

REPORT

National Launch of Report on Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 – Focus on Rehabilitation Services and Linkages with the POCSO Act, 2012

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**Report of National Launch of Report on
Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 –
Focus on Rehabilitation Services and Linkages with the POCSO Act, 2012¹**

I. Introduction

In his Welcome Address, **Hon'ble Justice Hinchigeri, Judge and Chairperson JJC, High Court of Karnataka**, welcomed all the dignitaries and participants to the National Conference, thanking them for their initiative and efforts over the past years to better the lives of children. He highlighted the critical role played by Hon'ble Justice Madan B. Lokur, Judge, Supreme Court of India and Supreme Court Committee on Juvenile Justice, underscoring that it was under his stewardship that care and protection of children has become a movement and a mission in the country.

In her Introductory Remarks, **Ms. Yasmin Haque, Representative, UNICEF India**, recognized the presence of representatives at the highest level from all the key constituents who have a duty towards children, in the room, saying that if the motivation and commitment to action that has been generated through this initiative continues to grow, then we have a winning solution for the challenges faced by children in the country. She observed that the sustained momentum of the round-tables has resulted in Child Protection now being high on the agenda of the judiciary as well as the executive, which is indeed remarkable. She described the multi-agency approach that has been strengthened through these consultations as the 'golden nugget' that needs to be cherished and strengthened in order to aspire towards higher levels of achievement. could be harnessed for the benefit for children, and the best practices of different states could be used to push implementation. She highlighted three areas of focus for the way forward. *First*, the need for strengthening the protective environment for children through family and community based rehabilitation, recognizing that in some situations the family may itself be perpetuating abuse, due to which the child would need other forms of rehabilitation. *Secondly*, prevention and effective case management, using government services and community organisations, particularly given the higher caseloads caused by growth in population, more children in vulnerable situations and the greater levels of awareness among the community resulting in higher levels of reporting. And *thirdly*, the need to address the sexuality of adolescents in a non-judgmental and safe manner, supporting families in this endeavor. She concluded by saying that these consultative processes have now triggered a movement fueled by a strong and passionate drive for the cause of children. She expressed the hope that this would become a norm, given that children matter, and that the Hon'ble Chief Justice of India has put his weight behind this important initiative steered by the untiring efforts of Hon'ble Justice Lokur.

Mr. Rakesh Srivastava, IAS, Secretary, Ministry of Women and Child Development, Government of India, expressed his sincere appreciation for the efforts taken by Hon'ble Justice

¹Report prepared by Arlene Manoharan, SwagataRaha, Shraddha Choudhary and MonishaMurali from the Centre for Child and the Law, National Law School of India University, Bengaluru with assistance from Carina Singh, 3rd year BA-LLB (Hons) student of NLSIU, Bengaluru.

Lokur, the various State HCCs on JJ, the concerned Government Departments, the NGO sectors and other stakeholders, in helping to create a safe and conducive environment for children in the country. He shared the measures taken by the MWCD, the highlights of which include:

- 781 units, set up in collaboration with Childline, to provide 24x7 service to children in distress. The ministry aims to cover the entire country in the following year.
- Railway Childline services for children who run away, get lost or get trafficked.
- Trackchild and Khoya-Paaya portals, which have been successful in tracking missing children and restoring them to their parents.
- Instructions issued to place cradles at hospitals and other places to save and rehabilitate unwanted/ abandoned children

A detailed report of the presentation made by Mr. Srivastava is available as **Annexure 1**.

In his Opening Remarks, **Hon'ble Mr. Justice Subhro Kamal Mukherjee, Chief Justice, High Court of Karnataka** emphasized the need to change societal mindsets and work towards reforming practices within the home and family, especially as regards child rearing, to make laws, aimed at the protection and development of children, effective.

Justice Madan B. Lokur, Judge, Supreme Court of India briefly shared the progress made in the course of the three round table consultations, which include concrete outcomes based on efforts in the following key areas - to ensure that living conditions for children residing in CCIs are improved; that JJBs and CWCs are established in all Districts, and that their functioning improves; that effective legal aid is provided to children and to trigger and propel efforts aimed at rehabilitation of children in need of care and protection, children in conflict with law, and child victims of sexual abuse.

