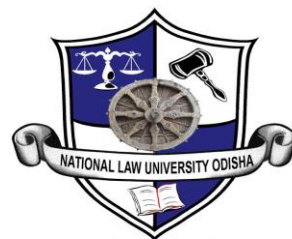


# Consultation on Juvenile Justice (Care and Protection) Amendment Bill, 2021

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## DISCUSSIONS AND RECOMMENDATIONS



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3<sup>rd</sup> April 2021

Organized By:

Centre for Child Rights, National Law University Odisha

## CONTENTS

Consultation Profile		
1	Context	3
2	Consultation Brief	9
3	Introduction	11
4	Overview of Amendment Provisions	15
5	Adoption Orders by District Magistrate: Effectiveness and Consequences	26
6	Way Forward	32
7	Recommendations	36

## Consultation Profile

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Consultation was attended by ninety seven persons including judges, lawyers, academicians, child rights commission, bureaucrats, child rights activists and the functionaries of Juvenile Justice Boards, Child Welfare Committees, District Child Protection Units, Child Care Institutions and Child Rights Centers of various National Law Universities, The consultation was enriched by the presence of the following speakers and panelists of great eminence.

1. Hon'ble Mr. Justice Madan B. Lokur, Former Judge Supreme Court of India
2. Hon'ble Mr. Justice Jaswant Singh, Judge and Chairperson Juvenile Justice Committee, High Court of Punjab & Haryana
3. Hon'ble Mr. Justice Abhinand Kumar Shavili, Judge and Chairperson Juvenile Justice Committee, High Court of Telengana
4. Hon'ble Mr. Justice G.R Swaminathan, Judge and Member Juvenile Justice Committee, Madurai Bench, High Court of Madras
5. Hon'ble Mr. Justice N.Kotiswar Singh, Judge and Member Juvenile Justice Committee, High Court of Assam
6. Prof.( Dr) Ved Kumari, Vice-Chancellor, National Law University Odisha
7. Prof.(Dr)Faizan Mustafa, Vice-Chancellor, NALSAR, University of Law, Hyderabad
8. Mr. Anant Kumar Asthana, Advocate, New Delhi
9. Ms. Maharukh Adenwalla, Advocate, Mumbai
10. Dr. Nilima Mehta, Professor & Child Rights Specialist, Mumbai
11. Ms. Nina Nayak, Former Member, NCPCR
12. Ms. Tannistha Datta, Child Protection Specialist, UNICEF Country Office, India

## 1. Context

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**1.1** The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 has been introduced in the Parliament to amend the Juvenile Justice (Care and Protection of Children) Act, 2015.

**1.2** The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 seeks to strengthen child protection system to effectively address issues relating to children in conflict with law and children in need of care and protection.

**1.3** The Statement of Objects and Reasons to the Amendment reads as follows.

*“The Juvenile Justice (Care and Protection of Children) Act, 2015 (the Juvenile Justice Act) came into force with effect from the 15th January, 2016, by repealing the Juvenile Justice Act, 2000, with a comprehensive provision for the children alleged or found to be in conflict with law and children in need of care and protection. The Juvenile Justice Act has been made in pursuance of the Constitution of India which mandates equal rights for children and also mandates upon State, inter alia, to take suitable measures for protection of children. The Act also fulfils the India's commitment as a signatory to the United Nations Convention on the rights of the child, the United Nations Standard Millennium Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption (1993) and other related international instruments.*

*2. Sub-section (1) of section 56 of the Juvenile Justice Act provides that adoption shall be resorted to for ensuring right to family for the orphan,*

*abandoned and surrendered children, as per the provisions of the said Act and the rules and regulations made thereunder. Section 63 of the Juvenile Justice Act stipulates that the adoption is final on the issuance of the adoption order by the Court. Sub-section (2) of section 61 of the said Act also provides that the adoption proceedings shall be disposed of by the court within a period of two months from the date of filing of an application. It was observed that there is significant delay in finalisation of adoption cases in Courts. Besides, these adoption cases are non-adversarial in nature and to be dealt according to well laid out process. Hence, it is proposed to culminate the adoption process at the level of District Magistrate in the District.*

*3. District Magistrate, being the Chief Executive Officer in the District, is suitably placed to ensure effective coordination among the stakeholders for facilitation of necessary services for children's rehabilitation/re-integration. By further empowering District Magistrate to deal with child protection and adoption process, it aims to facilitate a coordinated and effective response of District Administration to various issues pertaining to children, including adoption.*

*4. The Juvenile Justice Act deals with "Petty", "Serious" and "Heinous" categories of offences. Hon'ble Supreme Court in the matter of Shilpa Mittal Vs. State of NCT of Delhi (Criminal Appeal No. 34 of 2020), vide its judgment dated the 9th January, 2020 has observed that the Juvenile Justice Act does not deal with the fourth category of offences viz., offence where the maximum sentence is more than seven years imprisonment, but*

*no minimum sentence, or minimum sentence of less than seven years is provided and treated the same as "serious offences" under the Act.*

5. Accordingly, the *Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, inter alia, proposes: —*

*(a) to strengthen child protection at district level by empowering District Magistrate including Additional District Magistrate to effectively coordinate and monitor the functions of various agencies responsible for implementation of the provisions of the Juvenile Justice Act;*

*(b) to empower District Magistrate including Additional District Magistrate to authorise orders of adoption, in order to address issues of delay in adoption and to propose that appeals on the orders of adoption may be preferred to the Divisional Commissioner;*

*(c) to strengthen the Child Welfare Committee by incorporating provisions relating to educational qualifications for the members and stipulating eligibility conditions for selection of the committee;*

*(d) to categorise offences wherein maximum sentence is more than seven years imprisonment but no minimum sentence, or a minimum sentence of less than seven years has been provided as "serious offences" under the Juvenile Justice Act; and*

