Research Paper Area – Law

Rehabilitation and Reintegration of Juvenile in Conflict With Law With Reference to Adoption asnd Foster Care Under The Indian Juvenile System

Dr Kamaljit Kaur

BSc, LLB (Gold Medalist, University Medalist), LLM, Ph.D, Assistant Professor of Law Army Institute of Law

ABSTRACT

This research paper attempts to critically analyze the Rehabilitation and Reintegration of children under Indian Juvenile Justice with reference to adoption and foster care. The U.N. Convention on the Rights of the Child 1989 has been used as a benchmark to assess the extent of incorporation of the global norms of child protection in the domestic legal paradigms of India. The primary status – Juvenile Justice (Care and Protection of Children) Act 2000 and Amendment 2006 has been analyzed. The onus of Rehabilitation and its implementation is on the Department of Women and Child Development and Juvenile Justice Boards. The institutional and non- institutional services are lacking in execution, though the structure for 'Program for Juvenile Justice' has been set up.

KEYWORDS

Introduction

It is unfortunate that when we address the issue of marginalized children it is seen that 'Children in Conflict with Law' are always overlooked. The reason is that some opine that these children get what they deserve and hence they want to do little about the treatment meted out to them. Due to relative immaturity, a Juvenile does not quite understand the results of his action and he is receptive to his surroundings. This situation is faced not only by the developed countries but also by the developing ones as there are new pressures on young people undergoing transition from childhood to independence. The urgent efforts to fight Juvenile Delinquency are characterized by lack of systematic action and the absence of task – oriented and effective social work with both offenders and the victim, whether real or potential.

International Legislations and Conventions

In the 20th century, the Madras Children Act, 1920 made concrete efforts to make laws to safeguard the interest of JICL. Bengal and Bombay Children Act soon followed the similar path. Thereafter, a need was felt for having legislation at national level and this led to the coming into force of Children Act, 1960 which was followed by the first Juvenile Justice Act, 1968 which made a distinction between different machineries to handle 'delinquents' and children in need of Care and Protection.

In the core, numerous number of international legislations were also enacted to safeguard the interests of JICL. Illustrious among these were, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). India ratified the UN Convention on the Right of the Child in 1992. The JJA which is at present the main governing legislation for JICL in India, has been drafted in this backdrop.

In the UN CRC, significance has been laid clearly laid on the social reintegration of JICL as stated :

"Sates Parties recognize the right of every child alleged as, accused of , or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".

Paramount consideration – best interest of the child

The Government of India is fully dedicated and stimulated to the rights and welfare of children all accredited to the power vested in our Constitution. The Chapter on 'Fundamental Rights of the Citizens' provides the right against exploitation of children below 14 years of age. The Directive Principles of State Policy objectifies the provision for free and compulsory education of children.

At the International level, India has ratified the Convention on the Rights of Child and the Hague Convention on inter – country adoption if children. At the national level, Ministry of Women and Child Development, has got the mandate to enact laws regarding welfare of children by declaring them as our national asset. In Barse v. Union of India the Supreme Court observing that' a child is a national asset' held that it was a duty upon the State to look after the child with a view to ensuring – full development of its personality. The Juvenile Justice (Care and Protection of Children) Act 2000 conjointly with National Chapter for Children evolved in the year 2003 by the Government of India, in pursuance of its Constitutional mandate, declares it as a supreme responsibility to nature them in growing up as robust future citizens. The government launched the Integrated Child Protection Scheme (ICPS) in 2009, the main objectives of which is to improve the delivery mechanism of JJS. The concept of Rehabilitation in Juvenile Justice was based on the belief that children and adolescence are period of growth and development. Because patterns of proper behavior evolves from nurturing the goal of benign intervention was to serve the best interest of the child

Rehabilitation and social reintegration of Juvenile in Conflict with Law

The Principle of the Best Interest of the Child under the Model Rules, 207 states :

"The traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice."

The Model Rule calls for the probation officer to prepare an Individual Care Plan for every dispositional order. This plan should cater to the educational, vocational and counseling needs of the juvenile in question besides other needs. The Model Rule directs the State to develop linkage with NGOs

ands to delineate the role of each department. In order to meet with the expenses incurred to execute the program of Restoration and Rehabilitation, the State Juvenile Justice Fund has been set up.

The U.N. Convention on Rights of the Child in Article 18 provides :

"1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child – rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child – care services and facilities for which they are eligible."

It is true that the family is the central fulcrum around which both mental and physical development of a child is given full opportunity to bloom. Therefore the goal is to do welfare of most vulnerable category of children, i.e. orphan/abandoned and surrendered children in order to restore their dignity and self - worth.

