Off the Streets of Delhi: Justice for the City's Children

Submitted to

Centre for Civil Society

Ву

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Working Paper No 233

Summer Research Internship 2009

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ABSTRACT

The aim of this research paper is to examine the following points-

- 1. Government Policy with regard to street children in India
- 2. Work done by the Delhi Government for the betterment of street children in Delhi

An attempt has been made to observe the change in the perception and attitudes towards children in the international sphere by analyzing evolution in international policy over the last 50 years. The analysis of international treaties is important because the change in our national policy with regard to children mirrors the international treaties and agreements that India has signed over time. The United Nations Convention of the Rights of the Child ratified by India in 1992 remains the main set of guiding principles for the Government's efforts for helping street children.

The Juvenile Justice (Care and Protection of Children) Act is a central Act that governs the actions of the State Governments in this regard. States are free to come out with Juvenile Justice Rules of their own, and the Delhi Juvenile Justice Rules are currently being drafted. It is important to note that the Juvenile Justice (Care and Protection of Children) Act, 2000 provides the guidelines for work to be done by the State Governments, yet the level and method of implementation is determined by the State Governments- making a particular study of Delhi relevant.

The paper analyses the Juvenile Justice Act in itself, focusing on the concept of children's homes, also providing critique. It also looks into the efforts made in Delhi, pointing out specific areas of the Act that are inadequately implemented. A reform model for Delhi, adopted from an NGO, has also been suggested to provide a more child-friendly environment for the development of street children than is available presently, noting all the while the reforms suggested do not require a change in our national policy towards children or the Juvenile Justice (Care and Protection of Children) Act.

INTRODUCTION

"If we don't stand for children, we don't stand for much" - Marion Wright Edelman

There are **18 million children** living, working and dying on the streets in India, the highest in the world.¹

These children form the most neglected strata there is in our societal structure for children²-unseen, unheard and ignored – most hidden away in plain sight, most too scared to shout to be heard above the din of a largely apathetic society, all too young to form a section of the vote-bank to matter to our politicians.

This is not just a stringing together of emotional words to catch attention and evoke sympathy - Who stops to help a child on the street? How many people are aware of what to do with children found on the streets- know that our legal system provides us the opportunity to take them to children homes? Our leaders do not care either- referring to Bachpan Bachao Andolan (NGO) chairperson Kailash Satyarthi's statement, "Children are still out of our politicians radar" which is backed by a survey showing that about 80 percent of the candidates standing for this 15th Lok Sabha election did not have child welfare on their priority list.³

Estimates claim that Delhi's streets house between 100,000 and 500,000 of these children.⁴ Their fragile future hangs even more precariously on the edge, now more than ever- with the Commonwealth Games around the corner the Government has identified 18 'zero-tolerance zones' for beggars, a majority of who are children.⁵ Plans are submitted in the High Court but these children will be off the street soon one way or another- which way, will make all the difference. The difference in their future makes the issue relevant now, it is time for society to understand what the Delhi Government's efforts are for these children, time for our Government to analyze how they well they are doing what they are supposed to be doing and whether what they are doing is enough.

A lot of research has been done, and scores of reports written on the status of street children in India today, scrutinizing Acts and policies that have affected them, offering views and suggesting changes. But there seems to be very little organized statistical research available to the public giving information on these children specific to Delhi. Most NGOs in Delhi are engaged in on-field work- running Children Homes and organizing campaigns. Even the government has not published much data regarding the same. Very little importance has been given to collection of relevant information and documentation, probably implying that the involved people feel the need for primary action over data collection. Yet what can be measured, can be controlled. It is a mistake to overlook the significance of public understanding of government procedures related to handling street children and their status for it has usually been public awareness and participation that forms the base of an organized mass movement. That mass movement is needed- a concerted and organized program to help street children will work better than small isolated pockets of work.

Beyond the concept of moral responsibility, it is now, a time far overdue, that Delhi understands who these children are and more importantly, that the help they need is not counted as charity anymore, but legally, as their right.

DEFINITION OF STREET CHILDREN

It is essential to understand the various definitions for street children because work done by the Government for street children will be targeted towards the section of children that is recognized as street children under Indian Law.

There are two main definitions of street children that are recognized internationally.

The UNICEF Definition

UNICEF has defined and segregated 'street children' into three categories:

- i) Street Living Children: children who have run away from their families and live alone on the streets.
- ii) Street Working Children: children who spend most of their time on the streets, fending for themselves, but returning home on a regular basis.
- iii) Children from Street Families: children who live on the streets with their families⁶

The INTER-NGO Definition

There is another definition for 'street children' given by Inter-NGOs which states that a street child is any girl or boy who has not reached adulthood, for whom the street (in the broadest sense of the word, including unoccupied dwellings, wasteland, etc.) has become her or his habitual abode and/or sources of livelihood, and who is inadequately protected, supervised or directed by responsible adults.⁷

