

Child Rights Imperatives for Children in Alternative Care

Hiranthi Wijemanne

Abstract

The paper identifies human rights issues related to all children in alternative care institutions, causal factors and how these need to be addressed, and the prevention of the risks of neglect and abuse. Attention is drawn to the state's responsibilities related to supporting vulnerable families of such children; this includes community-based preventive approaches, including the promotion of better parenting practices. Emphasis is placed on childhood disabilities and other factors which contribute to institutionalisation and its impact on the well-being of children. Estimated numbers of affected children in South Asia are referred to in the context of recognising the extent of the problem and the huge challenges to reach out to all the affected children with quality services. Emphasis is placed on the need for the resolution of such issues in the context of childhood vulnerabilities. The special issues of disabled children and adoption processes are referred to. Attention is drawn to the state's responsibilities as signatories to the Convention on the Rights of the Child, and their obligations to establish and ensure the implementation of rights-based standards for quality care and protection, the importance of independent monitoring of the care being provided and the need to emphasise child protection in all instances. The necessity to plan for all children when they leave the institution is emphasised.

Key words:

Child rights, institutions, CRC, quality care, alternative care, children with disabilities, adoption, India

Corresponding author:

Hiranthi Wijemanne, Child Rights expert and former member of UNCRC

The Context

The right to a family is a basic human right of all individuals and is of special importance to children who are defined as persons from birth to 18 years. This right is one of the most fundamental of all human rights, given special recognition in the Universal Declaration on Human Rights. The UN Convention on the Rights of the Child (CRC) refers to the right of every child to survive, grow and develop to their fullest potential and capacities in their own family environment and to know and be cared for by both parents. This includes their extended family and their community.

The family has particular importance as the fundamental unit of human society. The family has to be accorded a central place in the domestic policies of all countries. But if a family is dysfunctional and has problems, as children are dependants, they are the worst affected. When a family is in difficult circumstances, children tend to be abandoned, particularly newborns and infants. This also occurs when pregnancies occur as a result of extramarital unions, incest and sexual abuse. Adolescents in troubled families tend to run away from their home, live on the streets, particularly in overcrowded urban areas, engage in petty crime to survive, join gangs and get into conflict with the law. They too are at high risk of being institutionalised. Some children are victimised by abuse, exploitation and neglect in their own homes. Contributory factors include parental alcoholism and drug abuse, including domestic violence. Parents when preoccupied with their own problems are at high risk of neglecting their children and denying them their right to health and nutrition, education and protection, and placing them in institutions. This is mainly due to poverty, poor parenting practices, too many children in a family, low and irregular incomes, alcoholism and substance abuse, conflicts and violence between parents. Although access to family planning is available in most countries of South Asia, there still exists customs and traditions which promote large families even if resources are lacking to support all the children.

Some communities in South Asia still maintain a gender preference for boys, contributing to female foeticide and infant abandonment. Families in poverty cannot cope with children with disabilities, and abandonment or institutionalisation can occur. Rapid urbanisation, lack of housing, overcrowding in cities, expanding slums and shanties — all contribute to poor parenting practices. There are also other situations such as environmental disasters, armed conflicts and migration which are beyond the

- 153 million children in alternative care institutions around the world.
- Nearly one third live in South Asia.
- India: 31 million,
- Pakistan: 4.2 million,
- Bangladesh: 4.8 million,
- Nepal: 650,000
- Sri Lanka: 340,000
- Bhutan: 21,000
- Maldives: 7000.
- Afghanistan: 2 million
- Source: UNICEF

control of individual families which contribute to the institutionalisation of children.

Every state has the inherent responsibility to support and protect their most vulnerable families. But this may or may not occur, and children are the most affected. The child population affected in South Asia is huge and, hence, the challenge to reach out to all affected families is formidable. Greater efforts are needed to bring about a change. Support is needed for families to improve parenting practices, as the parental role is unique and irreplaceable and is vital to the well-being of a child. Support for a family is also essential when there is a loss of one or both parents or there is extreme poverty and deprivation. It is then that a system of quality alternative care for every child in need of such care becomes a necessity. However, care in institutions should not be an immediate option, and other possibilities need first consideration. These include foster care, care by extended family and safe adoptions.

Numbers of children in alternative care

There is enormity in the task ahead to improve the quality of care in alternative care for every child in need. Most countries do not conduct a regular annual census on such institutions. The state needs to establish a mandatory registration requirement, so that actual numbers can be known, both regarding state-run and non-governmental organisations, including religious institutions. Every institution needs to abide by child rights principles.

