

## Child Welfare Committees in India: A Study



**Dr. Ved Pal Singh**

Asst. Professor, Faculty of Law  
Maharshi Dayanand University

**Rahul Goyat**

Research Scholar, Faculty of Law  
Maharshi Dayanand University

### Abstract

*The Juvenile Justice (Care and Protection of Children) Act, 2015, states about "Child Welfare Committee" in Sec. 27 of chapter V. It's a statutory authority and an autonomous body which deals with children needing of protection & care. Child protection has typically been at low priority in India since long. The statutory authority for ensuring protection of children may remain hard to identify unless the Government takes appropriate steps towards the present functioning of the system for protection & care of children. This system is lacking because of the unavailability of proper funds and absence of State support which makes it very difficult for the proper functioning of the Committees for welfare and care of children under juvenile justice system. This study provides the insight about the existing Child Welfare Committees, their ground realities, functions and power. It also explains the constitution and strength of juvenile justice system; gaps and challenges to secure the rights of the children. Through these insights, this study aims to evaluate the efforts of the policy-makers and child protection practitioners to bring well informed, evidence-based progressive changes within the system of Juvenile Justice for children in need of care and protection.*

**Key Words:** Juvenile Justice, Child Welfare Committees, Juvenile

### Introduction

As per Hindu Minority and Guardianship Act, 1956, A Child is a person under the age of 18 years. Children are the most vulnerable participants of the society who are too young to have understanding of the society norms therefore; they need protection from exploitation from the world outside. Approximately one third of the population of India comprises children which. The future development of a nation depends upon better future of the children of that country and hence their protection is of utmost importance. The State is duty bound under the Constitution of India to take care of a child to ensure his overall development of personality so to the development of the nation.

Before 1986, each State in India enacted its separate Juvenile Justice System to treat children differently by different State legal systems. However, in 1986, the Union Parliament of India passed its central legislation on Juvenile Justice with Juvenile Justice Act, 1986. A uniform law applicable on whole country was enacted by India being the only country in the world to have law on juvenile justice covering both the children in need of care & protection and the children who come in conflict

of the law. The act ensures the protection of juveniles in difficult circumstances. It was first time when it became the integral part of social justice system and the judicial delivery system in India. Juvenile Justice Act (1986), states the age for a boy is below 16 year and the age limit for the girl is below 18 years to be seen as a juvenile.

In 2000, The JJ Act (1986) was re appealed and a new Act was constituted naming as "The Juvenile Justice (Care & Protection of Children) Act, 2000". Though, this act was also amended in the year 2006, by building minimum standards of care & protection as part of justice delivery and to empower the existing child protection mechanism. Further, this act was amended in 2010, for preventing the discrimination of disease-prone children from other occupants inside juvenile care institutions.

The current legislation is a progressive one and has its primary focus and principals for the best interest for the children. All the children before attaining eighteen years of age come under the purview of the act. It provides for the required care & protection to the children by taking into consideration is needs and rights. A child-friendly perspective is adopted for the disposition and

adjudication of the juvenile cases. The Act works on two-sided approach with the Juvenile Justice Boards being the authority competent to deal with the “Children in Conflict with Law” and Child Welfare Committees being the authority competent to deal with “Children in Need of Care & Protection”. “Child in Conflict of Law” includes children who are indulged in criminal activities or behavior. Child In Need of Care & Protection includes those working as beggars, residing on the streets, victims of child marriage, physical/sexual abuse, trafficking, mentally/physically challenged, suffering from HIV/AIDS, missing from home or eloped from home, which are ignored or abandoned, harmed by any kind of disaster like earth quake, floods etc. Both CNCP and CICA having provisions for rehabilitation and protection of such children by due process of law. The scope of 2000 Act extended the scope of CNCP rehabilitation including their family and community based alternative care options like Foster Care and Sponsorship, as in contrast with earlier practiced sole alternate care option of institutionalization. The sharp focus of Juvenile Justice Law in India is basically centered on protection and rehabilitation through State responsibility and action.

“The Ministry of Women & Child Development” in the year of 2007 framed the Juvenile Justice Rules as Model Rules to give light on the roles of the Committees & Boards. These Rules are formulated by State Governments and may change from one state to another state.

The heinous incident of 16<sup>th</sup> December 2012, “Delhi gang rape” sought the Juvenile Justice (Care & Protection of Children) Act (2000), as amended by 2007 and 2010 under grave public scrutiny. The main accused in the case was a juvenile aged seventeen years and six months as per school admission records. The heated circumstances were debated under political, judicial, public and media for the justifiable amount and level of punishment to be specified to this juvenile who committed such heinous crime. The situation was mainly discussed around the case as primarily focused on the Juvenile Justice Act pertaining Children in-Conflict with Law while State’s responsibility as provided by the “Juvenile Justice Act” for Children in Need of Care & Protection, was rarely been discussed.

