

MAHARASHTRA REPORT

The visit to Pune and Mumbai was a result of communications received by the National Commission for Protection of Child Rights (NCPCR) from Mrs. Shiela Barse of the state of juvenile justice in Maharashtra. The NCPCR has been looking into children's issues at its mandate and juvenile justice has been a priority area of concern.

The team comprising Ms. Dipa Dixit (member – NCPCR) and Ms. Bharti Ali (Co-Director, HAQ: Centre for Child Rights) visited Pune and Mumbai and met with the State Department, Officials in the Police Department, JJBs and CWCs in Pune and Mumbai, some Pos and other functionaries in the JJ system during visits to the institutions and a few NGOs working on the subject.

State Advisory Board and District Advisory Boards

The State Advisory Board as per Section 62 of JJ Act was established in the State in 2003. On an average the State Advisory Board has been meeting thrice a year as it has had 10 meetings since January 2004, when it first met.

Besides Secretary WCD, Commissioner WCD, State Human Rights Commission, Director General of Health, Director of Education, Deputy Inspector General of Police, Managing Director of MIDC, Director Halfkeen Institute, there are 3 NGOs among the 12 members of the State Advisory Board.

The State Advisory Board has already recommended 30 names to the State Government for sanctioning the appointment of Chairperson of the District Advisory Boards.

The State Advisory Board scans all the application for selection of members for the JJB and the CWCs, to be recommended to the state WCD for appointment. However, a member of the Pune JJB informed that her appointment did not happen that way. She did not even apply and one fine day, she got a letter appointing her as a member of the JJB

Child Welfare Committees

There are 35 districts in the State and so far, Child Welfare Committees (CWCs) have been constituted in 29 out of these 35 districts.

Working of the Committee is carried out with the help of staff of the children's home. Therefore the expenditures incurred by the Committee are met through the grant allotted to the children's homes.

The CWCs have had 1334 sittings during the period April 2006 to August 2006, in which 7058 cases are reported to have been handled and 3606 remained pending.

The Commissioner, State WCD, takes a monthly review of the working of CWCs. The District Women and Child Development Officer and the CWCs are required to submit quarterly reports to the Commissionerate, which includes number of cases handled and number of cases admitted during the period.

The CWC in Pune sits three days a week – Wednesday, Thursday and Friday in the Shivaji Nagar Children's Home. However, it is mobile CWC i.e. shifts its location to another home as and when required. The State WCD has made it compulsory for all CWCs to take sittings in every children's home, which is monitored by the District Officer.

Juvenile Justice Boards, pendency and of cases

28 Juvenile Justice Boards (JJBs) have been set up in the State so far. The Chairperson of the JJB is either the Chief Judicial Magistrate of a Judicial Magistrate of First Class (JMFC).

In Pune there is one JJB whereas in Mumbai, there are two JJBs – one for Mumbai Rural (which was established only on 9 April 2007) and the other for Mumbai City. Except for the Mumbai City JJB, separate First Class Judicial Magistrates have not been appointed for the JJBs anywhere else. Therefore additional charge is given to the Chief Judicial/Metropolitan Magistrate or the Judicial Magistrate of First Class of the District to carry out the work of JJB. Therefore there were no social workers in the Mumbai City JJB at the time of the visit of the NCPCR team. It was reported that the social workers do not see any role for themselves as JJB deals with criminal legal matters and the social worker members are not empowered under the law to take up any such matters. They have dual function.

The State Juvenile Justice (Care and Protection) Rules 2002 require the JJB to decide on the time and place of sittings to be held. With juvenile crimes increasing year after year and high pendency of cases, the State needs to amend the Juvenile Justice Rules or pass some interim order, increasing the number of sittings of the JJBs to dispose off pending cases.

According to the Chief Justice of Maharashtra, for JJBs headed by a CJM, directions have been issued for a regular Magistrate also to be attached to such JJBs. Pendency of cases in Pune was admitted to be too high.

The Maharashtra High Court exercises direct control over juvenile justice matters. Justice Ranganath Desai has been given the charge of reviewing the implementation of the JJ Act. Quarterly reports are invited from him, by the High Court.

