CHAPTER 4
REHABILITATION AND SOCIAL REINTEGRATION OF JUVENILE

4.1 Introduction

The Chapter V of the JJCPA, 2000 deals with rehabilitation and social reintegration of the juvenile. The JJA, 1986 was silent on rehabilitation and social reintegration of juvenile. The JJCPA, 2000 came into existence with aim to establish the basis for a uniform juvenile justice system, addressing care, protection and treatment of neglected and delinquent juveniles. This Act also made things further clear by putting emphasis on the rehabilitation of juvenile instead of punishment. It states that rehabilitation and social reintegration of a child to be done in Children’s home and Special home by adoption, foster care, sponsorship and sending juvenile to an after-care organization.

Section 40 of the JJCPA, 2000 make it clear by stating that during the stay of the child in a children’s home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) Sponsorship, and (iv) sending the child to an after-care organization. The Rule 32 of the Model Rules 2007 states that “the primary aim of the rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family where possible, or otherwise through alternate care programmes and long-term institutional care shall be of last resort”. In 2006, the Act was amended to revise the Act in order to strengthen the Act and instill a child-centric rehabilitation and family restoration focused system.
International Perspectives

Reintegration is the stated aim of juvenile justice as a whole. Very often, by this or another name such as 'rehabilitation', it is perceived in terms of simply assisting an offender's return to the community. In fact, reintegration is more the juvenile concerned as being particularly 'at risk' of committing offences and taking appropriate steps, with him or her as well as with the family and community, to reduce that risk as far as possible. Reintegration is to be the object of specific measures set out more especially in the nonbinding international texts for instance, vocational training, counselling, conditional release, and halfway houses — there is also considerable similarity between measures to be envisaged for prevention on all three levels and those that are proposed for reintegration itself. Rule 1.3 of the Beijing Rules notes the need for "positive measures that involve the full mobilization of all possible resources, including the family, volunteers and community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law...".

In the UN CRC, there is a clear emphasis on the social reintegration of Juvenile in Conflict with Law as stated:

"States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes 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".

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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 within a manner appropriate to their well-being and proportionate both to their circumstances and the offence".

As in the convention, the JJCPCA too identifies education, training and counseling as needs imperative for improving the quality of life of these children and urges the mobilization of all resources for their provision. It was only after the Model Rules for this Act were passed in 2007 that some semblance of clarity was obtained on this issue. But as is peculiar to India much was lost in translation from a drafting legislation on paper to implementing it in the real world.

The Principle of the Best Interest of the Child under the Model Rules 2007 states:

"The traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice".

The JJB is the main body under the JJCPCA 2000 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—the first summary inquiry, then investigation and at last disposition. The 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. After this, the investigation part of the process ensues wherein the board determines whether the juvenile has committed the offence or not under what circumstances. This is established through the SBR and the SIR submitted by the Police and the Probation Officer respectively and by directly interacting with the child during the hearings. As per the Model Rules 2007 every inquiry by the Board must be completed within 4 months and only under special circumstances can be extended up to 6 months for non-serious crimes. For serious crimes, the time period may extend beyond 6 months with reports sent to the Chief Judicial Magistrate and all efforts made to expedite the process.

In reality due to 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 in 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. Thus thousands of such children continue to languish in homes because of the delay in justice. However the situation seems to have improved in recent times after the 2006 amendment with bail being granted more easily and attempts being made to expedite the judicial proceedings.

Last comes the disposition of these cases, wherein any of the orders enumerated before may be passed. But as one commentator noted “though the Rules have incorporated certain principles, and

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343 Model Rules 13 (6).
344 Model Rules 2007 13 (8).
opened spaces for bringing in procedures for diversion and restorative justice approaches, it should have included the framework for programmes such as victim offender reconciliation programmes, family group conferences, community service programmes etc instead of leaving this to the discretion of State Governments”. The SIR and Individual child care plan are instrumental to the determination of the kind of rehabilitation process to be followed.

The rehabilitation and social reintegration of a child shall begin during the stay of the child in Special Home and it shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship or (iv) sending the child to an After-Care Organisation.

4.2 Adoption

Adoption can be a most beautiful solution not only for childless couples and single people but also for homeless children. It enables a parent-child relationship to be established between persons not biologically related. It is defined as a process by which people take a child not born to them and raise it as a member of their family. Adoption as a legal concept was available only among the members of the Hindu community except where custom permits such adoption for any Section of the polity. Only Hindus were allowed to legally adopt the children and the other communities could only act as legal guardians of the children. The religion-specific nature of adoption laws was a very retrograde step. It reinforced practices that were unjust to children and hindered the formation of a Uniform Civil Code. Article 44 of the Constitution declares that the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.

