



INSTITUTIONAL CARE AND TREATMENT UNDER JUVENILE LAWS IN INDIA

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Abstract-- “Home is where the heart is” is a beautiful quote which means that the home is place where you feel the deepest affection. It is a place which provides you with solace even at the worst of your times. We always use the quote “Home Sweet Home”, this shows the place of a home in our life. I have seen non resident Indian millionaires living in mansions in the countries where they work but they always yearn to come Home, where home means their home in India, even for a short stint. Your home always pulls you towards itself. This brings us to one major issue. What about homeless children? Will homeless children ever be able to feel their home? In these times when children get mature very early, if not given proper attention and care, there is an apprehension that they might turn towards wrong ways. Children being the future of our country this issue seems to be of prime importance. With an objective to provide a home for each child, the juvenile justice legislations provide a framework for institutionalized care and treatment. The legislators have made an excellent attempt to provide a home for homeless children which ensures holistic development of children. The present framework is evolved keeping in mind the needs of growing children. However, at times, it becomes difficult for the government to provide what is actually legislated. The distance between the cup and the sip becomes too long. The paper makes an attempt to analyse the history of institutional treatment which exists in India since almost two centuries. The Author has made an attempt to suggest measures through which the care and treatment received by the children in these homes can be excelled.

Key words: Juvenile laws, institutionalised treatment, child in conflict with law, children in need of care and protection, special homes, observation homes, children homes

INTRODUCTION

Children comprise of one third of the population in our country. They are the future of tomorrow and it is the collective responsibility of the government as well as the community to protect the interests of children. If we can secure the present of our children then our Country will have a strong human resource in future. India being a welfare State, the ultimate responsibility of securing the rights of children rests in the hands of Government. At times the responsibility is also shared by voluntary bodies through legislative provisions.

The Doctrine of *Parrens Patriae* as evolved under the common law has been well accepted by the Constitution of India and supported by the Supreme Court in various cases.¹ In pursuance with the Doctrine of *Parrens Patriae*, the State has acquired the responsibility to look after the care and wellbeing of children and protect them in legal proceedings. The responsibility also stems out from the Welfare State Doctrine. In order to fulfil this basic responsibility the Government has over a period has made several efforts which have seen a jurisprudential change over a period of time.² Notable among these is Article 15(3) allows the State to make special provisions for women and children. It is because of this reason that we find various laws in favour of women and children.

Broadly speaking, children can be divided in two categories:

- (i) Children staying in their homes with parents and guardians
- (ii) Children staying in institutions established either by government or voluntary bodies

Children staying in home are given the best possible care by parents/guardians. A question arises when children stay in institutions. These children may be either children in conflict with laws or children in need of care and protection or both. The juvenile justice legislation provides for a framework for institutionalized care and treatment of children. The law has been framed keeping in mind the developmental and rehabilitation needs of children.

1 In State of Rajasthan v. Union of India, (1977) 3 SCC 592; Kakumanu Pedasubhaya v. Kakumanu Akkamma, 1959 SCR 1249; the Sovereign as *parrens patriae* has the power, and is indeed under a duty to protect the interests of minors.

2 See the changes brought in juvenile justice legislations, child labour legislations, legislations affirming rights of children like education.



HISTORICAL OVERVIEW OF LEGISLATIVE EFFORTS ON INSTITUTIONAL CARE AND TREATMENT

Juvenile Delinquency is not a recent phenomenon. It existed in all epochs and cultures. The first law relating to delinquency was enacted during the Roman times. It had a legislation governing judicial proceedings with children. The first juvenile court in the whole world was established in Chicago in 1899³. The philosophy was to remove the young delinquent from the class of adult criminals.

In India, the early part of the 19th century saw no substantial body of law relating to liabilities, treatment and welfare of children. The principle of equality before law was applicable and everyone was liable to ordinary proceedings in the ordinary courts and hence no special provisions were made for the children. These principles needed amendments as the social conditions had changed due to industrial revolution. With the increase in the number of young offenders it was necessary to provide young offenders with reformatory treatment in institutions.

