

# **RESIDENTIAL CARE SYSTEM**

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## **INTRODUCTION & CONCEPT BUILDING**

Residential care, fortunately, does not directly refer to institutional care - a much-maligned term in the social welfare lexicon. However, it is not understood and appreciated that for the millions of destitute and homeless children, the shelters or homes, which are provided under the concept of so-called institutional care, becomes the basic requirement of life. This often presupposes the fulfillment of the basic rights of 'protection and survival', as provided under the United National Convention on Rights of Child, 1989.

The topic of discussion has three specific terms, residential', 'care' and 'system' which have significant and specific meanings attached to them. We all understand the meaning of these terms but many a time we overlook their import when it needs to be translated into practice while running and managing the residential care institutions specially for children. The residential care for children, in other words implies Homes for children and the word Home may be used to denote institution / residential care for children. Therefore, we must understand the meaning of the Home in essence and practice which will also help us to understand the meaning and essence of the three terms — residential, care and system.

## **EMERGENCE OF HOME — HISTORICAL BACKGROUND**

In context of India we may refer to *gurukul* system. Parents willingly used to send children at a very young age to *Gurukul* for spiritual learning. The children used to stay in *Gurukul* until the time they used to gain proficiency in the spiritual learning. The life in the *Gurukul* was monotonous and children had to stay under strict discipline.

Then emerged *Sanstha* (orphanages) for children which mostly served the purpose of shelter and meeting only the basic survival needs of the children. The children no doubt suffered from social stigma under the conditions.

18<sup>th</sup> Century saw the emergence of homes for widows. Social reformers of the time like Raja Ram Mohan Rai, Dr. Phulle and other worked for the status of women in the society.

The era after the 2<sup>nd</sup> world war saw the emergence of several kinds of homes. Homes were created to keep the war victims who were disabled. Lord Cheshire who was a fighter pilot in the British Air Force during the world war II, established many Cheshire homes for physically and mentally challenged people around the world.

During this time, Dr. Herman Gmeiner established children's village in Austria for orphan and destitute children. He gave the concept of an institutional mother to the children and bring them up in family-like environment. The concept gradually became a movement round the world. SOS children's villages have been established in more than 150 countries. It takes the responsibility of infants and help them in getting established in the society.

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## LEGALISING HOMES — INDIAN CONTEXT

In the 19<sup>th</sup> century, the need to enact separate legislation for the protection of children against the possible abuse was recognized in India same as in most of the western countries. The government formulated legislations, having protective provisions for children, like Apprentices Act, 1850, the Indian Penal Code, 1860, Reformatory School Act, 1876 and later modified in 1897.

But, it was Indian Jail Committee (1919-1920) which for the first time recommended for setting up of separate machinery for the trial and treatment of juveniles in conflict with law. It suggested provisions for Remand Homes and Certified Schools. It was due to the recommendations made by this Committee that the provinces of Madras, Bengal and Bombay enacted their Children Acts in 1920, 1922 and 1924 respectively. The process was followed by several other provinces. After independence, provinces, such as, Saurashtra (1954), Uttar Pradesh (1951), Hyderabad (1951) enacted their Children Acts. West Bengal enacted a new Children's Act in 1959. The Government of India also enacted Central Children Act in 1960 for Union Territory which was amended in 1978. By 1986 all States except Nagaland had enacted their Children's Acts.

India being a welfare state. The problem of neglected and destitute children of all kinds becomes the direct responsibility of the state. The state, as such, has made several provisions in the Constitution to safeguard the interests of the children. These provisions are given below:

### *Constitutional Provisions*

- *Article 15(3) - Enjoins the State to make special provisions for children.*
- *Art. 23 - prohibits the traffic in human beings and forced labour.*
- *Art. 24 - Forbids the employment of children below the age of 14 years in factories, mines and other hazardous occupations.*
- *Art. 39(e) - Directs the State to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced by economic necessity.*
- *Art. 39(f) - Directs the State to secure facilities for the healthy development of children and to protect children and youth against exploitation and moral and material abandonment.*
- *Art. 45 - Directs the State to provide free and compulsory education to all children. upto 14 years to age.*

Under the various above-mentioned legislations, the Home became a legal institution to keep children. The Government of India framed two legislations, namely, The Women's and Children's Institutions (Licensing) Act, 1956 and the Orphanages & other Charitable Homes (Supervision & Control) Act, 1960. To grant license and certification respectively to the institution established for the care, protection and treatment of children.