*(e) to remove difficulties in interpretation of the Juvenile Justice Act."*

**1.4** Giving a background of the juvenile justice system in India, it may be noted that the legal framework to Juvenile Justice was first enacted in 1986 to deal 'juvenile delinquent' and 'neglected juvenile'. The Juvenile Justice Act, 1986 was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000 to remove age discrimination between boys and girls with regard to juvenility and to make the system more child friendly to deal the 'juvenile in conflict with law'

and 'children in need of care and protection'. The Juvenile Justice (care and Protection of Children) Act, 2000 was formulated in the perspective of child rights recognised by the United Nations Convention on the Rights of the Child (1989) and guidelines formulated under this Convention and other relevant international instruments. The Act was amended twice in 2006 and 2011. In 2009-10 the Government of India introduced the Integrated Child Protection Scheme (ICPS) to provide financial resources to State Government and Union Territory Administrations to implement the Act. With subsequent development in child protection law and policy especially by the enactment of the Protection of Children from Sexual Offences Act, 2012 and the introduction of National Policy for Children, 2012 and to address the issues and challenges constraining the effective implementation of the juvenile justice, the Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted by repealing the JJ Act, 2000. The Juvenile Justice (Care and Protection of Children) Act, 2015 has been in operation from 15<sup>th</sup> January 2016 with a comprehensive provision for the children alleged and found to be in conflict with law and children in need of care and protection. The institutional mechanisms established by virtue of this Act are responsible to address the issues of the children who have come to juvenile justice system through proper care, protection, development, social re-integration by adopting child -friendly approach to serve the best interest of children.

**1.5** During five years of its implementation few legal and operational issues arose that challenges to the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 , hence the amendments to the Act have been proposed by the Ministry of Women and Child Development, Government of India. The Juvenile Justice ( Care and Protection of Children) Amendment Bill, 2021 was introduced in Lok Sabha by the Minister Women and

Child Development , Ms. Smriti Zubin Irani on March 15, 2021 which has been passed by Lok Sabha on March 23, 2021. As proposed the Bill seeks to introduce measures for strengthening the child protection set up.

#### **1.6 Key amendments proposed by the Bill include:-**

- The definition given to ‘serious offences’ in the Act has been amended to include the offences for which the punishment under the IPC or any other law for the time being force is provided for minimum imprisonment for a term more than three years and not exceeding seven years; or maximum imprisonment for a term of more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years.
- The Act provides that an offence which is punishable with imprisonment between three to seven years will be cognizable and non-bailable. The Bill amends this to provide that such offences will be non-cognizable.
- The Act prescribes the procedure for the adoption of children by prospective adoptive parents from India and abroad. On the acceptance of the child by prospective adoptive parents, a Specialised Adoption Agency applies to a civil court to obtain the adoption order. The adoption order issued by the court establishes that the child belongs to the adoptive parents. The Bill provides that instead of the court, the District Magistrate (including Additional District Magistrate) will issue such adoption orders.
- The Bill provides that any person aggrieved by an adoption order passed by the District Magistrate may file an appeal before the Divisional Commissioner, within 30 days from the date of passage of such order. Such appeals should be disposed within four weeks from the date of filing of the appeal.



- The Act provides that there will be no appeal for any order made by a Child Welfare Committee finding that a person is not a child in need of care and protection. The Bill removes this provision.
- The Bill promises to rest controlling powers with the District Magistrates. These include: (i) supervising the District Child Protection Unit, (ii) conducting a quarterly review of the functioning of the Child Welfare Committee, and (iii) calling or any information from the Juvenile Justice Board.
- The Act provides that an offence against children under the Act, punishable with imprisonment of a term more than seven years, will be tried in the children's court. Other offences (punishable with imprisonment less than seven years) will be tried by any Judicial Magistrate. The Bill proposes that all offences under the Act be tried in Children's Court.
- The qualifications prescribed by the Act for the appointment of members to CWC that the appointee should be (i) actively involved in health, education, or welfare of children for at least seven years, or (ii) a practising professional with a degree in child psychology or psychiatry or law or social work or sociology or human development. The Bill amends this qualification by substituting that the appointee (i) shall have a degree in child psychology or psychiatry or law or social work or sociology or human health or education or human development or special education for differently abled children and has been actively involved in health, education or welfare activities pertaining to children for seven years, or (ii) is a practicing professional with degree in child psychology, psychiatry or law or social work or sociology or human health or education or human development or special education for differently abled children.

## 2. Consultation Brief

**2.1** The amendments envisage strengthening district level monitoring by empowering and authorizing District Magistrate to order adoption and to ensure effective coordination and monitoring the functions of various agencies responsible for the implementation of the Juvenile Justice Act. This calls for public discourse and commentaries on the quality of the changes or any ambiguities or contradictions that are likely to be confronted by virtue of the proposed amendments in the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015.

**2.2** In this context, the Centre for Child Rights, National Law University Odisha organized consultation on April 3, 2021 to discuss and deliberate upon the usefulness and adversaries of the proposed amendments in practical administration of juvenile justice in the perspective of the best interest of the child. The consultation was held in virtual mode.

**2.3** The objectives of the Consultation were to :-

- Understand the implication of changes in the practice of juvenile justice administration and the accountability among the multi-stakeholders;
- Collect opinions of legal professionals, policy makers, academics, child rights activists, civil society organizations to identify key areas and other cross cutting issues which are still untouched in juvenile justice law or child protection policy;
- Formulate action oriented recommendations and advocacy issues

**2.4** The agenda of the Consultation was as follows. The consultation was moderated by Dr. Ananya Chakraborty, Faculty of Law, NLUO

### Introductory Session

Welcome Address	Prof. Yogesh Pratap Singh , Registrar, NLU Odisha
Consultation Brief	Ms. Tannistha Datta, Child Protection Specialist, UNICEF Country Office, India
Opening Remarks	Hon'ble Mr. Justice Madan B. Lokur, Former Judge, Supreme Court of India

### Thematic Session: Understanding Implication of changes in the practice of juvenile justice administration

**Chair: Prof.(Dr) Ved Kumari**  
Vice-Chancellor, NLU Odisha

Speakers:

Mr. Anant Kumar Asthana, Advocate

Ms. Maharukh Adenwalla, Advocate

### Thematic Session: Adoption Orders by District Magistrate: Effectiveness and Consequences

**Chair: Prof. (Dr) Faizan Mustafa**

Vice- Chancellor, NALSAR University of Law, Hyderabad

Speakers:

Dr. Nilima Mehta, Visiting Professor & Child Rights Specialist

Ms. Nina Nayak, Former Member, NCPCR

### Concluding Remarks

Prof.(Dr) Ved Kumari, Vice-Chancellor, NLU Odisha

Prof. (Dr) Faizan Mustafa, Vice- Chancellor, NALSAR University of Law,  
Hyderabad

## 3. Introduction

**3.1** The consultation began with the warm welcome by Prof.(Dr) Yogesh Pratap Singh, Registrar, National Law University Odisha.