Procedure for rehabilitation and social reintegration

The question of instrumental rehabilitation or reintegration arises only when the primary concern is to ensure that the child gets full opportunity to develop in its own family. For holistic rehabilitation and reintegration of JICL following perspectives should be kept in mind:-

• Individual Child Care Plan

Every dispositional order regarding the juvenile contains an Individual Care Plan prepared by the Probation Officer, Rule 2(h) of the Model Rules defines Individual Care Plan as :

"a comprehensive development plan for the 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 Individual Child Care Plan as per the format given in the Model Rules, 2007 is divided into four parts :-

- Needs of juvenile – to rehabilitate, the personal details and case history of the juvenile is needed with emphasis on his or her emotional and psychological needs, educational and vocational needs and how the juvenile can become socially adaptable.
- A fortnightly Progress Report – giving description on the progress the juvenile has made in education / training; if employed, his/her monthly earnings and savings; general behavior of juvenile.
- Pre-release Report –preparation to be made before the release of the juvenile.
- Post – release Report – the status of the juvenile at the time of release and follow – ups after every 3 months to 6 months.

It is unfortunate that what is really needed is not being practiced in the basic procedural requirements.

• Mental Heath Care plan

A mental health care plan should be developed for every juvenile or child by the CWO in consultation with mental health experts associated with the institution and integrated into the individual care plan of the concerned juvenile or child.

• Provisions for juveniles released on probation

The United Nations Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules' state:

"progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is specially the case for juveniles who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than adults because of their early stage of development."

Procedures of Rehabilitation and Social Reintegration

The rehabilitation and social reintegration of a child shall being during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of child shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after – care organization.

Foster – Care

Foster care is a family – based, non institutional childcare programme that provides temporary / substitute care for children in difficult circumstances, for example children whose parents are unable to care for them due to illness, death, desertion of one parent, emotional crisis or for the social reintegration of JICL. 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 return to their own homes.

Criteria for selection of foster – care homes

The Criteria for selection must be in accordance with Section 35 of Act's

i. Foster parents should have stable emotional adjustment within the family.
ii. Foster parents should have an income in which they are able to meet the basic needs of the child. The foster care maintenance allowance/assistance should not be their motivation for caring the child and they should not be totally dependent on the same.
iii. The CWC shall assess whether the monthly family income is adequate to take care of foster children.
iv. Medical reports of all the members of the family residing in the premises should be obtained including checks on HIV, TB and Hepatitis B, to determine their medical fitness.
v. The foster parents should have adequate exposure, orientation and capacity in childcare and the capacity to provide good childcare. The foster parents should be physically, mentally and emotionally stable.
vi. The home should have adequate space and basic facilities.
vii. The foster care family should be willing to follow rues laid down, including making regular visits to a pediatrician, immunization of the child, and maintenance of child's health records.
viii. The family should be willing to sign and agreement and to return the child to CWC if directed by the committee to do

so.
ix. The foster parents should be willing to attend training or orientation programmes on childcare and health, etc.
x. The foster parents should motivate the child to study and be willing to send the child to regular school or for vocational training.

Placement Conditions
i. Due consideration shall be given to age and sex of other children of the foster care applicants/parents.
ii. Not more than two children shall be placed in a foster family, except in case of siblings who many require to be placed in the same family.
iii. The child's emotional and psychological assessment shall be discussed with the foster care applicant(s) to enable them to deal with the child's situation, to minimize the chances of premature termination of the foster care placement.
iv. The child's opinion should be sought, wherever possible, prior to initiating the foster care procedures.
v. In case of a JICL, the JJB may refer the child to CWC to initiate the procedures for foster placement.

Procedures for implementation
i. Applications for foster care shall be received by the CWC.
ii. The CWC shall be the competent authority under the Act for implementation of the scheme.
iii. In cases where the child needing assistance through the scheme is related to the foster parents, to prevent disruption of the child's normal routine, the child may be permitted by the CWC to reside with the family while the inquiries and assessment is carried out by the childcare coordinator.
iv. An initial meeting shall be conducted by the CWC with the foster care parents/applicants for preliminary inquiries and to inform them about the scheme.

ADOPTION
Adoption is a process whereby a person assumes the parenting for another and, in doing so, permanently transfers all rights and responsibilities, along with filiations, from the biological parent(s). Unlike guardianship or other systems designed for the care of the young, adoption is intended to effect a permanent change in status and as such requires social recognition, either through religious or legal sanction. In modern times, adoption is a primary vehicle serving the needs of homeless, neglected, abused and runaway children

Concept and Principles of Adoption
The Government of India considers adoption to be the best non – institutional support for rehabilitation of orphans, abandoned and surrendered children who become homeless and whose separation from their biological parents cannot be avoided due to various factors. The concept of adoption is based on the following principle :

a) Professionalism – Reasonable professional fee can be changed with no improper financial gains.
b) Subsidiary principle – International adoption may be considered in the absence of domestic solution (in cases where child cannot be brought up by adopted parents in the child's country of origin).
c) Principle of best interest – This requires a central authority in each country to co-ordinate inter – country adoption policy and practice ; to establish legal safeguards to ensure that the adoption made in one country will be recognized in the other country; requiring that consent to adoption be informed and freely given and to ensure preservation of medical and other records.