Further, Juvenile Justice Act, 1986 repealed all the Children's Acts formulated a uniform legislation for the entire country, except for the state of Jammu & Kashmir. This piece of legislation was again amended and now replaced by Juvenile Justice (Care and Protection of Children) Act, 2000. This law also has provision to grant certification to establish and run

institutional care programme for children in need of care and protection and juvenile in conflict with law.

As of now, there are basically two legislations under which homes are necessarily to have license or certification, they are the Orphanages & other Charitable Homes (Supervision & Control) Act, 1960 and Juvenile Justice (Care and Protection of Children) Act, 2000.

### **HOMES CERTIFIED UNDER THE ORPHANAGES & OTHER CHARITABLE HOMES (SUPERVISION AND CONTROL) ACT, 1960**

Under this Act, Homes are mostly established and run by the voluntary, religious, charitable organizations. Since this Act authorizes to establish Home for women or children, both kinds of Homes exist in the country. For children, again there are Homes for carrying out the purpose of adoption as well as other routine activities of a Children's Home.

In the city of Delhi, there are 7 adoption agencies run by the voluntary organisation. There are at least 10 voluntary organizations in the city, much are running Children's Homes, recognized under this Act. The Missionary of Charity also provides residential care for children as well as for the disabled persons. The adoption agencies, though licensed under this Act, operates on the CARA guidelines. The status, however, remains unchanged even after the adoptions have been brought within the domain of Juvenile Justice (Care and Protection of Children) Act, 2000 as well. The children are brought to these institutions by police, childline or by the people from the community. Children in the institutional care receive education as well as vocational training to enable them to settle in the society.

For the want of any available data, it is not possible to give figure of such institutions in the country.

### **HOMES UNDER JUVENILE JUSTICE ACT**

#### **(a) INTERNATIONAL CONCERN**

There has been equally great concern for the welfare of children at the international level culminating in the declaration of the rights of the child adopted by the General Assembly of the United Nations on November 20, 1959. The declaration in its preamble pronounces that "the child by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth" and that "mankind owes the child the best it has to give".

The Second UN Congress on Prevention of Crime and Treatment of Offenders (1960) provided that 'juvenile delinquency should be understood as the commission of an act, which when committed by an adult above the prescribed age would constitute an offence in law'. The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Venezuela in 1980 discussed further and in detail the problem of juvenile delinquency. They decided that there should be the Standard Minimum Rules for the Administration of Juvenile Justice. Every child has its human rights and they should not be denied the same by anybody. Hence, they said that there should be laws to protect the rights of the children. Consequently, it was accepted that special attention should be given for the steps initiated to prevent delinquency among children and also for homeless and street children in the urban setting. The need for giving special attention to youthful criminality was also given due importance and emphasis. The nature of youthful criminality in semi-urban and rural areas was considered. Further, the areas were discussed in the meeting at Beijing (May 14 to 18, 1985) which examined the bench

marks which became the said Standard Minimum Rules for the Administration of Juvenile Justice.

A 'child' is defined in the *UN Convention on the Rights of the Child (CRC)* as a person under the age of 18, which includes infancy, early childhood, middle childhood and adolescence.

The UN Convention on Rights of the Child, 1989 draws attention to four sets of civil, political, social, economic and cultural rights of every child. These are: (i) Right to survival; (ii) Right to protection; (iii) Right to development; and (iv) Right to participation. Article 4 of the Convention requires state parties to undertake 'legislative, administrative and other measures' to implement the rights conferred by the Convention. Article 3 of the Convention also envisages that the different components of the legal system- legislative bodies, court of law, administrative and law enforcement agencies- give concerted priorities to the best interest of the children. Satisfactory implementation does require judicial sensitivity and activism and regard to the children rights as well as cooperation of law enforcement and other agencies responsible for the administration of justice. All these provisions have the underpinnings of residential or even the basic institutional care systems to be provided under the law and per the needs of the children.