The Apprentice Act, 1850 was passed which authorized the Magistrates to bind over children between 10 and 15 as apprentices to learn a trade, craft or employment instead of sending them to prison for minor offences. This Act for the first time introduced the concept of neglected children like orphaned and poor who were brought up by charity. The Indian Penal Code came after another ten years had passed. Though it is not a specific legislation dealing with juvenile justice, nevertheless it has some provisions when it comes to underage criminals. Then came the Reformatory Schools Act 1876 and the same was modified in 1897 which provided Special Courts which could order 3-7 years detention and training instead of punishment.

The first move to enact a Children's Act came from the Indian Jails Committee (1919-1920) which recommended special treatment for young offenders to reform and rehabilitate them. The first of these legislations were passed by the states Madras in 1920, Bengal in 1922 and Bombay in 1924 which provided special procedure and institutions for the trial, custody, correction and rehabilitation of delinquent children. The trend continued and various states enacted legislations for children with some variations.

In 1960 a new Children Act was for passed for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected and delinquent children and for the trial of delinquent children in Union Territories⁴. But the problem was different states had different Acts to deal with juvenile delinquency which led to inequality amongst children belonging to different states.

The Supreme Court observed in the case of *Sheela Barse v. Union of India*⁵ to have a uniform legislation in the entire territory of the country and to have mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Based on the observations of the Supreme Court the Juvenile Justice Act, 1986 was passed for the care, protection and rehabilitation of juvenile delinquents and neglected children. In order to fulfil the obligations of various International Conventions ratified by India, the Act of 1986 was replaced by the Juvenile Justice (Care and Protection) Act, 2000 (hereinafter called as 'the Act of 2000'). Further, in view of increasing number of heinous crimes being committed by children between 16 to 18 years of age, the Act of 2000 has been recently replaced by The Juvenile Justice (Care and Protection) of Children Act, 2015.(hereinafter referred as the 'Act of 2015')

A unique and common feature of all the juvenile justice legislations in India has been the provisions relating to institutional treatment. The legislations provide for establishment of separate institutions for the treatment of 'Children in conflict with laws' with that of 'Children in need of care and protection'. The State Government is empowered under the Act to provide for the rules relating to the institutional care and treatment.

INSTITUTIONAL CARE AS ENVISAGED UNDER JUVENILE LAWS

The Juvenile Justice (Care and Protection) Act, 2015 is a progressive legislation and provides for a primary legal framework for treatment of children. The principle behind the legislation is that juveniles lack the physical and mental maturity to take responsibility for their crimes; and because their character is not fully developed,

3 Chicago History, Winter, 1998-1999

4 Ademwalla Maharukh, Child Protection and Juvenile Justice System: For Juvenile in Conflict with Law, 13, Childline India Foundation, December 2006

5 (1986) 3 SCC 632



they still have the possibility of being rehabilitated. Further, children in need of care or protection are also covered under the juvenile law so that their tender age can be protected. The children identified to be in need of care and protection, are to be given institutional care so that they can be brought to the mainstream and thereby avoid them to fall into the trap of criminals and criminal activities.

The Act provided for institutional treatment of following two broad categories of children:

1. Children in conflict with law i.e. those who are alleged to have been in conflict with laws. These children were called as delinquent juveniles under the Juvenile Justice Act, 1986 which got repealed with the passing of the Act of 2000. The Act of 2015 has replaced the word Juvenile with Child.
2. Children in need of care and protection i.e. children who have not committed crimes but due to various situational factors they are not taken proper care and have a greater tendency to turn criminals in future. They were called as neglected juveniles under the Act of 1986.

The Act of 2015 provides for a differential treatment to both categories of children depending on their developmental needs and adopts a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act. The Act of 2015 provides a special emphasis on rehabilitation and social re-integration of children.

The Supreme Court in *Gaurav Jain vs Union of India & Ors.*⁶ Observed

“Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and co-operation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning the children, excluding good foundation of life for them, is a crime against humanity. The children cannot wait till tomorrow; they grow everyday; along with them grows their sense of awareness about the surroundings. Tomorrows are no answer; the goal of their present care, protection and rehabilitation is the need of the hour.”