Appropriate Conditions for Adoption
Adoption is a lengthly and rigorous process which requires the working together the various parts of the system. It often happens that the child is taken care of by an agency in one part of the would and the prospective adoptive parents(s) are applying in another, then efforts of red – tapism legal procedures and legal action are required. CARA, an autonomus body established on 28th June, 1990, under the Ministry of women and Child Development, Government of India, functions as a nodal body for adoption of Indian children and is mandated to monitor and regulate in – country and inter – country adoptions in accordance with the provisions of the Hague Convention on Inter – Co0untry Adoption, 1993, ratified by Government of India in 2003. CARA opines that all existing children care housing orphans are required to register with the State Government and apply for recognition as SAA as per provisions of JJA. To become part of CARA network these agencies should register under CARINGS to be a part of CARA network. CARINGS would facilitate linkages between agencies to ensure early rehabilitation of the child.

In – country Adoption
In its series of judgments, the Supreme Court in Pandey v. Union of India, and the UN Declaration on Rights of Child adopted by the General Assembly of UN in 1989 as well as Hague Convention on Inter – country Adoption of 1993, clearly specifies that by providing an opportunity to place a child within its own socio-cultural milieu, the best interest of the child can be served.

According to Section 41(6) of JJA, the following persons are eligible to commit an in – country adoption :

- A person irrespective of marital status
- Parents to adopt a child of same sex irrespective of the number of living biological sons or daughters
- A childless couple

Inter–country Adoption
India has a restrictive approach toward inter – country adoption because adoption is an irrevocable compromise of a child's life, hence the government requires to be as cautious as possible before introducing abrupt changes in the child's life as compared to the in- country adoption which requires minimal interruption in the social atmosphere of the adoption child. The result of this scenario was that on one hand too many childless couple failed to fulfill their cravings for a child and on the other hand, many children remained unadopted. The UN CRC also embodies the principle of inter – country adoption as :

"Recognize that inter – country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin"

The CARA Came up with a guideline which states as follows

- Married couple with 5 years of a stable relationship, age, financial and health status with reasonable income to support the child should be evident in the Home Study Report.
- Prospective adoptive parents having composite age of 90 years or less can adopt infants and young children. These provisions may be suitably relaxed in exceptional cases, such as older children and children with special needs, for reasons clearly stated in the Home Study Report. However, in no case should the age of any one of the prospective adoptive parents exceed 55 years.
- Single persons (never married, widowed, divorced) up to 45 years can also adopt.
- Age difference of the single adoptive parents and child should be 21 years or more.
- A FPAP in no case should be less than 30 years and more than 55 years.
- A second adoption from India will be considered only when the legal adoption of the first child is completed.
- Same sex couples are not eligible to adopt.

Apart from these,
• In case of foreigners who have been living in India for one year or more, the Home Study Report and other connected documents may be prepared by the RIPA which is process-

ing the application of such foreigners for guardianship of the child. The concerned Embassy/High Commission should give an undertaking that the child will be legally adopted in that country, mentioning the Agency/Organization who would send the progress reports and take care of the child in case of any disruption as and when the child is taken abroad. However a certificate is required from the competent authority in the country of permanent residence of the FPAP indicating that the child shall be allowed to enter the country and get adopted in due course.

Criteria for eligible children

- The child must be legally free for adoption.
- Clarence from ACA/State Government is mandatory for all children except wherever exempted under the Guidelines.
- Siblings/twins/triplets cannot be separated except in exceptional cases.
- Two unrelated children cannot be proposed to a foreign family at a time.
- A child may as far as possible be placed in adoption before it reaches the age of 12.
- The consent of the child has to be obtained wherever applicable.

Suggestions

- Children's program is a prominent part in our national plan for the development of human resources. Our main objective should be to find a loving and caring family for every adoptable child and to ensure that the 'best interest of the child' is always kept in mind.
- The sooner a child is placed with alternative families; it is better for the overall growth and development of the child.
- All homeless children whether orphaned or abandoned, must have access to non – institutional services.
- Adoption should be 'child – centered' rather than ' parent – centered'. Intervention strategies at the level of lobbying for a special law on child adoption must focus on the need for a 'uniform' adoption rules.
- Foreign adoptions should be encouraged as it can provide every child a family to ensure better social and emotional development.

Conclusion

The Juvenile Justice (Care and Protection) Act, 2000 places importance on the rehabilitation of the juveniles in conflict with a view to promote their 'dignity and self –worth'. In is unfortunate that JJA is a watershed in the history of child legislations in India. The implementation of the Act has suffered from severe infrastructural bottlenecks which resulted in incapacitating the delivery mechanism of the entire system. As a result of this, the initiatives which were taken to improve the system intermittently and did not last for long. Therefore the need of the hour is to delineate the roles of different departments so as to ensure that the channels of rehabilitation and reintegration of JICL are well defined and established. There is also a requirement for monitoring mechanism in cases of adoption and foster – care. Only with the co-operation and sensitization of the functionaries involved, can a change be brought in the entire infrastructure.

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