

## CHILD RIGHTS IN JEOPARDY: CHALLENGES IN RECRUITING FAMILIES FOR FOSTER CARE IN INDIA

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### Abstract

*Foster care is a method to provide alternate family to a child who are unable to live with their biological parents. Identification of families to protect the children requiring alternative care is a fundamental element in foster care services. This is popularly called “recruitment” in the Western world, finding appropriate families for the kind of children needing placement needs planning. Various mediums and techniques are essential and needed to make recruitment successful. Providing alternative care for a child is his basic right as stipulated in the United Nations Convention on the Rights of the Child. This article is an attempt to broadly view the issues and challenges of foster family recruitment specifically targeted in the Indian context. The lack of financial resources, technical know-how, human resource is hampering the efforts in selecting the families from community. In the absence of awareness in the community, it is difficult to attract families and make the scheme successful. A policy supported with evidence-based research with strong political will and sufficient resources will ensure that every child grows in a family environment and his rights are upheld.*

**Keywords:** *Recruitment, Foster care, Foster family, Awareness, Motivation, Assessment.*

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## I. Introduction

India is committed to protect children and their rights by ratifying the United Nations Convention on the Rights of the Child (UNCRC) in 1992,<sup>1</sup> which happens to be the most ratified human rights document in the world. UNCRC contains provisions covering all attributes of children, including the right of the child to stay in family environment. Institutional Care should be the last option, if child is unable to live with biological parents, however, it was found that thousands of children in many countries were residing in institutional care and it was the first and only option available to the child. Such research findings by Kevin Browne on impact of institutionalization upon children was shocking for the world and deinstitutionalization caught the attention of social workers.<sup>2</sup> Deinstitutionalization is described by Eurochild as a process to remove children from institutional care settings and placing them in community or family-based care.<sup>3</sup> The countries having substantial number of children in institutional settings suddenly became the focus of international agencies. There was tremendous pressure to shift focus from institutional care to non-institutional family-based care. After 20 years of adoption of UNCRC, it was felt necessary to help and guide the countries for better implementation of alternative care placements and on November 20, 2009, Guidelines for the Alternative Care of Children was

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<sup>1</sup> Convention on the Rights of the Child, G.A. Res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (Nov. 20, 1989)

<sup>2</sup> Kevin Browne *et al.*, "Overuse of institutional Care for Children in Europe", 332 *Brit. Med. J.* 485 (2006), available at: <https://www.bmj.com/content/332/7539/485> (last visited on Dec. 25, 2020)

<sup>3</sup> Eurochild, *Deinstitutionalisation and Quality Alternative Care for Children in Europe: Lessons Learned and The Way Forward* 6 (2014), available at: [https://bettercarenetwork.org/sites/default/files/2020-06/DI\\_Lessons\\_Learned\\_web\\_use.pdf](https://bettercarenetwork.org/sites/default/files/2020-06/DI_Lessons_Learned_web_use.pdf) (last visited on Dec. 25, 2020)

adopted.<sup>4</sup> European countries came together and formed Eurochild to protect children across the region. The Opening Doors campaign for European Children from 2013 to 2019 was launched to end institutional care and to support and develop community-based care.<sup>5</sup>

According to the UN, “foster care” refers to such situations where “children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children’s own family that has been selected, qualified, approved and supervised for providing such care.”<sup>6</sup> The foster family is unrelated to the child and taking care of an unrelated child is not only challenging, but also stressful resulting in unsuccessful placements. Finding capable families from community has always been a challenge for Foster Care Agencies across the world. Various methods are used to identify foster families to come forward and take children in their care, and identification of foster families is popularly known as “recruitment” in western countries.<sup>7</sup> This article discusses the legal framework relating to foster care and recruitment in specific in India. Without the support of caregivers, this system is destined to fail. Therefore, as the first step, it very essential to identify them. Being action-oriented, multitudinous approaches for different people would appeal the interested families. Recruitment is not a one-off event but an ongoing process. There are quite a few challenges in recruitment which this article analyses, and prescribes

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<sup>4</sup> UN, Guidelines for the Alternative Care of Children, U.N. Doc. A/RES/64/142 (Feb. 24, 2010) [hereinafter ‘UN Guidelines of Alternative Care’]

<sup>5</sup> The Opening Doors for Europe’s Children, Lessons Learned and Recommendations to Strengthen Families and End Institutionalisation of Children in Europe (2020), *available at*: [https://eurochild.org/uploads/2021/01/OD\\_last\\_report\\_v5\\_NT\\_SCREEN.pdf](https://eurochild.org/uploads/2021/01/OD_last_report_v5_NT_SCREEN.pdf) (last visited on Dec. 25, 2020)

<sup>6</sup> UN Guidelines of Alternative Care, para. 29(c)(ii)

<sup>7</sup> Hans B. Bergsund, Tore Wentzel-Larsen and Heidi Jacobsen, “Parenting stress in long-term foster carers: A longitudinal study”, 25(S1) *Child & Family Social Work* 53 – 62 (2020)

some remedial actions which are similar to those identified in western countries, however, being a new concept, the foremost challenge is changing mindset of people towards child care. Therefore, in order to revolutionize the caring culture, the most important aspect is to change the caring culture through different methods of awareness generation, motivation and encouragement of foster families, social media campaigns, which will not only decrease the number of children in Child Care Institutions, but will also encourage families to become foster families.