Every child in an institution needs to be provided with individualised care. But adequate resources are necessary for this to occur, and if resources are limited, quality care may not be possible. As the numbers of children are unlikely to decline, but rather increase, more effective and widespread preventive measures at family and community level are also necessary. Greater priority must be placed to promote the establishing of a better quality and more regulated systems of alternative care in both the state and private sector, including civil society organisations which provide such services. As most states may find it difficult to establish sufficient alternative care services, incentives and financial support should be considered for those civil society groups interested in expanding such services. Thus, a twin approach of preventing institutionalisation through widespread family support and protection systems specially focused on vulnerable families, combined with better promotion of foster care options and support to safe adoptions is recommended.

The Convention on The Rights of The Child (CRC) and alternative care

Article 20 of CRC states that all children deprived of their own family, whatever the reason is, are entitled to special protection by the state. Many states assign this responsibility to Departments of Social Welfare and Social Work or Ministries for Child Welfare, combined sometimes with women's issues. There are also social workers, foster care providers and adoptive parents who function as caregivers. But whether all such categories function according to the CRC is sometimes neither monitored nor evaluated and thus is not known.

Any child removed from his/her family environment in their best interest must be undertaken by relevant state authorities through a legal system that is based on the CRC. The first search for placement of such a child should occur in his/her wider family environment, in conformity with Article 5 of the CRC. Only when this is not possible, the next option of foster care must be given due consideration. If this is also not possible, an adopted family should be considered. If this also fails, a child care institution as a final option should be considered. It is doubtful whether this recommended sequence occurs in all situations, and hence, it is an area for further evaluation. This may need time, for attitudes to change and action to be taken. But, it has to occur, and the change is monitored by the CRC committee when countries report to them.

Articles 5 and 18 of the CRC particularly focus on parental responsibilities. But the reference emphasises the essential importance for states to provide necessary support to the parents to fulfil their responsibilities towards the upbringing and development of their children, upholding the best interest of each individual child. This, again, is not well implemented in many countries, nor given due priority. Reference is also made to the duties of the state to provide necessary assistance to parents and guardians to enable them to perform their duties related to the upbringing of children. This includes promoting necessary institutions and services relevant to enable access to quality child care and protection. Working parents should also be able to enjoy the right to access quality child care services. This includes special attention to the needs of working mothers and access to crèche facilities in workplaces.

Article 10 of the International Covenant on Economic, Social, Cultural and Political Rights provides for the widest protection and support which can be made accessible to families. Since the family is the fundamental unit of a society, the state bears an obligation to help them to fulfil their family responsibilities, particularly to care, support and educate their children, enabling each child the opportunities to fulfil their fullest potential. Family support systems should also include promotion of positive parenting practices, strengthening parent-child relationships, providing conflict-resolution skills,

expanding opportunities for employment, if unemployed, and enabling access to the means for income generation and social assistance, if necessary.

All childcare institutions, whether established by state authorities, civil society organisations, religious entities or any other groups, have a duty and responsibility to function in conformity with the CRC (Article 3). Systematic monitoring of alternative care situations is important to prevent neglect, sexual abuse and exploitation and illegal adoptions, which sometimes may even involve money transactions. Other areas to be monitored include abuse and emotional deprivation. It is well known that in spite of the global campaigns against corporal punishment, as it is violence against children, the practice occurs in many homes and childcare institutions, including schools. It must be substituted with non-violent forms of discipline.

There are many institutions which lack resources and thus have untrained and poorly paid staff who are neither regularly supervised nor well monitored. These factors lead to constant changes in staff which affect children. Such issues lead to neglect and low quality of care for children in institutions. Children may have/not have opportunities for confidential reporting which is important. These are some reasons why institutions become sites of hidden and undetected child rights violation. Counter measures are absolutely essential. Newborns and infants are the most vulnerable of all children in any institution. They are unable to articulate their needs and are often neglected, left in their cots for long periods of time with little human contact. They lack essential parental affection and are denied of it by caregivers in the institution, who maybe too busy to respond to their needs. Lack of early childhood stimulation has long-term negative consequences on children which is not well recognised and given due priority. Establishing quality of care standards, ensuring adherence to such standards, deploying well-trained staff, getting an adequate remuneration and a regular monitoring system are all essential. Children placed in poor-quality institutions are much worse off than being in a dysfunctional family situation. Thus, maintaining quality standards of care and protection for children in institutions is essential and is a responsibility of both the state and the individual organisation concerned.