**3.2 Ms. Tannistha Datta**, Child Protection, UNICEF Country Office, India remarked the consultation is an opportunity to understand what are the new changes in the Amendment Bill. She urged all stakeholders to focus on the effective implementation of the law rather than amending the legislation frequently.

**3.3 Hon'ble Justice Madan B. Lokur, Former Judge, Supreme Court of India** began opening address with a note of congratulation to the vice-Chancellor, NLUO for organising the consultation and the fast initiative to set up dialogue on Juvenile Justice by the University. He was enlightened by seeing the participation of judges of some the High Courts, faculties and students of law, child rights experts and expecting good discussion from the consultation. He wished to reflect three issues -inordinate delay in courts for adoption order, lack of clarity to offences which neither come in serious offences nor in heinous offences category, and classification of designated courts to try offences against children- could have forced to Government to bring amendments in Juvenile Justice Act, 2015.

**3.4** Elaborating further, Justice Lokur viewed that the first trigger for the amendment is the continuing discussion of long delay in Courts for adoption order. He found instances of the complaints in Supreme Court that judges are taking long time to order adoption. The second trigger is perhaps the judgement of the Supreme Court in the matter of Shilpa Mittal Vs. State of NCT of Delhi in which Court observed that the Juvenile Justice Act does not deal with fourth

category offences i.e the offence which does not fall within of “Petty”, ‘Serious’ or “Heinous ‘ categories of offences.

**3.5** He found problems in the adoption but he raised the concern that the Judgement of the Supreme Court in Shilpa Mittal case came on the 9<sup>th</sup> January 2020. The ministries involved in the law-making process must be aware about the interpretation of the judgement of the Supreme Court. He gave the example that law in the matter of sexual harassment at workplace was enacted in a decade after the judgement passed by the Supreme Court in Visakha case. But in contrast, juvenile justice law has been amended within a year of the Supreme Court judgement in Shipla Mittal case. The amendment needs elaborate discussion. There was of course discussion on the legislation of JJ Act ,2015 but not wider consultation with legal experts and criminologists. Had such kind of discussions been taken place the lacuna in the laws would not have come.

**3.6** The third trigger is that the voice of the Government that Court cannot legislate, the legislation is the domain of the Government. If Government does not legislate then what will happen. The Supreme Court conscious of the fact that the judiciary cannot legislate but the Court taken into consideration of definition of heinous offence, serious offence and interpretation of such provision in the law. Form Jurisprudence point of view and in the post legislative period the Court will judge what are the powers of the legislation and powers of the judiciary. The court has taken the Public Interest Litigation to direct the legislation.

**3.7** In relation to the issues of delay in adoption orders, Justice Lokur pointed out that the Chief Justice of High Courts and High Court Juvenile Justice Committees would have reviewed and guided to prevent the delay in issuing adoption orders by Courts. Now, the Government has taken the other root of

taking away the power of courts and desires to confer on the District Magistrates who are primarily the Chief Executive officer of the district. Taking power from judiciary to District Magistrate would not be a good solution. District Magistrate being the chief executive officer in the district has long responsibilities. Other issues highlighted by Justice Lokur are as follows.

- By virtue of responsibilities to oversee the functioning of institutions effectively to their capacity, District Magistrates did not act. They may come out with their own excuse that over burdened with primary responsibilities on revenue and land administration and other issues.
- Juvenile Justice Board is headed by a Judicial Magistrate who is accountable and responsible to Chief Metropolitan/Judicial Magistrate. Dispensing justice is the power of Courts and naturally the absolute jurisdiction is the High Court. Although two social worker members are appointed by Government, it does not mean that they are under the control of executives. The present amendment has created a conflict of dual accountability. Board could not responsible or answer to District Magistrate. The District Magistrate may, as and when required, in the best interest of a child, call for any information from all the stakeholders including the Board and the Committee as per the new addition in the Amendment Bill. Sub-section (4) to Section 16 of the Principal Act.
- Similarly, the Child Welfare Committee by virtue of its status, it is a **“Bench of Magistrate”**. The incorporation of the above sub-section (4) to Section 16 of the Principal Act, the accountability to Chief Metropolitan/Judicial Magistrate has been taken away and by transferring to District Magistrate, the functions and responsibilities can be influenced and controlled by District Magistrate. This is not a good solution.

- There are evidences that show the District Magistrates did not discharge their functions and responsibilities in overseeing the child care institutions and ensured such institutions are equipped with infrastructures and amenities and functioning to their capacity effectively. But, such District Magistrates are empowered to monitor and oversee the functions of other stakeholders.

## 4. Overview of the Amendment Provisions

The session understanding implication of changes in the practice of juvenile justice administration was chaired by Prof. Ved Kumari, Vice Chancellor, NLUO. Speakers for the session were Mr. Ananta Kumar Asthana, Advocate, New Delhi and Ms. Maharukh Adenwalla, Advocate, Mumbai.

**4.1** At the outset to the deliberation on Mr. Anant Kumar Asthana expressed gratitude to NLU Odisha for organising consultation and providing him opportunity to share his opinion, appreciation and comments on the Amendment Bills which could have been drafted without wider consultation and debate. According to him the amendments proposed in the Bill in certain provisions involve serious lapses, contradictions and control of the administration over the judicial bodies. Mr. Asthana discussed the positive and negative factors of amendments and also touched upon the need for further amendments. He highlighted those amendments that has direct impact on the lives of children and brought to the discussion other important issues which have not been paid attention. He reiterated that the Amendment Bill has been passed in the Lok Sabha and it is in the process to be introduced in the Rajya Sabha. He was of the opinion that there is opportunity for the practitioners, lawyers and academics to get engaged in the process in influence policy to revisit the amendments.

**4.2** He is not averse to amendment because amendments are directly related to implementation. A faulty law cannot be pushed for implementation. Some of the areas where amendments were require and they are critical for implementation.