## II. Legal Development of Foster Care in India

The system of establishing orphanages in India was started by British Government before independence to place orphan children of British and European soldiers who were residing in India and working for British Indian Army. A new community, namely Eurasians came into existence after the Revolt of 1857, due to their racial proximity with White community. Education became the focal point to make Eurasians employable and orphanages were established for poor Eurasian children or orphan children. The Lower Orphan School was the first Orphanage established in Kolkata in the year 1789 and subsequently, first floor of Lower Orphan School was reserved for orphans of European Army officers and was being called Upper Orphan School.<sup>8</sup> After independence the orphanages, now known as Child Care Institutions (CCI), continued to exist and tremendously increased in numbers. The Children Act, 1960<sup>9</sup> was the first Act specifically legislated for children and Section 9 of the Act empowered Administrators to establish a Children's Home for

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<sup>8</sup> Teresa Hubel, "In Search of the British Indian in British India: White Orphans, Kipling's Kim, and Class in Colonial India", 38(1) *Morden Asian Stud.* 227 – 251(2004)

<sup>9</sup> Act No. 60 of 1960

Neglected Children. The Act described “neglected child” as any child who is found begging or has no place to live or parents are unable to care for their child or child lives in a brothel and mother happens to be a prostitute.<sup>10</sup> The Child Welfare Boards established under the Act had powers to give the custody of child to a parent, guardian or “other fit person”.<sup>11</sup>

In the Juvenile Justice Act, 1986, the terminology was changed from “neglected child” to “neglected juvenile” and expanded its definition by including children who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.<sup>12</sup> The Juvenile Justice (Care and Protection of Children) Act, 2000 dropped the word neglected and rephrased it to “children in need of care and protection”.<sup>13</sup>

With the passage of every legislation the definition of child who need care, safe environment and protection has been expanding and Section 2(14) of the present Juvenile Justice (Care and Protection of Children) Act, 2015<sup>14</sup> (hereinafter ‘JJ Act’) further expanded the definition and now includes children, who are orphan, abandoned, missing, run away, abused, found vulnerable, mentally or physically challenged, surrendered, and when parents unable to take care of them. The enlargement of definition of child who need care and protection also means enlargement of services that needs to be made available to children and one of the services was establishment of different types of shelter homes for different categories of children. For safety and protection of children who are without parental care, institutional care is imperative,

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<sup>10</sup> Children Act, 1960, s. 2(1)

<sup>11</sup> Children Act, 1960, s. 16

<sup>12</sup> Act No. 53 of 1986, s. 2(1)

<sup>13</sup> Act No. 56 of 2000, s. 2(d)

<sup>14</sup> Act No. 2 of 2016

but as specified in the UNCRC, it should be the last option. Before a child is placed in institutional care, every possible effort should be made to place the child in the community and family-based care must be explored. The JJ Act includes a range of homes for different category of children, like Children Home, Observation Homes, Special Homes, Open Shelter and place of safety.<sup>15</sup>

According to the government report in 2018, India has around 9,589 number of registered CCIs, wherein 8,744 are run by non-governmental organizations and 845 with governmental support.<sup>16</sup> There is considerable rise in sexual abuse of children who are residing in these homes and lately attempts are being taken to ensure that alternative care options are being made available to these children.<sup>17</sup>

India submitted its Third and Fourth Period Combined Report to UN Committee on the Rights of the Child in 2014 and recalling the Guidelines for the Alternative Care of Children, the Committee observed that State parties shall establish foster care for children in alternate care and urged that requisite and suitable human, technical and financial resources to be made available for alternative care.<sup>18</sup> It also recommended to create awareness on foster care.<sup>19</sup> The Committee was concerned about the lack of information on processes with respect to foster care, be it assessment, selection, training, remuneration or supervision. The

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<sup>15</sup> JJ Act, chap. VII

<sup>16</sup> Ministry of Women and Child Development (MWCD), Gov't of India (GoI), The Report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care & protection of Children) Act, 2015 and Other Homes Volume-I 40 (2018), available at: <https://wcd.nic.in/sites/default/files/CIF%20Report%201.pdf> (last visited on Dec. 24, 2020)

<sup>17</sup> *Id.* at 61 – 63.