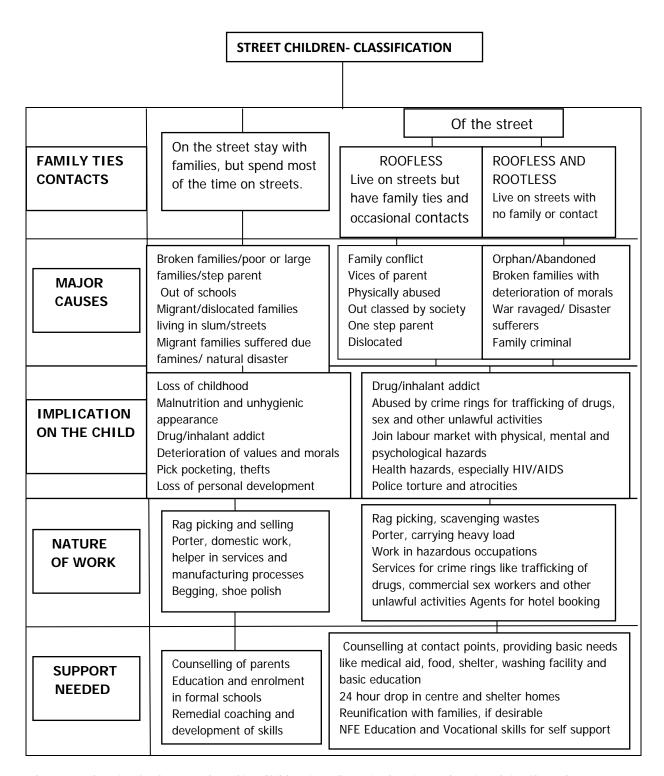
The Juvenile Justice (Care and Protection of Children) Act, 2000 currently dealing with certain categories of children in vulnerable conditions has a classification termed 'children in need of care and protection.' Street Children, as referred to in this report, fall within this category. The exact definition from the Act is as follows- A 'child in need of care and protection' means a child-

- i) who is found without any home or settled place or abode and without any ostensible means of subsistence,
- ia) who is found begging, or who is either a street child or a working child,

- ii) who resides with a person(whether a guardian of the child or not) and such a person-
- (a) has threatened to kill or injure the child and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after
- iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child.
- v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered] him or who is missing and run away child whose parents cannot be found after reasonable injury
- vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts
- vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- viii) who is being or is likely to be inducted into drug abuse or trafficking,
- ix) who is being or is likely to be abused for unconscionable gains,
- x) who is victim of any armed conflict, civil commotion or natural calamity

The research does not attempt to differentiate between the various categories present in 'children in need of care and protection.' The paper does examine policy evolution of child rights with focus on children in categories (i), (ii), (iv) and (v).

However, it must be understood that children in the previously mentioned categories may overlap into other categories as well. Help and rehabilitation efforts are the same under the Juvenile Justice (Care and Protection of Children) Act, 2000 for all children in need of care and protection, therefore no differentiation is done between the various categories while analyzing the efforts of the Delhi Government in this regard.



Source: Education for Street and Working Children in India, United Nations Education, Scientific and Cultural Organization, Indian National Commission for co-operation with UNESCO, Ministry of Human Resource Development, New Delhi (2001)

EVOLUTION OF INTERNATIONAL POLICY

A vulnerable child is entitled to certain rights of protection and development, and the onus of providing those lies with the State.

The concern for organized international recognition of child rights goes back to the beginning of the twentieth century. Initial major references to agreements on child rights are the Declarations of the Rights of the Child adopted by an independent child welfare organization called International Save the Children Union in 1923. With regard to vulnerable children, a point in the declaration stated- 'The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succored.'⁸

However, the first instance of countries coming together to adopt principles on the welfare of children was when the same agreement was adopted by the League of Nations in 1924 as the World Child Welfare Charter (Declaration of Geneva). It was the first international agreement that put child welfare 'beyond and above all considerations of race, nationality or creed'; implying that child welfare went beyond the tense political boundaries of the time.

The end of World War II saw need for nations to come together to lobby for international peace security and human rights. The United Nations formed with this objective, did in the UN Charter concentrate on promoting human rights but no special mention was made with regard to children. In the immediate aftermath of the World Wars the children reeling under the damages caused by the conflict were forgotten.

The UN Charter of 1945, however, is the beginning of international concern for children as the human rights laid the base for the evolution of child rights. Special mention of welfare for children did find its place in one article of The Universal Declaration of Human Rights in 1948- Article 25 stated that 'Motherhood and childhood are entitled to special care and assistance.' The Declaration clearly did not focus on children but this was the first UN document in which children found mention- a beginning all the same.

UNICEF (initially United Nations International Children's Emergency Fund), interestingly, was born out of the effects of the Cold War- The United Nations Relief and Rehabilitation Administration (UNRRA) was set up to prove economic assistance to European countries and the US government funded to close to half its budget. With the descent of the Iron Curtain USA refused to continue with funding as the organization provided assistance to Eastern European Countries as well. The last meeting to close UNRRF brought protests from countries, particularly Poland the fate of

children in Europe. Following this the UNRRA's residual resources were put to work for children through a UN International Children's Emergency Fund to provide them with food, shelter and healthcare. 9

Increasing attention towards children over the years led to the Declaration of the Rights of the Child on 20th November 1959; with the UN also adopting the day as Universal Children's day. The Declaration recognized 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.' The document specified the basic rights of every child in its principles and made a specific right for children in vulnerable circumstances in Principle 5 stating, 'The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.'

The Declaration however, was not enough to ensure that countries gave adequate legally binding; it merely projected the countries position and will to work towards ensuring child rights.

United Nations Convention on the Rights of the Child

The need for legally binding instruments for human rights was recognized and International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were formed. Following the same pattern, work on the United Nations Convention on the Rights of the Child (UNCRC) began in 1978. It took ten years for the draft to be finalized and it was finally adopted by the UN on 20th November 1989. It is the most widely ratified treaty, ratified by all UN members except the United States of America and Somalia.¹⁰

The UNCRC, in its 54 articles and 2 optional protocols defines a child, defines the rights of the child, and outlines the role of the State and emphasizes the importance of the family in the protection and development of the child. Article 20 specifically points out the responsibilities of the State towards children in need of care and protection-

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special

protection and assistance provided by the State.

- 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
- 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. ¹¹

Article 39 refers to the role of the state in the social reintegration of neglected children- States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

NATIONAL POLICY

The national legislative framework in India for children in need of care and protection is derived from the constitution and the international agreements to which India is a signatory.

