**Unofficial Translation**

**Commissioner, Department for Women and Child Development, Pune**

**Circular 242**

**1.6.2016**

This is with regard to processes to be followed by the Child Welfare Committees when admitting children in need of care and protection into residential care institutions as under the Juvenile Justice Act 2015

The Juvenile Justice Act, 2015 has been implemented in the State of Maharashtra. As per Section29 (1) of this Act, the Child Welfare *Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.*

Child Welfare Committee (CWC) should take decisions effectively. Following are the guidelines for the CWC to dispose of cases for children in need of care and protection.

While taking decisions in relation to children in need of care and protection from poor backgrounds, it has been noted that the CWC has preferred to institutionalize these children despite the fact that many of them are only in need of educational support. Parents of such children are deemed to be unfit and incapacitated to care for their children resulting in the enrollment of these children into Children home. If parents have the capacity to care for their children during their vacations, it can be inferred that they have the capacity to care for their children at other times as well.

Often, children are in need of care and protection for a short period but they are placed in Children’s homes for a long period of time. In some cases, the CWC may not have asked for a Home Study Report (HSR) of the child prior to placing him/her in a Children’s Home. It is the HSR that enables the CWC to decide the duration and type of support/care and protection required by the child. A child who resides in a Children’s Home for a long time period is **deprived of family environment.**

The general principles to be followed when implementing the Juvenile Justice (care and Protection of Children) Act, 2015 Tare detailed in Chapter 2 of the Act in Section 3. It is expected that the Child Welfare Committee keep these principles in mind when taking decisions on whether to admit a child into an institution. The principles include the following:

(*iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child’s views shall be taken into consideration with due regard to the age and maturity of the child.*

*(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.*

*(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.*

*(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.*

*(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.*

**Current loopholes in process of admitting children in Children’s Homes**

1. Child/children are placed in **Children’s Homes**on the basis of one application letter given by any registered organisation
2. The CWCs place the child without conducting any investigation of the child themselves. Often, the report is prepared by the institution or by their functionaries who may not have proper training and qualifications. The CWCs make their decisionon the basisof this document without any further verification. consideration the experience and expertise of the NGO/SW concerned.
3. Institutions present their cases are mainly in June/July. During the rest of the year, cases of children in need of care and protection are presented by the Police and Childline. This implies that children brought forward by the Institutions are not in need of care and protection/ rehabilitation but in need of education support. Children’s Homes are being used as boarding schools/ hostels for children in need of educational support.
4. Institutions often present cases of 100 to 150 of children. May times, only documents are presented to the CWC, children are not brought forward. The CWCs issue orders for admitting these children without seeking a Social Investigation Report (SIR) and/or Investigation Report.
5. The HSRs submitted by the Institutions are uniform, the only variation being the personal details and other such information related to the child. Although the HRS is the same for all children, the CWC does not question the same.
6. Sometimes the order is issued by a single CWC member who has visited the institution and issued the order for admitting the child solely on the application by the institution without conducting any investigation. However, such decisions have not been approved at a sitting of the CWC.
7. Often, the applicable sections under the JJ Act under which the child has been admitted are also not mentioned in the orders. Someorders contain the signature of only one CWC member while in others the signatures, date and the outward number areall missing in other orders.
8. When a child is presented before the CWC, it is essential that the CWC make all necessary efforts to trace and place the child within his/her family. If the child’s family cannot be traced despite all efforts, the CWC should explore non-institutional services that can be provided to support the child. Institutionalization should be considered as a last resort option. This has been enshrined in the JJ Act 2015. However, in practice, the CWCs appear to prefer to institutionalization and place children in institutions without exploring
9. Manytimes, children brought before the CWC require educational support. However, the CWCsdeem their parents as unfit or incapable of caring for them, bringing them into the definition of those needing care and protection as per Section 2 (14) (5) of the JJ Act, 2015, and institutionalize them.
10. When issuing orders for admitting a child into an institution, the CWC does not investigate/ inquire into the need for any rehabilitation or social reintegration program for the child while admitting him/her into the institution.
11. There is no discussion amongst the CWC member at the time of issuing orders for institutionalization of the child.
12. CWCs do not follow the guidelines as per the JJ Act 2015 when admitting children in Children’s Homes.