In *Sheela Barse vs Secretary, Children Aid Society*⁷, the Court observed

“Gerontocracy in silence manner indicated that like a young plant a child takes roots in the environment where it is placed. Howsoever good the breed be, if the sapling is placed on a wrong setting or an unwarranted place, there would not be the desired growth. Same is the situation with the humane child. The Child Welfare Officer (Probation) as also the Superintendent of the Observation Home must be duly motivated. They must have the working knowledge in psychology and have a sense of keen observation on their good functioning would depend the efficacy of the scheme.....Children in Observation Homes should not be made to stay long and as long as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life aimed at bringing about a self confidence and picking of humane virtues.”

The Act of 2015 had a special focus on the institutional care and treatment of children. It provides for establishment of various homes where the child can be rehabilitated and such care and treatment can be given which focuses on the developmental needs of the children. The homes set up under the Act of 2015 addresses the care, development and rehabilitation needs of such vulnerable children.

The child care institutions or the places where the rehabilitation of the child can be done to be established under the Act of 2015 are as under. These homes can be established either by the State government itself or voluntary or non-governmental bodies.

- Observation Home for the temporary reception of any child in conflict with law during the pendency of any inquiry under the Act. The Act further provides that any child who is sent to the observation home should be kept in a reception unit of the observation home for preliminary inquiries, care and classification for children according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.
- Special Homes for reception and long-term rehabilitation and protection of child in conflict with law under this Act. The Act empowers the State Government to provide for rules for the classification and separation of children in conflict with law on the basis of age and the nature of offences committed by them and his mental

6 AIR 1997 SC 3021

7 1987 AIR 656, 1987 SCR (1) 870



and physical status.

- Children's Home for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.
- Shelter Homes which are established by capable voluntary organizations may be recognised by the State Governments to function as drop-in-centres for the children in the need of urgent support such as street children, abandoned and runaway children.
- Foster Care for temporary placement of those infants who are ultimately to be given for adoption. In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visit regularly and eventually after the rehabilitation, where the children may re urn to their own homes.
- After-care organization for taking care of children in conflict with law and children in need of care and protection after they leave special homes, children homes and for the purpose of enabling them to lead an honest, industrious and useful life and to facilitate the transition of such young people from an institutional-based life to mainstream society

Apart from Observation Home, Special Home and Children Home to be established, the Child care institutions or the places where children can be rehabilitated are as under. These homes can be established either by the State government itself or voluntary or non-governmental bodies.

- Open shelter as a community based facility for children in need of residential support, on short term basis, with the objective of protecting them from abuse or weaning them, or keeping them, away from a life on the streets.
- Foster Care may be provided in a family which does not include the child's biological or adoptive parents or in an unrelated family recognised as suitable for the purpose by the State Government, for a short or extended period of time
- Individual to individual sponsorship, group or community sponsorship to provide supplementary support to families, to Children's Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life
- Place of Safety to place a person above the age of eighteen years or child in conflict with law, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence
- Fit Facility to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child
- Fit person as any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period

The rules for the management of observation homes, special home, children homes, including the standards and various types of services to be provided by them for rehabilitation and social reintegration of the child are to be provided by the State Governments which includes the provision of "individual care plan" to be developed for each child. "Individual care plan" is a comprehensive development plan for a juvenile or child based on age specific and gender specific needs and the case history of the juvenile or child, prepared in consultation with the juvenile or child, in order to restore the juvenile's or child's self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following needs of a juvenile or a child:

- (i) Health needs;
- (ii) Emotional and psychological needs;
- (iii) Educational and training needs;
- (iv) Leisure, creativity and play;
- (v) Attachments and relationships;
- (vi) Protection from all kinds of abuse, neglect and maltreatment;
- (vii) Social mainstreaming; and
- (viii) Follow-up, post release and restoration



The Rules further provides for the following aspects with respect to standards of care:

- Physical Infrastructure
- Clothing and bedding
- Sanitation and Hygiene
- Daily routine
- Nutrition and diet scale
- Medical Care
- Mental Health
- Education
- Vocational Training
- Recreation facilities
- Institutional Management of juveniles or children
- Prohibited articles
- Maintenance of case file
- Management Committee
- Children's Committee
- Rewards and Earnings
- Visits to and communication with juveniles and children
- Death of a child
- Abuse and exploitation of a juvenile or child
- Leave of absence
- Visitor's Book

APPROACHES TO IMPROVE INSTITUTIONAL CARE AND TREATMENT

The author has conducted a research on “A study on the Implementation of Provisions relating to Institutional Treatment under the Juvenile Justice (Care and Protection) Act, 2000 in the city of Baroda”. The institutional care and treatment as envisaged under the Act of 2015 provides for the overall development of the child. It is important that the government should ensure substantial implementation of provisions relating to institutional care homes in order to meet the objectives of the Act. The following approaches would go a long way to improve upon quality of care and treatment provided in the homes.