#### **(b) TYPES OF HOMES**

The Homes under the Juvenile Justice Act, 1986 now Juvenile Justice (Care and Protection of Children) Act, 2000 are mostly under the direct charge of the government. The Act, however, stipulates the involvement of voluntary sector in the management of these Homes but very little initiative has so far been taken in the country. On a very small scale in Delhi, voluntary organizations like Prayas and Samarth have been associated with the government run Homes. Maharashtra, however, has many more examples of government-NGO partnership, the major one being the Children Aid Society, which have run most of the government institutions for a long time, and, in Mumbai, perhaps Don Bosco has access to a few government homes.

The new Act stipulates establishment of various kinds of institutions for the residential care of the children / juveniles and prescribes therein for the observance and enforcement of minimum standards for the care of juveniles / children. These Homes are:

- a) Observation Homes: For the temporary reception of any juveniles in conflict with law during the pendency of any enquiry regarding them under the Act.
- b) Special Homes: For reception and rehabilitation of juveniles in conflict with law under the Act
- c) Children Homes: For the reception of children in need of care and protection during the pendency of any enquiry and, subsequently, for their care, treatment, education, training, development and rehabilitation.
- d) Shelter Homes: The State Government may recognize the reputed and capable voluntary organizations and provide them assistance to set up and administer as many Shelter Homes for the juveniles or children as may be required. These Shelter Homes shall function as drop-in-centres for the children in need of urgent support who have been drop to such Homes.
- e) After-care Organisation: The government may by rule made under this Act, provide for the establishment or recognition of after-care organizations for taking care of juveniles or children, after they leave Special Homes or Children's Homes for the purpose of enabling them to lead honest, industrious and useful life.

The government has to establish and maintain the above Homes either by itself or in association with the voluntary organisation in every district or group of districts in the country.

**(C) GOVERNMENT HOMES IN THE COUNTRY**

Below is given the state-wise list of numbers of Homes of different types according to the Annual Report, Ministry of Social Justice & Empowerment, 1997-98.

The inadequacy of the Homes in the country is abundantly clear from the table given below. It is estimated that for the children in conflict with law and in need of care and protection at least 5 to 6 times space would be needed in the country, particularly after the increase of age to 18 years for both boys and girls.

**Number of Juvenile Homes / Observation Homes /  
Special Homes / After Care Institutions**

S.No.	State / Union Territories	Observation Homes	Juvenile Homes	Special Homes	Aftercare Institutions	Total
01.	Andhra Pradesh	9	5	2	1	17
02.	Arunachal Pradesh	1	1	—	—	2
03.	Assam	7	25	1	1	34
04.	Bihar	10	8	5	2	25
05.	Goa	2	2	2	—	6
06.	Gujarat	25	5	2	14	46
07.	Haryana	3	3	1	1	8
08.	Himachal Pradesh	—	1	1	—	2
09.	Karnataka	22	19	—	11	52
10.	Kerala	12	5	2	—	19
11.	Madhya Pradesh	22	2	3	1	28
12.	Maharashtra	45	101	3	3	152
13.	Manipur	1	2	1	—	4
14.	Meghalaya	1	—	—	—	1
15.	Mizoram	3	3	—	—	6
16.	Nagaland	—	1	1	—	2
17.	Orissa	12	2	—	—	14
18.	Punjab	7	2	1	2	12
19.	Rajasthan	11	4	1	—	16
20.	Sikkim	1	—	—	—	1