<sup>18</sup> Committee on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of India, UN Doc. CRC/C/IND/CO/3-4, para. 56 (Jul. 7, 2014)

<sup>19</sup> *Id.* at para. 66

Committee recommended that there is requirement for legal provisions in the national law to arrange alternative care for children who are deprived of parental care.<sup>20</sup>

It would be pertinent to mention that the whole world is deviating from institutional care and adopting community and family-based care. The UN also took cognizance of harmful effects of institutionalization and adopted the Guidelines on Alternative Care of Children in 2009. These developments necessitated incorporation of foster care in our national law and it was integrated under Chapter VII dealing with Rehabilitation and Reintegration under the JJ Act in 2015. The concept was new to Indians and to help its implementation, the Ministry of Women and Child Development took the initiative to draft Model Guidelines for Foster Care<sup>21</sup> to guide the State Governments. The States either adopted or adapted the Guidelines according to their regional requirements and translated into local languages.

There is evidence that, good quality service provider, care givers, social workers and support services in collaboration are able to produce positive developmental outcome.<sup>22</sup> For better outcomes for children and families, the Centre on Developing Child, Harvard University maintained that for maximum effectiveness, the policies and services should harmonize effusive, relationships for children and families, enhance the fundamental

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<sup>20</sup> *Id.* at para. 55 – 56

<sup>21</sup> MWCD, GoI, Model Guidelines for Foster Care, DO No. 14-5/2015-CW-II (Nov. 11, 2016) available at: <https://wcd.nic.in/acts/model-guidelines-foster-care-2016> (last visited on Dec. 24, 2020) [hereinafter ‘Model Guidelines for Foster Care’]

<sup>22</sup> Kenneth A. Dodge *et al.*, “The Durham Family Initiative: A Preventive System of Care”, 83(2) *Child Welfare* 109 – 28 (2004)

survival skills and decrease the origin of hardships in their lives.<sup>23</sup> Hence, it was expected that State Governments would create the systems, necessary for its implementation and pool in financial and human resources ensure its implementation.

### **III. The First Step: Recruitment**

After carefully examining the foster care system of many countries and the UN definition, JJ Act defined foster care as “placement of a child, by the Committee for the purpose of alternate care in the domestic environment of a family, other than the child’s biological family, that has been selected, qualified, approved and supervised for providing such care”.<sup>24</sup>

Foster care is a long process involving many stages starting from recruitment of families to monitoring the placement of child. The User Guide developed jointly by National Commission for Protection of Child Rights (NCPCR) and Centre of Excellence in Alternative Care (CEAC) details various steps in the entire process of foster care, namely, selection (recruitment), assessment, approval and supervision.<sup>25</sup> Recruitment of foster families is the first step in foster care system. There is need to have enough number of foster carers to take care of children who need alternative care. Identification of foster family involves awareness, communication and engagement of people from the society. According to McNitt, it is observed that in many countries, the recruitment of foster

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<sup>23</sup> Center on the Developing Child at Harvard University, *Three Principles to Improve Outcomes for Children and Families* (2017), available at: <https://developingchild.harvard.edu/> (last visited on Dec. 24, 2020)

<sup>24</sup> JJ Act, s. 2(29)

<sup>25</sup> NCPCR and CEAC, *User Guide on Foster Care* (2018), available at: <https://ncpcr.gov.in/showfile.php?lid=1672> (last visited on Dec. 24, 2020)



families is reactionary.<sup>26</sup> Upon learning the harmful effects of institutionalization, the whole world criticized the European countries, especially Romania, Moldova, Ukraine, Bulgaria for putting large number of children in institutions.<sup>27</sup> McNitt further states that sometimes its driven by crisis, the focus is more on having families without ensuring the standards of care required in the placement. The lack of planning is another reason for shortage of foster carers. The foster care organizations and agencies should be skillful and creative to motivate foster families to come forward to become foster parents.<sup>28</sup>

A study conducted by CEAC, an organization headed by the first author, highlights various challenges in the recruitment of families, which starts from change in mindset, as putting children in institutional care is prevalent and considered beneficial for children of poor families, who struggle to survive.<sup>29</sup> Another important factor that determines recruitment is motivational factors for foster parents *vis-à-vis* different cultural and contextual issues. Although, many western countries have developed foster care system in the last 60-70 years still, there is shortage of foster families.<sup>30</sup> The lack of pool of foster families, qualified and selected is becoming a global crisis. According to the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter ‘Model JJ Rules’), the District Child Protection Unit (DCPU) is the nodal agency

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<sup>26</sup> Myrna McNitt, “Foster Parent Recruitment” in Danielle Douglas and Jean Anne Kennedy (eds.), *Ensuring the Rights of the Child, and Family-Centered Services* 164 (Conference Proceedings), IFCO 2014 European Conference organized by Waterford Institute of Technology, Ireland (Aug. 26 – 29, 2014)

<sup>27</sup> *Supra* note 2.