Constitution

The Constitution has over two hundred statutes that address the child, directly or indirectly. 12

The fundament right that would make the state responsible for ensuring the care and protection of street children is not intended for children only – It is the Fundamental Right to Life and Personal Liberty, applying to all people, including children. Article 21 of the Constitution, The Right to Life and Personal Liberty, states 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

The Supreme Court has held time and again that 'life' implies more than just mere existence-

In 1978, the Supreme Court first found in the case of Maneka Gandhi vs. Union of India that the right to life provisions must be interpreted as the right to live to live with dignity.¹³

In 1981 the Supreme Court, interpreting the Right to Life and Personal Liberty in the Francis C. Mullin v. Administrator, Union Territory of Delhi case stated- "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings" 14

In the Bandhua Mukti Morchas vs. Union of India & others case the Supreme court again stated—"It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's Case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy

and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the

tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief." ¹⁵

The above judicial interpretations of the Right to Life and Personal Liberty by the Supreme Court imply that children on the street have a fundamental right to ask the State for shelter, food and clothing and also have a right to live without being harassed and exploited.

Article 15 of the Constitution is with regard to 'Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth' implying and agreeing with the text in article 14 about equality of people before the law.

But clause (3) of Article 15 states that "Nothing in this article shall prevent the State for making any special provision for women and children"; recognizing children as a category of people requiring special consideration in our laws. It allows for 'positive discrimination' ¹⁶ of children allowing the government to make specials laws for them.

Acts can be passed in Parliament with special reference to children, drawing relevance from Article 15, clause (3). The evolution of these Acts in India is discussed below.

Acts and Laws

The Children Act 1960 was the first major Act in India dealing with street children, initially passed for Union Territories, defined street children as 'neglected' children (including a child found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not). Although the Act seemed to be concentrate more towards delinquent children it set the precedent for instruction regarding care of neglected children. The Children Act of 1960 was the first perspective the government took for rehabilitating street children- through institutionalization; setting a precedent of sorts, for the perspective has not changed majorly in the last 50 years.

The National Policy on Children was formed in 1974. The Policy, recognizing that India was a signatory to the UN Declaration of the Rights of the Child 1959 lays emphasis on child welfare. The following points, would apply or street children-

- To ensure equality of opportunity, special assistance shall be provided to all children belong to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas
- Children who are socially handicapped, who have become delinquent or have been forced
 to take to begging or are otherwise in distress, shall be provided facilities of education,
 training and rehabilitation and will be helped to become useful citizens
- Children shall be protected against neglect, cruelty and exploitation

The policy directed the government to give priority to programs relating to 'maintenance, education and training of orphan and destitute children.' The document focused on child welfare, giving no insight on work to be done on protection of child rights as asked for in the Declaration of the Rights of the Child. Also, the policy gave directions for formulation of laws in 'suitable time', thereby implying no timeframe for their formulation.

Even with a policy in place, India still lacked a central act for uniform laws throughout the country for the rehabilitation of street children. A central act could not be created as the subject fell in the State List of the Constitution. It was brought into the Union List and the Juvenile Justice Act, 1986 was passed by Parliament.

In trying to be in accordance with the various agreements signed in the UN about children, particularly the UN Convention on the Rights of the Child, India replaced the Juvenile Justice Act, 1986 with the Juvenile Justice (Care and Protection) Act in 2000.

It was replaced by the Juvenile Justice (Care and Protection Children) Act in 2000. The Act, which is applicable to the whole of India except the state of Jammu and Kashmir, includes street children in the category of 'children in need of care and protection.'

The Act lays down methods for rehabilitating street children which constitute sending them to children homes, shelter homes. It states that restoration of the child shall be the primary objective

of the homes, implying that child should be restored to his/her parents or adopted parents as the case may be. The Act also has emphasized the role of Non-Governmental Organization (NGOs) in the process of care for street children.

Since the details of the implementation of the Act vary from state to state, I shall elaborate and discuss the Rules followed by the Delhi Government in the next section.

IMPLEMENTATION IN DELHI

To give full effect to the provisions of the Act, Juvenile Justice (Care and Protection) Rules, 2007 have been framed by the Centre. Under section 68 of the Act, every State Government has been empowered to frame their own Rules, and until the same are framed by the State Government, the Rules of 2007 would apply. ¹⁷

The Delhi Government has not passed Juvenile Justice Rules to implement the Juvenile Justice (Care and Protection) Act specific to Delhi, so it follows the Juvenile Justice (Care and Protection) Rules laid down by the Central Government. The Delhi Juvenile Justice Rules, 2009 are being prepared.

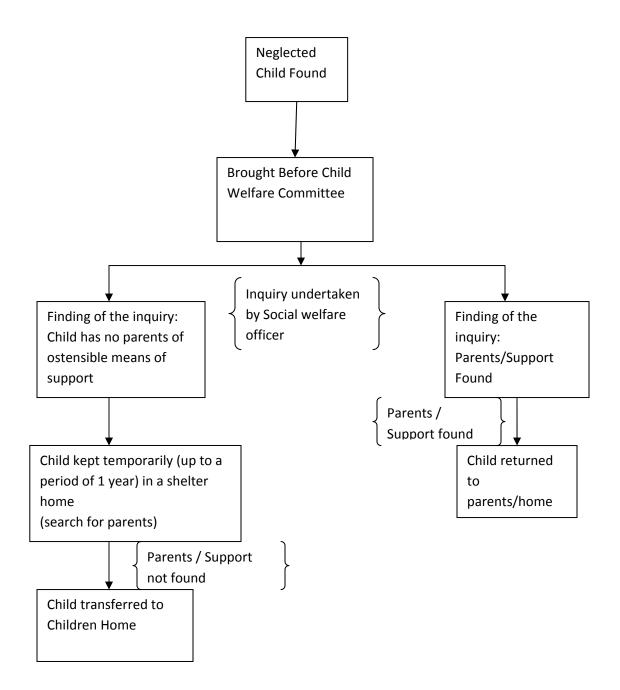
The duty of implementing the Juvenile Justice (Care and Protection of Children) Act in Delhi lies with the Department of Women and Child Development of the Delhi Government. It was formed on 14th November, 2007 when the Department of Social Welfare was bifurcated into the Department of Social Welfare and the Department of Women and Child Development. The Delhi Government has divided Delhi into 4 districts to administer these rules. There are 4 Child Welfare Committees and 4 District Level Officers in Delhi.