Like Delhi, Maharashtra too has held Lok Adalats in the recent past to dispose off pending cases. Whether Lok Adalat is the right way to deal with pendency of cases is indeed questionable. Facts that point to the need for a debate on this issue are as follows:

- Lok Adalats follow a process of Arbitration. The negotiations between the two parties in a case are directed towards arriving at a compromise that would lead to cancellation of the charges and hence end the matter. In a criminal case, the role of Lok Adalats need to be understood well. Lok Adalats are not about plea bargaining, where the accused pleads guilty and bargains for lesser sentence. Only compoundable offences where “culpability: i.e. guilt, need not be

NALSA Section 18 – Organisation of Lok Adalats:

A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of –

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

attributed to the crime going by the nature and intensity of the offence. In other words, a child who is booked for committing murder will have to go through a trial as murder involves culpability and the JJB shall accordingly dispose off the matter. But petty offences can be dealt with by the Lok Adalat as there is no disposal in those cases, only charges are cancelled and the case comes to an end after reaching a compromise between the compliant and the accused child. While it sounds logical to have a speedier arrangement such as the Lok Adalat for dealing with petty compoundable offences, the fact is that in case of Juvenile i.e. children below 18 years of age “culpability” cannot be attributed for any kind of offence as per the principles and the spirit of juvenile justice is it then fair to allow one child to receive justice through the Lok Adalat and deny another child who may have committed a serious offence of a higher degree access to this judicial process when the question of “culpability” cannot be applied to juveniles?

- The other question that follows are – can a compromise really be arrived at? Who will make the compromise? Withdrawal of case by the compliant can put him / her in legal jeopardy and therefore the compliant will never make compromise as regards the compliant. Does it then mean that child must necessarily admit to have committed the alleged offence and apologize in order to get rid of the charges? While actually that is what really happens even though there are no questions of pleading guilty in a Lok Adalat. While parents are happy to arrive at a compromise and accept the decision of the Lok Adalat without having to fight the case any longer, the reason for their happiness lies in the fact that they and their child do not have to suffer the vagaries of the judicial process endlessly. Many argue that a Lok Adalat is a useful mechanism to deal with compoundable offences since the charges get cancelled and there is no question of having any criminal report of accused. But that is true of the JJ Act also as it clearly lays down that no record of the child is to be kept and also talks of speedy disposal of cases. How does the Lok Adalat then serve a purpose any different from what the JJ Act is already meant to be serving? Moreover, in reality, it is not so simple as the home are inclined to arrest the same child after he is arrested once for offence.

- The fact that the system has failed to ensure fair and speedy disposal is used as a reason for setting up alternative redressal mechanisms such as the Lok Adalats. However, the Juvenile Justice system is in itself an alternative adjudicatory mechanism for children. Hence it would not be incorrect to say the failure of the judiciary system has led to a system of creating alternatives to already existing alternatives. How far can this be justified and what is the end to this trend of creating alternatives to alternatives?
- The Lok Adalat process does not provide a fair opportunity to all juveniles whose cases are listed as the police often fail to inform all the concerned parents / guardians of the juveniles and all the complainants.
- Lok Adalats often turn in to a media event, are more like a celebration (of failure and injustice?) and held with much fan fare.
- Lok Adalats held in Delhi and Maharashtra so far have not been able to meet the targets set out and whatever targets have been met are by way of cutting on the time spent for case – the recourse to be lengthly judicial process!

It becomes imparity at this point of the NCPCR to take up such critical matters and initiate nation-wide discussions and debates on not just the viability of Lok Adalats for Juvenile Justice but also their compatibility with the juvenile justice system and the justification. The NCPCR could also contemplate petition in the Supreme Court challenging the use of Lok Adalats for juvenile justice.

