and ‘non-formal education’ shall be deleted.	Educational opportunities should be in consonance with RTE Act.
48(10)	The report	The provision shall add that the copy of the report shall be submitted to SCPCR.	The Commission for the Protection of Child Rights is the statutory authority to oversee and report the implementation of children related laws.
52	Heading: Duties	The relevant section of the Act has to be reflected.	Section 53 of the Act deals with Rehabilitation and re-integration services in the institutions under this act
52 (1)	Every child	Case worker may be deleted	Accountability cannot be ensured if there is duplication.
52 (4)	On	Delete	Responsibility given to Probation Officer at the rule 54
55	Rehabilitation cum Placement Officer	The position may be named as Social integration cum placement officer	Social Reintegration of the children is ultimate aim of this law.
58	Security measures. (Section 53 of the Act)	The list given here may include serial no. 14 mentioning that monitoring of security system of child care institution by an Inspection Committee involving DCPO, Child Line. Add serial number 15 to mention that children should be sensitized about their security facilities	Accountability shall be ensured at different levels in the matter connected safety and security of the inmates at the Child Care Institutions.
60(A)1	Every child	Should be designated as superintendent	
60(A)2		“Within 24 hours.:	The time frame must be specified
60(B)	Types of Stay at the	Clarify how these children are	Needs further elaboration

	Child Care Institution.	identified	about the categories creates unnecessary hassles for the CCI
69(1)(i)		Drop the provision.	In case of death the police must be informed first and steps to be taken to inform the board or committee.
69(1)(ii)		Drop the provision	There is no "natural death" of a child. All cases are to be reported to the police. Parents where known must be informed.
69(1)(viii)	the "last rituals" shall be performed	Replace with 'Last rites'	It would imply dignified way of disposing of the body.
70(1)	Every institution	A list of 'early indicators of abuse' shall be offered under this rule.	To bring a shared understanding among the stakeholders.
71 (2)	The State Inspection Committee	Drop "or human rights commission" include CHILDLINE representative in the Committee.	
73(4)	The Person-in-charge	The case file must contain Individual Care Plan of the child.	There is a lack of common understanding about the documentation and case file.
73(6)	Children's Suggestion Book.	Children suggestion box whose key shall remain with DCPU.	It would enhance children's participation at the planning and management of CCIs.
73(20)	Order Book.	Define order book (orders file of CWC)	
73	Maintenance of Registers	Record of donation shall be inserted at Sl. No 26	
76 (1)(iii)	shall be eligible placed in	Child shall be placed for foster care only after his/ her consent.	
76(v)		Provided the child agrees to the proposal.	
87 (1)(i)-(iii)		This will create antipathy towards adoption. CWC should take more time for missing/runaway child.	Revocation of adoption should only be in the best interest of the child
88	Linkage of Child Care Institutions	Linkages should be elaborated.	
91 (1)(ii)	(e), the	Replace 25 with 30 and 65 and 60 with 65 years.	Need experience for the work
91 (13)	shall be "two" years,	Shall be "three" years	uniformity for the statutory bodies or any committee under this Act.
92 (1)	The Steering	Quarterly basis	High officials involved

	Committee of the Authority shall meet on monthly basis.		
97 (1)		Definition of 'Missing Child' to be inserted under Definitions after (xi)	To avoid ambiguity
97 (2)	When.	Add the police can also take "suo motu" cognizance.	For entrustment of duty on the police authorities.
97 (3)	The police	After the word 'forward' the word "forthwith" shall be added.	To expedite the matter and stipulate the time limit.
97 (4) (iii)	The police shall: ...	Form no. to be indicated for 'Missing Persons Information Form'	For easy identification of the Form, from the appendix or annexure.
97 (4) (vi)	The police shall:	After the word 'cinema halls' the insert "or any other means of communication" for the means of communication.	To achieve the objective.
97 (4) (vi) and (viii)		Interchange the position sub clauses (vi) and (viii).	Permission is to be accorded first, before publication.
97(4) (ix)	The police shall: ...	Insert "search" before "areas" and delete "should be searched".	Grammatical incongruence
97 (4) (x)	The police shall:	Insert "scan" before 'the recordings' delete words "should be scanned".	Grammatical incongruence
97 (4) (xii)	The police shall: ...	The expression "inquiries should be made" be replaced by "enquire"	Grammatical incongruence
97(4) (ix)	The police shall:	insert "search" before "areas" and delete "should be searched" and "should be identified and watched".	Grammatical incongruence
97 (4) (xiii)	The police shall: ...	The words "inquiries should be made" be deleted and the word "enquire" may be substituted.	Grammatical incongruence
97 (4) (xv)		Replace 'Asha' with "ASHA"	Being an acronym
97 (5)	Where a child cannot be traced within a period of four months,	The period of "four months" may be substituted with "15 days".	Immediate rescue being the intent
97 (6)	When a child is traced:	the date and hour of tracing the child must be recorded in a Form to be prescribed to that effect. Insert the word "forthwith" after the word 'produced'	To reckon the point of time of tracing and expedite the matter.
98	Prevention of Offences Against Children	Sub-rule (8) may be added to create a specialized body with updated technical know-hows to achieve the goal of wide publicity of the	Best interest of the child to prevent offences against them.

		legislative intention.	
99 (2)	On receipt of	After the word 'forthwith', "and handover a copy thereof to the parents or relatives or the next friend of the said child" to be added.	For transparency
99 (9) (iv)	Displayed at a prominent place in every police station.	Replace "at a prominent place in every police station" with "and prominently displayed at public places".	Wide dissemination of information
100	Prohibition	Sub-rule (6) may be added to the effect that, appropriate penal measures may be prescribed for wilful violation/ contravention of any or all provisions of the said rule by any person/ institution/ body/ media, etc.	To prevent wilful disclosure of identity of children
101	Punishment for cruelty to child. (Section 75 of the Act)	After sub-rule (3), a sub-rule may be added prescribing penal measures for willful employment or use of a child for begging or maiming.	To prevent cruelty to children
111 (3)		financial provision for the parents/attendants during such treatment.	To provide basic facilities to the parents/attendants of the child.
113 (5)	The State Government	A provision may be added to take steps for coverage of the said child under the Skill Development Programme as would be in force for Self-employment/ Placement Linked Training Programme for self-sustenance	For rehabilitation of the said child.
114(1)	The Board	A list of documents may be indicated to establish the identity of the person claiming to be parents/ guardians.	To establish a clear-cut relationship between the child and the parents/ guardians.
117 (1)	The District Child Protection Unit,	A provision should be inserted impressing upon the CWC and the DCPU to have a synchronized effort and appropriate coordination so as to achieve the objective of best interest of the child. Any person violating or resorting to any such action, which may defeat the said objective, shall be liable for disciplinary action as deemed appropriate.	To purposefully achieve the objectives of the ICPS.
119(1)		A representative of State Human Rights Commission/ State Commission for Protection of Child Rights/ State Commission for Protection of Women may be added.	For better transparency

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