**4.3** He came across cases where police could not take decisions due to lack of records relating to character certificates in respect of pending cases. Children are unable to access legal assistance owing to poor background or being unaware of seeking such services. In the absence of proper representation on such matters, children whose cases are pending disposition face immense hardships. By proposing amendment to **Sub-section (2) of Section 74** of the Principal Act, the Police should be prohibited to disclose any record of the child for the purpose of character certificate or otherwise in respect of pending case or case which has been closed and the gap has been addressed.

**4.4** He made the point that amendment of Section 86 of the Act shall remove the ambiguities in relation to classification of designated courts for the trial of cases of offences against children. Giving further insights to this provision he stated that the Commission for Protection of Child Rights Act, 2005 says for the establishment of children's court to adjudicate the case where child is a victim. But the concern is that Children's Courts were neither created nor even a single matter was transferred from other courts until the POCSO Act was enacted by which Special Court was created. The POCSO Act, 2012 says that where Children's Courts are available they can also function as Special Court so both Children's Court and Special Court were merged in a single one. The fact is that Delhi was the first state where children Court were notified but not a single case was transferred. In 2012 Children Court and Special Court under POCSO were merged and there was progress. The JJ Act, 2015 introduced Section 86 where offence against children could be triable in any court. It may be triable by any Magistrate or Magistrate of First Class or Children's Court. He raised the point that when law says that all offence against children is triable in Children's Court,

then what are the points to be achieved by introducing Section 86 in JJ Act, 2015.

**4.5** Mr. Ananta mentioned that in relation to the role of “Children’s Courts” to handle the issues of child victims, the Commission for the Protection of Child Rights, Act, 2005 provides the establishment of such courts to handle exclusively the offences against children. He is of the opinion any victimization relating to a child under any law may be tried by the Children’s Court alone. This power is drawn from the provision of Commission for the Protection of Child Rights Act, 2005. Therefore, all child victims would go to Children’s Courts<sup>1</sup>. Further, the same legislation ensures the appointment of Special Public Prosecutor or exclusive Prosecutor<sup>2</sup>. This provision shall ensure child centric approach and sensitivity attached to the issues of victim children in the best interest.

**4.6** Mr. Anant has pointed out that the High Courts can take initiatives to ensure that the all cases relating to child victims’ and exploitation including the issues of child labour shall be brought under the purview of Children’ Courts. This can be drawn from the provisions of the Commission for the Protection of Child Rights and not from Criminal Code Procedure. Further, dedicated legal aid shall also be ensured.

**4.7** Mr. Anant has pointed out the lacunae in relation to heinous and serious offences. He narrated a Motor Vehicle accident case which was projected as a

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<sup>1</sup> Section 25 of JJ Act, 2015. For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children’s Court to try the said offences: Provided that nothing in this section shall apply if- (a) a Court of Session is already specified as a special court; or (b) a special court is already constituted, for such offences under any other law for the time being in force.

<sup>2</sup> Section 26. For every Children’s Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

heinous offence. The Juvenile Justice Board and the Sessions Court upheld the provisions of Section 15 and classified the same as heinous offence. But, the High Court observed and said that offence had not prescribed a minimum punishment of 7 years and hence it did not fall within the ambit of Section 2 (33) of the Juvenile Justice (Care and Protection of Children) Act, 2015. An appeal was made and it was upheld appeal<sup>3</sup>. The Juvenile Justice (Care and Protection of Children) Act, 2015 did not consider the cases fall under the observation and direction of Supreme Court where the maximum sentences is more than seven years but no minimum sentence or sentence less than seven years is provided, such offences shall not be considered as heinous offences but as “serious offences.” This 4<sup>th</sup> category is to be treated as “serious offences” and shall be followed till such time the Parliament takes a call on the matter and amend the Juvenile Justice legislation incorporating the provision.

**4.8** Mr. Anant has pointed out that a review on orders passed under Section 15 of the JJ Act in relation to 4<sup>th</sup> category as mentioned in the Supreme Court orders will have to be relooked from the date of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015. Any orders erroneously passed by any Children’s Court needs to be reverted to Juvenile Justice Boards.

**4.9** By amending Section 18 (1) with the incorporation the wording “*a child above the age of 16 years has committed a heinous offence and the Board has after preliminary assessment under Section 15 disposed of the matter*” the ambiguity has been cleared and the definite direction is ensured.

**4.10** The provision in clause (3) of Section 28 of the Act that a child in need of care and protection has to be produced before an individual member of the CWC

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<sup>3</sup> Criminal Appeal No.34 of 2020 [Arising out of Special Leave Petition (CrI.) No. 7678 of 2019 by Shipa Mittal vs State of NCT of Delhi & OTHERS

when the Committee is not in session for restoration of the child in Child Care Institution. It needs to be revoked to achieve deinstitutionalisation.

Under the proposed amendment District Magistrate has been given with power to order adoption. If any person aggrieved by the order passed by the District Magistrate, then appeal may be preferred before the Divisional Commissioner. After that there is nothing as if the order passed by the Divisional Commissioner is final and binding. There can be no appeal against the order of the Divisional Commissioner. The amendments do not touch the revision of the order. According to him this provision has totally blocked the principles of justice and the revision power of Courts under Section 102 has been removed. This is a serious lapse.

**4.11** Mr. Anant has pointed out in one instance in Gwalior the orders of the Child Welfare Committee was set aside by the District Magistrate to whom the power of review the functions of the CWC was alone rested and not to dispensing with justice delivery. On appeal the matter was clearly defined by the High Court. Hence, he has cautioned that conferring more powers to District Magistrates may lead to more confusion

**4.12** Discussing the gaps in the Section 97 of the Act, Mr. Asthana illustrated that during the COVID pandemic children were released from Children's Home. JJBs issued order U/s 97 to release child from observation home/ special home. The children who are placed in the place of safety could not be released because place of safety was missing under section 97. There are huge number of children who are placed in the place of safety it was not mentioned in section – 97 to release children who are staying in place of safety. So amendment is required in Section 97(1) to include child living in the place of safety.