The Child Welfare Committees are quasi-judiciary bodies that have 'the final authority to dispose of cases for the care, protection, treatment, development and the rehabilitation of the children as well as to provide for their basic needs and protection of human rights.' ¹⁸The Committees comprise five members (at least one woman) who function as a bench of magistrates. The Committee members are not paid; ensuring people passionate about are a part of the committee.

Street Children can be brought before the Committee by any police officer or the special juvenile police, any public servant, registered NGOs, a social worker or the child himself.

An inquiry is ordered to determine the support system/parents of the child. The inquiry, by a social worker or a child welfare officer has to be completed within 4 months of the committee ordering it. If the child is found to have 'no family or ostensible support' the child is kept in a children's home. During the period of inquiry however and for a year after if the child is found to have no family or support he/she may be kept in a temporary institution called a shelter home.

The District Level Officers are responsible for inspection of the children and various homes to ensure they conform to the various standards mentioned in the Juvenile Justice Rules.



Procedure with respect to a child in need of Care and Protection under the Juvenile Justice Act, 2000

Resources of the Department

The total approved outlay for the Department of Women and Child Development for the financial year 2008-2009 was Rs 108,00,00,000 (one hundred and eight crore rupees).

2008-2009 (Budget Estimate)

Amount allotted for child welfare: Rs 388541,000

Amount allotted to children/observation homes for boys: Rs 57056,000 Amount allotted to children/observation homes for girls: Rs 16580,000

2007-2008 (Revised Estimates)

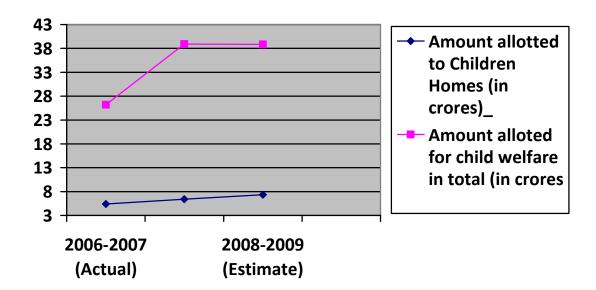
Amount allotted for child welfare: Rs 389199,000

Amount allotted to children/observation homes for boys: Rs 50180,000 Amount allotted to children/observation homes for girls: Rs 14159,000

2006-2007 (Actual)

Amount allotted for child welfare: Rs 262062000

Amount allotted to children/observation homes for boys: Rs 41228,000 Amount allotted to children/observation homes for girls: Rs 12840,000



Source of figures for graph: Detailed Demands for Grants

Government of National Capital Territory of Delhi for 2008-2009

STREET CHILDREN IN DELHI- A PROFILE

A survey was conducted by P. Agnihotri in 2001 with a sample of 402 children, an aspect of which was to determine a social profile of street children in Delhi. The sample consisted of children falling into the following categories- 90.5% had run from their homes ('Runaways') and 9.5% were not 'Runaways'. Majority (90%) had been arrested for 'Vagrancy', 5% for begging and 4% for petty thefts. ¹⁹(There was no differentiation between Children in need of care and protection and children in conflict with the law under the Juvenile Justice Act in 2001). Some of the findings of the report were as follows-

Age pattern

Major proportions of children were between 10-13 years (56%) and 6-9 years (23%). Agnihotri claimed a possible reason may be decreasing affection and increasing parental expectations with the onset of puberty between 10-12 years.¹⁹

Place of Origin

More than 4/5 of the children were from neighbouring states of Delhi. 19

• Education Levels

53% of the children were illiterate. 38.5% had dropped out from primary school. 19

Substance Abuse by Parents

Substance Abuse	Father	Mother
Smoking	65.5%	8.8%
Alcohol	43.6%	0.2%
Tobacco Chew	19.5%	2.3%
Other Drugs	10.8%	0.25%
None	25.0%	85.7%
Don't know	5.0%	5.2%

19

• Physical Abuse by Family

Biological	Biological	Step	Step	Other	Total
Father	Mother	Father	Mother	relative	
54.7% (of the	21.3%	9.3%	7.1%	14.2%	45.7%
children living					
with father)					
19		•	•	•	

• Occupation of Parents

57.7% of fathers worked as unskilled/ semi-skilled labourers. In 54% cases, only father earned. In 12.8%, only the mother earned and in the rest, both contributed to the family income. ¹⁹

• Living Status of Parents

Both alive and living together	46.9%
Both alive but not living together	14.5%
Only father alive	13%
Only mother alive	17%
None alive	8.5%

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CASE STUDY: Children Home for Boys- I and II, Lajpat Nagar

It is harder to get permission to enter a government run children's home than it is probably to get in anywhere else – is it, as the government claims to protect the children's privacy and minimize potentially harmful outside interference, or because there is something to hide? One wonders how far to one side of the balance the real reason lies. But finally, with a sign from the chairperson of the Children Welfare and a seemingly reluctant approval of the superintendent, there's nobody to monitor what you ask and do inside.

