Rehabilitation Focus in the Juvenile Justice System in India

The Ideal vs The Real

- A.J. Regis

The JJ system in India is laid out in a legal framework in the form of the JJ (Care & Protection of Children) Act, 2000. This legislation is an outcome of a long process of evolution over a considerable period of time, more significantly since 1980s. This process incorporated into the Act the necessary provisions of CRC, Beijing Rules, UN Rules for the Protection of Juveniles Deprived of their Liberty and all other such relevant international instruments, not to mention the country’s own learning experience in dealing with children in need and at risk.

The Act addresses significant biases against child-centric system with provisions that are not line with expected standards of treatment and delivery of justice, care and protection to children. It also aims to ensure a child-friendly approach in the adjudication and disposition of matters in the ‘best interests’ of the child and secure their ultimate rehabilitation/reintegration through various institutions established under the purview of the Act. This Act was amended and further consolidated in 2006 to cover all aspects of interaction between children and the legal system.

Further to this, to give effect to the provisions in the Indian Constitution and international instruments, the Central Govt. took a significant step to formulate in 2007 the Model Rules under JJ Act. Model Rules were designed to better implement and administer the provisions of the JJ Act in letter and spirit. They sought to reinforce a child-centric system of appropriate provisions and procedural and operational guidelines aimed at rehabilitation and family restoration. They are to be complied with by the States/Union Territories until they drafted their own state-specific Rules.

The Act identifies two categories of children viz Children in Need of Care and Protection and Children in Conflict with Law and created separate institutions and processes to deal with children under these categories. The key institutions for Children in Conflict with Law are Juvenile Justice Boards, Observation Homes and Special Homes.

The JJ Act is the governing legislation for ‘Juveniles in Conflict with law’ in India, the main objective being establishment of an alternative justice system for their rehabilitation. So while on one hand an alternative system for juveniles should advocate decriminalization and deinstitutionalization in its interventions and, on the other hand, it should ensure that the rehabilitation process is effective and strong enough to prevent them from coming into conflict with law again.

In the UN CRC, there is a clear emphasis on the social reintegration of JICL: they are “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth” and must take “into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.” The CRC also goes on to identify educational, vocational training and counseling among other needs as important for the well-being of these kids: “A variety of dispositions, such as care, guidance and supervision orders; counseling, probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

The JJ Act also identifies education, training and counseling as needs imperative for the rehabilitation of juveniles. In the Model Rules, these provisions were even made more explicit and better deliberated. But most unfortunately, the translation of legislation to its effective implementation left a huge gap and much to be desired.
The delivery mechanism

Judicial proceedings

The Juvenile Justice Board is the main body under the JJ Act responsible for adjudication and disposal of cases concerned with juveniles in conflict with law.

Every case brought before the JJB progresses in **three basic stages**

1. First Summary Inquiry
2. Investigation
3. Disposition.

**First Summary Inquiry** is when the juvenile is placed before the board for the first time and the Board on the basis of the report presented to it by the police, decides whether the juvenile is to be released on bail or sent to an observation home pending enquiry. It is alarming to note that at this stage there seems to be no mechanism to check if the juvenile produced before the JJB has come into conflict with law is a first-time offender or a habitual offender. This obviously will have serious implications for the rehabilitation process.

**Investigation:** In the investigation part of the process, the commission or otherwise of the alleged offence is established largely based on the Social Background Report submitted by the Police and the Social Investigation Report submitted by the Probation Officer. Every inquiry by the Board must be completed within 4 months and only under special circumstances can be extended up to 6 months. For serious crimes, the time period may extend beyond 6 months.

However, given the **high pendency of cases** in the JJBs the inquiry phase extends to 6 months almost always in the case of non-serious cases and indefinitely for serious ones.

A study conducted by a non –governmental organization, Bal Sakha(2006) revealed that over 6,000 juvenile cases were pending in various Juvenile Justice Boards, of which about half were pending for more than three years and in some cases, still unresolved even after 10 years. (Srivastava, Zachariah and Kaur.2006) Thus thousands of such children continue to languish in homes because of the delay in justice.

