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**Delhi Commission for Protection of Child Rights (DCPCR)**

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**Dated: 12<sup>th</sup> March 2021**

**Subject: Recommendation Regarding Continuance of Proceedings  
Against Children in Petty Offences Beyond 6 Months**

1. Delhi Commission For Protection of Child Rights (hereafter referred as "DCPCR" or the "Commission") has been constituted under Commission For Protection of Child Rights Act 2005 read with Government of NCT of Delhi notification number: . The statute empowers and entrusts the Commission with the responsibilities of monitoring the implementation of rights of the children and conducting inquiries into deprivation of their rights based on a complaint or suo-moto. Section 13(1) (j) states,

*"(j) inquire into complaints and take suo-moto notice of matter relating to*

*(i) deprivation and violation of child rights*

*(ii) non-implementation of laws providing for protection and development of children;*

*(iii) non-compliance of policy decisions, guidelines or instructions aimed at, mitigating hardships to and ensuring welfare of the children and to provide relief to such children; or*

*take up the issues arising out of such matters with appropriate authorities;"*

2. The statute gives the Commission the powers of the civil court while conducting inquiries and entrusts the Commission with the responsibilities to monitor all matters relating to constitutional and legal rights of children, review the safeguards provided by any law for the protection of child rights and recommend measures for their effective implementation in the best interest of the children.
3. Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter referred as "Juvenile Justice Act") is one of such rights to provide for children's basic needs through proper care, protection, development,

treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided and institutions and bodies established for the same purpose.

4. Consequently, the Commission is statutorily mandated to monitor the Juvenile Justice Act 2015 and conduct inquiries into deprivation of this right of the children. The same has been explicitly clarified under section 109 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which assigns the additional responsibility to the National/State Commissions For Protection of Child Rights to monitor its implementation
5. Therefore, the Commission inquired into the pendency levels in Juvenile Justice Boards and given below is the status of the pendency with regard to petty offences as on 31.12.2020.

<b>Juvenile Justice Board</b>	<b>&lt;4 Months</b>	<b>4-6 months</b>	<b>6-12 months</b>	<b>&gt;12 months</b>
<b>JJB-1</b>	275	36	118	582
<b>JJB-2</b>	140	50	105	137
<b>JJB-3</b>	400	200	100	100
<b>JJB-4</b>	46	09	22	30
<b>JJB-5</b>	35	06	11	15
<b>JJB-6</b>	26	02	11	89
<b>Total</b>	<b>922</b>	<b>303</b>	<b>367</b>	<b>953</b>

6. Before proceeding further, it is critical to clarify the provisions in the law with respect to petty offences. Section 2(45) of the Juvenile Justice Act, 2015 provides the definition of “petty offences”. The provision is reproduced below

*“petty offences” includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;”*

7. Section 14 of the Juvenile Justice Act provides for the inquiry by the Juvenile Justice Boards (hereafter referred as “JJBs”) regarding children in conflict with law. The JJBs are, therefore, required to conduct inquiries in accordance with the provisions laid down in section 14 of the Juvenile Justice Act 2015 with effect from 15.01.2016. Reproduced below is the text of the section:

***“14. Inquiry by Board regarding child in conflict with law. -***



*(1) Where a child alleged to be in conflict with law is produced before the Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.*

*(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.*

...

*(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated: Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.*

*(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely: -*

...

*(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);”*

8. The pendency status indicated in the table given in para 4 reveals that
  - a. Category A: cases pending between 4 to 6 months (922)
  - b. Category B: cases pending between 4 to 6 months (303)
  - c. Category C: cases pending for more than 6 months (367)
  - d. Category D: cases pending for more than 12 months (953)
9. It must be noted that the Juvenile Justice Act 2015 explicitly states that all proceedings against children involving petty offences shall stand terminated at the end of the six months. The Act provides for no exception and no option whatsoever.
10. From a simple and plain reading of the law, it is clear that the cases of the category C i.e. cases involving petty offences and pending more than 6 months and category D i.e. cases involving petty offences and pending more than 12 months being pursued against children have no basis in law and therefore are being pursued beyond it.

11. However, to deepen its own understanding of the law and to finalise its position, the Commission referred the matter for legal opinion of the experts including hon'ble Justice Madan Lokur (Retired Judge, Supreme Court of India), Mr. Anant Asthana (Eminent Child Rights Lawyer), Ms. Bharti Ali (Founder & Executive Director, HAQ: Center For Child Rights) and Ms. Nimisha Srivastava (Program Director, Counsel to Secure Justice). Additionally, the Commission sought the legal opinion internally from its Legal Advisor as well. This advise to the Juvenile Justice Boards is the outcome of the Commission's evolved understanding based on its own reading of the law as well as consultation with experts.
12. The question being engaged with in this advise is not new. Similar questions have been raised before the Courts earlier as well. The Commission notes that in *R. Sembarithi v. State & Anr.* the Madras High Court in its order dated 12.03.2019 in Crl.O.P.(MD) No. 3070 of 2019 held that Section 14(4) of the JJ Act, 2015 is mandatory, and if enquiry proceedings are not concluded within the outer time period of 6 months, they must be terminated. In this case, the Petitioner/ Accused sought quashing of the case pending against him before the JJB in respect of petty offences allegedly committed by him. He argued that even if the JJB was given the extended period of time, that is, 6 months from the date of production, the permissible time period for enquiry under Section 14(2) and Section 14(4) had expired and since the inquiry remained inconclusive, the proceedings must stand terminated. The High Court accepted the Petitioner's submissions and quashed the proceedings, stating that:

*"7. The argument of the learned counsel for the Petitioner explains the state of affairs on its own. It is unfortunate that despite a statutory mandate, the Juvenile Justice Board could not complete its enquiry into this. When enquiry is not concluded within the time provided under Section 14(4) of the [JJ Act, 2015], the proceeding should stand terminated."*

13. The Commission further brings to the attention of the Juvenile Justice Boards the differences between the position under Juvenile Justice Act 2015 and the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the 2000 Act"). In *X Minor v. The State*, the High Court of Delhi in its order dated 15th November, 2019 compared the provisions of both Acts while considering a case under Section 14 of the 2000 Act. The High Court noted that:

*"23. Section 14 of the 2015 JJ Act provides for the consequence of terminations of inquiry, for petty offences, if it remains inconclusive.*

...



*27. As noticed hereinabove, the 2000 JJ Act does not provide for any consequence if the inquiry remains inconclusive for a period of six months and the consequence is provided only by the Rules. The question that arises for consideration is as to whether the Rules would be directory or mandatory and whether in all cases, irrespective of the circumstances, the inquiry has to terminate.”*

In this context the High Court of Delhi held that the consequence in the Rules would not apply automatically and could not be mandatory in the absence of any such mandate in the 2000 Act, being the legislation enacted by Parliament.

14. In context of the specific and direct consequence prescribed by Parliament in Section 14(4) of the JJ Act, 2015 which was absent in the 2000 Act, the intention of Parliament to mandate termination of proceedings is clear.
15. For any legislation, the Legislature is the final authority. Unless the Act as a whole or in part has been ruled ultra vires to the Constitution by the High Court or the Supreme Court, the Act prevails on all without exception. In the absence of any such judgment, the law enacted by the Legislature is sacrosanct. No other authority can constitutionally afford to not implement the law as enacted regardless of its opinion and consequences.
16. The Juvenile Justice (Care and Protection of Children) Act, 2015 has made it the statutory right of the children in conflict with the law to ensure proceedings against them are terminated at the end of sixth month if they remain inconclusive. The same has been upheld by the Constitutional Courts.
17. Therefore, the Commission is of the considered opinion that, the JJBs have no power under the Act to continue the enquiry under Section 14 beyond 6 months in case of petty offences and any proceeding that survives beyond sixth month has no basis in law and violative of the statutory right of the children in conflict with the law involving petty offences.
18. Strictly speaking, the proceedings “shall stand terminated” implies an automatic consequence. However, the Commission is of the considered opinion that it would be appropriate if a formal order is passed by the JJBs terminating such proceedings along with the final disposal order and individual care plan.
19. This is critical because the child may still have a strong rehabilitative need. Therefore, it is crucial that the mandate of the law is honoured by ensuring that rehabilitative need is fulfilled. Hence, the individual care plan and determining if a child needs to be declared “Child In Need of Care and Protection” under section 2(14) of the Justice (Care and Protection of Children) Act, 2015 is of essence and works in the best interest of the children.



20. Having settled the legal position, the Commission further sought to understand if the Covid-19 pandemic affected the legal position on the issue and if any exception may be carved out under the circumstances and if yes, the appropriate body for carving out those exceptions.
21. Based on the legal opinions received, the Commission is of the considered opinion there is nothing in the Juvenile Justice Act, 2015 to suggest the intention of Parliament to make exceptions to the timelines for inquiries into petty offences in case of delays caused due to natural or other disasters. It must be further noted that Covid-19 pandemic is not the first nor would be the last disaster facing our country. It is for Parliament to incorporate provisions to alleviate such difficulties. Disasters, natural and man-made, have been common and frequent in our country and yet Parliament has not carved out any exception despite that reality making its intention clear that it does not favour any exception. In the absence of any such provision, Justice Lokur remarked, *"JJBs will be unable to avoid the mandatory termination of proceedings pending beyond 6 months even during a disaster"*.
22. It may further be noted that statutes which provide timelines for criminal or civil proceedings, including the Limitation Act, 1963 and the Code of Criminal Procedure, 1973, do not contain any such specific exception or exemption in case of disasters. For this reason, the effect of the Covid-19 pandemic and the national lockdown from 24th March, 2020 onward was taken into account by the hon'ble Supreme Court in exercise of its inherent powers under Article 142 of the Constitution. The Court initiated suo moto proceedings in order to extend the period of limitation for all types of proceedings by its Order dated 23rd March, 2020 to alleviate the difficulties which would be faced by litigants if timelines continued to run during the lockdown.
23. However, the order of the Supreme Court is not applicable in the given circumstances. In fact, similar issues have come up before different Courts in the past year prompting clarifications. Maharashtra High Court favoured the right of the accused and clarified that the period prescribed by the Criminal Procedure Code (CrPC) for filing a charge sheet cannot be extended because of the nationwide lockdown restrictions.
24. The Supreme Court clarified that the order dated March 23, 2020 (on limitation) cannot be read to mean that it ever intended to extend the period of filing chargesheet by police as contemplated under Section 167(2) of the Code of Criminal Procedure. The Court remarked that Covid-19 pandemic does not eclipse personal liberty and rights of the individual. The Supreme Court further clarified that the March 23 order was for the benefit of those who have to take remedy, which may be barred by time because they were unable to come physically to file such proceedings. The Court stated that even during the lockdown, the charge-sheet could have been filed before the