Over the years several attempts were made to formulate a general secular law on adoption. The attempts of Parliament in this direction did not bear fruit, all these went in vain on account of a
number of reasons. In pursuance of its constitutional mandate, the Government of India has evolved a National Policy for the Welfare of Children (1974). The trust of this policy is summed up in the following words:

The Nation’s children are a supremely important asset. Their nurture and solicitude are our responsibility. Children’s programme shall find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunity for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

Under juvenile justice system the concept of adoption had changed the entire thought process of the people. Before going into the details of the JJCPCA, 2000 as amended in 2006 lets have the brief study of the various legislations dealing with the concept of adopting a child or taking a child in custody by those persons who are not biological parents. Having a glimpse on these provisions of the legislature will make it clearer to understand and view the present scenario.

The Hindu Adoptions and Maintenance Act, 1956

The Hindu Adoptions and Maintenance Act (hereinafter referred as HAMA), 1956, provides for adoption of Hindu children by the adoptive parents belonging to Hinduism. This is not applicable to other communities like Muslims, Christians and Parsi. They have to recourse to Guardians and Wards Act, 1890, wherein they become guardians of children. But the child does not have the status as it would have had, had it been born to its adoptive parents. One of
features of this Act is that no Hindu person can adopt a son or daughter, if they already have a child of that sex. Often the intentions behind the law are good, but the methods adopted fall short. The HAMA provides that there should be an age difference of 21 years between the adoptive parents and the adopted child whenever they are of opposite sex. This is intended to prevent sexual abuse.

The Guardians and Wards Act, 1890

The Guardians and Wards Act (hereinafter referred as GAWA) do not recognize complete adoption. As non-Hindus do not have an enabling law to adopt a child legally, the people belonging to these religions who are desirous of adopting a child can only take the child in 'guardianship' under the provisions of the GAWA. The statute does not deal with adoption as such but mainly with guardianship. The process makes the child a ward, not an adopted child. Under this law, when children turn 21 years of age, they no longer remain wards and assume individual identities. They do not have an automatic right of inheritance. Adoptive parents have to leave whatever they wish to bequeath to their children through a will, which can be contested by any 'blood' relative.

The aforesaid enactments remain silent about the orphan, abandoned and surrendered children. There was no codified legislation dealing with the adoption of the children of these categories. As a result, several misconceptions or irregularities appeared in respect of the custody, guardianship or adoption of these types of children, which were prejudicial to the interest of the children.

Considering all the aspects mentioned above laudable attempt were undertaken by the legislature by the stipulations, which have been made in Chapter IV of the JJCPA 2000. This enactment shows that the legislature may be found to have accepted the concept of
secular adoption whereby without any reference to the community or religious persuasions of the parents or the child concerned, a right appears to have been granted to all citizens to adopt and all children to be adopted.\textsuperscript{346}

It is pertinent to mention here that there arises confusion as to the interpretation as well as concept of adoption as because the expression “Adoption” has not been defined at all in the enactments like HAMA or GAWA. Moreover, the legal status of the adopted child has not declared to be equal to that of a biological legitimate child. Though at the initial stage the JJCPCA, 2000 did not contain these factors, these are introduced in JJCPCA Amendment Act, 2006. The concept of adoption has been well defined in Section 2 (aa) of the said Act, which is as follows:

“Adoption means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all rights, privileges and responsibilities that are attached to the relationship”.

The Act introduced an expression “child in need of care and protection” and it has been defined in Section 2 (d) of the Act. This definition covers what is meant by orphan, abandoned and surrendered children.

**Rehabilitation & Social Reintegration for orphan, abandoned or surrendered children**

The chapter IV of the Act deals with rehabilitation and social reintegration of children. The primary aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth.

and mainstream them through rehabilitation within the family where possible, or otherwise, through alternative care programmes and long term institutional care shall be of last resort. Section 40 of the JJCPCA, 2000 provides that the rehabilitation and social reintegration of a child shall begin during the stay of the child in children’s home or special home, but as the family is the best option to provide care and protection for children, adoption is the first alternative for rehabilitation and social reintegration of orphan, abandoned or surrendered children.