High pendency of cases is a matter of very grave concern with regard to the process of rehabilitation and reintegration of juveniles. Languishing indefinitely or over a prolonged period of time in JJ institutions whose conditions of living and treatment of children are of sub-human standards and known for flagrant violation of rights of children can in no way provide a conducive environment for an effective and meaningful rehabilitation.

**Disposition:** At this stage, appropriate orders are passed. Although the Model Rules have provided adequate space for **diversion and restorative justice** no clear program framework is in place to exercise options such as community service and victim offender reconciliation programs.

**Procedural documents**

The Social Investigation Report and Individual Child Care Plan are instrumental to the determination of the kind of rehabilitation process to be followed.
Social Investigation Report (SIR): Generally, after the first summary inquiry the JJB directs the Probation Officers to submit the SIR within the next 15 days. But most commonly these reports are far from holistic. Not only does the method for preparing the SIR leave much to be desired, but even while filling this basic information gathered from the juvenile the probation officers tend to be very vague and often leave parts of the SIR blank. All this has resulted in the redundancy of the role of the SIR.

Individual Care Plan: The Model Rules defines this as

“a comprehensive development plan for a juvenile or child based on age specific and gender specific needs and the case history of the juvenile or child, prepared in consultation with the juvenile or child, in order to restore the juvenile's or child's self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the needs of a juvenile or a child...”

Every dispositional order must contain an Individual Care Plan prepared by the probation officer to facilitate the rehabilitation process.

The Individual Care Plan must, among other needs, cater to the educational, vocational and counseling needs of the juvenile in question. They direct the States to delineate the role of each department and develop linkages with NGOs. Moreover, State Juvenile Justice Fund is to meet the expenses incurred to implement the programs of restoration and rehabilitation.

Individual Child Care Plan is divided into four parts

- Assessment of Rehabilitative needs of the juvenile
- Monitoring Child’s progress in the rehabilitation process
- Preparation of Pre-release Report
- Preparation Post-release Report

Lack of in-depth analysis of cases debilitates the entire rehabilitation process. When the basic rehabilitative needs of the juvenile are not identified properly, the determination of how juveniles are to be rehabilitated becomes weak and even irrelevant. The third and fourth parts of the Care Plan are even more farcical because there seems to be no tie-ups between the JJB and mainstream schools/vocational training centers or employment programs. So the social reintegration of these children does not really happen, at least not through the JJB. The JJB on occasion may try to achieve this through NGOs. However, neither these channels are well defined nor are they well established. So ‘social reintegration’ has been successful only for a lucky few.

While the mechanisms for making the SIR and Individual Child Care Plan are already flawed, the picture for the rehabilitation of these juveniles gets only bleaker from thereon.

Provisions for juveniles released on probation

The Beijing Rules advocates “the use of non institutional over institutional treatment” and admits to” little success of institutionalization as compared to non-institutionalization”. The JJ Act in the same vein laid down various non-institutional dispositional orders that may be passed by the JJB as alternatives to institutionalization. In view of this principle, most juveniles are released on probation given that other forms of diversion are missing. Statistics indicate that 20.8% of the juveniles were released on probation in 2008, a figure, only below the number of cases pending. (NCRB.2008)
The roles and responsibilities of Probation Officers and JJBs become inimitable to the entire rehabilitation process of juveniles in conflict with law. The JJB and the P.Os at their best seem to act as advisory bodies for the juveniles and seem to have no means or mechanisms to open up ‘avenues for health, education, relationships, livelihoods, leisure, creativity and play’ (MR, 2007: Rule 3) to the juveniles. The signification of this is that the rehabilitation process for juveniles in conflict with law stifles the rehabilitation process and thus has serious socio-economic implications.