A door opened to reveal a small courtyard with children spread all over- lounging, reading, painting and fighting, in some cases. Faces always look and light up with expectation when a visitor enters; and a crowd had gathered in around in no time. What do they do? What are their routines like? Do they enjoy the home? How did they end up there? A million questions enter the mind at once but nothing comes out and you sit with them in a circle, wondering how to the break then ice. There is no need; they will start the conversation asking where we are from and if we have finished class 15.

The first thing that strikes you about that group is the range of ages present – 6 to 18 years. This is when the Juvenile Justice Rules state that there have to be separate children homes state for ages 5 to 10 years and 10 to 18 years. Children between 10 to 18 years have to be further segregated in two groups of 10 to 15 years and 15 to 18 years.

The home is supposed be divided on the basis of age. There are supposed to be two children homes there Children Home for Boys- I and Children Home for Boys- II housing boys of different age groups, but there is only a division on paper- there is only one building for both.

Forget the ages, every one of them has a story to tell- surprisingly a lot of them claim to have parents, (a fact also confirmed by the Chairperson of the Child Welfare Committee (CWC)) maybe showing returning missing children to their parents, given the lack of centralized availability of information, is very difficult.

There are different tales as to how they got there. Some concerning the police involve a lot of praise, but others are disturbing. Delhi is supposed to have a Special Juvenile Police Unit, sensitized to handling children and instead stories of police taking bribes and giving children

correction fluid to sniff. These are admissions by children with no detail and proof, not statements presentable in court for prosecution; a yet their existence shows the corruption and lack of training in sections of the police. Not all encounters with the police are horrible experiences; some children recount the help and continued care by police officials even after they entered the children home.

A small child, trying to describe the home said it was a 'chillar' home; ironically, it was hard to tell whether he meant it as 'children' or actually 'chillar' (meaning small change) as they are sometimes called.

Yet, startlingly a major portion of the children, when asked, say that they are happy in the home. It might be partly because they do not know a better life and partly because at a basic level, in the home they are cared for. The home provides a major part of what is asked for by the Juvenile Justice Rules in principle. Clothes, proper meals, a place to sleep (not everyone has a bed) and other basic amenities are provided for although some children complained of things like books not being provided in time. There is time for recreation in the afternoon – sport, painting, carom, TV (at night), board games etc. There was also a camp on at Bal Bhawan to give the children things to do in the summer holidays.

Appreciably, there is a strong focus on education at the home, with children being sent to schools outside to study. Children on remand, who have not yet joined the home permanently are supposed to receive Non-Formal Education, though the Chairperson of the Child Welfare Committee admitted that the system for NFE needed strengthening.

A little over an hour, and hints of problems started trickling out. "Bhai, will you take my address? I want to go home." Most problems arise between the boys themselves- stealing and fighting. They claim that children of all groups living together does not pose a problem but hint that some do 'gandi masti', a reference to sexual abuse.

Their problems seem to stem from two basic points –

- 1) Lack of personal counselling and care
- 2) Lack of training of officials in the Children Home

With relation to the first point, the Children Home is a very formal 'institution' – personal care and love for children in the Home is absent. Therefore, problems of the children often go unheard – there was a child crying for his mother continuously for two hours. His crying went unheeded, and children said that he had been addicted to the thinner found in whiteners. With nobody to help him through the withdrawal he just howled the entire time.

There is an incident that took place in the Home that highlights both points mentioned above- A fight broke out in the courtyard between two boys. It was finally broken up by an official who brought one of the crying shirtless boys involved in the fight to a room, threatened him and beat him fists and slaps. Other officials there did not stop him and it led to strong protests from the other boys in the room which were silenced with admonition and threats. This firstly, is a blatant violation of the law. Not only that, an act like this is in indicator of the low level of empathy and compassion in officials present. Traits like these are passed quickly to impressionable minds of children, and never will children be able to grow and develop positively in such an environment. The Act does provide for children to get that required care, stating one of the Duties of House Father/Mothers is 'to handle the juvenile/child with love and affection.' The Act lay down guidelines for training to personnel for handling children but to what level it is followed is not known.

The home is divided in rooms called 'kutties' with each kutty having a captain, usually an older boy residing in the room. The Juvenile Justice Act lays down guidelines for children's' voices to be heard in the home. There is a Children's Committee constituted in the home that meets the management committee.

Surprisingly, the Juvenile Justice Act does not give directions for children with physical disabilities. Children reported that there were 5 dumb children in the home. Meeting one of them, he being ostracized and ignored by the other children was evident.

In summary, the home caters to the children's survival and education. A lot remains in reaching the level of love and empathy required to take care of these children.

<u>Profile of posts held in the children homes in Lajpat Nagar</u>

Children Home for Boys I

S. No.	Designation	Posts sanctioned	Filled	Vacant
1.	Superintendent		-	01
		01		
2.	Welfare Officer	02	02	-
3.	Upper Division Clerk	01	01	-

4.	Lower Division Clerk	01	-	01
5.	PT Instructor	01	01	-
6.	Craft Teacher	01	-	01
7.	TGT	01	01	-
8.	Care taker	06	06	-
9.	Care Taker (Plan)	03	03	-
10.	Cook	03	02	01
11.	Sweeper	03	03	-
	TOTAL	23	19	04

Source: Application filed under Right to Information Act, 2005

Children Home for Boys II

S. No.	Designation	Posts sanctioned	Filled	Vacant
1.	Superintendent	01	-	01
2.	Welfare Officer	02	02	-
3.	Upper Division Clerk	01	01	-
4.	Lower Division Clerk	01	-	01
5.	PT Instructor	01	-	01