He observed that though solutions to many problems faced by stakeholders, by society, by children and by others have been identified through these consultations, unfortunately some challenges have recently mushroomed, such as child trafficking, drug addiction among children, etc.

Justice Lokur then appreciated the sharing of the good practices that had taken place during the deliberations, describing this as a rich learning experience. He cautioned that since India is a diverse country, due care should be taken to replicate these practices only if they are appropriate in the local conditions.

Justice Lokur highlighted that over the three years, a much higher level of convergence has taken place through a meeting of minds of all the key stakeholders. He lauded the State High Court Committees who have facilitated regular meetings, and urged that consideration now be given for meetings to be facilitated at monthly intervals, given the huge benefits that accrue from these processes. He also appreciated that some states have even facilitated state and divisional level round table conferences, which he said effectively serves the purpose of monitoring the effective implementation of the JJ Act and related laws and schemes. He suggested that larger states could hold

regional conferences within the state followed by an annual conference, and smaller states could do this once in six months.

Affirming the proactive role demonstrated by non-governmental organizations and institutions, Justice Lokur said that a lot of active interest has been taken by them over the last three years resulting in quality research, services, and expertise. He appreciated the fact that some of this was even undertaken through CSR support, and that PPP models are being developed and tested, which is encouraging. He described UNICEF as playing a very proactive role, saying that the team deserves a lot of credit for the work that has been going on.

On the government front, Justice Lokur pointed out that many states have appreciably come out with schemes for children, but urged that they need to be implemented on the ground. The fact that some states have realized the urgency and importance of addressing pendency was also applauded.

Justice Lokur explained that during the last two years, an effort had been made to concentrate on rehabilitation and social re-integration of children, which he said requires a lot of thought, attention and patience given the huge challenges in this area and went on to identify some states who he felt had done a remarkable job in this regard. He then said that some of the challenges that remain in rehabilitation and social reintegration. He highlighted the lack of trained personnel, particularly people who can provide guidance to children, - i.e. counselors, child psychologists, etc. He recognized that many have indeed states taken small but extremely vital and necessary steps towards this end. He also highlighted the need for registration of CCIs on priority. Granting of birth certificates remains a major problem and infrastructure challenges continue to remain. Periodic monitoring needs to be undertaken on priority, particularly at the district level.

Justice Lokur then re-iterated the importance of a Secretariat to support the effective functioning of the State HCCs-JJ in understanding and analyzing the problems and contributing to planning and monitoring. He stated that many of the High Courts have already set them up, whereas some are in the process. He clarified that there is no need for a very formal Secretariat - what is important is to take away the load on the judges, given that they are hard-pressed for time.

Aside from the broader areas of intervention, Justice Lokur underscored that there have been a large number of success stories of progress made by individual children, saying the he truly believed that if you can make a major difference in the life of one child, then a lot has been achieved. He went on to enumerate States where he had been informed of cases where the lives of children have been completely transformed, highlighting that this is really the ultimate goal of this endeavour over these three years.

Justice Lokur commended the work being undertaken by the NCPCR, particularly the initiatives relating to the preparation of training manuals, SOPs, etc. which have contributed in improving the system.

As regards the State of Jammu and Kashmir, Justice Lokur observed that though it has joined the bandwagon a little late, there is now going to be a dedicated conference focusing on the situation in this state in September 2017. He was confident that under the leadership of Hon'ble Justice Ali Mohammad Magrey, Chairman, Jammu and Kashmir HCC - JJ, much will be achieved in a timely manner.

Justice Lokur concluded by stating that an effort has been made to cull out best practices in each of the States, and that he is sure there are many more - which is why the process of sharing of experiences should continue. He mentioned that most of the challenges have also been identified, and that though many of them could be easily overcome, there are some for which there seem to be no solutions, particularly given the lack of funds. Though he recognized that there are some individuals willing to help without even asking for remuneration, funds are essential for the effective implementation of the Act. He then made an earnest request to the Government of India to make funds available in adequate measure and in a timely manner, so as to transform the lives of more and more children.

Hon'ble Mr. Justice J.S. Khehar, Chief Justice of India, delivered the Keynote address and released the Report of the regional round table consultations held during this third round. Noting that children constituted the common living future of the country, he focused on the need to strengthen family and community support, increase awareness and sensitivity towards the need of all children (especially, children in conflict with the law,) for care and protection, reinforcing the constitutional and international obligations to improve the lives of children. He lauded the quality of the report for the way in which it has comprehensively captured the broad issues, key challenges, and recommendations that have emerged from the deliberations, and expressed the need to back them with concrete strategies for time-bound implementation.

