

HAQ: CENTRE FOR CHILD RIGHTS

A FRESH START FOR CHILDREN IN CONFLICT WITH THE LAW

HAQ: Centre for Child Rights works on recognition, promotion and protection of rights of all children because they are citizens of today. Children are also actors in society and adults in the making. HAQ believes that every child must have a right to equal opportunity. And this is forms the bedrock of its work on juvenile justice.

While children who have offended must be held accountable for their action, every child has the capacity to change for the better and must have a second chance - a right to a fresh start. It is this philosophy that has guided HAQ's interventions with children who have come in conflict with the law.

At the same time all the children who have experienced abuse and exploitation too deserve a fresh start so that they can move on. HAQ also works with children who have experienced abuse and exploitation.

About the organisation

HAQ: Centre for Child Rights was founded in 1998. It was registered under the Societies Registration Act, in June 1999. The recognition, protection and promotion of three rights form the cornerstone of HAQ's work. They are: Right to Survival, Right to Childhood and Right to Equal Opportunity.

HAQ believes that child rights and children's concerns have to be mainstreamed into all developmental planning and action, and must also become a core developmental indicator. HAQ's mission is to strengthen governance for children.

HAQ's strength lies in its capacity to undertake research and documentation, capacity building and advocacy. HAQ's strength also is its capacity to straddle micro as well as macro issues, bringing hands on experience into policy advocacy nationally as well as internationally.

HIGHLIGHTS

- HAQ's sees its role as on that to facilitates the government systems and at best support it, not replace it.
- HAQ sees its role both at the micro level for providing direct support to children as well as at the macro level for policy advocacy (nationally and internationally).
- So HAQ works closely with the state legal aid system, the JJ Committee of the High Court and the government to document and address the gaps.
- HAQ provides legal and counselling to children in contact with the law- both CICL
- Wherever needed, HAQ also steps in to provide immediate assistance and support such as medical support or educational support.
- HAQ with the support of other stakeholders was able to ensure the presence of legal aid lawyers in the Juvenile Justice Boards.
- Apart from being able to provide direct support to the children who require it, HAQ's work on juvenile justice has also been a tool to monitor the role of judiciary in ensuring justice for children.
- HAQ draws upon its micro experiences and learning gained from providing direct support to children and HAQ is able to advocate for macro changes necessary law and policy change as well as more effective implementation of law; as well undertake capacity building.

Mission

In Spirit, HAQ dedicates itself to the recognition, promotion and protection of the rights of all children

In approach, HAQ focuses on children in a holistic way – as Actors in society, as Citizens of today, and as Adults of tomorrow

In Practice, HAQ strives to propel child rights into all mainstream development efforts, governmental and non-governmental, and place it on the centre stage of national debate

A Fresh Start-Working with Juvenile Justice System

- **Children in Conflict with the Law (CICL)**

HAQ's work on juvenile justice began in 2005 with providing legal aid to the children in conflict with law. This enabled the organisation to not only provide the much needed legal representation to the children, but also provided insights into the gaps that existed in the system of justice delivery, the condition of the care institutions, the situation of children who came into conflict with the law. It also helped the team to understand the constraints faced by those implementing the law and providing care to the children. Such hands-on direct work has helped HAQ reach out many vulnerable children who come in contact with the law and improve justice delivery.

HAQ works through its two main programmes- *Children and Governance* and *Child Protection*. Its interventions on juvenile justice straddles both these programmes. While the direct interventions with children, both who are in conflict with the law as well as those in need of care and protection are part of its Protection Programme, its work on law and policy change and advocacy based on the research and documentation related to the interventions and the experience gained are part of its Children and Governance programme.

A twin-track approach

Children and Governance

Under its children and governance programme, HAQ monitors the executive, the legislature and the judiciary through budget analysis from a child's rights perspective, examination of the status of India's children, analysis of child rights issues and debates, and engagement with justice delivery systems.

Child Protection

Under the child protection programme, HAQ provides support and legal aid to children, works to build a cadre of child rights lawyers and defenders and undertakes capacity building of service providers and various stakeholders.

HAQ's role is to facilitate the government system and at best support it, not replace it. So HAQ works closely with the state legal aid system, the JJ Committee of the High Court, Police and Judicial Academies and the government to document and address the gaps.

Over the years, HAQ with the support of other stakeholders was able to ensure the presence of legal aid lawyers in the Juvenile Justice Boards. Since then, HAQ's intervention in the Boards has been largely

confined to providing counselling to the children in conflict with law. However, when needed it does step in to provide legal assistance.

Counselling CICLs

In the last 10 years, 901 boys and 19 girls in conflict with the law have received counselling support through HAQ to move on. Counselling is done at the JJB, the Observation Homes as well as in the HAQ office. If needed, home visits are made. Based on the nature of the case, family counselling is also undertaken.

Most children in conflict with the law are school drop outs having left the formal system of schooling in class 4 or 5. Their family is unable to understand the child's needs which are often psychological in nature. There is a need in the family to either deny the problems or on the other hand they seem to have given up on the child.