<sup>28</sup> *Supra* note 26 at 167.

<sup>29</sup> CEAC, *Finding a Way Home: Pathways out of Institutional Care* 3 (2019)

<sup>30</sup> Matthew Colton *et al.*, “The Recruitment and Retention of Family Foster-Carers: An International and Cross-Cultural Analysis” 38(5) *Brit. J. of Social Work* 866 (2008)

to implement foster care in the district<sup>31</sup> and should keep a roaster of selected and approved foster families, for quick placement of children.<sup>32</sup> Though, the whole process of recruitment of foster family needs planning at all levels, India is struggling with finding suitable families, in the absence of clear guidance, financial and human resources.

#### **IV. Challenges of Foster Care in India**

##### **1. Paid or Unpaid Fostering**

The whole world has debated for long whether, fostering should be paid or unpaid. Are foster parents' volunteers or paid service providers? To better understand let's look through the history when between 1854 and 1929 almost 3 lakh children were removed from the streets of New York and sent across the country to resettle with new families. Many children had good life, however, many were abused and used as punching bags or sex toys. It was only after the cases of abuse were reported, that child protection laws in US were legislated and monitoring became a prime factor in placement. Being voluntary in nature, the families were without any accountability. If a family was found abusing the child, the child was removed and placed into another family. It was argued at national level that payment to families would ensure accountability. Subsequently, fostering allowance started to ensure safety and security and fixed the accountability and responsibility when having children with them.<sup>33</sup>

Colton and Williams agreed that, there are discussions on the need to pay foster carers and is a controversial point in child protection. The Child Protection Law of Hungary has defined Foster Carer as civil servants,

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<sup>31</sup> Model JJ Rules, G.S.R. 898, r.23 (2)

<sup>32</sup> *Id.*, r. 85 (xviii)

<sup>33</sup> National Orphan Train Complex, "New York daily Tribune - January 21, 1880", *available at*: <https://orphantraindepot.org/history/artifacts-of-the-orphan-trains/new-york-daily-tribune/>

thereby making them service providers.<sup>34</sup> The Indian law requires that prospective foster families should be financially sound.<sup>35</sup> The general mindset in child welfare system is that financial support should not be provided, and a small fraction of social workers believe that, since foster families are taking the responsibility of looked after children, and it's the extension of state responsibility, and hence, they must be compensated. The Model Guidelines for Foster Care provides for paying ₹ 2000 per child per family, till the time child continues to be in foster care. The Sponsorship and Foster Care Approval Committee has the power to decide upon applications for financial support.<sup>36</sup> Foster Families are given skills and trainings to care for children and getting compensated for fostering is nothing, but some help towards their financial burden of fostering kids and keep them motivated to support the child. Majority of the countries are paying to their foster parents. It is believed that paid fostering gives better results as compared to unpaid. Recruitment process should make it clear, if the foster care is paid or unpaid and the ways of availing the financial support, if available.

## 2. Gender and Age

Every prospective foster family while applying, has the choice to give preference for age group and gender of the child.<sup>37</sup> India being a patriarchal society, it is observed that male children are preferred over females. Interestingly, the CCIs have more boys as compared to girls, even though, Indian family prefers boys over girls.<sup>38</sup> Female feticide is

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<sup>34</sup> *Supra* note 30 at 867.

<sup>35</sup> Model JJ Rules, r. 23 (12)(iv)

<sup>36</sup> Model Guidelines for Foster Care, at 24

<sup>37</sup> *Id.*, Annexure-A, Application Form

<sup>38</sup> *Supra* note 16 at 6.

very common practice in norther region of India.<sup>39</sup> The families either abandon their newly born girls or surrender them before CWC. The provisions to surrender the child was inserted in the JJ Act of 2000 through Amendment in 2006, to arrest feticide and save the life of child.<sup>40</sup> More than 60 per cent of prospective foster families prefer to foster young children hoping to adopt them later. Rule 44 (i) of Model JJ Rules states that children of 0 to 6 years of age shall not as far as possible be given into foster care. This has put social workers in a fix, as to whether these children can be given for fostering. In an interview with Ms. Nirmala Fernandes, the Executive Director of Family Service Centre, Mumbai, she interestingly informed that although across the country, the Special Adoption Agencies are CCIs, registered under JJ Act, their organization have identified around 23 families over a period of time who foster children. During the pendency of adoption proceedings, CWC hands over the children to the organization and they immediately place the children with these families to provide all necessary care specially health and nutrition, to ensure healthy development. She further apprised that her organization simultaneously initiates the adoption process in collaboration with government agencies.<sup>41</sup> Due process is followed to put the child into adoption, which sometimes might take more than a year to place in adoption.<sup>42</sup> The organization is able to provide family life in the initial stage and prevent the developmental harm, in line with the study