6.	Craft Teacher	01	-	01
7.	TGT	01	01	-
8.	Care taker	06	04	02
9.	Cook	03	03	-
10.	Sweeper	03	03	-
	TOTAL	20	14	06

Source: Application filed under Right to Information Act, 2005

Total Expenditure of Home

Children Home for Boys I

	Salary	Service & Maintenance	Other Expenses
2007-2008	Rs 11, 80, 165/-	Rs 14, 48, 926/-	Rs 2, 39, 939/-
2008-2009	Rs 26, 44, 305/-	Rs 14, 63, 729/-	Rs 5, 08, 042/-

Source: Application filed under Right to Information Act, 2005

Children Home for Boys II

	Salary	Service & Maintenance	Other Expenses
2007-2008	Rs 12, 11, 516/-	Rs 12, 67, 097/-	Rs 1, 15, 523/-
2008-2009	Rs 25, 20, 443/-	Rs 12, 43, 542/-	Rs 1, 37, 372/-

Source: Application filed under Right to Information Act, 2005

Number of children presently in children's home for boys I- 69 (capacity- 100) Number of children presently in children's home for boys II- 65 (capacity- 100) Excluding the salaries paid to the officials of the home, to calculate the expenditure per child in the home for 2008-2009:

Children Home for Boys I- Rs 28, 576 (approx.)

Children Home for Boys II- Rs 21, 244 (approx)

COMPARISON: An Ngo-Run Home

CHILDREN'S HOME IN CHABI GANJ (Run by Aman Biraadari)

There is a basic difference observed in the way all common work is done between the Department of Women and Child Development and an NGO- a difference in attitude. This difference is prevalent in their treatment of children in the Home. It can argued that the Home in Chabi Ganj had only about 60 girls, less than half the number of boys present in the Lajpat Nagar Home automatically allowing for more personal care but the difference is there all the same.

The children are housed in a small building provided by the Directorate of Education. The Home gets a grant of Rs 6000 per annum per child under the Sarva Shiksha Abhiyaan (by the Directorate of Education) as they are given education as well. However, the fund can be used for the daily running of the home. Money being given by two Departments (money is given by the DWCD as well) for the same amounts leads to multiplicity of authority. Also, the amount given by the Directorate of Education equalled only a fraction (less than one-fourth) of the money spent per child in the Children Homes run by the Government in Lajpat Nagar.

It is easier to get permission to this Home as compared to a Government run children's Home-NGOs are usually more open to visitors as they regarded in a different light. They encourage visiting and communicating with the children (considering it is important for the children's development) as opposed to the extra caution by the Government.

Facilities available in both homes were at par, with basic care provided for. The NGO run home did have the advantage of not having to go through red tape-it allowed for speedy purchase of items required for children.

As pointed above, there was a better atmosphere in the home, however subjective a term that is, in terms of the connect between the officials and the children.

They also claim to have restraints because of inadequate funding, a problem not found in the Government-run children's home in Lajpat Nagar. (M. Sahai, personal communication, June 2009)

CRITIQUE OF THE ACT

The cause of the problems faced in the care and rehabilitation of street children can divided into two broad heading:

- Shortcomings of the Juvenile Justice (Care and Protection of Children) Act
- Inadequate Implementation of the Juvenile Justice Act in Delhi

There is no doubt that most problems with the rehabilitation of street children stem from the fact the Act is only partially implemented in the Children Homes in Delhi, with the implementation varying as per convenience. However, the problem goes beyond that of under-implementation. Although the revised Juvenile Justice Act, which was again amended in 2006, has improved greatly upon the original Act of 1986, the Act still comes under fire from child-rights activists because of some fundamental problems in the legal framework itself.

Institutionalisation

The most criticism the revised Act gets is because of the principle of rehabilitation used- It has not changed since 1986 and its focus has remain on institutionalisation.

Harsh Mander in 'Vulnerable Children, Institutionalisation and the Law', attacked the basic logic behind sending a vulnerable child to an institution. He says, "It is absurd and heartless for children to be locked up only because they have no one to protect them. It is argued that this is done for the sake of the child: if the child was free in the community, the State would be unable to protect the child from abuse, and therefore she is locked up for her own good. This is as illogical as saying that when a woman is gang-raped, and the State is unable to arrest her tormenter, instead they lock her up for her own safety."

An interesting angle to institutionalization, as noted by ECHO- Centre for Juvenile Justice closed institutions impinge on the child's right to live freely. Therefore, the use of Children Homes for rehabilitation of the child implies using deprivation of liberty not as a punishment but as a method for caring for the child.²⁰

A quote from the movie The Shawshank Redemption sums up the problem of institutionalization quite effectively: "These walls are funny. First you hate 'em, then you get used to 'em. Enough time passes, you get so you depend on them. That's institutionalized."

It is ironical that this quote can be used to describe a Children Home because it originally comes from an inmate describing his prison, which is what Children Homes are compared to in their criticism. Children in need of care and protection who may be brought into even a theoretically perfect Children Home (as the law does not offer an alternative) against their will first obviously hate it, with time passing will get used to the idea. But with an extended period of care (remember, an ideal case) the child growing up in a caged environment will not be able to throw himself in to the world at 18 years of age.

It can be argued that vocational training provided to the child will enable him to fend for himself outside, but the question is not if he or she can earn money but it is a question of their mindset. Them having stayed and being used to a rigid institution with fixed rules governing their lifestyle for most part of their life (mean age of entering the home is 11.3 years)²¹ with minimal contact to the outside world, will they able to adjust suddenly at 18, to an entirely new world on their own?

This, remember was explained in an ideal scenario. Consider the present reality in Delhi discussed above – given the lack of personal attention and care required for development of the child, it seems impossible that this Act contributes to giving street children a better future.