An article published by Times of India (Srivastava, 2013, February) revealed that the juvenile accused

in Delhi gang rape case has a horrible childhood history. He left his home and family at a very young age and attended the school just for a year and half. Thus, it was clear that the state had failed in its responsibility of ensuring proper care as well as his right of education provided by The Constitution of India. It seems possible if the concerned CWC had identified this child in time and provide him appropriate care, protection and rehabilitation then he could have been prevented from committed such a heinous crime. It is clear that such prevention and intervention from becoming a child such heinous criminal can only be made possible through a high-functioning Juvenile Justice System for children in need of care & protection which India presently lacks but requires it urgently.

Thus, The Juvenile Justice (Care and Protection of Children) Act was passed in 2015 with the aim of re-enacting the previous Act of 2000 so that effective provisions could be made for the required children who are found to be in conflict with the law and are in need of protection as well as care.

### **Child Welfare Committee**

The “Child Welfare Committee” is an autonomous body constructed under Juvenile Justice (Care & Protection of Children) Act (2015), S-27 Chapter-V. Its function is to deal with the care & protection of children in need. According to the Act, it is mandatory to constitute at least one or more “Child Welfare Committees” at district level for the exercise of power and discharging the duties conferred by the act regarding children in need of care & protection. This committee consists of 5 members including one Chairman and four members of which one should be a woman and other three are experts of the same field as per State Government. Responsibility of appointing staff and secretary to support the effective functioning of the committee shall be of District Child Protection Unit. A person who wants to become the member of the committee needs to be actively participating in education, health and other activities concerning welfare of children for a period of at least seven years or he/she should be a practicing professional having a degree in human development, law, child sociology, psychology or psychiatry. The Child Welfare Committee is governed by the regulations conferred by Criminal Procedure code (1973). Any person can file a petition related to the child to the Magistrate of the

concerned District, who is having jurisdiction on the matter to pass appropriate orders.

### **Procedures in relation to the Committee**

Juvenile Justice (Care & Protection) Act (2015), Section 28 prescribes the procedure to be followed by the Committee for settling the cases. The Committee should meet for minimum twenty days during a month to observe the rules and procedures provided under the Act. Committee is considered to be met when it visits the existing child care institution. A child should be kept in child care home that is in need of care & protection and the same is required to be produced before the member of the Committee. In case difference of opinion among the members, the opinion of the majority shall prevail. Decision of the Chairperson shall be final in case majority cannot be formed.

### **Powers and Functions of the Child Welfare Committee**

The Child Welfare Committee is a statutory authority and its members are executive appointees. One of the most progressive features of The Act is mandatory participation of civil society in membership of CWC. Section 31 (1) of the Juvenile Justice Act gives the power to the Child Welfare Committee to be the proper authority for disposition of the cases related to the protection, treatment, care, development and rehabilitation of the children in need and to fulfill their basic needs and human rights. CWCs are the sole authority to handle the cases related to CNCP. Section 29 (5) of the Act provides the CWCs to work as a Bench of Magistrates. The powers of CWC are same as of the powers of a Metropolitan Magistrate or a Judicial Magistrate of the first class as provided by the Criminal Procedure code (1973). CWC members hold this power only as a bench and not in individual capacity. CWCs can use their discretion while handling particular circumstances of every child placed before them to provide the adequate and proper care, protection or rehabilitation to the child.

The various functions and powers of the CWC are presented in Section 25 of the Model Rules, which are as follows:

- To take the cognizance over the matters pertaining to the children and produced them before the Committee.
- To decide the matters kept before the

Committee accordingly.

- Find out the children who can't be produced before the Committee due to difficult circumstances and provide care & protection to with the help and support of State Child Protection Unit, District Child Protection Unit or the State Government.
- Holding appropriate inquiry on all of the matters pertaining to children which affect their well-being and safety.
- Give directions to the Child Welfare Officers or Probation Officers or non-governmental organizations to conduct social inquiry and prepare & submit a report of the same to the committee.
- To ensure the necessary and appropriate care and protection including instant shelter to the children.
- To ensure proper rehabilitation and restoration of the children by giving necessary instructions to parents/guardians/appropriate persons/institutions in this regard, also additional follow-up and coordination with District Child Protection Unit or State Adoption Resources Agency and other agencies.
- To give directions to the Officer-in-charge of children's homes to entertain children requiring care and shelter.
- To maintain the proper records and documentation along with the case summary of each case handled by the Committee.
- To provide a child-friendly atmosphere to the children.
- To provide and recommend the institutions appropriate for care & protection of children to the state government.
- To inspect and declare 'appropriate persons' for the children.
- To declare a child legally available for adoption.
- To maintain information regarding missing children and taking necessary follow-up action in respect of their jurisdiction.