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<sup>39</sup> Jonathan Abbamonte, “Beti Bachao: Female foeticide unabated in India”, *Deccan Herald*, Aug. 17, 2019, available at: <https://www.deccanherald.com/opinion/main-article/beti-bachao-female-foeticide-unabated-in-india-754898.html> (last visited on Dec. 26, 2020)

<sup>40</sup> JJ Act, 2000, Ins. by Act No. 33 of 2006, s. 4

<sup>41</sup> Interview with Ms. Nirmala Fernandes, the Executive Director of Family Service Centre, Mumbai, on November 23, 2020

<sup>42</sup> Family Service Centre, 63rd Annual Report 2017-2018 3 – 4 (2018), available at: [https://www.fscmumbai.org/AR/FSC\\_AR\\_17\\_18.pdf](https://www.fscmumbai.org/AR/FSC_AR_17_18.pdf) (last visited on Dec. 26, 2020)

which indicated that institutional care changes the brain structure of child, which results in long lasting impact on their adult life.<sup>43</sup> Unfortunately, fostering before adoption is very complex in India and conflicting law and theory has created a situation, which is impacting the motivation of social workers to promote foster care.

### 3. Awareness and Media

As mentioned earlier, foster care was legally implemented for the first time in India through the JJ Act in 2015, hence, it is imperative to create awareness among child protection workers, implementers and community at large. Any good initiative if unknown, will soon become extinct, whereas, if promoted correctly and judiciously, with reasons and significance, its impact could give better results.

Positive news and articles in the media can play a significant role by creating excitement in the community towards the new opportunity for the families who are empty nesters or have room for one more, or parents of single child or childless couple.<sup>44</sup> The requirement of families for millions of orphan children needs to be known by the community. They are required to be informed that government needs their support in providing family life to a child who would otherwise continue to stay at CCIs until an adult. The first author, while conducting awareness sessions through her organization, CEAC, found that many families expressed their ignorance about foster care, which could protect lives of many children and families could also get children.

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<sup>43</sup> Paraskevi Tatsiopoulou *et al.*, “A Qualitative Study of Experiences During Placement and Long-Term Impact of Institutional Care: Data from An Adult Greek Sample”, 116 *Child. and Youth Ser. Rev.* (2020)

<sup>44</sup> *Supra* note 26 at 167 – 68

While implementing foster care project in Bihar, she further realized that recruitment process involves planning. Without detailed planning enumerating all possible steps, it would be impossible to recruit foster families. The significance of family for a child needs to be propagated. Recruitment mobilization in the form of a campaign can be considered as one of the forms to recruit foster families. A single campaign was not able to attract the attention of foster families. Becoming a foster parent is an important decision and sometimes took months before, they made an enquiry call to the DCPU or Foster Care Agency. Continuous and ongoing foster care recruitment drive should be conducted on special days were more effective.

A conscious effort to create awareness and recruit families is essential for implementers. The month of May is Foster Care Month in USA and whereas in UK a fortnight in November is used for awareness. This time of the year with special focus on recruitment drive, with special slogans, tag lines in media like television, newspapers and big signages can be seen to start the conversation with families, talking about need of foster families and need of the children to live in families. “Walk me home” was used by National Foster Parent Association in USA. “Can I stay with you for a while” was the tagline in Azerbaijan. The catchy taglines create interest among families and helps the Foster Care Agencies to recruit the families.<sup>45</sup>

The Model JJ Rules very explicitly mentions that DCPU has the responsibility towards awareness generation and capacity building of stakeholders.<sup>46</sup> However, not a single noteworthy awareness event is

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<sup>45</sup> *Supra* note 26 at 168

<sup>46</sup> Model JJ Rules, r. 83(xxi)

being reported to be conducted since the legislation has been passed. Time has come to think of new ways to reach out to people. Old fashioned strategies needs to be changed in line with use of social media as it has emerged as one of the most powerful tools to reach out to millions of people, especially during the COVID-19 pandemic, which has forced people to stay at home. DCPU needs to think on using different mediums to generate awareness in the district to generate interest in communities towards foster care.

#### **4. Assessment of Needs**

Recruitment of families should be based upon the needs and kinds of children to be fostered.<sup>47</sup> Understanding the needs and determining the goals are important for good performance. It needs to be determined by DCPU or local authorities, whether the requirement is for young children, infants, school going children, or special need children. Assessment will help in keeping district-wise database of children who are in difficult circumstances and need foster families.<sup>48</sup> On the basis of requirement, the local authorities, can engage with community. Recruitment of families who need young children, and then placing school going children would be waste of resources, time and energy and also not in the best interest of children. It will also frustrate the social workers, when placement might get disrupted due to compatibility issues. The authors believe that it's something like demand and supply theory. The supply increases when there is demand.