In Pune the JJB was constituted by a notification on 17th March, 2003. The Board sits on every working Saturday and Monday. On average it deals with more than 50 cases. The Board wised the need for an independent JJB i.e.a Board with a dedicated Prinipal Megistrate who does not have any other judicial charge. They have not approached the Chief Justice of Maharashtra High Court with this problem as yet, but have shared it with some UN agency. While the Pune Board claims to be using Section 258 of the Cr.P.C to close some cases, is releasing children on advise and admonition or after imposing fine on the juvenile's parents, yet the pendency of cases is high in Pune. According to the Board, the reason of pendency of cases are as follows:

- It is difficult to locate the families of the juveniles and as the case does not move forward. Someones are sent on the addresses given by the juveniles and the police, but often the Board has no information as to the whether the summons were received or not.
- Police also do not inform the Prohibition Officers are required in the law. This delays the social investigation mean to be conducted by the POs, which has to be taken in to consideration by the Board before arriving at a decision.
- There is one SJPU in place, which is very active and cooperative, but the Child / Juvenile Welfare Officers are not there in all the police stations.
- Senior Police Inspectors have been given additional charge of children, which does not help given their already burdened existence.
- The number of sittings of the Board is not sufficient, but since the Principal Megistrate is also the Chief Judicial Magistrate with many other responsibilities, it is difficult to increase the number sittings.

- Ironically the Principal Magistrate, who is also the CJM of the district pointed out that both the police and the adult courts where often children are taken fail to look in to address the age question. Ideally the police should collect all information regarding the child's age and produce the child before the JJB, that does not accordingly. But neither the police nor the courts take care and children land up in the adult jails. If the age factor is challenged, there are brought to the JJB while should only one sitting for age enquiry, it takes at least 15 days for seeking a medical report of age verification, thus delaying the disposal of case.
- Police takes 90 days for presentation of charge sheet.
- The Juvenile Justice Rules do not prescribe how to investigate in cases involving juveniles.
- Sometimes the complaints don't want to pursue the matter further and stop coming to the Board. As result children continue to languish in observation homes and the case continues.
- Sometime juveniles who have been released pending inquiry also stop attending the hearings as they need to carry on with life and they have shifted residence.
- JJB has no infrastructure and no staff. They have bank on the staff of the OHB for maintaining records of cases, ensuring timely proceedings and every other assistance required. The only staff this JJB has is from the judiciary, who also has other work to handle.

Special Juvenile Police Units (SJPU)

The State Government submitted a report to NCPCR, regarding setting up of SJPU in 20 Districts. All Police Commissioners and District Superintendents of Police were reported to have been informed to establish SJPU at every district and city level police stations. During discussions, it was elaborated by the state WCD officials that although there is an order for formation of SJPU in 30 districts, not all have been formed as yet. On the other hand, during a meeting with the JJB in Pune, the team was informed that there are 27 SJPU in all of Maharashtra. At the end of the day it is difficult to say how many SJPU have been established in the State.

In a meeting with the Addl. DG, State CID Crime and other police officials in Pune, it was reported that the SJPU are a unit of the Social Security Cell. A SJPU is comprised of 1 Inspector and 2 PSIs.

Child/Juvenile Welfare Officers from the police department were reported to have been appointed in all police stations in the state and instructions have been issued to them about their roles and responsibilities. They all act in plain clothes i.e. they are not men in uniform. However, according to the Pune JJB, police arrests the juveniles in uniform.

The police officials admitted that due to pressures of VIP duties and other emergency duties, these Child/Juvenile Welfare Officers are unable to follow the instructions. They also admitted the need for constant liaison with NGOs for training of the Child/Juvenile Welfare Officers.

Further discussions led to a promise by the Addl. DG to issue notices to all police stations to the following effect –

- Information of apprehension must be given to the juvenile's parents
- Filing of chargesheet should not be delayed
- As far as possible, petty offences by minors should get diffused at the police station level itself.

