

**COMMITTEE ON THE RIGHTS OF THE CHILD**  
**DAY OF GENERAL DISCUSSION**

**The Context: Children without parental care in the Convention on the Rights of the Child**

*In his book *The 7 Habits of Highly Effective Families*, Steven Covey writes about the flight of an airplane. “Before a plane takes off, the pilots have a flight plan. But during the course of the flight, wind, rain, turbulence, air traffic, human error and other factors act upon the plane. They move it slightly in different directions so that most times that plane is not even on the prescribed flight path. Throughout the entire trip there are slight deviations from the flight plan. Weather systems or unusually heavy, air traffic may even cause major deviations. But barring anything too major, the plane will arrive at its destination. This happens because the pilot continues to receive constant feedback. They receive information from instruments that read the environment, from control towers, from other airplanes and even sometimes the stars. Based on these feedbacks they keep returning to the flight path.”*

This story of the plane and its flight may be a metaphor for looking at child rights, especially in the context of children without parental care. In a perfect world, lives are lived as planned, with no deviations. Children are born and live with their parents till they become adults, basking in the warmth and love that the parents, extended families and communities bestow. Yet reality strikes differently and like the plane, rough weather, air traffic, human errors in forms of fatal illness, discrimination, poverty, abuse and violence separate children from their families. Given the integral role of parents and families in the holistic development of a child, it is important to create alternative models that help nurture a child’s potential to the optimum. The hope lies not in deviations but in visions that create solutions to get back on the track.

Through this paper, it is our attempt to share with you briefly CRY’s *QIC/AC* initiative which is a unique model in India to address alternate care mechanisms for children without parental care and ensure a quality standard of care for children forced to live in institutions.

**What the Convention says**

The family’s role in a child’s development is emphasized everywhere in the Convention. The Preamble says, “..the family, as the fundamental group of society and the natural environment for the growth and well being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities...” and also that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, an atmosphere of happiness, love and understanding.”

The articles in the Convention further emphasize the obligation on the State to support families to meet this role and that parental care should be removed only if certain conditions are met. Article 5 calls for states to respect the responsibilities, rights and duties of parents, or other legal guardians. Article 10 encourages measures to promote family reunification as well as regular contact between the child and both parents in the event of separation

It is with this in mind that we, CRY, along with like-minded NGOs, professionals and community leaders launched its national advocacy initiative on quality institutional care and alternatives.

CRY stand for Child relief and You. It is an India non-government organisation that works towards restoring basic rights to underprivileged Indian children. The founders envisioned CRY as a link between millions of Indians who could provide resources and the thousands of dedicated fieldworkers struggling to function for lack of them. They saw their role as enablers and in doing so created an institution that is a unique model of a community movement that takes responsibility for its weakest and most vulnerable members and motivates and catalyses change on their behalf.

CRY focuses on the 4 basic rights of children:

1. the right to survival - to life, health, nutrition, name and nationality
2. the right to development - to education, care, leisure, recreation
3. the right to protection - from exploitation, abuse, neglect
4. the right to participation - to expression, information, thought and religion

These were defined in 1989, by the United Nations Convention on the Rights of the Child, an international human rights treaty to which 191 countries, including India, are signatories.

In its over 26 years, we have learnt that ensuring these rights in a sustainable manner is only possible when grassroots action is combined with community empowerment, active citizenship and advocacy. CRY works to ensure that these rights are available to all categories of underprivileged children, including street children, girl children, children bonded in labor, children of commercial sex workers, physically and mentally challenged children and children in juvenile institutions.

Quality Institutional Care and alternatives for children (*QIC/AC*) is a CRY initiative that looks at the whole gamut of options for children without parental care from a human rights framework. It is based on the core values that all children have to be cared for and not just looked after and that *the ideal environment for a child is in a family, not an institution*. We believe that separation of the child from his/her family should be as temporary as possible, unless the child experiences any form of exploitation, abuse or neglect in the family. The capacities and needs of a child are best nourished in a loving and learning environment given by parents and extended family. The State responsibility lies in ensuring facilities to families to take care of their children. This means assuring

them livelihood opportunities, education, health benefits and an overall freedom from fear of any kinds of violence.

Such belief is based on our field experiences through a network of our **117 partners spread over 18 states across all regions of the country**; and further substantiated by existing research which reiterates that the less time a child spends away from family, the better it is for her overall growth.