When asked for her opinion on the Juvenile Justice Act, particularly with respect to the criticism it has faced about 'institutionalization', Ms Mamta Sahai (Chairperson, Child Welfare Committee in Mayur Vihar) supported the Act. She said, "The Act does not promote institutionalization. Efforts are for three months made to restore the child to his/her parents." She added that if restoration was not possible and a children's home inevitable, a certain regime in a children's home was necessary for the development of the child. Children, if not put in a children's home would be back on the street in no time.

Ambiguously Defined Government-Ngo Linkage

The second major flaw in the Act is that it does not give due importance to the role of voluntary organizations working in this sector. The Act sets a base for co-coordinating government and NGO efforts stating that: "The State Government may make rules to ensure effective linkages between various governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child." But it stops at that. The scope of this provision and the and action required to be taken under it is not specified²²- There is no detail

laying the kind and extent of co-ordination leaving a hap-hazard, ambiguous relationship between the only two players working on the issue.

"The needs of street children are varied but the response from organizations - government & non-government has been patchy and isolated." ²³

Not to say that there is no linkage at all- the Delhi Government gives financial assistance to recognized NGO run Children Homes. But the getting NGO Homes recognized by the government is an issue in itself. Children Homes not recognized by the Juvenile Justice Act are illegal but NGOs claim recognition of Homes by the Government impose upon them co-ordination with the Government which involves lengthy bureaucratic procedures which are detrimental to the running of the Home. The Child Welfare Committee on the other hand claims that NGOs were 'stubborn' and had to learn to work within the ambit of the law. Besides this, there is no visible sharing of statistical information between both parties. Research seems to be conducted independently though recently, the Dil Se Campaign started in 2005 was collaboration between the NGO sector and the government.

SOLUTIONS

The domain of solutions suggested is such that it is within the prevalent laws of system. The Juvenile Justice Act is a National Act and it is understood that work done for helping street children in Delhi has to be done in accordance to the rules laid down by this Act. Therefore, the purpose of the proposed solutions is not to ask for a radical overhaul of the functioning of the department, nor is it to ask for a change in the very Act itself. The rationale behind the proposed reforms is to offer a set of changes that are within the ambit of the current Act.

It is recognized that the Juvenile Justice (Care and Protection of Children) Act does benefit street children; that it is not basically flawed even though it is has the problems discussed above.

Changes in the Children Homes

The possibility of implementing these reforms lies within the fact that the Act only lays down a minimum standard for the running and structure of Children Homes, allowing the State Governments to handle the running as they see fit.

 Meeting the minimum standards laid down by the Juvenile Justice (Care and Protection of Children Act), 2000

These suggestions for adequate implementation are made with regard to the Government run Children Homes in Lajpat Nagar but can be applied to other Children Homes as well as deemed necessary after research into their functioning-

i) Segregation of children of different ages in the Children Home

The Juvenile Justice (Care and Protection of Children) Rules, 2007 followed by Delhi asks for different homes for ages 5 to 10 and 10 to 18 years.

The Rules also ask for segregation of children in the age group of 10 to 18 years into two groups of 10 to 15 years and 15 to 18 years.

The above directions are not followed presently.

ii) Stress on Vocational Training

The only vocational training programs offered that the children in the home knew about

were stitching and being trained as housekeeping staff in hotels. The stitching room was currently non-functional. More stress has to be laid on vocational training to allow the children to re-integrate into society after leaving the home.

iii) Counselling

The Rules state- 'Every institution shall have the services of trained counsellors or collaboration with external agencies such as child guidance centres, psychology and psychiatric departments or similar government and non-government agencies, for specialized and regular individual therapy for every juvenile or child in the institution.'

This is an important requirement considering the difficult background of most of these children and the problems faced in adjusting to the life of the home. The Children Homes currently lack any such sort of facility- The Children Homes in Lajpat Nagar do not even have a post sanctioned for a counsellor for the children.²⁴

iv) Lack of a dining hall

The Rules ask for a dining hall of 800 sq. feet for an institution with 50 children. The home in Lajpat Nagar, housing 129 children, did not have a dining hall forcing children to eat on the floor.

A solution to Institutionalization – Adoption of the SOS model

This is an SOS Children's Village official's view on the Juvenile Justice (Care and Protection of Children) Act, 'The Juvenile Justice policy of the Indian Government is not against children. It is the method of implementation of the policy that matters.'

True enough, since SOS Children Villages, an international NGO, working for children has a simple and unique model for their children home, which while being registered under the Juvenile Justice (Care and Protection of Children) Act, takes away the problems of institutionalization and manages to provide a much needed child-friendly environment and personal attention that is lacking in other homes.

The overview of the model of the SOS Children's Villages is based on a visit to their model Children's Village in Faridabad. Housing 50 children, with an area spread of 12 acres, the Village campus could compare with that of a high-end Indian Public School. There are offices, rooms for children and staff, a school, a training centre for employees, a vocational training area, an auditorium, volleyball court and a football field in the enclave.

It is the break-up of children living in the Village into families that allows for personal attention for so many children. The children are divided into families having up to 10 children each. The children in the family are termed as brothers and sisters. Each family is looked after by a mother and an aunt. Each family contains both boys and girls up to the age of 14 years, after which they live in separate 'youth houses'. A child may leave the home at 18 if he/she likes, but will be supported by the home financially up to the age of 24 by which time he/she should have settled down.

The family is given a home of its own, with each home modelled just like a normal household- the home has a sitting area, bedrooms for the children, a fridge, a TV, a dining room etc. This home-like appearance is one counter to the child's perception of a Children's Home being a jail.

Personal attention and the treatment depend on the training received by the officials in the home. The aunt, who helps the mother, is actually a mother being trained to replace the current one when her term ends. The training centre in the campus also serves this purpose.