Institutional care

Children's homes

The information provided by the State Women and Child Development Department gave contradicting figures on the number of children's homes. According to a table on number of institutions in the state after implementation of JJ Act 2006 is as follows

S.No.	Type of Instituion	Government	NGO	Total
1.	Children's Homes	31	161	192
2.	Bal Sadan	-	188	188
3.	Balakawshram	-	124	124
4.	Orphanages	-	18	18
5.	Observation Homes	12	48	60
6.	Special Homes	2	1	3
7.	After Care Hostels	1	3	4
	TOTAL	46	543	489

However, it was indicated that there are 193 children's homes in the state. 33 of them are run by the state government and 160 by NGOs. The sanction strength of these homes is 15615. Assuming that at any given point of time there are not more than 10664 (7058 handled and 3606 pending) cases to be handled, the sanctioned strength of children's homes exceeds by about 5000. The state government needs to revisit their planning and look into the number of children's homes required and reinvest in improving in quality of services while cutting down on some institutions. On the contrary, if the table above is true, perhaps there has been some recent addition to the existing number of children's homes to bring the figure to 193.

Pune

No. of Children's Homes – 13

No. of Observaiton Homes – 4

Total No. of Observation Homes in Maharashtra : 60 (12 Government, 48 others)

Total No. of Children Homes in Maharashtra : 195 (33 Government, 162 NGOs)

While some children's homes also provide shelter to children in conflict with law i.e. also operate as observation homes, the State Government does not officially say so while providing data on number and kinds of institutions running in the State.

The team visited the Shivaji Nagar Children's Home in Pune only to find that it was also housing juveniles in conflict with law and hence also as an Observation Home for Boys. This is a common problem in the state that needs to be taken up with the state WCD. According to WCD officials, since the number of children in need of care and protection is far greater than the number of children in conflict with law. However, the state department has a budget allocation for observation homes and therefore most institutions have been sanctioned as observation homes. The State WCD is banking on the proposed ICPS (Integrated Child Protection Scheme) of the Central Ministry for funds for setting up homes and ensuring better and quality institutional care. The officials kept insisting on the state policy not making it possible to set up separate observation and children's homes, which did not make any sense as the policy is also that of the same department to which they belong and can be changed if the state decides to plan and invest its resources meaningfully and optimally.

The NCPCR team sought a copy of the order/notification by which children's homes are also asked to function as observation homes. This however has not been provided to the team. The authorities at the Shivaji Nagar Children's home have been writing to the WCD Commissioner with regard to the problems they are facing in dealing with juveniles in conflict with law, but nothing has been done so far. They feel that not only is the nature of crime being committed by children become more severe, with change in the law increasing the age of boys to 18 years, many more boys are coming into the observation home with charges of heinous offences such as rape, murder and robberies. This has made it difficult for them to manage both children in need of care and protection and children in conflict within the same premises.

According to the Pune JJB, there is no vocational training provided to children in conflict with law.

In Mumbai however, visit to the children's home (cum observation home) run by the Children's Aid Society revealed that although separate dormitories were being maintained for children in conflict with law and those in need of care and protection, both types of children were being provided vocational training. The institute had a huge campus and infrastructure, and vocational training classes were being conducted in carpentry, masonry, tailoring and stitching, welding, etc. at the time of visit of the NCPCR team.

Children in need of care and protection on the other hand were being provided vocational training. The institution for 12-18 year old girls in Deonar, Mumbai and the Yerwada home for girls in Pune too were providing vocational training. In fact girls from Deonar were going out of the campus for their education and vocational training. The problem however lies in ensuring that the products made by the children are marketed well in order

to fetch them some pocket money, which the children may save and take back with them when they leave the institution to start a new life.

Rehabilitation, Repatriation and Restoration

Counselling services as of now are very poor. The Child Guidance Centre at the District Probation and After Care Association, which runs the children's home housing both children in need of care and protection and those in conflict with law in Shivaji Nagar, Pune had a seemingly good counseling programme for every child. Perhaps the state government needs to learn from such good practices. The state WCD admits that there are 6 Mental Hospitals in the State and there is need to tie-up with them for counseling services in institutions.

Children in the children's homes are provided education either within the institution or through mainstream formal schools outside.

All children's homes were reported to have a computer with corporates like Infosys, Satyam etc. providing computer literacy to the children.

Recently a GR has been issued that provides up to Rs.5,000/- for any vocation(s) a child may want to pursue.

The CWC in Pune involves Child line NGOs and organizations like Saathi for inter-state repatriation.