It is with this spirit that *QIC/AC* currently functions in 10 states in India. It works simultaneously at two levels:

First, working within government and NGO-run Institutions, where the effort has been to establish standards of quality care

Second, advocate for de-institutionalization, where the effort is to develop and promote more child-friendly alternatives. The need for alternatives is felt at two levels:

- preventing children from being institutionalized, by actively seeking out extended family and community-based models of care. This is especially in case of children who are temporarily separated from families and there is every chance that the family unit will come together again.
- taking children out of institutions and restoring them to their families and/ or rehabilitating them within communities.

Advocacy is done through the facilitation of a network of individuals, NGOs, teaching institutions and academics, professionals with specialized knowledge such as lawyers, and managers of homes for children. Constructive engagement with the State is seen as an essential ingredient of the advocacy process.

The long-term objectives formulated are:

1. Moving from Institution based interventions to Family and Community based Alternatives
2. Setting Standards in Institutional Care

### **Evaluating quality of children in institutional home –CRY study**

*QIC/AC*'s vision to encourage family and community based alternatives for children without parental care were further substantiated by a recent study done by CRY. We submitted a report to the Ministry of Social Justice and Empowerment, Government of India, to evaluate and assess the government's Programme of Juvenile Justice, a scheme drafted in 1999, which also forms the basis for the government funding of children's homes. The report was based on an elaborate research survey conducted over 159

institutions in 9 states of India, and incorporates voices of more than 10,000 children in these homes, and thousands of officials who form the first interface for these children.

#### The genesis:

The history of the juvenile justice system in India can be stated as being almost as old as the history of the Indian social system. The uniqueness of the joint family system and the caste system intricately linked the village community through a strong institutional framework of marriage, kinship and family. It recognized the social right of the children without parental care to have the benefit of a cushion space to enjoy all the facets of childhood- such as joy and play, love and elation, education and socialization, protection and development. These children without parents continue to remain as the subjects of these social groups, actively participating in their activities and rituals. This particular 'social action' may be seen as the recognition of the rights of such children to continue receiving social protection. It was fuelled by the societal interest to maintain the identity of social groups. Hence, respective institutions were obligated to take care of these children in the best interest of maintaining the identity of the community.

The gradual disintegration of the joint family system and the steady crumbling of caste groups as a social group, along with urbanization, the consolidation of industrial capitalism, and the extension of the state interventions in the community process as well as on the lives of individuals, saw the withering away of the cushion space for such children. The State, having strengthened itself as a socio-political institution by establishing its functional linkages with the communities, instead of rebuilding this space, advanced towards building 'homes' for children, that is *secular*- independent of unique social and cultural background of a child, and *temporary*- with the precise objective of providing a temporary space for children and waiting for their phase of childhood to be over. The building of these temporary spaces began as early as the late 19<sup>th</sup> century, when the prisons started looking at child offenders as 'children' and built reformatory schools for children below the age of 15 years. Since then, such temporary homes have multiplied and grown, but neither have they provided the needed temporary relief to all the children in need of care and protection, nor have they provided a quality of life that can vouch for quality 'adulthood'.

#### The present

The current State-managed juvenile justice system in India is built on its more than 100 years of experience. It is a product of the history of concerns put forth by various interest groups, and the consequent government laws, policies and programmes that shaped the system.. The most significant of the steps recently taken by the Government of India is the enactment of the Juvenile Justice Act, 2000, which foresees a positive change in the juvenile justice system, and has in fact been appreciated for introducing more non-institutional alternatives such as adoption and foster care, and attempts to facilitate the rebuilding of community spaces.

Data from the field tells us that there has been a spurt in the number of homes. There are incidences of overcrowding in institutions, even to the extent of 6 times as many children in a home as sanctioned. However, the presence of a large number of children in these

homes does not mean that the children have volunteered to be part of this system. Few children enter institutions out of choice. This decision is usually made for them by one or more adults- a few by their parents and related acquaintances, but mostly by unrelated adults, and a majority of them by the police. The Juvenile Justice Act, 2000 has created institutional gatekeeping mechanisms in the form of Juvenile Justice Boards and Children Welfare Committees to assess the children's needs and examine alternative options for them. In the absence of concrete options for short term or long term care, which is the fact in most of the cases, institutionalizing them remains the only choice.