**4.13** JJ Act, 2015 has made a stringent regime of registration and regulation of Child Care Institutions (CCIs). Registration is mandatory and non-registration can be penalised. But most of the institutions who are not registered under JJ Act moved to 'Fit Facility' which has been a matter of great discussion. He strongly argued that if Fit Facility desires to achieve the purpose for which it has been conceptualised by the law then the 'Fit Facility' has to be taken away from the purview of definition of Child Care Institutions.

**4.14** "Fit Facility" has been defined in clause 28 of Section 2 of The Act. Further Mr. Asthana made a point that the concept of fit facility has been mentioned in the JJ Act 2015 in five provisions with different interpretation. The contradiction between the concept and practice of fit facility is misleading its implementation.

**4.15** According to the provision of clause (4) of Section 65(4), the Specialised Adoption Agency(SAA) can be penalised and recognitions can be withdrawn if they are found default in obtaining adoption order from the Court within the stipulated time. He found this his provision is unjust because nobody can be given guarantee to obtain order from the court. Court can only be approached. Obtaining order is not in the hands of SAA.

**4.16** Section 110 (1) empowers the State Government to make rules and in the proviso to sub-section (1), it has been mentioned that the States' Rule making powers to be in conformity to the model rules. This section force the state Government to follow the model rule. Conformity clause is unconstitutional as it takes away rule making power from the state government. The model rule cannot take into consideration the diversities across the States. The state has

geographical, territorial and cultural peculiarities so model rule cannot be adopted uniformly. The conformity clause shall be withdrawn.

**4.17** Section 9 (1) of the Juvenile Justice Act of 2015 speaks about a Magistrate who has not been empowered under the Act to form opinion that the person produced before him/her is a child and such opinions shall be recorded and forward the child immediately to the Board having jurisdiction. Further in Section 9 (2), the word Court has been used to which if a person claims juvenility or if the court itself is of the opinion as such that court shall make and enquiry and take such evidence as may be necessary to determine juvenility. Mr. Anant is of the opinion that in the sub-Section (1) of Section 9, the word “**Magistrate**” may be replaced by the word “**Court**”.

**4.18 Ms. Maharukh Adenwalla, Advocate, Mumbai** in her presentation pointed out that the present Juvenile Justice (Care and Protection of Children ) Amendment Bill is unclear, most confusing and lack of understanding on the roles and responsibilities of various stakeholders. It is presumed that the exercise is for cost saving. Without understanding the ground level situations and taking away the power of District Child Protection Units and CARA and giving additional powers to already overburdened District Magistrates is a glaring error. Ms. Adenwalla gave insights and comments on following amendment provisions.

- Amendment of Section 2(14)(ix) reads as child in need of care and protection means a child “*who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking*”. Analysing this provision Ms. Adenwalla said that the definition of a child in need of

care protection has a purpose. The earlier provision was prevention and protection of children from drug abuse or involving in trafficking. The present amendment has created a conflict to the provisions of NDPS Act. According to this Act, anyone who consumes or indulging in drug trafficking could be viewed as offenders. In such cases if children are involved, it would give dual authority on the child by CWC and JJB. This is a glaring error.

- **Section 2(17) reads as** *“Child Welfare Officer” means an officer attached to a child care institution, for carrying out the directions given by the Committee or, as the case may be, the Board with such responsibility as may be prescribed.* In this context she was of the opinion that by substituting the word child care institution to Children Home, the Board may place a child in conflict with law in children home and this could be a clear violation of principles of juvenile justice. Other important glaring error is by taking away the responsibilities of Probation officer who is a public servant and accountable. Since majority of Child Care Institutions are run by NGOs, the Child Welfare officer by virtue of their appointment by such child care organizations may be pressed into perform the duties of probation officers and it is nothing but privatization of services to CCL also.
- **Section 2(46) reads** *“place of safety” means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children’s Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.* Explaining the amendment to this provision Ms.

Adenwalla pointed out that by taking away the words that the person in-charge of which is willing to receive and take care of the children, these places of safety may be expanded as a place of keeping larger numbers of children and the very purpose of rehabilitative measures would go. If the person in charge of the institution is consulted such person may be aware of the types of services that are available and feasible to provide and shall take children who are in need of such services alone. It is made without understanding the consequences and impact.

- Amendment has inserted clause (4) in Section 16 which reads *the District Magistrate may, as and when required, in the best interest of a child, call for any information from all the stakeholders including the Board and the Committee*. Ms. Adenwalla found no purpose behind this provision. She stated that the purpose has not been defined. Further, the already overburdened District Magistrate would not find time to go through such information received and take appropriate measures. It is made without lack of understanding on the roles and responsibilities of stakeholders and the purpose of calling for information.
- Section 27(4) relating to qualifications for the member in CWC has been amended to read as **No person shall be appointed as a member of the Committee unless he has a degree in child psychology or psychiatry or law or social work or sociology or human health or education or human development or special education for differently abled children and has been actively involved in health, education or welfare activities pertaining to children for seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human health or education or human development or special education for differently abled children**. Commenting on this provision she mentioned



*that* the amendment has brought pre-requisite academic qualifications and practical experiences of not less than 7 years or a practicing professional. It is practically not possible to search personnel with such qualifications and experiences or such practicing professionals. This has not taken into consideration of ground realities in rural areas.

- Provision inserted in Section 38 (5) that the CWC shall inform to inform the District Magistrate about the children declared as legally free for adoption. According to Adenewalla by taking away the power of CARA and conferring the power to District Magistrate, the very purpose of monitoring on children would go off.
- As amended to Section 40(4) that the CWC shall submit a quarterly report regarding restored, dead and runaway children to the State Government and the District Magistrate. She commented to this provision that reporting to DCPU is a sense and deliverable actions would be taken. By reporting to Government and runaway children, and keeping away the DCPU from its responsibilities to effect follow-up is also made without understanding the purpose.
- As amendment proposed in Section 41(2) that the registration of CCI shall be made on the recommendation of the District Magistrate and the State to determine the type of CCI, capacity and purpose of the institutions, the District Magistrates would do mechanically and their time would not allow them to do with application of mind.
- According to the amendment in Section 54(2) the Inspection Committees to submit their reports to the District Magistrate for further action Glaring errors/deficiencies noticed and reported would require immediate action and attention. If DCPU and State Governments are kept away towards the

accessibility of reports, addressing the issues would be on orders of District Magistrates.