Inter-country repatriation is still a big problem. Many girls in the Deonar home in Mumber were from Bangladesh. They had been there for years and expressed their anger at the authorities for making false promises of being sent back home soon. The authorities on the hand have shared all these cases with STOP, an anti-trafficking NGO in Delhi and sought help in the repatriation of these girls. STOP unfortunately has not been able to provide any assistance in this regard so far.

The authorities have promised to give NCPCR a list of all the girls in their institution who need to be sent back to their countries of domicile and restored with their families. The said list is awaited.

Transfer

There is no coordination between sending CWC and receiving CWC in cases of repatriation.

There are no police escorts available to escort children. Police Commissioners and District Superintendent of Police have been informed to provide escort immediately at the time of inter-district and inter-state transfers of children/juveniles. By the state department's own admission, due to non-availability of escort children in conflict with law are in homes even

after necessary orders have been passed by the JJB/CWC as the case may be, and the police department is unable to provide escorts due to non-availability of funds.

Legal Aid

In Pune, the JJB Principal Magistrate reported that the lawyers advise the juveniles to plead guilty. The Principal Magistrate, who is also the CJM has appointed a panel of lawyers for imparting legal aid and as a practice the Board appoints a lawyer from this panel for juveniles who do not have a lawyer.

In Mumbai, the Pos reported that most children have their own lawyers. The rate at which the children get released on bail in Mumbai seems far better than Delhi. However, that does not solve the problem of pendency and the need for legal representation all through the matter till the case is disposed off rather than only till such time that the child is released on bail.

There was no mention of the State Legal Aid Service Authority providing legal aid. Perhaps this is one area that has not been paid adequate attention and therefore the information coming forth on this aspect was inadequate.

Place of Safety

There is no place of safety as required under Section 16 of the JJ Act in the entire state. The government is thinking of converting one Borstal School in Nasik into a place of safety.

Training

The number of training programmes organized for CWCs, JJBs, Pos and various functionaries in the institutions is not clear from the report submitted to the NCPCR by the State WCD.

At one point the State WCD mentions that 5 trainings for all CWC members was held immediately after the CWCs were set up. This training was provided by UNICEF. The State Department is now thinking of another refresher course or re-orientation programme. They are now also planning a training programme for the JJB members.

At another point, the State WCD has stated that in 2005-06, they had organized 45 training programmes for the Superintendents, Probation Officers and Care takers of the juvenile homes. These were attended by 883 participants. In addition, 4 programmes were organized by NGOs, which were attended by 62 participants.

In yet another action taken report on the situation in the field the state department claims to have organized 11 training programmes with the help of NGOs for the CWC members.

The JJB members and the Principal Magistrates in Pune feel that the State Judicial Academy should organize trainings for them which have not happened so far. The JJB Members voiced that whatever they have learnt is on the job out of their own willingness. There has been no training or orientation for them as such.

Sensitization in dealing with children seems to be lacking as the Principal Magistrates tend to follow the child unfriendly procedures of the CrPC strictly, without understanding the need to go by the spirit of the juvenile justice legislation. The protocol within the judicial system further reduces the scope for sensitization. It was found that if the Principal Magistrate in the Pune JJB has to be invited for an interface with children, the permission will have to be sought for it from the High Court.

Training and capacity building cannot be done in ad-hoc manner. Unless seen as a critical area requiring serious inputs, implementation of the law will remain questionable.

Data Management

Record keeping and data management is poor and inadequate. The Secretary of the State WCD admitted the need to develop MIS for record keeping and data management. At the same time, the State WCD complained about not receiving data from the JJBs which affects their planning. This is a common problem found in all the states. The judiciary does not share data with the administration and as far as children in conflict with law are concerned, it is very difficult to assess the situation in the absence of figures.

As for JJBs, the reason for not being able to maintain records and data is that they have no staff for it. The JJB in Pune is using the staff of the home where they hold their sittings. They do not have a separate staff but for one person, who is from the judiciary. Wherever the JJB is headed by the CJM, there is not only lack of adequate time and attention from the CJM but also lack of separate infrastructure and staff for the JJB, all of which make it difficult to carry on any paper work systematically.