The survey before starting the recruitment process will help in finding the appropriate families. Targeting the demographics, where the families are

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<sup>47</sup> *Supra* note 26 at 168

<sup>48</sup> Model JJ Rules, r 85 (viii)

likely to become foster family is an important aspect of recruitment. While working in Bihar, CEAC targeted the families who were interested in adoption but fell short of eligibility criteria or lost interest due to long process and waiting for years to adopt.<sup>49</sup> Geo-based approach tries to identify families within the local community, which helps the child to keep connections with friends and families and attend the same school, which is less traumatized. Finding families in neighbourhood should be the bedrock of recruitment process. The child belongs to community so do the foster families.<sup>50</sup>

### **5. Motivation to Foster**

The utmost important and intricate point in recruitment is to know what motivates a family to foster a child. Rees Foundation's, study identified intrinsic and extrinsic factors which motives a family to foster.<sup>51</sup> The intrinsic reasons could be the interest to help a child as noted in Sweden, Australia and many more countries. Another reason emerged was providing companion to their own biological children. The extrinsic reasons, quoted by Sebba, are filling up the empty nest and awareness on foster care was the most influential reason to come forward and become foster parents in USA.<sup>52</sup>

While implementing foster care in the state of Bihar, the first author observed that the families have also cited the above reasons to become

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<sup>49</sup> The first author while conducting training programs through her organization, CEAC noted this fact

<sup>50</sup> *Supra* note 26 at 168

<sup>51</sup> Judy Sebba, Why do people become foster carers? An International Literature Review on the Motivation to Foster 9 (University of Oxford, 2012), *available at*: <http://www.education.ox.ac.uk/wp-content/uploads/2019/06/Why-Do-People-Become-Foster-Carers-An-International-Literature-Review-on-the-Motivation-to-Foster.pdf> (last visited on Dec. 26, 2020)

<sup>52</sup> *Supra* note 51 at 11



foster families. An infertile couple sees fostering as a pathway to adoption. For many families the reason is humanitarian, where they want to help a child. Particularly in India, there are families opting for girls over boys, due to various schemes run by Government promoting girl's education. The financial aspect is not much an influential factor in motivating the families. There could be any reason for foster families that motivates them to foster and it's not a lucrative option as some people perceive. Fostering is a collective decision of family, which must be respected and the communication that children need families must be loud and clear. It's the state's responsibility to protect children and give the opportunity to live family life, which otherwise is missing in their lives.<sup>53</sup> The prospective foster parents while submitting the Application Form are asked to give reasons for becoming foster parents. Besides Application Form, Home Study Report for Prospective Foster Parents, has the column on Attitude and Motivation for foster care.<sup>54</sup> Despite all challenges, CEAC was able to recruit 98 families over one year period during 2019-20.

## 6. Recruitment procedure

Recruitment should not be considered as hiring of a family to care for a child. Its more than expressing the interest to become foster parents. A lot has gone within the family, before making the decision and calling the foster care agencies. Meeting the social worker and sharing the feelings and the decision needs to be encouraged. An international review of

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<sup>53</sup> Constitution of India, art. 39. Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing . . . (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment; . . .

<sup>54</sup> Model JJ Rules, Form 30

literature by Seeba reported that in UK there was dropout rate of 70-95 per cent from enquiry to registration.<sup>55</sup>

CEAC in its report on Bihar to UNICEF mentioned that the dropout rate is between 85-95 per cent. Immediately, after the launch of Tollfree Number 1800 111 878 for foster carers on February 18, 2020, CEAC received 89 calls per day on an average, however, only 2 per cent of families were found to be eligible to become foster parents. An article published in *Hindustan*, a Hindi newspaper, dated February 20, 2020, on foster care created confusion and misled the general public that Government will make a payment of ₹ 4000 to foster families for keeping children, who were residing in CCIs. The people of State of Bihar all of a sudden felt interested in fostering, but upon informing the law, rules and regulations, eligibility criteria and mandatory conditions to be met, the whole enthusiasm dropped immediately.<sup>56</sup>

More than becoming the foster carer, retaining the foster carers is a tedious task for social workers. Rhodes, Orme, Cox and Buehler stated that crisis in recruitment is mostly linked to retention of foster carers. There is direct relation between supporting the prospective foster families and their retention. Similarly, there is direct relation between happy foster families and referral generated from them. The more satisfied are the foster families, the more referrals the Agency receives through words of mouth.<sup>57</sup>