S.No.	State / Union Territories	Observation Homes	Juvenile Homes	Special Homes	Aftercare Institutions	Total
21.	Tamil Nadu	14	17	3	3	37
22.	Tripura	1	1	—	—	2
23.	Uttar Pradesh	59	10	1	—	70
24.	West Bengal	7	19	4	6	36
<b>UNION TERRITORIES</b>						
25.	A & N Island	—	—	—	—	—
26.	Chandigarh	1	1	1	—	3
27.	Dadra & Nagar Haveli	—	—	—	—	—
28.	Daman & Diu	—	—	—	—	—
29.	Delhi	3	11	—	—	14
30.	Lakshadweep	—	—	—	—	—
31.	Pondicherry	1	1	1	1	4
<b>Total</b>		<b>280</b>	<b>251</b>	<b>36</b>	<b>46</b>	<b>613</b>

*Note:* These Homes were established under the Juvenile Justice Act, 1986. Hence, the meaning of the Observation Home is both categories of children neglected as well as delinquent. The Juvenile Home will now be called Children's Home under the new Juvenile Justice (Care and Protection of Children) Act, 2000.

#### **(d) MANAGEMENT OF HOME**

The preamble of the Juvenile Justice (Care and Protection of Children) Act, 2000, itself signifies the need of the institutional care, *“An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting 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 this enactment”*.

In fact, the management of the Homes is the true indicator of the observance of the spirit of Juvenile Justice Act. It is the Home where the purpose of the Act is either achieved or defeated. There should be family like environment in the Homes and the juveniles / children should be treated with humane approach, love and affection. The treatment of the juveniles / children must be very friendly and the Homes must have sufficient facilities and opportunities for their growth and development of character and personality of the juveniles / children. The treatment of the juveniles / children must lead to reform and correct them of their mistakes and inculcate in them some values which can help them to become a good social beings. For effective management, the Home must have certain set of rules, procedures and also a well conceived daily routine.

The available studies corroborate that there are few Homes in the country and they cater only the fringe of the problem. The official records point to the fact the living conditions in the Homes are sub standard often inhuman. So much so that public interest litigations were filed in Supreme Court, Delhi High Court and Patna High Court against the prevailing conditions of the Homes and some changes were brought in.

The whole situation seems to be a paradox. On the one hand, there is a need for more residential institutions for children, while on the other, the existing institutions are not providing the congenial environment as per the objectives of the J.J. Act, 2000. The Homes have become almost like prisons for the children.

The residential care has always been under severe criticism because it isolates children from wider society. But, on the other hand, it is necessary also. The poor and physical conditions and prevalence of inhuman unfriendly atmosphere are two primary reasons for such criticism. So much so that in spite of its necessity, in principle, we have agreed to the principle of institution as last resort. If we take a careful look, we may find that residential care, licensed or certified under The Women's and Children's Institutions (Licensing) Act, 1956 and the Orphanages & other Charitable Homes (Supervision & Control) Act, 1960 under the voluntary sector are much better in all respects compared to the residential care provided under the Juvenile Justice Act. It is mainly due to the undesirable practices prevalent in these institutions, which are often contrary to the provisions of the Act and the Rules. More importantly, there is complete lack of understanding about the meaning and significance of the term Home, as discussed earlier, among the functionaries. The residential care / institutional care must be understood as running a Home, both in terms of concept and management. The management (system) should also be informal and inter-personal relationships amongst the children, the staff and between the children and the staff should reciprocate the social relationships and bonds that exist between the brother and sister and parents in the family and the children should have the rights of participation in the management (system) and then alone we can have a good residential care system or a child friendly home.

Precisely for these reasons the Juvenile Justice (Care and Protection of Children) Act, 2000 prescribes for child-friendly approach and adjudication and disposition of matters in the best interest of the children, in the preamble itself. Further, the provision of involvement of social workers and voluntary organizations in the running the institutions, production of children, the functioning of the Competent Authorities and Advisory Boards, have been made to make the institution more homely and child friendly. Only then the children will feel happy to stay in these Homes and there would be their proper growth and development. The programmes are likely to be more meaningful which may help to rehabilitate the children in the society. Provisions like Adoption, Foster care and Sponsorship are aimed at rehabilitation and, at the same time, would become the means to deinstitutionalize children.