Segregation of children: It is important that Children in conflict with laws should be separated from Children in need of care and protection. The Act clearly provides for a differential treatment to both the categories of children. Government should identify the homes where such segregation is not in place and should consider the same on top priority. If these children are not segregated then there is a possibility that children in need of care and protection may learn deviant behaviour from children in conflict with laws.

Further, segregation in accordance to the age group is also to be ensured. Due to lack of funds, Government is not able to provide for separate homes or separate facilities for children belonging to different age groups. Children affected with dangerous diseases like HIV should be kept separate so as to prevent spread of diseases. Also children having special needs should be kept separate.

Use of the term 'Child' instead of 'Juvenile': The Act of 2015 has removed the word 'juvenile' and has replaced the same with 'child'. However, the implementing bodies usually continue with the stigmatising terminology. The Government should ensure that the term 'Juvenile' should be replaced with the word 'Child'.

Appointment and training of Staff: It is important that Government should ensure appointment of necessary personnel in all the homes primarily. These personnel should include adequate number of health officers, counsellors, teachers and administrators. Once appointment is ensured, the staff members should be sensitised periodically with appropriate training sessions.

Vocational training: Vocational training should be provided to children who complete 14 years of age. This will help the children to earn their livelihood once they are out of the homes. The training should be made formal by



establishing linkages with institutions like Industrial Training Institutes, Jan Shikshan Santhan and other recognised institutions.

Education: All children living in homes should be compulsorily sent to schools. If they are not sent to regular schools then their admissions in the Open Schooling System should be ensured. Children who are admitted in the home at a later age and those who have never been to school should be provided with in-house education by special educators and attempts should be made to ensure that these children appear in Board exams through open schooling systems. Non formal education should be promoted. Special educators should be appointed in all the homes. Remedial coaching and bridge courses need to be ensured in all the homes. Concentrated efforts should be made for children having very low education levels to bring them back to age appropriate level. Computer lab with instructor should be made available to provide elementary education in computers. A library in each of homes should be updated with motivational books.

Medical Care: Full time and in-house medical staff should be appointed. Training should be given to the existing staff to handle first aid treatment to the staff. Medical checkups should be conducted regularly in all the homes.

Mental Health: Interventions with respect to mental health care should be ensured in all the homes. Full time Counsellors should be appointed. Each child should be allotted with specific counsellors and social workers and they should keep in touch with the children on regular basis. Mileu based interventions and Individual therapy should be ensured to the children as envisaged under the Rules. Linkages with private Counselling centres should be established.

After Care: After-care should be provided to children in conflict with laws in terms of vocational training so that are able to earn their livelihood. Follow up of children who leave after care organizations should be made for at least 5 years to ensure that they do not get involved in anti-social activities. Special Probation Officers should be appointed to ensure that once the children are released from Observation Home they get into societal mainstream and do not turn towards anti social activities.

Role of Voluntary organization and community: Voluntary organizations should be encouraged to provide services to children. Voluntary organisations can help in establishing homes, after care organisations and their intervention can be sought to provide better care to children. Community participation and involvement of public spirited persons in the child care institutions may also be helpful.

CONCLUSION

Institutionalised treatment as conceived under the juvenile laws provide for overall development of the children. However, it is doubtful whether the same is implemented in its letter and spirit. India has various laws but not all are implemented properly which deprives us from the positive effects expected from such laws. The author while conducting the research on institutional treatment found several lapses in its implementation. Although the same cannot be generalised, however it is pertinent that child care be given precedence. It is a fact that the best care can be ensured when a child lives in a family and hence adoptions of these institutionalised children should be encouraged. Adoption for the very first time has been legislated systematically in the Act of 2015 which will fulfil the aim of social re-integration of the children.