- Keep coordination with the Board in respect of cases in need of care & protection.
- To visit the institutions at least once in every three months where children are sent for care & protection or adoption at least once in three months to review the condition of children in institutions, with support of the State Government and suggest required action.
- To keep eye on agencies and associations within their jurisdiction that deal with children in order to check on the exploitation and abuse of children.
- To co-ordinate with the Police, Labour Department and other agencies involved in the care and protection of children in need with the help of District Child Protection Unit or State Child Protection Unit or State Government.
- Maintain networking and liaising with the corporate sector and non-governmental organizations for fulfilling its functions and also for social inquiry, restoration and rehabilitation as per requirement.
- To keep a suggestion box to invite inputs from children and adults alike and take required action over that.

#### Limitations on the powers of the CWC are as follows:

- To issue an order CWC requires a quorum of at least three members including The Chairperson.
- CWC does not have the jurisdiction to deal with the children which are in conflict of law.
- CWC can only recommend 'fit institutions' to the State Government, it does not have any authority to declare 'fit institutions.'
- CWCs can only declare a child legally free for adoption. The prevalent legal process of adoption is the matter of judiciary. The CWC does not have the power to directly place children in adoption.
- In conflicts in custodial cases, CWCs can not pass orders for the child's custody, this power is vested with the judiciary only. CWCs can only provide for the care and

protection of the child in such matters.

In the case of *Ms. Sheila Ramchandra Singh v. State of Maharashtra and others*, a Government Circular was issued on 16 June 2016 by Women and Child Development Department (Maharashtra). As per this circular The Child Welfare Committee of Thane (Maharashtra) was not fully constituted and proper functional. By taking this into mind, the charge of Thane Child Welfare Committee was handed over to the Child Welfare Committee, Mumbai by the State Government to the Deputy Secretary of the Woman and Child Development Department. The Court directed the Child Welfare Committee, Mumbai to take up an application dated April 04, 2016 on a priority basis and pass appropriate orders in accordance with law. And the petition was disposed of accordingly.

#### Conclusion

The Child Welfare Committees are constituted under sec. 27 of The Juvenile Justice (Care and Protection of Children) Act, 2015 to exercise the powers and performing the due procedures in relation to the workings of the committee. CWC carry out functions and responsibilities and discharge duties prescribed by the Act for the care and protection of the children in need. Child protection is about protecting the interest of children against any upcoming and real danger which may put a risk to their life or childhood. Children are the most vulnerable part of this society. CWC focuses on securing them from any kind of harm and ensures their social safety net. The Child Welfare Committees works to protect the children who are in need of care and protection and secures their future and prevent them from being criminals. Therefore, CWC plays a very important role in nation building by securing the future of the children who are the future of a nation.

#### References

1. AILACCR vision document 92010). All India Legal Aid Cell on Child Rights.- <http://www.docstoc.com/docs/86973504/LEGAL-AID-CELL-ON-CHILD-RIGHTS>. Accessed 12/4/2021
2. DLSA Website. Delhi Legal Service Authority. - <http://dlsa.nic.in/accessed> 15/4/2021
3. Firstpost (2012, October 29). Why Child Welfare Committees need to be

- overhauled. –  
<http://www.firstpost.com/india/why-child-welfare-committees-need-to-be-overhauled-506721.html>. accessed 25/4/2021
4. ICPS (2010). The Integrated Child Protection Scheme (ICPS): A centrally sponsored scheme of Government- Civil Society Partnership. Ministry of Women and Child Development (MWCD).
  5. NALSA (2011). *Working of the Juvenile Justice Institutions, CWCs, Observation Homes, Children's Homes and Special Homes etc. existing in the States and Union Territories in India (except in the J & K and Arunachal Pradesh)*. Report submitted to the Hon'ble Supreme Court of India in WP (C) No. 473 of 2005.
  6. Navbharath Times (2012, September 27). 'CWCs ka kaamkaj sudharne ke liye naye niyam'. p. 10.
  7. NCPCR (2013). *Sponsorship - an important Non-Institutional option for Children in Need of Care and Protection and Children in Conflict with the Law*. Background Note for an Action Study on the Sponsorship Programme under the ICPS.
  8. NCPCR National Consultation Report (2010). *National Consultation on the Implementation of the Juvenile Justice (Care and Protection of Children) Act 2000*, on 29<sup>th</sup> October, 2010 at Conference Room – II India International Centre, New Delhi. Rashtriya Sahara (2012, September 27). 'Aachaar-vyavhaar sudhare CWC'. p. 11
  9. Shekar, N. & Vora, V. (2010). *A study of the role and functioning of the Child Welfare Committees in Maharashtra: Opportunities and challenges in strengthening the Juvenile Justice System*. The Department of Women and Child Development, GoM & UNICEF. Maharashtra: UNICEF.
  10. Srivastava, R. (2013, February 1). *Is Nirbhaya case accused really a juvenile? Even his mother isn't sure*. The Times Of India (TOI).Retrieved February 5, 2013 from theTOIwebsite:[http://articles.timesofindia.indiatimes.com/2013-02-01/delhi/36683980\\_1\\_juvenile-justice-board-new-teacher-badaun](http://articles.timesofindia.indiatimes.com/2013-02-01/delhi/36683980_1_juvenile-justice-board-new-teacher-badaun). Accessed 24/4/2021