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<sup>55</sup> *Supra* note 51 at 10

<sup>56</sup> CEAC, Report on Mapping of Child Care Institutions in Bihar 2 (2020)

<sup>57</sup> Kathryn W. Rhodes *et al.*, "Foster Family Resources, Psychosocial Functioning and Retention", 27(3) *Social Work Research* 135 – 150 (2003)

## 7. Policy design vs. implementation

Every new government elected is desirous to announce new policies either replacing the old or to fulfil the political mandate. Andrew Graham, Professor at Queen's University, Ontario, Canada, reminds us that policy makers should embark upon implementation of new policies without realising that there is a consistent pattern of failure in implementing social policies by government across the world.<sup>58</sup> India's ever-increasing population makes it harder to implement any policy. The announcement of new policy is equated with achievement. Announcement or cutting ribbon with funfair and getting momentary attention in newspapers or news channels is considered sufficient.

The disconnect between designing the project and its implementation is another reason for its failure. Blocking of negative reviews/news reaching the top management, often the warning signs, underestimates the operational problems which may apparently appear to be minor ones but crucial for the success of the projects. Not addressing the issues, makes it complex and project starts to lose momentum and gears start to slip. The gap between policy makers and implementors is often the major reason for the failure of scheme. "We design it and you work on it" is the phrase used by Graham for such situations. The research, the need assessment and ground realities to roll out a welfare scheme is missing, which results in collapse of whole scheme. Many times, the original proposers move on and new officers have no interest to put their energy in someone else

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<sup>58</sup> Andrew Graham, Why Governments are So Bad at Implementing Public Projects? (Feb. 14, 2019), *available at*: <https://theconversation.com/why-governments-are-so-bad-at-implementing-public-projects-111223> (last visited on Dec. 27, 2020)

pet project. The response time to crisis is pivotal for the success of any scheme.<sup>59</sup>

The Integrated Child Protection Scheme (ICPS)<sup>60</sup> in India is one such scheme launched in 2009 with the promises to reach out to all vulnerable children, yet, the stakeholders find it difficult to implement due to bureaucratic red-tapism and lack of finances. In the last 11 years it has been revised only once and the critical issues are still unaddressed. In the revised scheme, limitations of ₹10 lakh per district per year has made it difficult to reach to most needy child.<sup>61</sup> The Scheme needs constant attention, revision and review to reach to the lost child. A National Consultation was done on 5<sup>th</sup> June, 2018 by Ministry of Women and Child to review ICPS Scheme. It was reported that states have not spent the money received from the Centre.<sup>62</sup> It amounts to abuse of child protection system and lack of seriousness and commitment towards child protection.

## 8. Lack of Political Will

Even today the law is still in nascent stage to get implemented, then one of obvious reasons could be lack of political desire to implement the law. It is also argued that children are not voters, hence, politicians pay little or no attention towards them, although it is observed that young adults

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<sup>59</sup> *Ibid.*

<sup>60</sup> MWCD, GoI, Integrated Child Protection Scheme (2009), available at: <https://bettercarenetwork.org/sites/default/files/attachments/The%20Integrated%20Child%20Protection%20Scheme.pdf> (last visited on Dec. 27, 2020)

<sup>61</sup> MWCD, GoI, Revised Integrated Child Protection Scheme 47 (2018), available at: <http://cara.nic.in/PDF/revised%20ICPS%20scheme.pdf> (last visited on Dec. 27, 2020) [hereinafter 'Revised Integrated Child Protection Scheme']

<sup>62</sup> MWCD, GoI, Review of Child Protection Services, National Consultation on Child Protection Services, Jun. 5, 2018, available at: <https://wcd.nic.in/sites/default/files/Review%20of%20Child%20Protection%205th%20June%20by%20JS%20.pdf> (last visited on Dec. 27, 2020)

are being engaged as they are seen as potential voters. Every possible effort to lure them is one of the mandate of politicians which helps them in their win. The UNCRC urges States to include children while making any policy, but child rights activists have been crying for years that their voice is hardly heard. Their concerns, needs and wants are seldom important. Politicians fail to understand that strong family and children are the future of any country. They fail to realize the importance of investing in children and expect higher results.<sup>63</sup>

### **9. Insufficient resources**

Financial and human resources to initiate and support the continuity of a scheme is paramount. The ICPS Scheme has provisions where Central Government gives certain percentage of grants to state governments to support the activities and implement the scheme. Primarily the grant is to be used for financially sponsoring the family living in difficult circumstances, to keep the family intact and support the educational needs of the child. The grant also needs to be funded and supplemented by State Government from its exchequer. The provision of ₹ 2000 per child per month for two children for a maximum period of 3 years can only reach out to handful of children. Annual Review by DCPU and CWC is an important feature of this scheme, which decides the continuation of financial support to a child. A close look at the Scheme will reveal that only 50 children can be supported a year in one district, whereas the requirement in any district at any given point is lot more. The insufficient funds by clubbing of sponsorship and foster care funds and putting a cap

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<sup>63</sup> Robin Bansal, "India lacks political will to protect kids", *The Times of India*, May 17, 2007, available at: <https://timesofindia.indiatimes.com/india/India-lacks-political-will-to-protect-kids/articleshow/2057155.cms> (last visited on Dec. 27, 2020)

of ₹ 10 lakh per year per district will reduce the success of foster care and gradually, the stakeholders will lose interest and scheme will fade away.