II. Aspects of POCSO Act and JJ Act Implementation

Ms. Bharti Ali of HAQ Centre for Child Rights, Ms. Sangeeta Punekar, FACSE, Mumbai and Advocate Maharukh Adenwalla presented a study of the working of 8 Special Courts under the POCSO Act, 2012 across Delhi and Mumbai. The data collection period was from November 2012 to June 2015. Ms. Punekar noted that considering the parameters of gender, age and proximity between perpetrators and victims in every category of offence, it was found that (i) 82% offenders were known to the child, neighbours being the largest segment; (ii) maximum children were in the 4-12 years age group; and (iii) there was no data for the third gender. The overall rate of disposal was 23%, being higher in Delhi (24%) than Mumbai (14%). She also pointed out that the Courts were spending a lot of time on cases arising out of romantic relationships.

Ms. Ali highlighted that although cases were fast-tracked in Delhi, the rate of acquittal was very high. She shared that material witnesses were turning hostile and bail was being granted because the parent did not have any objection. Interim bail had also been granted in some cases so that the accused could marry the victim.

Ms. Adenwalla highlighted the following critical findings of the study:

- The child requires assistance while journeying through the criminal justice system and thereafter. Despite the special provisions made under the POCSO Act and Rules to ensure speedy justice, care and protection of child victims, the Special Courts are not utilizing these provisions.
- In none of the cases was the child given legal representation, despite the special provision under Sec. 40. Neither the Special Courts nor the police are informing parents/guardians of this special provision. There is obviously no dearth of lawyers since the courts are appointing lawyers for all the accused. No bail order or judgment talks about appointing a support person. This demonstrates a lack of initiative on the part of the police and/or the CWC in giving the child the requisite support. No attempts are being made to explore the reasons behind material witnesses turning hostile, children's guardians giving consent to the bail of the accused, or withdrawal of complaints.
- There is absolute confusion regarding compensation of the victim, with no compensation awarded in Mumbai, while only 2 victims were compensated in Delhi. The Special Courts should ideally pursue the case even after passing the final order, and ask the State Governments to pay the portion of fine awarded as compensation, in cases of default. When Rule 7, POCSO Rules was framed, the government kept in mind the deficit of Sections 357 and 357A of the CrPC; yet there was no case of compensation being awarded under 357A of the CrPC.
- Even the few necessary linkages between the JJ Act 2015 and the POCSO Act, 2012 that stand established in law, are missing on the ground. There is no reference to the DCPU.

After giving an overview of the JJ Act, **Prof. Ved Kumari, Dean, Faculty of Law, Delhi University** pointed out that the State is finally recognising children as right-holders, particularly of the right to survival and development.

She pointed to the ambiguities in law that created room for adopting an interpretation that is pro-child. According to Section 2(33), JJ Act, 2015, "heinous offences" includes the offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for seven years or more. "Serious offences" are defined in Section 2(54) to include "offences for which the punishment under the Indian Penal Code or any other law for the time being in force is imprisonment between three to seven years." Section 304, IPC would not fall under either the definition of heinous or serious offences, which leaves a lot of room for discretion for the JJB. In such a situation, the general principles of statutory interpretation should be applied and the rule that an interpretation that widens the liability of the accused should be avoided. An application of this rule would mean that Section 304, IPC should not be construed a heinous offence, but a serious offence.

She also questioned what 'rehabilitation' means, and whether restoration of the child to her parents means automatic rehabilitation. She emphasized that the causes for becoming a CICL/CINCP must be explored, and the victims also must be rehabilitated too along with CICLs since they have undergone emotional and social trauma. She further pointed out that children are most vulnerable between 14 and 18 years of age due to hormonal and other changes in the physical structure of the

brain, and must be viewed as growing individuals in need of psychological and emotional support. She stressed the importance of ‘restorative justice’, which strikes a balance between punishment and support. It is high on control as well as support, involving working with the child and all stakeholders involved with the crime.