magistrate, and the investigating officer was not precluded from doing so within the stipulated period, the bench pointed out.

25. It is, then, a natural inference that neither directly nor indirectly the Supreme Court has granted any extension for completing inquiries against children under Juvenile Justice Act 2015.
26. The stigma faced by the children and the tag of the “criminal” when proceedings are being pursued in Juvenile Justice Boards not only adversely affects the mental health of the children, but denies them their familial love if kept in institution, and personal freedom duly enshrined in the Constitution. It has a significant adversarial impact on the children. Pursuing the proceedings beyond the legally permissible time limit, therefore, would be encroachment of the statutory right as well as personal liberty of these children.
27. The Commission, however, notes that the difficulty of terminating proceedings in cases where the age question has yet not been decided. The Commission appreciates the serious difficulties and the complications involved in determining the age of the children and hence the jurisdiction of the Juvenile Justice Boards.
28. Section 94 of the JJ Act, 2015 prescribes the procedure to be followed by the JJBs to decide the question of age, as follows:

*“94. Presumption and determination of age. -*

*(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*

*(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—*

*(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*



*(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*

*(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.*

....”

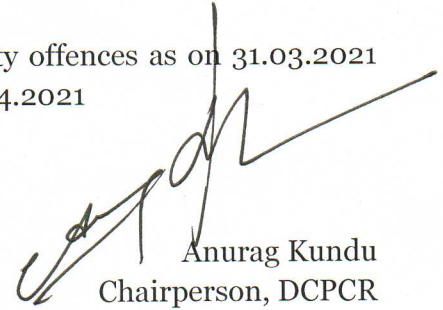
29. The statute does not prescribe any time limit for deciding the age of the children. However, a reading of Section 94 indicates that Parliament intended the procedure of age determination to be completed expeditiously and as quickly as possible. If it is apparent to the JJB that the person brought before is a child, it must immediately proceed with the inquiry. If there is some doubt as to whether the person is a child, the JJB must first seek the certificates mentioned in Section 94(2)(i) or (ii) which do not require any deep inquiry to be conducted. A scientific/ medical age determination test, if required, must be done within 15 days of an Order to do so.
30. Further, the Commission notes that the time-limit prescribed for conducting the inquiry is 4 months. Although, another 2 months extension is permissible having regard to the circumstances of the cases, but the expectation is that of completion of inquiry within 4 months. Since age determination is one (and the first) stage of the process of inquiry, the obvious inference is that the maximum time limit for age determination is less than 4 months since the stages of inquiry post the age determination must be completed within 4 months.
31. The Commission is of the considered opinion that it is a reasonable inference from this provision that the determination on the basis of Section 94(2)(i) or (ii) which is a shorter summary determination must be completed as soon as possible, and at the most within a period of 15 days, which is the outer limit for the longer procedure of a medical test. Same has been advised by Justice Madan Lokur. However, it is acknowledged the statute leaves out the gap for the maximum time-limit for the same. Therefore, it would be a travesty if the age question has not been decided within 4 months.
32. Having considered the law, facts and circumstances of the matter, the Commission, therefore, in exercise of the powers vested in it under section 15(i) advises the Juvenile Justice Boards to



- a. Terminate **immediately** all the proceedings involving petty offences that have completed six months and pass final disposal order keeping in mind the rehabilitative need of the children;
- b. Decide the age question expeditiously by means of documentation or by medical test and then proceed in accordance with the law.

33. Accordingly, the Juvenile Justice Boards stand advised.

34. The Commission seeks that the status of the petty offences as on 31.03.2021 be shared with this Commission on or before 10.04.2021



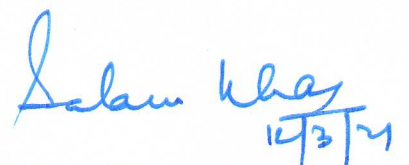
Anurag Kundu  
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Copy for information

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