The Legislation or Guidelines for adoption of orphan, abandoned or surrendered children. Given below is the guidelines are to be complied with in respect of adoption of orphan, abandoned or surrendered children.

1. Guidelines issued by Central Adoption Resource Authority time to time based on the judgment of the Supreme Court on inter-country adoption in Laxmi Kant Pandey v Union of India & others,347 and subsequent judgments.


3. JJCPCA 2000 and Rules promulgated under this Act.

Relevant provisions for Adoption under JJCPCA, 2000 & Model Rules, 2007

Section 41 of JJCPCA, 2000 read with JJ Rule 33(1) expresses the following aspects of adoption:

347 W.P. (Crl.) No. 1171/1982, 1984(2) SCC 244.
The primary aim of adoption is to provide a child who can't be cared for by his biological parents with a permanent substitute family. The family of a child has the primary responsibility to provide him care and protection. Orphan, abandoned or surrendered children can be adopted for their rehabilitation through such mechanism as may be prescribed. Such children may be given in adoption by a Court in keeping with the provisions of several guidelines regarding adoption issued by the State Government and Central Adoption Resource Authority and notified by the Central Government. But the Court should be satisfied with the investigation having carried out which are required for giving such children in adoption. For placement of the orphan, abandoned or surrendered children for adoption in accordance with the said guidelines, the State Government shall recognize in each district one or more institutions or voluntary organizations as specialized adoption agencies. Section 41 of JJCPCA, 2000 is reproduced herein below:

Section 41: Adoption

(1) The primary responsibility for providing care and protection to children shall be that of his family.

(2) Adoption shall be resorted to for the rehabilitation of such children who are orphan, abandoned, and surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.
The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-Section (3):

Provided that the children’s homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-Section (3).

No child shall be offered for adoption-

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children,

and

(c) without his consent in the case of a child who can understand and express his consent.

The Court may allow a child to be given in adoption-

(a) to a person irrespective of marital Status or;

348 Substituted by Act 33 of 2006.
(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples.  

The Children’s Homes and institutions run by the State Government or voluntary organizations for children in need of care and protection who are orphan, abandoned or surrendered, should ensure that these children are declared free for adoption by the CWC and such cases shall be referred to the adoption agency of that district for their placement in adoption.

The guidelines issued by the CARA and notified by the Central Government under Section 41(3) of the Act, shall apply for all matters relating to adoption. What is CWC and its power had already been discussed in previous chapter no 3. Now, it is necessary to understand how Child Welfare Committee works in case of orphaned, abandoned and surrendered child.

**Which Court shall entertain the adoption matters?**

Prior to the amendment of the JJCPA, 2000 the Juvenile Justice Board was placed instead of the Court for allowing the child to be given in adoption. However, the legislature has consciously amended the expression “Board” and replaced it with the word “Court” in the JJCPA, 2006. So in case of adoption under the JJCPA, 2000, the petitions should be filed u/s 41 of the Act before the Court.

Now it is necessary to understand which court is specifically meant by the said Act to deal with the adoption matters of orphan, abandoned and surrendered children. Since the Act does not define

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349 Ibid.  
350 JJCPA 2000.  
351 See Power of CWC in Chapter 3.
the expression “court”, the Rules framed by the Central Government relating to adoption should be taken to consideration. According to Model Rules 2007 the Rule 33 (5) of the Act states that the “Court” implies a civil court, which has jurisdiction in matters of adoption and guardianship and may include the court of District Judge, Family Court and City Civil Court.

But the provision of the said Rules empowering the Family court has been subjected to several criticisms by judiciary. In the one of the important case of Manuel Theodore D’Souza352 the Bombay High Court also observed that the right to adopt being a fundamental right must be capable of enforcement through the civil court as it falls within the ambit of Section 9 of Civil Procedure Code. It was also opined that the District Court or the High Court has the jurisdiction to deal with the question relating to adoption as this court normally deal with the disputes regarding custody, guardianship etc. of children. It was also held that such applications can be filed before the District Courts exercising powers under the Guardians & Wards Act and such applications for adoption of the child by a guardian must be reckoned as a miscellaneous application in the petition in guardianship.353

The Hon’ble High Court of Kerala in the recent case of Andrew Mendez & others v State of Kerala, has drawn similar conclusion.354 It minutely interpreted the expression “Court” in JJCPCA as well as the jurisdiction of the Family Court as mentioned in the Model Rules 2007 and the Family Courts Act. As per Section 7 (1) (g) of the Family Courts Act, the Family Court has the powers/jurisdiction to deal with the question of guardianship. So the question arises whether claim for