Another, regretful feature of ICPS Scheme is contractual human resource. The whole Scheme is based upon temporary staff who are appointed for one year.<sup>64</sup> The CWC Members have the tenure of 3 years. There is no continuation of service and wages paid are based upon per sitting basis. As a result, majority of work force is left out of the social security network with no public health or pension benefits. CEAC while proposing the project to UNICEF stressed upon the importance of human resource and included 2 officers per district to focus only on foster care, if Government of Bihar, wants to make foster care a success in the State.<sup>65</sup>

### **10. Lack of Technical knowledge and Research**

Foster Care has developed in different countries and has taken years to establish itself as a form of alternate care for children who are without parental care. Many countries took conscious decision when various research found out that institutional care is detrimental for child's development. The findings of the research conducted by Kevin in Eastern European countries was the turning point in the history of children, when the United Nation decided to come up with the Resolution on Alternative Care in support of children who are without biological parents and languishing in institutional care.<sup>66</sup>

A practice model consisting of best practices, uniqueness and creativity together will give the Foster Care agencies a model of practice. The PRIDE Model of Practice having 14 steps have composed the fostering

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<sup>64</sup> Revised Integrated Child Protection Scheme at 12

<sup>65</sup> *Supra* note 56 at 10

<sup>66</sup> *Supra* note 2 at 486

process, detailing the process of recruitment and other steps.<sup>67</sup> Similarly, The User Guide on Foster Care of NCPCR details the needs in foster care, explaining each step detailing the reasons and process to successfully implement in the whole of country. The best practices helps Foster Care Agencies across the country in maintaining the standards of care in recruitment of families. The agencies can recognize the gaps in foster care and develop resources based upon their experience and international standards.

### **11. Support to end institutionalization**

International and national laws recognize the right to family as one of the fundamental rights for every child. The UNCRC emphasizes that every child has a right of protection and in situations when child is without parents and needs protection, State should make arrangements to provide family life to the child.<sup>68</sup> Countries need to recruit families to protect children be it developed country or developing country. Developing countries, might have gone through civil war or political instability, which makes the protection and development of the child a challenge and also a necessity. These countries need technical knowledge and support to end institutionalization and promote family-based care.

Many countries like Romania, Bulgaria or Moldova took policy decision to shift focus on family-based care by borrowing the best practices from well-established foster care systems in the world and putting slow end to institutional care. Eurochild supported the countries in developing

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<sup>67</sup> Child Welfare League of America, PRIDE Model of Practice, *available at*: <https://www.cwla.org/pride-training/> (last visited on Dec. 27, 2020)

<sup>68</sup> UNCRC, art. 20

policies, procedures, mechanisms and system with the support of international agencies.<sup>69</sup>

## I. Conclusion and Recommendations

Regardless of having many laws to protect children, India has failed to implement the same due to poor awareness among stakeholders and in the community. The lack of political will has further deteriorated the conditions of children.

Foster care is a long process requiring mind set change to accept the children in their family, which requires phase-wise strategies to make it popular and attractive for prospective foster families to opt for fostering. Staying in Child Care Institutions is violation of rights of children. The recommendation of UNCRC in its third and fourth Periodic Report to incorporate foster care in the national laws and set forth the process requires recruitment of families and place children in alternative care. Recruitment of families is the right of the child and the necessity and first step towards deinstitutionalization.

Borrowing technical support to build and strengthen the foster care system can resolve many issues like, developing of resources, training tool kits and Information, Education and Communication material. Research and Policy Making are two sides of same coin. A policy based upon evidence-based research is less likely to fail and must be encouraged in the country.

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<sup>69</sup> *Supra* note 3.



From the above discussion it is quite apparent that despite challenges, when an organization in Bihar can recruit 98 families through planning, identifying the gaps, mapping of districts, reaching out to family through different methods, it can be said that a well-documented and informed practices guiding the child welfare agencies, NGOs and stakeholders the families will be interested to become foster families as discussed in this article. The collective responsibility of state and community towards our children with sufficient resources to recruit families will protect the next generation of our country.