### **Children's Experience in these Homes**

Children face a range of emotional and physical traumas within the four walls of these homes. Their physical safety and security within the homes is uncertain because the problems they face include violence, sexual abuse, physical abuse and exposure to drug-addiction. Incidentally, the major concern for the children, as expressed by them, is the separation from their families and isolation from their community. Families and communities are the institutions that they naturally look to for protection. Any other institution, by any name, cannot match what the family and community stand for in the child's eyes.

The children's inability to see these homes as their *real* homes reflect largely from the inherent absence of space for child participation. For example, in a home of 100 children, it is difficult to have an effective mechanism for consulting each child for their preference, say, over what food they eat. The adult respondents to the research survey admitted that there is little participation of children in deciding menus. Expectedly, children in most cases do not like the food provided, not merely because the food does not have the necessary quality and quantity, but also in the absence of their participation in deciding the menus, food no longer is a matter of their choice and yearning, but a matter of routine and object. While the intention of an efficient home is to meet the minimum dietary norms, the concerns expressed by children are the sameness of food and the absence of choice.

As the schemes are designed keeping in mind the profile of a universal child, the State does not recognize the need for locale-specific, contextual decision-making in the best interest of the child. Children's divergent voices are not heard, children's desires are taken for granted, and that each child's story is different is not recognized. Therefore, the homes lack an enabling environment where the child's voice would be listened to.

Even in respect of the stated norms, the overall quality of infrastructure services provided to children in the care of the State, is poor. Children in institutions have inadequate options for relaxation. There are children's homes without playground and recreation rooms. Where recreation facilities exist, the quality and the range necessary for overall development of children is inadequate.

As regards health facilities, children in the institutions are at risk of both communicable and non-communicable diseases. Doctors are not available on call. There is inadequate

attention in the field to providing safe drinking water, clean and airy surroundings and maintenance of hygiene. Without adequate medical attention, and inadequate counseling support within the homes, the emotional needs of children are inadequately addressed.

In respect of education, some institutions do not have even minimum facilities for educating students. In other cases, the schools were more than one km distant from the home and in some instances the school was more than 5 kms distant. In a majority of instances, children are expected to walk to school. In some homes, classes are being held within the institution by inadequately trained staff. In others, especially the Observation homes, there are no facilities for education and limited facilities, if at all, for vocational training. With nothing to do except eat and sleep, children tend to get frustrated and this leads to further emotional problems.

Particularly revealing is the proportion of institutions where punishments have been given to children. 74% of respondents admitted to having punished children. Detailed nature of such punishments is shown below:

<b>Kind of Punishment</b>	<b>Percentage (%)</b>
Counseling	25
Counseling and lock up	1
Counseling and no recreation allowed	2
Counseling and physical punishment	23
Counseling and restriction on their diet	2
Counseling, physical punishment and locked up in the room	1
Counseling, physical punishment and not taken for outings	1
Locked up in room and no recreation allowed	1
Locked up in room	2
Physical punishment	28
Physical punishment and locked up in room	2
Restriction on diet	2
Restriction on diet and locked up in room	1
Restriction on diet and physical punishment	4

*'Counseling' in this case is broadly used as a euphemism for a scolding and being lectured on propriety and duties.*

#### Children with special needs

As regards to children with special needs, the system's ability to deal with more recent concerns such as HIV positive children is suspect. Even for those children with special needs, whom the system has been dealing with for decades, such as orphans, survivors of child abuse and children with disabilities, the range of services and the quality of care is not adequate.

A special mention here is the inability of the system to register the special and distinct needs of girl children. Yet the system while recognizing the reality of these scenarios has found it difficult to incorporate them within programme design. There appears to be structural constraints which are clubbed together and labeled as context-specific.

However, there is no space within the scheme to develop context-specific solutions, which are in the best interest of the individual girl child. Both staff and some of the girls spoken to, raised the issue of inadequate support for physical realities such as monthly menstruation. Budgets, for example, do not allow flexibility to buy sanitary pads when required and in adequate numbers. In some homes it was found that girls are therefore often reduced to tearing their few clothes to provide protection. Yet each of these problems, while relatively easy to address in themselves, together raise a larger conceptual problem of how the institutional care can be informed through the mediation of a gendered perspective.