- **Section 86(2) reads in amendment** *where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be non-cognizable and non-bailable.* Discussing this provision she explained that the Schedule to Cr. P.C listed out the offences which are cognizable and on-cognizable. Sale and procurement of children is cognizable and non-bailable. If children go missing from nursing homes, hospitals etc would become non cognizable. It is a serious error in the amendment. The commission of offence under Section 81 of the Principal Act would become non-cognizable

Ms. Maharukh Adenwalla observed that the cosmetic changes have been proposed in the form of amendment to the existing Juvenile Justice Act, 2015 is to conferring more power to executive the District Magistrate. The types of children to be addressed under the Juvenile Justice which is the concern of activists and advocates are not addressed in the amendments. Rather, pushing children towards criminal justice system is in the agenda. Administration of juvenile justice is the areas of professionals with specialization. This is pushed to ordinary personnel.

## 5. Adoption orders by District Magistrates: Effectiveness and Consequences

**5.1** The session on **Adoption orders by District Magistrates: Effectiveness and consequences was chaired by** Prof. Faizan Mustafa, Vice-Chancellor, NALSAR University of Law, Hyderabad. Speakers were Dr. Nilima Mehta, Visiting Professor and Child Protection Specialist and Ms. Nina Nayak, Former member, NCPCR.

**5.2 Dr. Nilima Mehta** in her presentation pointed out that the content of the Bill and its intent and process, outcome and long-term impacts, accountability etc are to be debated and discussed. Contribution of legal professionals, academicians, child rights activists and practitioners, civil society organizations were not considered. In 2018 extensive discussions with civil society organizations and Government personnel happened and several suggestions were made highlighting the detrimental impact of the amendments proposed to the JJ Act 2015. Intentions of academics, civil society organizations that approached the issues with transparency, openness and willingness to share their views and recommendations with trust have also not been recognized. It is disappointing. The areas of concerns are:

1. Adoption of a child is a social process
2. Adoption creates a legal relationship between the child and unknown persons. Therefore, it involves social and legal issues and hence statutory procedures will have to be fulfilled and followed.
3. The important socio-legal issues are inheritance of family name, succession and inheritance rights. These issues are to be considered in a child centric point of view keeping the best interests of the child and long

term security. These are civil rights and such rights are to be ensured by civil courts.

4. District Magistrates are under the control and supervision of Government and not under the control and supervisions of the Judiciary. Civil rights should be ordered through a legal process and adoption as a legal process will be hampered if the District Magistrates are empowered to pass adoption orders.
5. The functions of District Magistrates which include licensing, supervision, cancellation, prosecution, withdrawal and related powers are administrative in nature. But, adoption is a civil matter. Emotionality of the birth parents, adoptive parents and the children require a child centric approach and such an approach can be made only by courts. Right to protection is absolute and shall be strengthened.
6. Adoption can be counterproductive in the lives of adopted children unless succession rights, family name and inheritance rights are ordered by civil courts
7. CARA is the Adoption Resource Centre with authority over supervision, control and monitoring of adoption related issues and established under the provisions of the Hague Convention<sup>4</sup>. The proposed amendment dilutes the role of CARA
8. Role of DCPU has also been taken away.

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<sup>4</sup> Article 6 of Hague CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION: A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

9. Definition of the Child in sub-section (2) of Section 2<sup>5</sup> shall be considered. Adoption is a legal relationship being created lawfully through civil courts and such legal relationship cannot be ordered by Executive Magistrates. Since it creates a child-parent relationship legally, in the absence of the power of civil courts the adoption orders cannot be considered legally valid and may create complications in relations to the issues of family name, succession, inheritance rights etc.
10. Further we do not have provisions of terminating the pre-existence legal relationships between the child and the biological parent. In adoption, this can be acquired under the provision of Hague Convention<sup>6</sup> as the adoption order once passed by a Court cannot be set aside.

**5.3** Passing an adoption order requires exercise of judicial powers and involvement of multi stakeholders in relation to counselling and guidance, social enquiry and home study, emotional issues, and so on. It is doubtful that such a chain of processes will be made by a District Magistrates. Verification of documents, scrutiny, and protection from exploitation including trafficking of children cannot be guaranteed if adoption orders are passed by District Magistrates.

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<sup>5</sup> “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child;

<sup>6</sup> Article 26 of Hague CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION: The recognition of an adoption includes recognition of a) the legal parent-child relationship between the child and his or her adoptive parents; b) parental responsibility of the adoptive parents for the child; c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made. (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State. (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

**5.4** If pendency is the only reason that causes the Government to transfer the power of the Court to District Magistrates to order adoption, it is doubtful whether family care and child protection practices will be ensured by District Magistrates as their focus would be to expedite orders rather than consider these issues.

**5.5** In the statement of objectives for the amendment it is mentioned that 629 cases were pending as on July 2019. In in-country adoptions, the process of pre-adoption foster care has been ensured. Therefore sizable children would be in pre-adoption foster care and the adoption order is a process that follows. Sub-section (4) of Section 3 of Code of Criminal Procedure has defined the roles of executive Magistrates and hence, adoption orders by District Magistrate are not in the right spirit of law.

**5.6** Dr. Nilima Mehta also pointed out that in the absence of foolproof methods there may be many challenges ahead on the adoption of children. Legality of orders, child protection issues, gender justice, equal rights, and succession, acquiring family name and inheritance rights, all of which may not get addressed. Therefore, she has proposed for the enactment of Special Law on Adoption to replace the current route of the Juvenile Justice Act.

**5.7** Ms. Nina Nayak pointed out that the intention and experiences of District Magistrates would fail to effectively handle adoption orders. Going as far back as 1991 she recollected the orders related to children's discharge from institutions or transfer of children were being passed by District Magistrates with little application of mind and time to review the documents presented. . In the absence of proper training and orientation and also lack of institutions to impart such training on law and policy on adoption, District Magistrates cannot be expected to perform the new responsibilities responsibly and effectively.

**5.8** In 1994, the Supreme Court suggested the services of recognized scrutiny agencies to scrutiny of documents of perspective adoptive parents; home study etc. to assist the Courts and such services must be made available either at the district level or at the state level if District Magistrates are to pass adoption orders.

