

National Human Rights Commission

RECOMMENDATIONS

North West Regional Review Conference held on 18-19 June 2018
Juvenile Justice (Care and Protection of Children) Act, 2015,
Protection of Children from Sexual Offences (POCSO) Act, 2012 and
Restorative Justice (Victim Compensation & Rehabilitation)

1. Conference was organized by the National Human Rights Commission on **18-19 June, 2018** at **Kisan Bhawan, Panchkula, Haryana**, in collaboration with the Department of Women & Child Development, Government of Haryana. It was held under the **Chairmanship of Smt. Jyotika Kalra, Member, NHRC**, with eight participating States/UTs, viz. Himachal Pradesh, Haryana, Punjab, Rajasthan, Uttar Pradesh, Uttarakhand, Chandigarh and Delhi. Other participants included Justice Shri S.K. Mittal, Chairperson, SHRC, Haryana, Shri Ambuj Sharma, SG-NHRC, Dr. Ranjit Singh, JS-NHRC, Shri P.K. Mahapatra, ACS, Government of Haryana and several other Senior Government Officials, NGOs and Civil Society.

2. The objectives of the Conference were three fold: (i) to raise awareness amongst all the stakeholders, (ii) to review the status of implementation of the Juvenile Justice (Care and Protection of Children) Act and the Protection of Children from Sexual Offences (POCSO) Act, 2012 and, (iii) to discuss the various issues involved in raising awareness and improving access to restorative justice. The objectives were deliberated by the Government officials from Department of Women and Child Development, Chairpersons/Members of Child Welfare Committees, Chairpersons/Members of State Commissions for Protection of Child Rights, Chairperson/Members from State Human Rights Commissions, Senior police officials, legal experts, officials from Department of Judiciary, Resource Persons and representatives from NGOs/CSOs/HR organizations and academic institutions. The Gap identified (G) and the salient Recommendations emanated(R) out of the deliberations are given below under three heads of JJ Act, POCSO Act and Restorative justice.

I. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

A. SENSITIZATION AND AWARENESS

G- Sensitization and awareness about provisions of the JJ Act 2015 among the concerned government officers, police officers, judicial officers, members of JJ Board and CWC, Probation officers, staff posted in DCPUs and general public are not up to the desired standard.

R- Training on regular basis should be made mandatory for all the stake holders.

Action: Ministry of Women & Child Development/ Ministry of Home Affairs/Concerned Ministry/Department of State Governments/UTs.

B. FLEX BOARDS WITH PRINCIPLES OF JJ ACT TO BE PUT UP IN POLICE STATIONS

G- The highlights of the Juvenile Justice Act need to be emphasized on the conspicuous places in the police stations; the ignorance of actual provisions of the Act, many times, leads to wrong interpretation and implementation.

R- The principles of Juvenile Justice as prescribed in section 3 of the Act should be prominently displayed in every police station.

Action: Ministry of Home Affairs/ State Governments/UTs.

C. AGE OF CONSENT IN CONSENSUAL SEX

G- The number of rape cases registered against 16-18 years of age has increased significantly. But most of the cases out of these pertain to consensual sex between the adolescents. Since, the law deems that no consent can be given by those below the age of 18 for consensual sex; the police have no choice but to lodge complaints.

R- A study be conducted to assess whether the age of consent for consensual sex be lowered from the present 18 years to 16 years as was the law before 2013 amendment in IPC

Action: Ministry of Women & Child Development/Home Affairs

D. CHILD CARE INSTITUTIONS

- (i) *G- Many CCIs are not yet registered, the reasons are the formalities of registration are cumbersome and there is no regular process for identifying the unregistered CCIs. The process to lodge a complaint against the unregistered*

CCIs has not been specified in the Act/

R-

Provisional registration should be encouraged to attract more CCIs to register. The process to Lodge a complaint against the un registered CCIs should be specified in the Act/ Rules made by the Central Government and the States.

The Supreme Court guidelines in *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu Vs Union of India* and Ors should be strictly complied with.

Action: Ministry of Women and Child Development/ Concerned Departments of State Governments/UTs.

(ii) *G- Facilities and staff prescribed for CCIs under the JJ Act are not in place.*

R- NHRC should call a conference of all CSs and Secretaries (WCD/related departments) and emphasize this point. Periodic review may be done to know the progress made in this regard.

G- Design of the CCIs, especially of the Observation Home, Special Home and Place of Safety is not child friendly.

R- A model design should be prepared and states may be asked to replicate it. Central Government and State Government should accord priority to build CCIs in government sector. The NGOs may be included to run these CCIs but as per the standard laid down in the JJ Act, NGOs are not in a position to construct CCIs. Age segregation in child care institutions as per the Rules laid down by the Centre in this regard must be strictly adhered to. Age segregation should not imply merely segregating them according to their age by allotting different dormitories. Instead developmental needs and safety concerns must guide such segregation.

Action: State Governments/UTs, NHRC, Ministry of Women & Child Development.