352 Manuel Theodore D’Souza & Another, Bombay High Court (Justice Rebello), II (2000) DMC 292.
353 Supra note 346.
354 Criminal MC. No. 2271 of 2007 – judgment by Kerala High Court pronounced on 19.02.2008
adoption can be brought under any sub-clauses (a) to (g) of Sec.7 (1) of the Family Courts Act so that the Family court must be the court for the purpose of Sec.41 (6). Similar type of question arose in the case of Vinod Krishanaan v Missionaries of Charity,355 where the Division Bench of Kerala High Court held that the Family Court cannot be clothed by the stipulations in Section 7(1) to deal with a claim for adoption u/s 9(4) of HAMA. It is only the District court having the jurisdiction to entertain such application. Following this observation the Kerala High Court in Andrew Mendez’s case opined that Section 7(1) (g) is not sufficient to clothe the Family Court with the jurisdiction to consider an application for adoption by reckoning the same as incidental to guardianship and custody. Another important point was raised in this case, i.e., Section 7(2) (b) of Family Courts Act declare that the Family court shall also have and exercise such other jurisdiction as may be conferred on it by any other enactment. Though JJCPCA 2000 is an enactment, it doesn’t certainly states that Family Court shall be the court for the purpose of Section 41(6). On the contrary, the Central Rules promulgated u/s 68 of the JJCPCA confers such jurisdiction on Family Court, but it does not fall within the ambit of “enactment” as explained by the High Court in the aforesaid case. Consequently it was concluded by the Kerala High Court that the Family Court does not have jurisdiction to entertain an application for adoption by a guardian u/s 41 (6) of JJCPCA and it can’t be held to be the court u/s 41(6). It is only the District Court, which can have jurisdiction to entertain such application u/s 41(6) of JJCPCA read with Rule 33(5) of the Model Rules 2007.

Again an important aspect related to the Adoption came before the Hon’ble Court of Bombay High Court, whether a Hindu couple governed by the HAMA 1956, with a child of their own can adopt a

355 1997 (2) KLT 863.
child of the same gender under the provisions of the JJCPCA 2000?\(^{356}\)

The court made the following observation stating that HAMA and the JJCPCA must be harmoniously construed. The HAMA deals with conditions requisite for adoption by Hindus. The JJCPCA 2000 is a special enactment dealing with children in conflict with law and children in need of care and protection. While enacting the JJCPCA 2000 the legislature has taken care to ensure that its provisions are secular in character and that the benefit of adoption is not restricted to any religious or social group. The focus of the legislation is on the condition of the child taken in adoption. If the child is orphaned, abandoned or surrendered, that condition is what triggers the beneficial provisions for adoption. The legislation seeks to ensure social integration of such children and adoption is one method to achieve that object. The religious identity of the child or of the parents who adopt is not a precondition to the applicability of the law. The law is secular and deals with conditions of social destitution that cut across religious identities. The legislature in its wisdom clarified in Sub-Section (6) of Section 41 that the Court may allow a child to be given in adoption to parents to adopt a child of the same sex irrespective of the number of living biological sons or daughters. This provision is intended to facilitate the rehabilitation of orphaned, abandoned or surrendered children. The condition must apply to all persons irrespective of religious affiliation who seek to adopt children of that description. The object of rehabilitation and providing for social reintegration to orphaned, abandoned or surrendered children is a matter of high legislative policy.

\(^{356}\) Re: Adoption of Payal @ Sharinee Vinay Pathak and his wife Sonika Sahay @ Pathak v ICSW. 2010 (1) Bom CR 434. 2009 (111) Bom LR 3816; MANU/MH/1007/2009.
The JJCPA 2000, establishes specific rules for the adoption of a limited subclass of persons—abandoned, surrendered, or orphaned children. The special provision modifies the operation of the general rule without completely overriding it: in general, Hindus cannot adopt a child of the same gender as an existing child, but there is a special rule in the case of abandoned, surrendered, or orphaned children. Therefore, in these circumstances, the JJCPA is a special act that overrides the general provisions of the Hindu Adoptions and Maintenance Act. The court allowed the petition. The court based its judgment on the following ground that

When the child to be adopted is orphaned, abandoned or surrendered child or a child in need of care and protection as defined in JJCPA, the bar imposed by Section 11(i) and (ii) of Hindu Adoption and Maintenance Act does not bar the Hindu having biological child from adopting the child of same gender.