Given that the CWCs are admitting children into institutions without following due procedures as per the JJ Act, 2015, children who do not require rehabilitation and social reintegration are also brought into the JJ System and by giving them admission into institutions deprive them of the right to stay in their own families. This also results in undue pressure on the systems and lowering of the quality of the JJ programs. This further leads to the ineffective implementation of the JJ Act in the State.

The JJ Act clearly defines the children in need of care and protection as well as processes to be followed when admitting them into homes.

As per JJ Act, 2015 Section 2(14), the definition of a child in need of care and protection

*means a child—*

*(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or*

*(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or*

*(iii) who resides with a person (whether a guardian of the child or not) and such person— (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or*

*(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or*

*(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or*

*(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or*

*(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or*

*(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or*

*(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or*

*(x) who is being or is likely to be abused for unconscionable gains; or*

*(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or*

*(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage*;

The points above specify the different categories of children in need of care and protection.

The processes to be implemented when providing for children in need of care and protection are specified in Sections 31, 32, 36, 39and 40 of the JJ Act, 2015 and are discussed as follows:

* Section 31 (2) of the Act states:*The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children’s home or fit facility or fit person, as the case may be, during the period of the inquiry.*
* Section 32(1)states: *Any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be.*
* Section 32 (2) states:*The information regarding a child referred to in sub-section (1) shall be mandatorily uploaded on a portal as may be specified by the Central Government or the Committee or the District Child Protection Unit or the child care institution, as the case may be.*
* Section 36(1)states*: On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of section 31, may pass an order to send the child to the children’s home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer: Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.*
* Section 36 (2) states: *The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child: Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.*
* Section 36 (3) states: *After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children’s home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years: Provided that the situation of the child placed in a children’s home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.*
* Chapter 7 provides details of the processes or rehabilitation and social reintegration of the child. Section 39 (1) states: *The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care: Provided that all efforts shall be made to keep siblings placed in institutional or non- institutional care, together, unless it is in their best interest not to be kept together.*
* Section 40 (1) states: *The restoration and protection of a child shall be the prime objective of any Children’s Home, Specialised Adoption Agency or open shelter.* Hence, when a child in need of care and protection is brought before the CWC, it is essential that the CWC ask for the Social Investigation Reportto ascertain whether the child needs protection and/or rehabilitation and social re-integration and use institutionalization only as a last resort after exploring other alternatives of providing for the child.
* Keeping the above in mind, it appears that the guidelines and processes provided for admission of a child in need of care and protection given in the JJ Act, 2015 are not followedclosely. In this context, all the CWCs in the State are being informed through this circular thatthey must keep in mind/take into consideration the guiding principles and provisionenshrined in the Juvenile Justice (Care and Protection of Children) Act, 2015 when taking decisions related to admitting children in need of care and protection under the JJ Act into institutions and follow/implement the processes detailed below:
1. Whenever a child is presented before the CWC an order should be issued for an inquiry to be conducted as under Section 36 (1)
2. This social investigation must be completed within 15 days as per Section 36 (2).
3. On receipt of the inquiry and social investigation report, the CWC must make every effort to restore the child to his/her family.
4. If despite all the best efforts of the CWC, the child’s family is not traceable, priority should be given to rehabilitate and reintegrate the child through non-institutional services like adoption, foster care and sponsorship.
5. Keeping in mind that Section 40 (1) emphasizes that the primary objective is to ensure the restoration and protection of a child, the CWC must make every effort to ascertain whether the child needs protection and rehabilitation. Institutionalization should be used only as a last resort after exploring other alternatives of providing for the child.
6. Section 3 (12) clearly states that *a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry* emphasising the Principle of Institutionalization as a measure of last resort. This principle should be followed closely.
