

**.....BECAUSE TOMORROW SHOULD NOT BE
LIKE YESTERDAY...**

SUBMITTED TO:

**UN Committee on Rights of the Child
for the
Day of general discussion
On
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Submitted by



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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. The initiative pegs itself on the Constitutional guarantees and commitments made via international conventions to assure these rights for children.

Constitutional guarantees

Art 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Art 15 (3) “Nothing in this article shall stop the state from making special provisions for women and children..” (to prohibit discrimination)

Art 21: Right to life and personal liberty

Commitments through CRC:

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 vent of separation

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

About CRY

CRY stands for Child Relief and You. It is a 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

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 was initiated in 1998 and* currently functions in 11 states in India with two more states to be included this year. 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

Significant Qualitative Highlights

1. **CRY teams are now more confident of their understanding of the issue, its complexities** and thus able to move into situations where the relationship between State and Civil Society are tense and there is a lack of trust, often the engagement is confrontational.

- *In the past year, CRY has facilitated the launch of QiC & AC initiative in Kashmir, primarily in the valley and in Manipur, both states with ongoing internal conflict situations. In both states, CRY has been able to begin developing relationships of trust with various stakeholders.*
 - *In Tamil Nadu, a greater sharing of roles in the core group has resulted in progress on ownership building. In the post-Tsunami scenario, many issues got clarified and most important, a clearer understanding of the role of the network, in helping children stay within their communities was highlighted.*
2. **In states where the initiative has been ongoing for the past few years, the effort has been to establish urban-rural linkages in programme frameworks and in the activity profile, increasing focus on moving from the urban to the rural scenario.**
- *In Maharashtra, child protection issues are now part of the agenda of the state alliance. Especially in the Marathwada region, efforts have been made to reach out to communities with whom CRY partners engage with to take on greater responsibility for children at risk.*
 - *In Andhra Pradesh, a restructuring is planned and it is expected that the new partner will be operational in rural areas and will thus add to the national initiative's knowledge base on protecting children within their communities.*
3. Efforts of the past years have begun to show small but distinct shifts in perception. There has been a shift in mood with **greater willingness within government agencies & civil society collectives to learn more about and consider broadening the basket of services and options available for children outside family care.**
- *In Delhi, During the year, the core group was expanded and a range of professionals came on board. This included representatives from the Central Adoption Resource Agency, National Institute of Social Defense, the SOS villages and the Jamia Officials from the police and select media-persons have also expressed their willingness to be a part of this initiative in their personal capacity instead of their official capacity. The group was also asked to provide inputs on children for incorporation in the Human Development Report through State Consultations.*
 - *Also a state level consultation on foster care has been held, by the QiC&AC core group in partnership with the Delhi government. As a follow-up, the department of social welfare, government invited CRY and the Core Group members to finalize the Foster Care Placement Rule for Delhi.*
 - *In Orissa, an orientation programme on the JJ Act and Child Rights, with a focus on the role of the CWC was organized by the Social Welfare Department in collaboration with CRY. As an outcome of the training, the Resource Organisation alongwith the core group members is in the process of fine tuning Quality Parameters drafted at this state consultation.*

- *In Karnataka, CRY and the core group have focused on strengthening the capacities of CWC members in 12 districts. The experience of the CWC, functioning in Bangalore (urban) district has been a benchmark. Through concerted efforts and skill building, relationship between the CWC, JJB and the State department has emerged as transparent and mutually accountable.*
 - *Rajasthan: One of the achievements of the initiative in the state in the last year has been the strengthening of the Core Group which has succeeded in establishing a good rapport with CWC. This enabled the members permission to visit some Government run homes based in Jaipur to examine if the quality norms provided by JJ Act were followed. The QIC/AC co-ordinator has taken leadership to document a profile of the children in one of the homes i.e. Kishore Home. Besides this a capacity building workshop on aspects of the JJ Act, 2000 and child adoption from a child rights framework was organized in partnership with the Social Justice and Welfare Department.*
 - *Bihar: An increased government receptivity towards the QIC/AC initiative has allowed the RO to facilitate community intervention in nine institutional homes for children. One immediate outcome of this has been that these homes were shifted to better premises. In addition, status report on the pending cases of CCL and the children within jails was handed over to government for action and eighty children held in the jails were placed to family.*
 - *West Bengal: Interface with the state government was strengthened through various consultations and capacity building initiatives. A district level seminar on the JJ act was also organized for lawyers and CWC members in Cuttack.*
- 4. CRY teams spent a significant proportion of the year, in gathering evidence, of reality on ground, within institutions. That evidence has now been collated and dissemination strategies are being evolved. Based on this, norms of quality care will be evolved.**

The JJ study reached out to 159 Institutions, spread over 9 states: Delhi, UP, in the North, Maharashtra in the West, Karnataka and Tamil Nadu in the South, Bihar, Orissa and West Bengal in the East and Manipur in the North East.

When the survey was conducted, through the monsoons and autumn of 2004, about 4500 girls and boys were living in these institutions. During the course of fieldwork, the teams have collected information on even those children who had stayed in those institutions and have since left. These included information on children who ran away, children who committed suicide, children who were moved to other homes and a very limited number of children who were restored by the system to their families and communities. The study findings are based on information about the situation and experiences of about 15,000 children. While the actual number of children surveyed were approx 10000 but as the survey tried to get information about children who were present in the homes from the year 2000 to 2004, the survey actually has information for more than 15000 children.

The significant outcomes of the study were:

- a. a need for a child rights policy that would support the substantive changes that the JJ Act, 2000 seeks to achieve
- b. need for capacity building of the various partners like CWC members, JJB officials, probationary officers with a purpose to enable them to implement the JJ act provisions from a human rights framework
- c. increase involvement of community in creating a “place of safety” for the child, as mentioned in the JJ Act, 2000

Evaluating quality of life for children in institutional home –CRY study

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. 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.

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 as 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.

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.