Child Welfare Committee:

Section 29 of the Juvenile Justice Act, 2000 provides for the Child Welfare Committee. The Committee has the sole authority to declare the child in need of care and protection who are orphan, abandoned or surrendered free for adoption. CWC shall determine legal status of all orphan, abandoned and surrendered children. Functions and powers of the Committee, procedure in relation to the Committee, production of child before committee, procedure for inquiry, procedure related to orphan and abandoned children and procedure related to surrendered children shall be governed as laid down in the JJCPA Amendment Act 2006 and its Rules. Rule 33 (3) laid down the procedure followed in case of orphaned and abandoned children and Rule 33(4) relates to the procedure to be followed in case of surrendered children. On clearance from CWC that a
particular child is free for adoption, there will be termination of parental right. The Rule 33 (3) and (4) is reproduced hereinbelow:

33 (3) In case of orphaned and abandoned children the following procedure shall apply, namely

(a) Specialized Adoption Agencies shall produce all orphaned and abandoned children who are to be declared legally free for adoption before the Committee within twenty-four hours of receiving such children, excluding the time taken for journey;

(b) a child becomes eligible for adoption when the Committee has completed its inquiry and declares the child legally free for adoption;

(c) such declaration shall be made in Form XIV;

(d) a child must be produced before the Committee at the time of declaring such child legally free for adoption;

(e) whenever intimation is received by the police about an abandoned infant, the police shall take charge of the infant and arrange to provide immediate medical assistance and care;

(f) subsequently, the child shall be placed in a specialized adoption agency or recognized and certified children’s home or in a pediatric unit of a Government hospital followed by production of the child before the Committee within twenty-four hours;

(g) procedure for declaring a child abandoned and certifying him legally free for adoption;
(i) in case of an abandoned child, the recognized agency shall within twenty four hours, report and produce the child before the Committee with the copy of the report filed with the police station in whose jurisdiction the child was found abandoned;

(ii) the Committee will institute a process of inquiry, which shall include a thorough inquiry conducted by the Probation Officer or Child Welfare Officer, as the case may be and who shall give report in Form XIII to the Committee containing the findings within one month;

(iii) there shall be a declaration by the specialized adoption agency, stating that there has been no claimant for the child even after making notification in at least one leading national newspaper and one regional language newspaper for children below two years of age and for children above two years, an additional television or radio announcement and notification to the missing persons squad or bureau shall be made;

(iv) the steps stated in (iii) shall be taken within a period of sixty days from the time when the child is found in case of a child below two years of age and in case of children above two years of age, this period shall be four months;

(v) the period of notification shall run concurrently with the inquiry to be conducted and report submitted under clause (ii) of this sub-rule;
(vi) the Committee shall declare the child legally free for adoption on completion of the process of inquiry, including declaration of the specialized adoption agency made under clauses (ii) and (iii) of this sub-rule;

(vii) no child above seven years who can understand and express his opinion shall be declared free for adoption without his consent.

33(4) In case of surrendered children the following procedure shall apply, namely

(a) a surrendered child is one who had been declared as such after due process of inquiry by the Committee and in order to be declared legally free for adoption, a ‘surrendered’ child shall be any of the following:

(i) born as a consequence of non-consensual relationship;

(ii) born of an unwed mother or out of wedlock;

(iii) a child in whose case one of the biological parents is dead and the living parent is incapacitated to take care;

(iv) a child where the parents or guardians are compelled to relinquish him due to physical, emotional and social factors beyond their control;

(b) serious efforts shall be made by the Committee for counselling the parents, explaining the consequences of adoption and exploring the possibilities of parents retaining the child and if, the parents are unwilling to
retain, then, such children shall be kept initially in foster care or arranged for their sponsorship;

(c) if the surrender is inevitable, a deed of surrender in Form XV shall be executed on a non judicial stamp paper in the presence of the Committee;

(d) the adoption agencies shall wait for completion of two months reconsideration time given to the biological parent or parents after surrender;

(e) in case of a child surrendered by his biological parent or parents, the document of surrender shall be executed by the parent or parents before the Committee;

(f) after due inquiry, the Committee shall declare the surrendered child legally free for adoption in Form XIII as the case may be after a sixty days' reconsideration period as per Central Adoption Resource Agency guidelines.