**5.9** Ms. Nina Nayak has also pointed out that the DCPU personnel are mostly adhoc employees and not empowered to scrutiny of documents, enquiry etc. to support the District Magistrates. Further, she mentioned that monitoring of Child Welfare Committees and Juvenile Justice Boards by District Magistrates are difficult propositions considering the humungous administrative responsibilities of District Magistrates.

**5.10** Prof. Faizan Mustafa, Vice-Chancellor, NALSAR University of Law lamented on the recent trend of shifting judicial functions to the administrative bodies against the constitutional provision of separation of power between executive and the judiciary. He raised the fact that there are 250 foreign tribunals in the north eastern states to decide on the important subject of citizenship of its people. The requisite qualifications of personnel for the tribunals are retired judicial officers. Recently it has included retired civil servants. Likewise, the farmers have expressed that the power under Farm Laws have been vested with District Magistrates which is very much of concern to them. The provisions of District Magistrates to order adoption in the place of civil court are part of the movement towards transferring the powers of courts to executives. The rationale for the movement is attributed to the delay in adoption orders by Courts. Although in some cases, the courts have taken 3-4 years to pass adoption orders yet it is not right to transfer such powers to executives. Delay in justice means denial of justice. But, hurried justice is buried justice which is more harmful. Prof. Mustafa has also suggested that to address the issues, it is

necessary to enhance the efficiency of courts by evolving effective mechanisms and creation of additional civil courts.

**5.11** Prof. Mustafa also pointed out that too much control by CARA and centralization of power in one place is also not appropriate. The brought to the attention of report NCPCR that revealed the pathetic state of child care institutions with 3 out of 5 children homes not having toilet facilities with 26 % of such institutions having no Child Welfare Officers. There is a need to encourage adoption which is the best way to prevent children languishing in homes and ensuring that they have permanent families.



## 6. Way Forward

**6.1** Justice N. Kotiswar Singh, Judge and Member, High Court Juvenile Justice Committee, Gauhati High Court raised the concern that important provisions of the Juvenile Justice Act, 2015 were not taken seriously either by the State or Central Government<sup>7</sup>. High Court Juvenile Justice Committees are to some extent monitoring the functions of JJBs and CWCs. To his knowledge no evaluation has been made for DCPU, CCIs and SAAs. He told that neither NCPCR nor SCPCRs have fulfilled their obligations effectively to monitor the implementation of the JJ Act<sup>8</sup>.

**6.2** Hon'ble Justice highlighted that the separation of judicial powers from the executive has been made to ensure effective dispensing of justice because judges are trained for the purpose. Delay and adversary are the result of having to handle too many legal issues and their serious implications. He thanked the panelists for their commitment and knowledge, and for highlighting key legal and sociological issues.

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<sup>7</sup> Juvenile Justice Act of 2015 - Section 55 of. (1) The Central Government or State Government may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government. (2) In case such independent evaluation is conducted by both the Governments, the evaluation made by the Central Government shall prevail.

<sup>8</sup> Juvenile Justice Act of 2015 - Section 109. (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17 (herein referred to as the National Commission or the State Commission, as the case may be), of the Commissions for Protection of Child rights Act, 2005, shall, in addition to the functions assigned to them under the said Act, also monitor the implementation of the provisions of this Act, in such manner, as may be prescribed. (2) The National Commission or, as the case may be, the State Commission, shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in the National Commission or the State Commission under the Commissions for Protection of Child Rights Act, 2005. (3) The National Commission or, as the case may be, the State Commission, shall also include its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005

**6.3** Justice G.R. Swaminathan, Judge, Madras High Court Madurai Bench and Member High Court Juvenile Justice Committee urged for continuous dialogue and sensitization of juvenile justice and child rights issues.

**6.4** Prof. Asha Bajpai, Former Professor, TISS, Mumbai raised the point that District Magistrates do not have skills and capacity to take concluding decisions on child protection issues especially on adoption matters. She further mentioned that Child Welfare Committees are employed with part time personnel with limited honorariums. Considering the enormous functions and responsibilities vested on the CWCs, this Committee should be made as full time Committees with reasonable emoluments.

**6.5** Dr. George Kolanshany mentioned that during the

#### Participants Opinions

- Since District Magistrates are responsible for overseeing functioning of all child care institutions, including adoption agencies. Giving them the power to finalise adoption creates a direct interest. Will their decisions withstand the test of objectivity and Impartiality?
- Can an order that terminates the right of a child with the biological parent(s) and creates rights within the adoptive family be passed by District Magistrates?
- In my view, distinction between fit facilities and CCIs is important so as to enable children to be placed in institutions where they can access education, therapeutic services, de-addiction treatment, etc.
- The importance of pre-legislative consultation needs to be considered. There are several aspects that need attention and an opportunity to discuss the current amendments as well as other legislative gaps should have been provided to the public and civil society.
- Appeal against adoption orders is a grey area. Not sure if DMs who come from all sorts of background have the skills and understanding to handle adoption matters with the nuances needed
- The decision relating to adoption matters need judicial skills and understanding. I don't think DMs have these skills
- CWC i has very important and complex legal functions. at least some members must be fulltime and salaried not par time with honorarium
- If the DM is monitoring in true spirit then why it has not been reviewed the implementation of other alternative care rather than adoption? If the pendency is an issue then there will be more pendency .Gradually the decision of the CWC is not being executed by the DCPU rather they have started to avoid in terms of executive issue. Such thing should not be happen.

periods from 1986 to 2000, the children in need of care and protection (neglected children) and children in conflict with law (delinquent children) could not mingle and dealt with separately. The treatment process for the children mentioned above are entirely different and adjudicated by different authorities. The Juvenile Justice (Care and Protection of Children) Act, 2015 has provisions that children in conflict with law can be treated as children in need of care and protection. It gives jurisdiction to both the adjudication authorities (Board and the CWC) and the intention is transfer the power from judiciary.

**6.6** Ms. Bharati Ali, HAQ Centre for Child Rights explained that the transfer of powers to District Magistrates involves conflict of interests and specialized adoption agencies will possibly influence such interest with District Magistrates. Further, CWCs by virtue of their judicial powers to be viewed as judicial bodies and should not be expected to report to CARA. She further added that that except in Ireland and Finland in the rest of the countries of Europe, orders on Adoption are made by the judiciary. In Ireland and Finland the orders are issued by administrative authorities who have accountability to public on issues of adoption.