E RULES TO OPERATE JJ FUND AND DE-ADDICTION CLINIC FOR CHILD IN CONFLICT WITH LAW

G- Most of the States have established JJ Fund as per section 3 of the Act but rules to operate the fund are not in place. At present children in conflict with law who are drug addicts are being treated with adult drug addicts.

R- States to frame the rules so that funds are made available to the DCPUs. At least one drug de-addiction clinic for child in conflict with law and child in need of care and protection should be established in each state, preferably in each zone/range

Action: State Governments/UTs/ Ministry of Health & Family Welfare

F FIXED TIME PERIOD FOR CNCP IN SHELTER HOMES AND FOLLOW UP ACTION FOR

RELEASED CHILDREN

G- (i) *The time for which a CNCP may be kept in an open shelter is not defined in the Act.*

(ii) *Provisions to undertake follow up action for children after they are released from CCIs are also not established adequately in rules.*

R- (i) The time for which a CNCP may be kept in an open shelter should be defined properly in the Act.

(ii) Provisions to undertake follow up action for children after they are released from CCIs needs to be established adequately in rules.

Action: Ministry of Women & Child Development/ State Governments/UTs

G. SARPANCHS TO BE DECLARED AS CHILD COMMUNITY WELFARE OFFICER

G- *Most of the children in conflict with law are treated as adult due to lack of age proof.*

R- It is recommended that Sarpanchs/Gram Pradhan may be declared as Child Community Welfare Officer to ensure mandatory registration of birth and getting AADHAR card made for every child.

Action: Ministry of Women & Child Development/ State Governments/UTs

H. JUVENILE JUSTICE BOARD- DELAY IN COMPLETION OF CASES

G- *Every case under the act has to be disposed of within 4 months from date of institution [section.14 (2)] but plethora of cases are pending with the Juvenile Justice Board all over India.*

R- The Principal Magistrate of JJB should not be assigned any other judicial work. To clear to backlogs in the districts where the number of pending cases is huge, two JJBs instead of one be established.

Action: Ministry of Women & Child Development/ State Governments/UTs

II. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

A. SUPPORT PERSONS

G- There is a need for strengthening broad provisions for support persons under the Act

R- (i) Honorarium/salary/travel allowance/contingency expenses must be made available to the support person.

(ii) Psychologist must be given a place in the first line of defence (post attack) and first line of offence (prevention of attack)

(iii) Para Legal Volunteers may be co-opted to serve as support persons.

(iv) A well defined guideline for the support persons about how they are to provide their services may also be prepared for the support persons to deliver the reports to CWCs in a time bound manner.

Action: Ministry of Women & Child Development/ Ministry of Health & Family Welfare/ State Governments/UT

B. AGE OF CONSENT

G- The POCSO Act infringes the right to privacy of adolescents engaging in consensual sexual behavior. The law can be misused against both boys as well as girls.

R- A study be conducted to assess whether the age of consent for consensual sex be lowered from the present 18 years to 16 years as was the law before 2013 amendment in IPC

Action: Ministry of Women & Child Development

C. COMPENSATION

G- Though the Act provides for victim compensation at various stages of trial, but the same is not practically implemented in letter and spirit.

R- (i) There is a need to work out on compensation plans, to ensure interim relief to the victim and reintegration to the main stream as soon as possible.

(ii) Further, 25% of compensation should be given on registration of FIR, 50% on charge sheet and rest on conviction. Also, the fine on the accused may be given to the victim in addition to compensation.

(iii) Special Courts should immediately address interim compensation needs as soon as they receive a copy of the FIR from the police.

(iv) CWC must assign a support person to a child as they receive a copy of the FIR from the police, even if the child is not produced before them.

(v) As soon as the CWCs designate a support person, a copy of the order should be sent to the Special Court.

(vi) The Special Court must seek a needs assessment report from the designated support person before making an order on interim compensation.

Action: Ministry of Law & Justice/ State Governments/UTs

D. EMERGENCY CARE AT SJPUS

SJPU should be given an amount for emergency care – medical treatment, food, clothes etc for POCSO victims, which can be disbursed to each *thana*. This will also increase ownership within police of child protection systems.

Action: Ministry of Health & Family Welfare/ Ministry of Home Affairs/ State Governments/UTs

E. RECRUITMENT OF WOMEN POLICE OFFICERS

G- Lack of women police personnel in police stations

R- The police force needs to increase the number of women recruits and ensure that there are enough women Investigating Officers (to conduct investigations) as well as PSIs to take statements of women/child victims as per law in all police station across the country.

Action: Ministry of Home Affairs/ State Governments/UTs

F. NEED FOR THE COUNSELOR AND PSYCHOLOGISTS

G- The role of the Counsellor and Psychologist is often ignored in the process. The POCSO victims are often stigmatize especially at children's home

R- (i) Trained counselors must be appointed to involve both the victims and

offender to form a *balanced approach* in understanding their behavior and its consequences.

(ii) Trained psychologist must be a part of Child Protection Team

Action: Ministry of Women & Child Development/ Ministry of Health & Family Welfare/ State Governments/UTs

G. COURTS

G- The court proceeding in such cases often amounts to second victimization of the child victim

R-

(i) There is a need to appoint separate Judicial officer for POCSO Courts and ensure in-camera trial.