During the **open house discussion**, the following points emerged:

- The Delhi High Court provides 3 support persons to each victim, including support from the rape crisis cell and DCW; (ii) the High Court conducts continuous sensitization of police, lawyers, CWCs and doctors every other Sunday; (iii) every court has One Stop Centres managed by the court staff; and (iv) Compensation is awarded under each order, and victim rehabilitation under the Delhi Victim Protection Scheme includes reformation of the entire family too.
- Despite the emphasis given to the role of counsellors, capable counsellors are not available since our education system is not developed enough to produce them.
- CWC members should be available 24x7, including Sundays and holidays, so that IOs are able to promptly produce a child who needs care and protection before them.
- Criteria for age determination should be fixed under the POCSO Act - similar to that under the JJ Act for CICLs - in order to prevent the large number of acquittals resulting from failure to establish age.

III. Best Practice on Rehabilitation of Children

Hon’ble Ms. Justice Harsha Devani, Gujarat High Court was of the view that rehabilitation requires much greater convergence between the government and civil society. If civil society enhances services within the infrastructure provided by the State, the children in the juvenile justice system would get access to much better care.

Ms. Renuka Kumar, Principal Secretary, Department of Child and Women Welfare, Uttar Pradesh shared initiatives taken to sensitize Superintendents, care takers and class IV employees on dealing with children along with ECHO, a NGO based in Bangalore, Prayas in Delhi and other NGOs in Maharashtra. This has provided a platform to understand practices in other States and learn from them. Drawing from the PPP models in place in Gujarat, Karnataka and Maharashtra, Uttar Pradesh invited national level NGOs to extend support to children with special needs in three CCIs. To improve the disbursement of victim compensation, the *Mahila Evam Bal Samman Kosh*, a state-funded initiative with allotment of 100 crore state budget annually has been established. Through this initiative, 720 victims were paid compensation and it was directly deposited into the victims’ accounts. Ms. Kumar was of the view that MIS and data management centres are critical to ensure transparency. All CCIs within the State should be connected to these centres and public should be able to access financial dealings of every CCIs.

Mr. Bhaskar Rao ADGP, Karnataka Police recommended district level meetings of the various stakeholders including the nominated Special Court judge, Additional SP and medical officer. Delay in submitting the charge-sheet within the stipulated period can be minimized only if structural

constraints like delay in DNA testing and forensic tests are addressed. The protocol for medical examination of child victims under the POCSO Act is not followed. He was of the view that bail should not be granted to a child alleged to be in conflict with the law without consulting the police to assess if the child is at threat.

Ms. Shoba Koshy, Chairperson, Kerala SCPCR recommended the establishment of a common platform for all agencies to interact with all stakeholders to discuss issues within the district. She shared that the KeSCPR with KeSLSA and UNICEF have formed child friendly local institutions. Training is provided on child rights at the panchayat level so that issues can be resolved swiftly. There are identified parameters on the basis of which a panchayat will be considered child-friendly. Collaboration has been entered into with the Health Department and CEHAT to revise the safe kit used for medical examination of sexual assault cases. The KeSCPCR is monitoring the POSCO Act and plans on putting in place a similar system to monitor the implementation of the JJ Act. The KeSCPCR has digitized the complaints system and has assigned two staffs to monitor the action taken reports submitted by the government. Ms. Koshy also recommended that the data collected by SCPCRs and presented in their Annual Reports be considered by the High Court Committees on Juvenile Justice.

Prof. Sri Krishna Dev Rao, Vice Chancellor, NLU-Odisha, emphasized on the need for coordinated efforts of all stakeholders to translate the “friends of children” concept into action. Support to children has to be professionalized and the vacuum has to be filled by trained lawyers, psychologists, sociologist, and social workers. A special cadre of officers to work on JJ and POCSO issues should be created. The victim assistance model that has been developed in Goa needs to be replicated. has come up but how do we replicate this. Compensation for victims needs to be operationalized and the assistance of law schools and social work colleges can be taken in this respect. There is a need, however, to look beyond monetary relief and focus on alternative victim assistance schemes. The concept of prison visiting system should be introduced within the JJ system as well.

Some good practices emerged during the open house discussions:

- To deal with cases of delinquency and addiction to drug and substance abuse, Delhi Government pulled out data on children out of school. These children were placed back in the school system or special education centre so that the child is prevented from delinquency and drug abuse. Section 77, JJ Act was also being invoked to strike at the source and brings those providing drugs to children under the net of the law.
- In Odisha, cases under the POCSO Act are being monitored on monthly basis at the level of the IG and ADG-Crime in the Women and Child Cells as a result of which conviction rates have gone up.