Quality of care in alternative care institutions

- Information on biological parents of every child, even if abandoned, should be preserved and kept under strict confidentiality.
- Caregivers should be well trained, even if a few in number, and have sufficient time to devote to the special care of babies and infants, preventing emotional deprivation. This also includes providing adequate nutrition and healthcare, prevention of infections, protection from neglect and abuse and regular interaction.

- It is important to pay special attention to promote the psychological well-being of children. Continued neglect of this important aspect of a child's needs, inevitably, has long-term implications when they become adults, including social adjustment issues.
- Special attention must be given to the most vulnerable periods of childhood. These particularly include newborns, from birth to three years and three to five years. Unless care givers are well trained, qualified and committed, children will be negatively affected. Children during adolescence, from ten to 18 years, also need special attention and a responsive care and protection according to their special needs.
- It is also essential that all care givers of children are well trained, are closely supervised and also that they receive adequate remuneration. Unless the needs of care givers are well met, they will not be able to provide the quality services children are entitled to receive.

Issues of importance when establishing an institution

- Smaller institutions are definitely preferable to larger ones as these are easier to manage, need a few but well-trained staff, who are well supervised, receive adequate remuneration and are motivated. This should be the future trend.
- If a child in an institution has even a single family member who is able to visit and keep contact with the child, financial support should be made available to enable this to occur, as it will be of immense benefit for the child.
- Adequate and regular financial allocations are necessary to meet the basic needs of all children in care institutions, which include safe water, sanitation, nutritious food, a pleasant environment, comfortable rooms and access to a play area.
- Children also need access to basic health care, both for screening purposes and the prevention of infections, health as well as for curative purposes. This also includes screening for any visual and hearing disabilities as well as psychological and mental health issues.
- Access to a play area and time for leisure and recreation is a right that they should enjoy.
- Discipline should not include corporal punishment, isolation or other cruel actions. This also includes depriving children of food, sleep and isolation as punishment methods for disciplinary purposes. Alternative non-traumatic methods of discipline can be used.

- No bullying or harassment of any child should be tolerated either by the staff or other children. Confidential reporting opportunities are necessary for all children to report such incidents. Behavioural changes in children could also signify such events when these occur. Early detection is important.
- Children with psychological and mental health issues need access to appropriate therapy. No drugs should be used on children for this purpose unless absolutely essential. They should always be used only under special circumstances and by trained mental health professionals. Expert monitoring is necessary. This also includes behavioural disorders which need early detection but are more difficult to address without the necessary expertise.
- The development of a well-defined state policy related to alternative care is essential. This must be incorporated in the legislation and administrative system.
- Active support is needed from the states for civil society and other organisations to provide alternative care, as many countries may find it difficult to provide the necessary care to reach out to all children in need.
- Special situations such as immigrants, unaccompanied and refugee children, including children affected by armed conflict situations need special alternative care and support systems. Such children may lack official documentation, including a birth certificate. Probable age certification is necessary. Special detention centres maybe needed, including care providers who are able to communicate with them.
- A review of the national legislation is necessary, including customary, regional and local laws. It is necessary to identify the amendments which are necessary to ensure conformity with the CRC.
- Attention also needs to be paid to the child's ethnicity, religion, culture and language when a placement is made. Caregivers should be made aware and act accordingly.
- Fostering is recommended as a preferable option to institutionalisation wherever possible. But suitable families need to be identified and predetermined on the basis of criteria related to the best interest of the child. If placed in foster care, home visits and monitoring is required to ensure that the child does not suffer neglect or is used for child labour. Access to health and nutrition, as well as education, play, leisure and recreation must be ensured. Fostering is usually recommended as an option before resorting to institutionalisation, but adherence to quality of care standards must be monitored.

- Every child in institutionalised care needs to have an individual plan both in the institution and when he/she reaches 18 years and has to leave to begin an independent life as an adult. Planning must occur to determine prior to 18 years, to identify a place where he/she could live independently, have a support group/ family or organisation. It is also important to help them to find a job to generate an income. Without such plans, if such children are asked to leave, boys risk joining street gangs and petty crime syndicates, and girls can get lured into commercial sex networks. Thus, planning for a child who leaves the institution, including a community support system, is absolutely essential.

Children with disabilities

Children with disabilities remain at greater risk of over-institutionalisation in most countries of the world. The root cause is that families lack capacity to care for them. Such children become a burden to a family, particular if poor. Parents could regard an institution as the only way out of their dilemma. Caring for a child with a disability is challenging for most families, particularly, when there are financial issues.