Procedure for adoption

Procedure in case of orphaned and abandoned children

The Specialized Adoption Agencies shall produce all orphaned and abandoned children who are to be declared legally free for adoption before the Committee within 24 hours of receiving such children, excluding the time taken for journey stated under JJ Rules (3) (a). A copy of the report should be filed with the police station in whose jurisdiction the child was found abandoned.\textsuperscript{357}

A Child becomes eligible for adoption when the Committee declares the child legally free for adoption after completion of its inquiry. The Probation Officer or Child Welfare Officer should conduct

\textsuperscript{357} JJCPCA 2000 as amended in 2006.
such inquiry, who shall produce report in Form XIII to the Committee containing the findings within one month.

**Declaration By the Specialized Adoption Agency**

Rule (3) (g) (iii) states that the Specialized adoption agency shall declare stating that there has been no claimant for the child even after making notification in at least one leading national newspaper and one regional language newspaper for children below two years of age and for children above two years, an additional television or radio announcement and notification to the missing persons squad or bureau shall be made.

**Time stipulation:** In case of abandoned child below two years, such a declaration shall be done by CWC within a period of sixty days from the time the child is found. For an abandoned child above two years of age, such a declaration shall be done within the period of four months. A child must be produced before the Committee at the time of declaring him/her legally free for adoption. Subsequently, the child shall be placed in a specialized adoption agency or recognized and certified children’s home or in a pediatric unit of a Government hospital followed by production of the child before the Committee within 24 hours.

No child above seven years of age who can understand and express his opinion shall be declared free for adoption without his/her consent as per Rule (3) (g) (vii).

**Procedure in case of surrendered children**

A surrendered child is one who has been declared as such after due process of inquiry by the Committee and in order to be declared legally free for adoption, a surrendered child shall be any of the following:

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1. Born as a consequence of non-consensual relationship,
2. Born of an unwed mother or out of wedlock,
3. Whose one of the biological parents is dead and the living parent is incapacitated to take care,
4. A child whose parents or guardians are compelled to relinquish him/her due to physical, emotional and social factors beyond their control.

The Committee shall give effort for counseling of the parents, explaining the consequences of adoption and exploring the possibilities of parents retaining the child and if the parents are unwilling to retain, then such children shall be kept initially in foster care or arranged for their sponsorship as per Rule (4) (b). If the surrender is inevitable, a deed of surrender in Form XV shall be executed on a non-judicial stamp in presence of the Committee Rule (4) (c).

Time stipulation

Rule (4) (d) In case of surrendered child, two months reconsideration time shall be given to the biological parent or parents after surrender before declaring the child legally free for adoption.

As the case may be after inquiry the committee shall declare the surrendered child free for adoption under Form XIII after sixty days reconsideration period as per CARA guidelines.\textsuperscript{358}

Conclusion

The enactment of the JJCPCA 2000 and its subsequent amendment in 2006 is definitely a significant effort of the legislature towards recognition of adoption of orphan, abandoned and

\textsuperscript{358} ibid.
surrendered children by people irrespective of their religious status. It can’t be denied that it is a secular legislation only under which any person can adopt a child of orphan, abandoned and surrendered child irrespective of his/her religion. It is more children oriented unlike other legislations. But it may be mentioned at the same time that some more factors need to be considered specifically by the legislature. As for example, this Act stipulates adoption by any person irrespective of his/her marital status, but it does not specify whether the consent of the other spouse is required to be obtained by the adopting spouse in case adoption by a married couple. This might create misconceptions among the Hindus as in Hindu Laws (HAMA) taking consent of the wife by her husband is an essential criteria for adoption. Secondly, the expression “Court” has not been specifically defined for the purpose of adoption under this Act as a result of unwarranted mistakes/misconception arises frequently in filing the application for adoption by the adoptive parents. Thirdly, the Act is silent about the criteria for age difference between the adoptee and adoptive parents in case they are of same sex. This is an essential factor for adoption, which should be considered seriously for the purpose of preventing child abuse and trafficking. All these facts are obviously applicable to all religions and therefore, it is necessary to specify them for the interest of the children.

4.3 Foster Care

Foster care is a form of child welfare that provides an alternative family that cares for a child who has been deprived of his or her birth family. Of course, the best home is the child’s biological home or an adoptive home. But foster care is the first priority when the child does not have a home. However good an institution is, the nurturing of a child with care and love in a family environment is
undoubtedly the best alternative for a homeless child. This would be on a temporary basis till his or her parent can resume this responsibility or until a permanent home is found. In India, while Foster Care is not a new concept, it is not as organized as adoption is. In fact, most social workers in the field of child care recognize this as an alternative or pre-requisite to adoption. But Institutions, both Governmental and Non-Governmental are vague about and at times indifferent to this necessity of providing foster family care to children. The public is also not aware of the need and the feasibility of the project. There are no uniform policies and guidelines, or rules and regulations all over India.