IV. Key Priorities for Action

According to **Hon'ble Justice Mr. Ramesh Ranganathan, Acting Chief Justice, High Court of Judicature at Hyderabad for Telangana and Andhra Pradesh**, the key priorities should be capacity building and sensitization of JJBs, Magistrates and panel lawyers. Considering the frequency of transfers, such trainings will have to be conducted periodically. The JJ Act should be a part of the induction curriculum for all Magistrates. There is a need for creation of a pool of trained psychologists who can assist the JJB with the preliminary assessment. He also stressed on a monitoring system. A model exists in the form of *Bal Sahara* in Telangana to track the child from the time of appearance before the JJB or CWC till the exit from the Child Care Institution. However, this needs to be expanded to ensure tracking of the child and the matter's progress from the time of apprehension by the police or SJPU till the child's rehabilitation.

Ms. Stuti Kacker, Chairperson, National Commission for Protection of Child Rights expressed that violence against children has been on the rise while the rate of crimes by children has been relatively stable. She laid emphasis on the need for a more empathetic and child-friendly society as there is a direct correlation between what children are subjected to and what they do. The data based on the monitoring tools developed by NCPCR revealed that while structures were more in place under the POCSO Act, the JJ Act was not well monitored. She expressed concern that the country will lose out on productive citizens if they are not protected from violence and priority is not accorded to their concerns.

Ms. Uma Mahadevan, Principal Secretary, Department of Women and Child Development, Karnataka, emphasized on the need to use technology to track cases and pendency within the JJ system. She was of the view that social media, with necessary privacy protection, could be effectively used to link CCIs with NGOs where children are likely to be found to track missing children. She reiterated the need for training and capacity building programs and stated that it should include discussion on specific grey areas so that authorities can be guided towards the right and ethical decision. She flagged emerging areas of concern such as cyber-stalking and online safety of children and stressed on the urgent need to commence work on these areas. Finally, she laid emphasis on the need to provide children with sexuality and personal safety education as talking to children about their rights could go a long way.

Mr. Rajeev Sharma, ADGP –Rajasthan Police, stressed on the need to enhance the vibrancy and effectiveness of the SJPU, Child Welfare Police Officers (CWPO), and the Anti-Human Trafficking Units (AHTU). He suggested that counsellors be attached to the AHTU. Acknowledging the challenge presented by frequent transfers of police officers, Mr. Sharma recommended that officers serve as CWPOs before they are considered for field postings based on their performance. He also recommended that recruitments for the position of Sub-Inspector and CWPOs be made based on prescribed qualification criteria. He emphasized upon the need for better coordination between the CWC and the police and the need to build people's faith that the system will respond effectively. Mr. Sharma also recommended that individual care plans should be developed based on a continuous

dialogue. Children's potential should be evaluated fully so that rehabilitation programs can be tailored based on their needs and talents.

Ms. Kushi Kushalappa, ENFOLD India, Bangalore emphasized on convergence in training programmes and the using technology to deliver modules. She recommended the use of the Multi-disciplinary Case Conference model developed by CCL NLSIU, wherein different authorities, professionals, and other stakeholders collectively discuss a case to arrive at clarity on roles as well as how the child can be better protected or served, a model that Enfold and the children whose cases it handles have benefitted from immensely. She underlined the need to train medical practitioners on writing of provisional and final medical reports in a manner that it aids the court. She highlighted the challenges presented by a lack of awareness about the process to be followed when a child is pregnant and desires termination. Considering that Public Prosecutors are overburdened and are not exclusively dealing with POCSO cases, Ms. Kushalappa suggested a panel of trained lawyers who could guide the family before the Special Court and in other forums. To create a pool of Support Persons under the POCSO Act, para-legal volunteers and DCPU staff could be trained. In incest cases, there is a need to ensure that Family Courts conduct independent inquiries involving the child, mental health professionals, and family welfare officers while dealing with a custody claim by a parent who may have been acquitted by the criminal court.