(ii) Further, capacity building of Judges on specific provisions of POCSO needs to be done.

(iii) The Kangaroo courts should not be allowed to do anything pertaining to POCSO cases and a penal provision should be introduced for the same.

(iv) The courts are required to be child friendly and there should always be a screen between victim and accused, as provided in the Act.

(vii) Video Conferencing should be made possible where a child is restored to her/his home state. The cost of VC will be much less than that of bringing the child to the Court.

Action: Ministry of Women & Child Development/ Ministry of Law & Justice/ State Governments/UTs

H. APPOINTMENT OF A NODAL TEACHER IN SCHOOLS

G- Identifying vulnerable area for sexual offence especially schools

R- A nodal teacher may be appointed in every school and he/she should be provided with proper training for identification of suspected cases of child abuse. Also, awareness about POCSO Act in schools needs to be done through different mediums.

Action: Ministry of Human Resource Development/ State Governments/UTs

III RESTORATIVE JUSTICE

A. NEED FOR ADEQUATE RESOURCES AND TRAINING

G-

- (i) Punishment alone via current formal criminal Justice is an inadequate response to sexual crimes by child in conflict with law.*
- (ii) The preventive measure of mandatory reporting in POCSO has not acted as a deterrent.*

R-

- (i) Rehabilitation of CICL inside the observation home through vocational training or other means must be the priority for the JJB.*
- (ii) For mandatory reporting to be successful, there must be adequate resources and training available to the reporting department i.e. the police and child welfare committees. Special training modules must be prepared in consultation with NIMHANS/other Universities, involving trained psychosocial workers.*

Action: Ministry of Human Resource Development/ State Governments/UTs

B. FLEX BOARD WITH PROCEDURE FOR GETTING COMPENSATION IN POLICE STATION, JJB AND CWC

G- *General public is not aware of compensation and the procedure for getting the same under the Victim Compensation Scheme and POCSO Act*

R- *Schemes/Provision about compensation under different laws along with the procedure to get the same, duly printed on flex and put in Police Station, JJB and CWC*

Action: Ministry of Women & Child Development/ State Governments/UTs

C. NEED TO HAVE INDIVIDUAL CARE PLANS

G- *Though the Act provides for the individual care plans, the same is not being taken up seriously by the JJB.*

R-

- i. Individual care plans must be prepared by the experts and it must be made as a mandatory document.**
- ii. Periodical review of all plans relating to individual care is necessary with close monitoring.**
- iii. Special care plan for geographically affected states like Uttarakhand where**

SJPU concept is practically difficult to implement

Action: Ministry of Women & Child Development/ State Governments/UTs

D. STRONG AFTER CARE SYSTEM FOR CHILD IN CONFLICT WITH LAW

G- Lack of after care system for children in conflict with law which needs special attention

R-

- (i) A stronger after care system must be implemented in practice and a social worker or a trained psychologist must be appointed to see through the working of the after-care system.
- (ii) Socio-Psycho trauma as well as the compromised educational opportunities of the children, needs to be addressed
- (iii) There is a need to institutionalize and formalize the role of after care organization/programme.

Action: Ministry of Women & Child Development/ State Governments/UTs

E. PREVENTIVE PROGRAMME

G- The focus on developing preventive programme is still not a priority.

R-

- (i) There is a need for preventive programme in community, in schools and family. We need strategies that target only individual offenders for change but involve all these in their prevention, treatment, rehabilitation and reintegration, hence promoting a community-based approach for strong after-care system.
- (ii) The major responsibility of the social workers/probation officers to ensure rehabilitation is not interrupted when the child re-enter the community.
- (iii) Vulnerability Mapping of the victims as well as the offenders must be done by trained professionals to identify areas which requires attention and accordingly formulating an effective plan to be included either in school through curriculum or at policy level.

Action: Ministry of Women & Child Development/ State Governments/UTs

F. CONSENSUS AMONG KEY STAKEHOLDERS

G- Lack of coordination between various key stakeholders, Community, family and civil society

R- For Implementation of a better restorative system consensus building among Key stakeholders; Community, Family, School, Civil Society is needed. In order to build a more holistic approach, small research- based pilot projects must be developed as a model to be implemented.

Action: Ministry of Women & Child Development/ State Governments/UTs

G. INCREASE STRENGTH OF THE PUBLIC PROSECUTORS

G- The cases are often delayed due to the non-availability of the PPs

R- Strength/ Number of public Prosecutors should be increased to match with the number of courts. So that the case should not get delayed due to multiple duties assigned to one public prosecutor having duty at the same time.

Action: Ministry of Law & Justice/ State Governments/UTs

H. BANK SCHEME FOR REHABILITATION OF VICTIM

There is a need to formulate a National Bank Scheme to provide speedy financial assistance to the victims for their Rehabilitation.

Action: Ministry of Finance/ Ministry of Women & Child Development/ State Governments/UTs.