State Children's Fund

In 1989, the State Government constituted the Children's Fund which was renamed as the State Children's Fund as per the revised Juvenile Justice Act of 2000. The fund is having Rs.11.28 lakh. It is managed by the State Children's Fund Management Board, comprising six members – Secretary WCD (Chairperson), Commissioner WCD, Joint Commissioner and 3 Non-Officials (Members) and Deputy Commissioner, Child Development Member Secretary and Treasurer. The Fund can be utilized for:

- Implementing programmes for the Welfare and rehabilitation of children who do not fall in any of the Central Government or State Government any other scheme;
- Providing medical aid, surgery or treatment of major illness suffered by a juvenile or child.
- Providing fees for higher or vocational or technical education;
- Meeting the expenses of the State Advisory Board and its purpose;

- Doing all other things incidental and conducive to the above purposes.

What the authorities and seem to be concerned about

There is lack of reliable data on children in need of care and protection as there is no data management system for it.

Rehabilitation is weak as compared to other States.

MISCELLANEOUS

Child protection programmes for children of migrating families and street and working children as well as for other children in need of care and protection run by the State include:

- Night shelters for street and working children
- Shakh Shalas to provide education to children of migrating families
- Shikshan Mandals in Mahanagar Palikas to ensure children their right to education
- Child Guidance Clinics set up by the State WCD

A Sponsorship scheme was launched in the State about six months ago

Anti-child beggary drive

Maharashtra Government has initiated an anti-child beggary drive with the help of the Police Department and NGOs. On 26 February 2007 child beggars were “rescued” throughout the state.

A government functionary is accompanied by a policeman and some NGOs to pick up children found begging. These children are then produced before the Child Welfare Committees(CWCs) set up under the Juvenile Justice Act, which either return the children to their parents after getting the parents to sign a bond to the effect that they will not put their children to beg again or, are kept in custody of the state if parents are not ready pr cannot afford to take care of their children. Most of these children were reported to have been given back to the parents on their signing a bond. The others were kept in institutitonal care – those below six years old were sent to Shishu Greh’s and the rest to the children’s homes.

It is true that the anti-child beggary drive may have taken many children away from the lawful guardianship of their parents. It may also perhaps be true that keeping 0-6 yr. olds separate from 6 – 18 yr. olds may have led to many children being separated from their

siblings. The State Government as well NGOs involved in the drive however justify the drive on the grounds that since it is parents who put their children to beg and earn through their children, it is important to conduct such drives and deter parents from exploiting their own children. To them the CRC principle of “best interest of the child” is a paramount consideration in all actions and inactions of the Government and hence the drive.

Anti-child labour drive

In March 2005 a Task Force on Child Labour was set up in the State at both State and District levels. The role of the State Level Task Force was to monitor District level work. At the District level, the Task Force is comprised of the DM/DC, the SP/Police Commissioner, the District Women and Child Welfare Officer and the Labour Officer. The Labour Department rescues children working in hazardous occupations and produces them before the Child Welfare Committee (CWCs).

On production before the CWC, the Probation Officer talks to the child in depth to get more details about the child, his family situation and social circumstances etc. If the child belongs to another State/District, the concerned CWC in that State/District is contacted to make necessary home inquiry in order to arrive at an appropriate decision regarding rehabilitation and restoration of the child.

Both, repatriation of children as well as prosecution of employers, are areas that require urgent attention. It was reported that there is no coordination between the CWC that makes an order for sending the child back to their home and the CWC that is meant to receive the child in the home State/District before finally handing them to their parents. This adversely affects the repatriation process and often leads to failure in successfully restoring the child to his/her family.

As regards prosecution of employers, most cases were reported to fall out as witnesses do not come forward and there is no proper coordination between the labour and the police department at the SP/DC/Labour Officer level despite the existence of Task Forces in the districts.

Data Management and Record Keeping

Special Offences under JJ Act

The Pune JJB said that they did not deal with offences under Section 23 to 28 of the JJ Act as the law is not clear on the role of the Boards in this regard. Also, they felt they were not equipped to record evidences as they do not have adequate staff for it. Moreover since the Principal Magistrate is the CJM, he has many other tasks to manage and the two social worker members are not eligible or trained to record evidence.