What is Foster Care?

Foster care has been with us for at least a century. The origins of foster care can be traced to biblical times. It was first known as "placing out" when it began in the German town of Leipzig in 1866. Many children in our society are abused or neglected, or are severely disabled because of which their own families can't care for them. Sometimes, in order to be protected or given the special help they need, these children have to live apart from their natural families. The Foster Care Programme supports foster families—families who open their homes to children in need of care. As a foster parent, you open your home to such children. That child might stay for a few months or a few years. It will depend on when the child's family's conflict or crisis can be resolved. Each child's situation is different, but the goal of foster care is always the same, to return the child to his or her natural family, to a permanent alternate family, or help towards preparing the child to live independently. Most children experiencing separation from their own families will exhibit some emotional or behavioral problems. Some children may be moderately-to-severely mentally or
physically handicapped. The most effective way to care for the wide variety of foster children’s needs usually involves a combination of skills. These include good parenting skills and firm kindness, coupled with the skills gained in the foster parent training. However, it is important to remember that each child is an individual and, as such, no amount of personal background experience or training will cover every situation, which may arise in the course of foster parenting. The role of the agency is to assist in decisions regarding the care of the child and to help foster parent overcome those rough spots. The foster parents can help foster children reach their fullest potential by providing them a healthy home environment.

**Under India Law**

JJCPA 2000, has been instrumental in introducing the concept of Foster Care into law in India. The key principle that should underline decisions for children who are in need of alternate care is that they are to provide a healthy home and community experience for the child while the conditions, which caused the placement away from the birth/legal family, are being resolved. The first priority is for the child to return to his biological family and foster care should not keep a child in limbo, denying him right to his/her own birth family, or to a permanent adoptive family. Foster care may be defined as a 24-hour substitute cares for children placed away from their parents or guardians and for whom the State has placement and care responsibility, whether the State has placement and care responsibility, whether or not the placement is licensed or payments are made. Long-term foster care is the intentional and planned placement of a child in foster care for an extended period. After adoption has been explored and not selected, and kinship placement
options are not feasible, a goal of planned long-term foster care may be seen as a viable goal.

Section 42 of the JJCPCA 2000 related to Foster Care is reproduced herein below:

1) The foster care may be used for temporary placement of those infants who are ultimately to be given for adoption.

2) In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visits regularly and eventually after the rehabilitation, where the children may return to their own homes.

3) The State Government may make rules for the purposes of carrying out the scheme of foster care programme of children.

The foster care may be used for temporary placement of those infants who are ultimately to be given in adoption. In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child’s own parent usually visits regularly and eventually after the rehabilitation, where the children may return to their own homes. The State Government may make rules for the purposes of carrying out the scheme of the foster care programme for children. This Section fails to clarify the concept of foster care adequately. Article-20 UN Convention on the rights of the child (UN CRC) provides for alternate care for children who cannot remain in their biological families because of being dysfunctional. Article 21 of the CRC lays down basic standards with regard to adoption. Section 42 attempts to define
foster care and does not clarify basic issues such as the rights, responsibilities and duties of any of the parties involved.

Key Issues Related To Foster Care

- Rights of children in foster care
- Responsibility of foster parents
- Fit person, Guardianship and
- Licensing in foster fare
- Funding issues
- Role of the staff

Sponsorship

1. State Government shall prepare sponsorship programme for supplementary support to families and to Special Homes to meet medical, nutritional, educational and other needs of the children in consultation with the NGOs, Child Welfare Committees, other Government agencies and Corporate Sector.  

2. The Board shall make an order in Form XVIII for support to a juvenile through sponsorship and send a copy to the District or State CPU or the State Government for appropriate action.  

4.4 After-care Organisation

The one of the objective of the JJCPCA, 2000 is the social reintegration of the juvenile. The After-Care organisations are meant for taking care of juveniles after they have been discharged from

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359 JJCPCA Section 43 (1) r/w Model Rule 37 (1).
360 Model Rules 2007, Rule 37 (5).
Juvenile Homes or Special Homes. It is for taking care & giving guidance for the rehabilitation of juveniles/children after they leave special home / children home for enabling them to learn and honest industrious and useful life. The objective of these organizations is to enable these children to adapt to the society and during their stay they are encouraged to move away from an institution-based life and live normal life. The Section 44 of JJCPCA, 2000 is reproduced herein below for a clear glimpse what law states on this provision.