**6.7** Mr. Pratik Kher, Secretary, SCPCR, Chhattisgarh highlighted the need for adequate man power to handle child protection issues. He said that the ICPS should be a separate department with district officials who can report to District Magistrate.

**6.8** Prof. Ved Kumari concluded the programme by stating that the high voltage of debate and discussions has brought out many important issues, implications and consequences of the amendment bill. The suggestion of Prof. Mustafa to approach the Minister for Women and Child Development is highly valued as

the Minister is always listening to issues. It was also resolved that the report may be shared with High Court Juvenile Justice Committees and Parliamentarians.

**6.9** Prof, Ved Kumari appealed to all for engaging in collaborative efforts in the future for strengthening the juvenile justice system and conveyed her gratitude and appreciations to resource persons, participating Judges of High Courts and attendees

## 7. Recommendations

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The recommendations emerged from the Consultation are as follows.

**7.1** The existing provisions of **Section 2(14) (ix)** of the Juvenile Justice Act is very clear to prevent children expose to drug abuse or trafficking and protect them from vulnerabilities. Therefore, such children can be classified as children in need of care and protection. But, the Amendment to the section conflicts with the provisions of NDPS Act. The present amendment shall bring children in conflict with law as children in need of care and protection in whose cases the rehabilitative measures vary. These children are required not only counseling and guidance but also treatment for the addiction. Therefore, it requires reconsideration.

**7.2** The existing provisions of **Section 86 (2)** that relates to offences against children shall be cognizable and non-bailable. The amendment would bring in justice to children who are procured or sale of children or child missing and trafficking as these offences would become non-cognizance and non-bailable.

**7.3** The amendment to **Section 2(17)** shall bring unqualified and non-professionals to be appointed as Child Welfare officers in Child Care institutions which are mostly run by NGOs. Using the services of such personnel by committee or Board shall be either sub-standard or with conflicts of interest because there are not accountable as they are not public servants. The services of probation officers shall alone be used who are Government appointed personnel and accountable for their duties and functions.

**7.4** The amendment to **Section 2(46)** of the Principal Act would push children to place of safety without any purpose. By removing the words that the person in-charge of which is willing to receive and take care of the children, the purpose of rehabilitative measures will be defeated. By consulting the officer in charge,

the children to whom the needy services which are available with institution shall be admitted.

**7.5** The amendment to **Section 27(4)** will create dearth of qualified personnel to involve in CWCs. The pre-requisite qualifications and 7 years of experiences in the field of child welfare and social work are impossible in rural districts. The existing provisions hold good.

**7.6** There are certain discrimination prevailed in the existing legislation. Section 97 (1) ensures release of children in children homes or special homes either absolutely or on such conditions as it may think fit to impose. But, this provision is not available for children in place of safety. Therefore, the same privilege shall be extended to children who are placed in place of safety

**7.7** Fit facility institutions shall be taken away from the definition of child care institutions to ensure children who can be placed in such institutions with flexible options

**7.8** Section 98 (2) does not include the place of safety for ensuring leave of absence for children in such place of safety which is available for children in special homes or in Children homes.

**7.9** Section 65(4) requires revision as the special adoption agency could not be viewed responsible for obtaining the orders of adoption within the stipulated period. Such agency could file necessary petitions within the stipulated period of time.

**7.10** It is suggested that the Rule making power should be absolutely with the State Government and framing model rules and making the States to conformity to such model rules are not in the right spirit because each state has its own diversified issues to be addressed.

**7.11** Sub-Section (3) of Section 28 of Juvenile Justice (Care and Protection of Children) Act, 2015 shall be amended suitably to ensure that the individual member can exercise power to either sent to children home or to restore to parent or guardians

**7.12** District Magistrates by virtue of their position as “Executive Magistrates” are supposed to perform duties and functions as defined in Section 3(4) of Criminal Code Procedure. Hence, the District Magistrates can be the supervisory officers. It is pointed out larger numbers of child care institutions are functioning with lack of infrastructures and amenities as reported by NCPDR. These institutions have not been supervised effectively and to ensure their functions to their capacity. The reasons could be the over burdened District Magistrates could not spare time for such supervision or device mechanisms to oversee. Under these circumstances, delegating more powers in the administration of juvenile justice to District Magistrates will complicate the already limping system.

**7.13** According to in sub-section (2) of Section 2 of Juvenile Justice Act, 2015 “**adoption**” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child; It is therefore involves legality, termination of rights of biological family and creating new relationship with unknown person lawfully. In the absence of provisions in law to terminate the relationship of the child with biological family, it is guided by Hague Convention to which India is Signatory. Therefore International laws and conventions and National law and policy will have to be invoked appropriately while adoption orders are issued. Further terminating certain rights and ensuring certain rights such as right to

family name, succession and inheritance rights in the new family are the domain of civil court and not the executive magistrate.

**7.14** It is not an order issued on paper brings all issues are settled. Creating a new relationship between unknown person and a child who is already in the grip of sufferings with deficiencies of love and affection and disturbed emotionally, ground exercises are required to address the issues of child's rights and protection, ways and means for addressing emotional issues and beyond evolving trust and confidence with the new family. It requires the involvement of professionals, competent probation officers to conduct social enquiry and home study reports and counselling and guidance, and empowerment. These issues can be well addressed in the civil court and it is doubtful that already overburdened district magistrates with multifaceted and diversified duties and functions, and responsibilities can concentrate.

**7.15** The monitoring and evaluation of the effective functioning of institutions, structures and mechanism as envisaged in the legislation in Sections 55 and 109 by State and Central Governments, National and State Commissions for the Protection of Child Rights have not been done resulting in backlog of cases. This can also be strengthened.

**7.16** Instead of finding a short cut method to reduce the pendency of adoption orders by conferring the powers to District Magistrates who's multifaceted and diversified responsibilities would not suit to ensure justice to children, it is required not only to strengthen the District Courts with requisite support systems but also through proper monitoring and evaluation.

**7.18** It is suggested to revisit the existing legislation and appropriate changes may be proposed after consultation with legal experts on criminal and constitutional law, family law, academic, civil society organizations etc.