**Formal education and Vocational Training:** When it comes to providing formal education for juveniles it seems to be last on the list of priorities. A report by National Commission for Protection of Child Rights (NCPCR) in 2008 summed up the situation aptly by stating that

> “In most cases, only children who can enter into age appropriate classes on placement within the Homes are typically enrolled in formal schooling. The remainder are provided with adhoc educational inputs and/or engaged in activities which are termed as vocational training but often involve surreptitious forms of engagement of children in ‘work’ within the institution (for example; kitchen duties; washing; cooking; mending; cleaning; etc). Alternatively; they receive instructions in activities which have neither linkages to vocational skills and aptitudes nor potential access to employment opportunities nor support the development of sectoral skills.”

Thus, by and large, the vocational education is practically neither ‘gainful’ nor ‘as per their interest’ of the juveniles. Most juveniles, especially those above 14 years of age, thus, end up pursuing the kind of low-end vocational training that they can learn for free, mostly archaic and certainly not gainful. These vocations can do little to improve the economic status of these juveniles.

**Psychological Intervention:** Most of these juveniles come from dysfunctional and difficult environments and are in earnest need of adequate psychological intervention. The Model Rules with the same realization, suggests that there should be 2 full time counselors (in a home of capacity of 100 juveniles) along with part time psychiatrists, psychologists and occupational therapists (MR,2007:Rule 68). In reality it is a far cry. This means that not all the kids could be given the much required individual psychological intervention. Counseling methods are usually generic, activity-based and far from innovative. There is no system of substantiating the psychological analysis of these juveniles with accounts of peers, employers, parents or teachers. Most homes have no space specifically assigned to counseling. The reformative and correctional measures therefore suffer a setback due to this.

**Provisions for JICL in Institutions**

Every piece of legislation on juvenile justice has reiterated the need for minimum institutionalization. The Model Rules clearly state that:

> ‘**Institutionalization** of a child or juvenile in conflict with law shall be a step of the last resort after reasonable inquiry and that too for the minimum possible duration.’ (MR 2007: Rule 3)

Being separated from their family and natural surroundings, most juveniles are contemptuous towards the process. This is evident from the fact that many juveniles try to run away at the first opportunity they get.

The point of institutionalization has been, as the Beijing Rules says: ‘To provide care; protection; education and vocational skills; with a view to assisting them to assume socially constructive and productive roles in society.’ But institutionalization has been reduced to a punitive measure which is against the very spirit of JJA for which rehabilitation and not retribution has always been the objective. This is apparent from the provisions of education, vocational training and psychological intervention that have been actually provided at these homes.
Inadequacies and shortcomings in the maintenance of case files, Mental Health Plan to be integrated into Individual Care Plan, monitoring mechanisms, quality of reports and the like; low levels of training and professionalization of the functions of JJ functionaries; and poor performance of Management Committees, Inspection Committees and Children’s Committees together pose serious challenges to the rehabilitation process.

The JJAct is considered a watershed in the history of child legislations in India. Like its international predecessors, the JJA stresses on the importance of the rehabilitation of Juveniles in Conflict with Law(JICL) in a manner so as to promote their ‘dignity and self worth’.

But serious implementation issues and severe infrastructural bottlenecks debilitated the delivery mechanism of the entire JJ system. Initiatives which were taken to improve the system happened sporadically and either failed to sustain or replicate. There is a need to delineate the roles of different departments-education, labor, health, law and ensure that the channels of rehabilitation are well defined and well established. The different departments should then work in tandem to provide for the holistic rehabilitation of these children. There is also a requirement for a proper monitoring mechanism in place to assess the effectiveness of the rehabilitation of these children.

The attitudes of the Juvenile Justice functionaries remain perhaps the biggest challenge. Their professionalization and sensitization is critical to realize the goals of rehabilitation as envisaged by the JJ Act. Unfortunately, the JJ system under the purview of the very same Act does not hold up to scrutiny if key indicators such as length of time in institutions, rate of restoration to families or to family based care, case pendency, child rehabilitation, mainstreaming with education as the cornerstone and protection under non-family based care are taken into account.

The journey that began with the commendable child legislation seems long and arduous and the destiny is not yet in sight. Narrower the gap between legislation and its implementation the greater the justice delivery for children in conflict with law.