Section 44: After-care organization

The State Government may, by rules made under this Act, provide-

(a) for the establishment or recognition of after-care organizations and the functions that may be performed by them under this Act;

(b) for a scheme of after-care programme to be followed by such after care organizations for the purpose of taking care of juveniles or the children after they leave special homes, children homes and for the purpose of enabling them to lead an honest, industrious and useful life;

(c) for the preparation submission of a report by the probation officer or any other officer appointed by that Government in respect of each juvenile or the child prior to his discharge from a special home, children’s home, regarding the necessity and nature of after-care of such juvenile or of a child, the period of such after-care supervision thereof and for the submission of report by the probation officer or any other officer appointed for the purpose, on the progress of each juvenile or the child;
(d) for the standards and the nature of services to be maintained by such after care organizations;

(e) for such other matters as may be necessary for the purpose of carrying out the scheme of after-care programme for the juvenile or the child:

Provided that any rule made under this Section shall not provide for such juvenile or child to stay in the after-care organization for more than three years:

Provided further that a juvenile or child over seventeen years of age but less than eighteen years of age would stay in the after-care organization till he attains the age of twenty years.

In the above Section it is made clear that a juvenile cannot in any case stay in the after care organization for more than 3 years i.e maximum time limit a child/ juvenile can be kept in after care for 3 years. It is further proved that a juvenile / child who has not completed 18 years of age and who is above 17 years can stay in after care till he/ she attains the age of 21 years. Under Rule 38 (2) it states that after care can be given to child for 18-21 years old who has no place to go or is unable to support themselves. The District or State Child Protection Units can provide this in collaboration with voluntary organization. As per the Model Rules 2007 the key component of the programme shall include community group housing for age group of 18-21 years, will be encouraged to learn vocation or gain employment and contribute towards the rent and running of the home, gradually moved out of group and encourage to stay in place of their own place.
Linkages & Co-ordination

1. State Government, with the help of State or District CPU, shall identify the role and responsibility of each department and inform them through a notification;
   - arrange for appropriate training and sensitization of functionaries of these departments from time to time in coordination with National Institute of Public Cooperation and Child Development (NIPCCD) and its Regional Centres; and
   - develop effective networking and linkages with local non governmental organisations for specialized services and technical assistance like vocational training, education, health care, nutrition, mental health intervention, drug de-addition and legal aid services.  

2. State Government shall establish effective linkages between various government, non-government, corporate and other community agencies for facilitating the rehabilitation and social reintegration of juveniles.  

The aim of JJCPCA is to provide rehabilitation to juveniles in a manner so as to promote their ‘dignity and self worth’. The onus of implementation of the JJA is on the Ministry of Women and Child development for the entire country. In Delhi, it is the Department of Women and Child Development which is responsible for its implementation or to be more specific the Child Protection Unit. In 2009 the government launched the Integrated Child Protection

361 Section 45 r/w Rule 39
362 Rule 39(1).
One of the main objectives of this scheme is to improve the delivery mechanism of the Juvenile Justice System.

The role of the government can be classified under three basic heads:

- Setting up the necessary infrastructure and providing the required services
- Outlay of funds
- Monitoring the system.

The implementation of the Act has suffered from severe problems, which debilitated the delivery mechanism of the entire system. Some of the problems are like, there seems to be no machinery in place, neither with the Special Juvenile Police Unit nor with the JJB, to check if the juvenile produced before the JJB has come into conflict with law for the first time or more unless their memory serves otherwise. So a proper centralized system of keeping records is missing. In such a situation it is possible to identify the juvenile as a repeater only

- If he is apprehended by the same police station; and
- If records are being maintained at the police station.

Moreover in cases where the JJB admonishes and releases the juvenile with directions for counseling there seems to be little or no provision from the side of the JJB to make this possible. So the process of rehabilitation in India seems to be not much effective. Initiatives, which were taken to improve the system, happened irregularly and did not sustain for long. 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. However the biggest hindrance that remains are the attitudes of the functionaries who are assigned the work. Unless they take keen interest and being directed properly to achieve the objective of the act only than we can imagine that things change in better and in favour of children. Along this cooperation and support of the people is also important.