7. After completion of the inquiry and having verified that the child has no family or ostensible support or is in continued need of care and protection, the CWC may issue an order to end the child to a Specialised Adoption Agency if the child is below six years of age, children’s home or to a fit facility or person or foster family as stated in Section 36 (3).
8. When an order is issued for admitting a child in an institution, the order should clearly specify the sections of the JJ Act, 2015 under which the child is being admitted. The admission order should be issued in the prescribed format. The order should be signed by at least three members of the CWC.
9. If the decision to place a child in an institution is made by a sole member of the CWC following a visit to the institution, the matter should be discussed at the next sitting of the CWC and once the decision has been confirmed, the admittance order should be issued in the prescribed format.
10. The CWC should that the discussions and decisions taken at its sittings are maintained in writing on a daily basis/ regular basis/
11. As per Section 39, It is mandatory for the institution to prepare an individual care plan for the rehabilitation and reintegration of every child placed with it, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care. The CWC must ensure that every institution has prepared a suitable format for the care plan and should ascertain/ verify that these are maintained for every child during their visit to the institution.
12. As per Section 2 (14) (5), when dealing with children whose parent or guardian is found to be unfit or incapacitated to care for the child, it is necessary to verify if the child is in danger of being excluded from mainstream society and in need of rehabilitation and social reintegration in keeping with Section 39. The child should not be admitted to children’s homes merely on the grounds of poor economic situation of his/her parents or because educational facilities are unavailable in his/her village. Instead, such parents should be given information on residential schools run by the government as well as the different programs/schemes implemented by government departments which would assist them.
13. When deeming a parent or guardian as unfit or lacking the capacity to care for the child, poverty should not be a deciding factor. An unfit parent or guardian can be defined as:
	* Parents with incurable disease
	* Parents violating child rights and using their children for begging
	* Women in immoral trades / Commercial sexual exploitation and trafficking
	* Parents involved in trafficking of children
		+ Parents who abuse children sexually, mentally, physically or have been involved in rape
14. Migrant workers/ labourers, sugarcane cutters, brick kiln workers, construction workers, quarry workers, cotton pickers, farmers and agricultural workers are some of the different groups of people who migrate either within a district or from one district to another in the State of Maharashtra in great numbers seeking employment opportunities. It is assumed that children from such migrant families are in need of care and protection and hence these children are brought under the purview of the JJ Act and placed in Children’s Homes. However, these children have families and are part of society, which means that they are not in need of rehabilitation and social reintegration. Placing such children in Children’s homes is not a viable solution. The School Education and Sports Department of the Government of Maharashtra has issued a circular on 1 October 2015 (Circular/ SCA/Temporary Shelter Homes / 2015-2016/ 2643) focusing on children from migrant families. This circular seeks to bring children from migrant families into mainstream education and prevent migration by providing them safe and secure accommodation withinfamilies (kinship care), food as well as stationery items and toiletries. If children from migrant families are provided support under this scheme, they can continue to reside in a family environment and would not need to be sent to boarding schools for education alone. To this end, the CWC should not place children from migrant families that include migrant workers/ labourers, sugarcane cutters, brick kiln workers, construction workers, quarry workers, cotton pickers, farmers and agricultural workers in boarding schools. Instead the CWC should ensure that parents who migrate are informed of this scheme implemented by the School Education and Sports Department of the Government of Maharashtra on 1.10.2015 through a circular so that they can avail of the benefits under this and ensure that children are not deprived of a family environment.
15. Institutions that present a case of a child should not be allowed to prepare the Home Study Report or Social Investigation Report for the child. Instead, the CWC should order Probation Officers from Government Institutions or the District Child Protection Officerto carry out the Home Study and Social Investigation and present these reports.

The above recommendations must be followed closely by all CWCs.

The CWC should follow all the guidelines while placing the child and ask for reports from individuals or agencies. They should investigate each case before taking any decisions rather than merely relying on the documents and statements provided by individuals or agencies.

At the same time, the DWCD is being informed that when they conduct surprise visits/ inspections to Children’s Homes, they should inspect all the documents related to admittance of children in the institution and verify that the CWC has followed every single provision mentioned in the JJ Act 2015 and this Circular.

Copied to:

1. Hon. Chief Secretary, Ministry of Women and Child Development, Mumbai
2. Dpty Commissioner, Department of Women and Child Development Pune, Konkan, Nashik, Auragabad, Amravati and Nagpur
3. Chairperson/ Members CWC (all districts)
4. District Women and Child Development Officer (DWCDO, all districts)