### Efforts to re-integrate

Reintegration efforts are limited. The concern about what will happen after the age of 18 years, permeates through the system and while less articulated by the children, is certainly felt by the older ones, who instead articulate their fears in the form of the desire for more training and the need for secure employment. While in some homes efforts have been made to provide vocational training opportunities, these are primarily related to specific kinds of skills, and mainly in what are perceived to be male occupations: carpentry, electrical repairs. For girls, marriage is seen as the only safe and secure long-term option. The other options are limited to sewing and knitting.

What happens to children who leave the homes is often the indicator of how well or otherwise the system is functioning. These children being brought up under State protection ought to become model citizens, as they, theoretically, have at their disposal the entire State machinery to fulfill their needs. The reality, unfortunately, is otherwise.

There are some success stories of children who have been restored to their families and are now well-integrated in their own community. Of greater concern, is the number of children, who on leaving the home are unable to reintegrate and move away from the atmosphere of the homes. For children, especially those with families, not being able to be with their family is most difficult to live through. There are a range of restrictions on children meeting with their families. These range from the logistical, where the home is far from the child's village or town and the family is unable to make the trip regularly. Also, except at court appearances wherein restrictions are placed by the staff, children have few opportunities to meet with their families. In such cases, the State needs to be charged for being in conflict with the rights of children because the particular denial to children of the right to get integrated with their own families, directly or indirectly, costs a child her childhood as well as adulthood.

From this abovementioned experience, it is clear that institutionalisation of children should be the exception rather than the rule. This means exploring and encouraging non-institutional options such a foster care, group homes, community backing, including temporary family support. Hence any legal framework that aims at meeting "best interest of the child" should explore alternate care models as one of its research priorities. Efforts to restore children to families and communities should be an integral part of such legislation.

The measure of success of the System needs to be the best interest of the child, which needs to be interpreted not only against the quality of care within homes, but also against the kind of adulthood which the child would have, especially social integration, once she is out of the system.

CRY's experience and the research study has emphasized a need for capacity building of the various partners like the police, judiciary, government officers and other community leaders with a purpose to enable them to implement the existing law (Juvenile Justice Act, 2000) provisions from a **human rights framework**. We believe that children's rights are inextricably linked to the larger issue of human rights, that issues-both global and local that affect a community, affect children. Such understanding has also revealed a need to increase involvement of community in creating a "place of safety" for the child without parental care.

The role of the community in ensuring child rights is now pivotal to all our work. We believe children are the nuclei of the society. Thus issues affecting children can only be dealt with if those affecting the family are addressed first. It is our strong belief that a community that is aware of its own human rights will strive to ensure the rights of its children. Hence mobilization of community in CRY supported initiatives is critical. CRY's partners are no longer just service providers but facilitate the larger communities they work in to become aware of the policies affecting their lives and those of their children. These communities are empowered to take stances on these policies and put pressures on local bureaucracy and the government to reform them. They are mobilized to demand services of education, of health care, of the establishment. Hence today there are some fine examples of successful mobilizations of community leading to realization of child rights.

The *QIC//AC* is a step in this direction, which at one level examines the quality of institutional care for children; at other level it challenges the need for such institutions and demanding state responsibility in preventing separation of children from their families.

Since its inception in 1998, *QIC//AC* has been able to provide a larger platform for sharing and debating issues relating to child care from a child rights perspective. It has helped in placing CRY in a position to work with the government at the highest level. It has also helped CRY gain credibility amongst other stakeholders towards furthering the cause of *QIC//AC*.

Through the consolidated efforts of various organizations, professionals and child rights experts in the coming years, CRY, through our alternate care initiative supported by work with communities, will lead a sustained campaign for the rights of these children. It will also enable the preparation of a national framework for a planned intervention across the country ensuring state responsibility along with civil society participation for prevention of institutionalization of children.

Besides exploring alternate care for children, CRY's work with communities hit by national disasters (*our interventions in the Tsunami hit areas in India*), conflict (in the states of Jammu and Kashmir and Manipur), those affected by violence, poverty, disability and social breakdown will further help us strengthen State responsibility in understanding and regulating the factors for separation of children from parents. It will seek to identify concrete solutions, including State support for families to prevent institutionalizing of children.

Through constant feedback and recommendations for substantive actions, CRY, through its QIC/AC initiative will help the various stakeholders to keep returning to the path that creates new spaces for children that facilitate their mental, physical, emotional and spiritual development.