Additional priority areas identified by participants during the open house discussion were as follows:

- Individual Care Plans are a fundamental necessity for rehabilitation and have to be ensured.
- After care, foster care, and sponsorship need to be operationalised.
- Social audits should be conducted.
- Need for a special JJ cadre as while there is a cadre under ICPS, the salary structure is very low and that leads to high attrition.

V. Conclusion

In his Concluding Remarks, Hon'ble Justice Madan B. Lokur stated that he had learnt a lot during this one day program on the two themes - Rehabilitation and Key Priorities. He went on to say that he believed that the good practices such as this kind of sharing and dialogue, and also the multi-disciplinary approach, needs to be institutionalized. He re-iterated the need for monthly round table conferences, bringing together representatives from all the key stakeholders, initially, and subsequently this could be undertaken once in two months. He commented on some of the issues that had emerged during the presentations, including the high numbers of children who have dropped out of school due to drug addiction, and the need for sensitivity by the police and the judiciary in handling POCSO cases. He urged the Judicial Academies and the Police Academies to become more and more involved in these issues on priority, particularly through capacity building. He also called upon the NCPCR and the SCPCRs to get more and more involved given that they are a statutory body. He urged them to look more closely into developing and conducting capacity building programs of high quality; and also to conduct research studies. He commended the various institutions that have been doing work in this area, including academics and other persons who come forward and help, highlighting the need for work to be done on preparing SOPs and Benchbooks on a

variety of topics, for developing a cadre of Support Persons, for sensitizing police, for capacity building of counselors, etc. Justice Lokur highlighted the fact that Legal Aid has been a major problem, and that there is need for greater sensitization among them. Sensitization of judges was also flagged as an urgent issue. Justice Lokur commended the establishment of the vulnerable witness courts by some States, saying it was a great idea, one that does not cost too much, given the huge benefit it brings to victims of sexual abuse, be it a child or a lady.

Justice Lokur flagged the need to engage more closely with the constructive use of technology, recognizing the efforts that have already been made in this regard by the MWCD, and the Telengana Police who have developed an e-learning program with the support from UNICEF. He also underscored the need for more attention to be given to data collection, suggesting that this be initiated at the District wise, and gradually at State and National level.

Highlighting the crucial role of being a focal point, being played by the HCCs on JJ, Justice Lokur said that these Committees require to be supported by a Secretariat. This he said is particularly important given that the judges are extremely busy and hold greater responsibilities, some of them are attaining the age of retirement, and most importantly, because these Committees have to become institutionalized into the system. Such Secretariats could play a supporting role in enabling collection of data, and assisting the JJs and other stakeholders to arrive at good decisions. He urged that these Secretariats be set up on priority at the High Courts, saying that there is no need to wait for a formal government order, for the same.

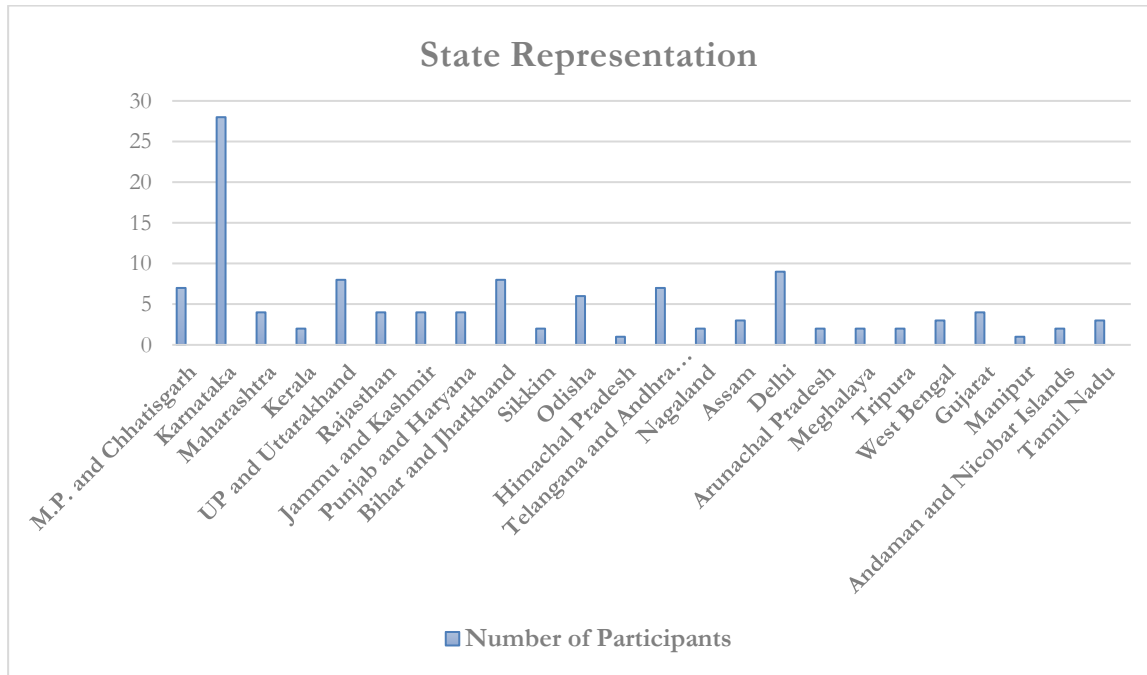
Finally, Justice Lokur highlighted the need to develop and establish review and monitoring mechanisms, including social audits, saying that this was an extremely important part of ensuring effective implementation of the JJ Act.