## **SOME SUGGESTIONS**

1. Most of the juvenile homes do not have proper buildings or the buildings are in dilapidated condition or have a prison-like structure. The staff lack professionalism and commitment, specialized knowledge and skills. Carefully designed programmes catering to the specific needs of children are needed urgently.
2. The most important requirement for the successful functioning of a juvenile home is transparency. This implies that anyone including people from the media can visit the home at any time.
3. Restoration is a very important aspect of the juvenile justice system. Successful restoration requires interaction with and counselling of the families and the communities to which the juveniles belong.

4. Registration is necessary, since every juvenile home has to be run on certain specified minimum rules and regulations. We fail because we do not adhere to rules and regulations. In fact, there should be a mandatory periodic evaluation of every juvenile home to find out all this.
5. According to Justice Bhagwati, and in terms of all adopted principles, institutionalization should be the last resort. If necessary, it should be in the form of social inoculation.
6. Linkages between the formal system and the informal system should be developed in a manner whereby the institution should function like a home and not like a jail.
7. Staff working in an institution must be competent and committed to their work.
8. Local resources should be identified to rehabilitate the children based on their needs. Liaison may be established with the industrial houses to build resources in this regard.
9. Bureaucratic Apathy: being the serious barrier to effective child care system must be dropped. NGOs should lobby together to pressurize the bureaucracy to change its style of functioning.
10. Transparency, simple monitoring system and standardization of documentation work should form an integral part of both NGOs and the Government agencies involved in juvenile home management.
11. Rehabilitation of children needs to be reactivated and adequate resources need to be generated for the same.
12. Both the Government and NGOs should work in unison to serve the best interests of the children.
13. Selection of government officials in social welfare departments should be done with great care by the authorities. Sensitive and knowledgeable officials should be given due responsibilities.
14. A partnership between the NGOs and the Government is the need of the hour, particularly in running the shelter homes and drop-in centres.
15. A mutual suspicion between the Government and the NGOs has persisted regarding the management of the drop-in centres. But this suspicion has to go and the on-going dialogue should go on to sort out the problem.
16. The developmental programmes in rural areas should be strengthened to stop the influx of children to the cities, to make a living.
17. Juvenile homes have to fulfill every need of the child. The first priority is to restore the child to his parents and the second is to find a suitable person who is willing to take the responsibility of the child.
18. The government institutions are both inadequate and also grossly under-utilized. This must be looked into for optimum use.



19. The total capacity of all the homes in the country is just 36,000 (98-99) children, which is quite inadequate when faced with a huge number of neglected and delinquent juveniles children in the country.
20. The NGOs have a very important role to play in the management of juvenile homes because they are more suited for the kind of work required in the homes and they can supplement and even substitute such homes.
21. The NGOs need to be strengthened by proper supportive supervision by the government rather than creating obstructions. Proper networking is to be developed among NGOs to avoid wastage of funds.
22. Training of the staff is an immediate need, keeping in view the implementation of law in the spirit and good practices to be evolved.
23. The govt. machinery should do something for the lapses in sanctioning the grants to the NGOs.
24. Large-scale community participation is required for setting-up the homes and to fulfill various requirements of the law. Community Fora should be created with local persons as members, functionaries and chairpersons.
25. There should be common minimum standards in all the homes in order to maintain basic facilities and unhealthy avoid comparisons by the children.
26. More NGOs should come forward to participate in the government run homes in order to improve their conditions.
27. Programmes of government run institutions should be community-based and should include recreation, education and vocational training.

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**Note: Section 31(1)** of the Orphanages & other Charitable Homes (Supervision & Control) Act, 1960 states as mentioned below:

**Repeals and Savings** – “As from the date of the coming into force in any State of this Act, the Women’s and Children’s Institutions (Licensing) Act, 1956 (105 of 1956), or any other Act corresponding to this Act in force in that State immediately before such commencement, shall stand repealed.”

*This Act has been enforced only in Kerala and Rajasthan so far. Naturally, Act 105 of 1956 stands repealed in those two States.*