Disabilities which cause institutionalisation include cerebral palsy, hyperactive and attention span disorders, bipolar conditions, psychotic conditions and mental retardation. Some of these conditions may not even have been diagnosed accurately, which is the basis for remedy. The best approach for the state is to provide community-based rehabilitation services, including day care facilities, where an affected child could be cared for, protected and also helped in relation to their disability. Families of such children also need support to access necessary medical services, including diagnostic facilities, so that they can obtain the most appropriate treatment for their children. Such children need to be provided with the necessary appliances and may need prolonged medication. Parental education is needed on how they should handle the child.

Such children, whether in a home environment or an institution, are particularly vulnerable to neglect, abuse and violence, including sexual abuse. They need special protection to prevent these occurring, as well as the means for early detection by the family or the staff of the institution they are in. Access to both inclusive and special education is essential. Another aspect is, that children with disabilities, even when institutionalised, are at greater risk of neglect, abuse and violence. This includes children with both mental and physical defects.

Adoptions

Newborns and infants are amongst the most taken for adoption. But, every adoption must be undertaken only in the best interest of the child, not in the

interest of the prospective couple seeking a child for adoption. It is essential that every adoption be authorised by a competent authority appointed by the state, who determines that it is undertaken in accordance with applicable laws and procedures and on the basis of reliable information. Inter-country adoptions should only be given consideration if an adoption is not possible within the country of origin. Inter-country adoptions must adhere to safeguards and standards as in the case of country level adoptions. It is essential that no financial gain should occur in either situation.

Unfortunately, the evidence is that these recommended practices do not always occur. Although there is information about the sale of children, very few cases are detected. There are many alternative care institutions which are run by unregistered private entities. Some, if not all, give support to unmarried women who may be anxious to get rid of a newborn and require absolute confidentiality. Whether there is a sale is often kept hidden. Hospitals are also known to be some sites where children can be adopted outside the legal system. As legal processes are lengthy and complicated with several court appearances, potential adoptive parents may therefore prefer using illegal channels. This must not be allowed to continue. An effective surveillance system is essential. Sometimes, the information is exposed in the media and this triggers an investigation. But there is little doubt that children are still being trafficked for adoption and other illegal purposes, much of which is occurring with no action taken against the perpetrators. Greater vigilance and a more effective surveillance system is necessary, including preventive action.

State responsibilities

All states which have ratified the CRC have a responsibility to implement the rights of children in alternative care institutions, which includes every country in South Asia. The state has to uphold the best interest of every individual child in their jurisdiction without discrimination, which includes a child without parents in alternative care. Each child is thus entitled to health, education, nutrition, protection and opportunities to be heard in courts, in administrative and judicial proceedings which affect them. Access to birth certification and if not possible, probable age certification and thus an identity is important. Other rights include access to leisure and recreation, promotion of psychosocial well-being and access to mental health services.

States should provide adequate support, including training and funding to both governmental and non-governmental organisations, as well as civil society groups who care and provide alternative care. Efforts are necessary to set up a comprehensive database, including information from both state and non-state alternative care institutions, numbers of children, ages, gender, reasons to seek

such care and corresponding age groups. Geographical distribution is necessary. The database should include information related to foster care and adoptions.

All states need to establish an independent and effective monitoring system which is designated by law to obtain, investigate and address confidential complaints from children or others on their behalf.

Conclusion

Every child whether in a family or alternative care institution, from birth to 18 years, has the right to services and facilities which enables the child to fulfil his/her full potential and capacities which will enable them to have an independent life as an adult. Ensuring this is a legal obligation for state entities of individual countries and must be supported by both private and voluntary organisations. This paper states the key issues to be addressed and those which already have become incorporated in the overall aims and objectives of Udayan Care, in its commitment to fulfil the rights of all institutionalised children, by explorations and beyond. I hope, this successful beginning will lead to a positive change in the lives of all children who are denied the opportunity of a family environment, but, nevertheless be able to survive, grow and develop to their fullest potential.

References

Committee on the Rights of the Child (2005). *Days of general discussion: Children without parental care*, September 2005, Geneva. Retrieved from: https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjh3JnO1PPRAhVHQ48KHXGqBGAQFggZMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FHRBodies%2FCRC%2FDiscussio ns%2FRecommendations%2FRecommendations2005.doc&usq=AFQjCNFBI7RNO9vrw_gk_To5CcGgAqyM6g&sig2=6UJYAFKfzhuSf-yxefS4Yg&bvm=bv.146094739,d.c2I

Unicef. Implementation handbook for the convention on the rights of the *child*. Retrieved from: https://www.unicef.org/publications/index_43110.html

Republished by kind permission of the publisher and editors of *Institutionalised Children: Explorations and Beyond*

This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/)