There is the CBSE affiliated Hermann Gmeiner School which caters to all children-from in and outside the Village. The fact that it caters to children from outside as well allows for interaction of children with the outside world, reducing a critiqued aspect of institutionalization. The education received by the children in the Faridabad Village, seemed of good standard with a class VII student being fluent in both Hindi and English. He also had an idea of the possibilities of subjects that could be taken up after school- a result of the importance given to career counselling in the Village, an official claimed. The official claimed that there were children from the Faridabad Village were doing an MBA, studying in Amity and that there were four children in college abroad. He also mentioned that it was possible for SOS to provide financial support to such children because of the 'Sponsor a Child' Scheme, which allowed for donations for any particular children in the Village.

It has been said that SOS is selective in the children it takes into the Village- the organization only accepts orphans without any form of support up to the age of 12 years. SOS claims that their selective acceptance is justified. An official there, explained, saying that vulnerable children with some form of support usually were not willing to come to the Village and that there had been instances of such children running away. Owing to this, the acceptance criteria were changes and vulnerable children with some form of support, along with their guardians are now put through a 'Family Strengthening Program' lasting 3 to 5 years in which the family is assisted financially and socially to enable them to take care of the child. Replying to the 12 year old limit, he said that

children above 12 found it hard to adjust to the routine, environment and education provided in the Village.

Training and Sensitization of personnel

The incident related in the section describing the visit to the Lajpat Nagar home shows a lack of understanding amongst officials on how to deal with children in the home. There is data available presently to record the kind of training programs that the officials are put through. Although, the lack of love and the incident related are indicators such programs need to be reviewed- their frequency may need to increase or their effectiveness checked.

The Delhi Juvenile Justice Rules- Proposed Additions to the Current Draft

- Clearly define Government-NGO linkage
 - It is imperative that the Government and the NGOs work together, as opposed to working separately on this issue. The current Rules do not define the scope of Government-NGO linkage. The minimum collaboration that should be present between both parties should be defined to allow for a definite collaboration between the two. The ambit of such a partnership could be explored in the following areas-
 - i) Continuing the existing aid given to various NGOs by the Delhi Government
 - ii) This point is a compilation of areas where the Juvenile Justice Rules mention using help from NGOs as an option:
 - a) The inspection committee of a State, district or of a city shall consist of such number of representatives from the State Government, Local Authority, Committee, voluntary organizations and such other medical experts and social workers as may be prescribed.

b) The State Government itself or in association with voluntary organizations, shall set up separate homes for children in need of care and protection.

This point is the best example of link-up of the Government and NGOs in Delhi right now as numerous NGOs are running Children homes certified under the Juvenile Justice (Care and Protection of Children) Act. There is a fault within the NGO sector as well- A lot of NGOs are reluctant to get Children Homes registered under the Juvenile Justice Act. This is illegal, and whatever the reasons of the particular NGO may be, it is necessary, quoting the Chairperson of a Child Welfare Committee, that 'NGOs run within the scope of the law.'

- c) Every possible effort shall be made to trace the family with support from the District Child Protection Unit, and assistance of recognized voluntary organizations, childline or police may also be taken.
- d) Every newly admitted juvenile or child shall be allotted a welfare officer from amongst the probation officers or child welfare officers or social workers or counsellors attached to the institutions or voluntary social workers or counsellors.
- e) Where voluntary organizations are involved in providing professional and technical services like education, vocational training, psychosocial care, mental health intervention and legal aid, the Management Committee may invite a representative of such voluntary organizations as a special invitee to the Management Committee meetings.
- f) The Officer-in-Charge shall, as far as possible, seek assistance from local voluntary organization or child participation experts for the setting up and functioning of the Children's Committees.

The local voluntary organization or child participation expert shall support the Children's Committees in the following:

- *(j) selecting their leaders;
- *(k) conducting the monthly meetings;
- *(I) developing rules for the functioning of Children's Committees and following it;
- *(m) maintaining records and Children's Suggestion Book and other relevant documents;
- *(n) any other innovative activity.

An official from an NGO reported that the Child Welfare Committees were not functional in any of the Children Homes, leaving this point regarding the involvement of NGOs redundant.

- g) The Board or Committee may consult Children's Committee setup in each institution to enquire into the fact of abuse and exploitation as well as seek assistance from relevant voluntary organizations, child rights experts, mental health experts or crisis intervention centres in dealing with matters of abuse and exploitation of juveniles or children in an institution.
- Research tie-up: As stated before, most NGOs are involved in on-field work and the Government has not published much statistics on its website. The linkage proposed in the new Delhi Juvenile Justice Rules may include details of tie-ups between the DWCD and NGOs to create Delhi-specific research.
- NGOs could be more involved in the direct running of Government run homes and viceversa. There should be posts sanctioned for officials/counsellors in the home who work with NGOs to allow for better tie-ups between the Government and NGOs. There should be training program tie-ups with NGOs- SOS Children's Village in Faridabad holds training programs for its staff and was willing to involve the Government in the program.

Citizen Awareness, Updating of Information

This last point is a basic requirement of the department under Section 4 of the Right to Information Act, 2005. Section 4 of the Right to Information, 2005 requires the government to publish certain records proactively. Although it requires the Government to make these reports available on the internet, it does not specify a time frame, asking the Departments to do so in a reasonable amount of time, subject to availability of resources. However, on the DWCD website the following documents required have not been put up yet-

- i) the powers and duties of its officers and employees
- ii) the procedure followed in the decision making process, including channels of supervision and accountability
- iii) a statement of the categories of documents that are held by it or under its control

- iv) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof- details of NGO linkage not available.
- v) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public
- vi) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulation
- vii) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made
- viii) such other information as may be prescribed and thereafter update these publications every year- the annual report of the DWCD is not available on the website.

Publishing this information would help generate awareness in the public and reduce the need for citizens to file RTI applications for information on the above topics.

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