He then congratulated all the stakeholders for their sincere efforts, and extended a clarion call for all duty bearers to continue working in this constructive and collaborative approach in the interest of children of the country.

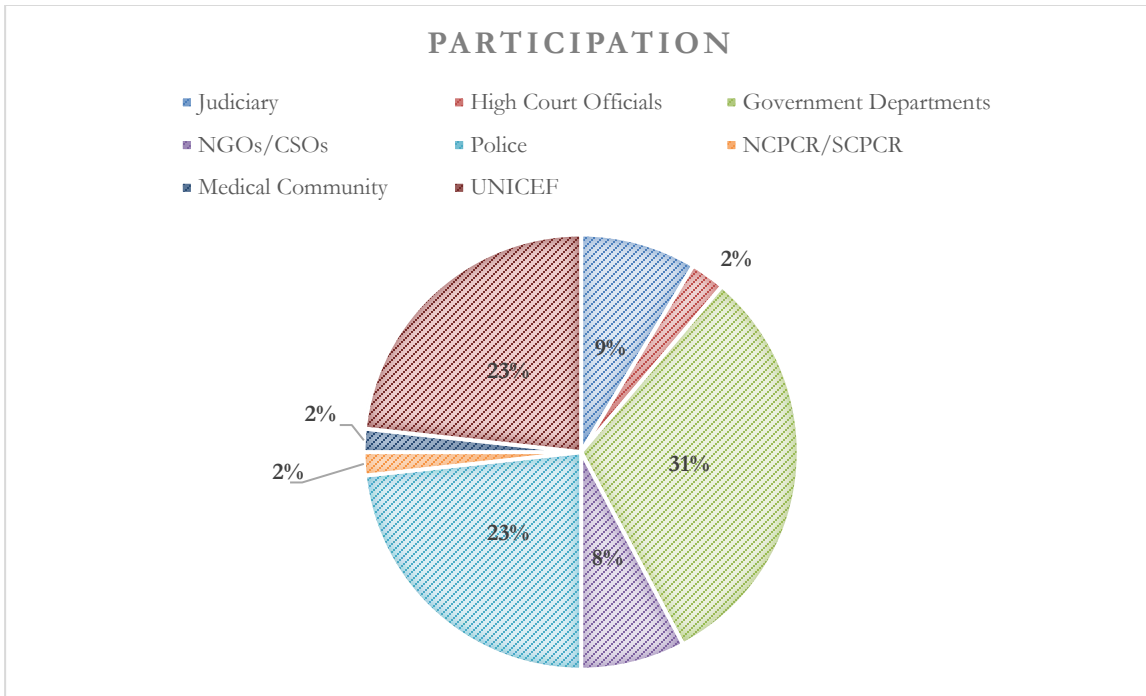
Annexure 1: List of Participants

The National Consultation was attended by over 100 participants from the judiciary, government departments, non-government and civil society organisations, educational institutions, the police, media personnel and several others engaged in the common goal of child protection.

The state-wise representation of participants is given below:



The share of participants from key stakeholders is depicted by the pie below:



Annexure 2: Report on efforts made by the Ministry of Women and Child Development (attached to this report)