Causes resulting in the offence – What HAQ has learnt

When the parent of a child is dead or not available to parent/protect/guide him/her (missing, alcoholic, too violent, too busy in his/her life, too many financial problems), the absence leads to little accountability to any other. This is where we often see an innate depression which is then acted out in the form of some aggressive move. At times caught up in that moment of impulsivity, these children are not able to curb their aggressive impulses with little thought in their minds at that time about the consequences of their actions. If they have consumed drugs then there is often little ability to process what is happening around, which aggravates the development of a distance from reality as it stands.

Often the first time, the offences seem to have been done with little cognizance of the implications of his/her own behaviour with a need to give in to the impulses governing the person at that given point of time. This sort of lack in the ability to look at their past or their future but to live in the present seems to mark the character of many of the children.

Poverty and lack of adequate living spaces means overcrowding and proximity, and very little space for the individual. Often there is a need to escape these said structures by aligning themselves with friends, those who seem to be similarly 'lost'. There is constant attempt being made to counter this inner sense of vulnerability by taking drugs, getting involved in activities which provide a high, testing of boundaries – all of which give the child a much needed albeit a false sense of being invincible and powerful and of being in control.

Often the family environment has failed them and when they go back to it little has changed or will change. Given such a situation it is easier to go back to the same old patterns as those patterns signify a defence against this environmental failure, with perhaps the offence being a symbolic acting out of the inner wishes, needs (aggressive, violent, sexual) and even seen as a means to grapple with the impinging environment, at an unconscious level.

There is little introspection, reflection about their own actions with not much emotion present except that of anger, with little provision of guilt in some, showing deeper pathology with a huge need to evacuate what is inside them. As they can't make sense of their own emotions, they get into fights and empty their inner chaos outside. Self cutting is another such example of this inner pathology along with an inability to sustain any given vocation.

Other work on CICL

Although, it is not an ongoing activity, sometimes special trainings are made available to children inside the homes. An example of this is the special training on hair styling to the boys in the Observation Home by a Spanish Hair Stylist who was visiting India.

Apart from being able to provide direct support to the children who require it, HAQ's work on juvenile justice has also been a tool to monitor the role of judiciary in ensuring justice for children and using the experience for advocating necessary law and policy change as well as more effective implementation of law. It has also helped HAQ strengthen its Legal Aid and Resource Centre, thus enhancing the availability of information on child related legislation and children's rights so that child victims of crime, CICL, their parents or guardians and the organizations are better equipped to take appropriate legal recourse and have more awareness about their rights.

HAQ's research on Juvenile Justice (Blind Alley by HAQ team and My God is a Juvenile Delinquent authored by a HAQ Volunteer, Ruzbeh Bharucha) have been referred to widely and has impacted implementation of the JJ system in the country. They have been recommended as essential reading for judicial officers in the country by the National Legal Services Authority of India.

HAQ was engaged in the process of law making on juvenile justice since 1999 leading to the enactment of the law in 2000 and was part of the drafting committee set up to draft the rules for implementation of the law on juvenile justice both at the central and the provincial levels.

It was based on its research and the experience gained through its direct interventions that HAQ was able to make interventions in the Supreme Court in the cases that were filed arguing against the age of juvenility to be lowered in 2012 and 2013 leading to judgements upholding the law. It also made submissions to the Parliamentary Standing Committee in 2014 before the new law was passed in January 2015.

Over the years, HAQ is called upon to develop training materials and also train judicial officers, police and other functionaries in the JJ system.

In April 2013, HAQ organised an international colloquium on Juvenile Justice, the first on this subject in India. The participants included experts from Africa, Europe, Australia, United States of America, South East Asia and South Asia. (The conference report is available on www.haqcrc.org/publications/international-colloquium-juvenile-justice-report).

At the international level, HAQ is a member of the IJJO-Asia Pacific, was represented on the Scientific Committee of the 6th IJJO conference in Brussels in December 2014 and the Thematic Committee of the World Congress on Juvenile Justice in 2015. HAQ has been part of the expert committees for the drafting of the UN Model Law on Juvenile Justice and the "Joint Report on Prevention of and Responses to Violence against Children within the Juvenile Justice System", presented at the Human Rights Council in 2012.

Learning- How to intervene in cases of CICL through Counselling

Based on our experiences of dealing with children in conflict with law we find that during sessions with such children we should concentrate on:

- Getting an idea of the child's emotional reality with an attempt made to find the congruence or disparity between the child's stated reality and the expressions and the demeanours and the verbal slips which could tell us about his/her phenomenological reality.
- Getting a sense of the child's routine, interests, aspirations and how they were earlier and if they have changed in the aftermath of the trauma/ event.
- Crosschecking some of the details we received from the family members and/or any other person to get a broader idea of things as they stand.
- Taking into account the fact that rapport is formed over time, which means that it becomes imperative that we allow the child to tell his/her initial story till he/she trusts us to give us some more details about himself/herself, his/her fantasies and his/her life. Creating a comfortable environment for the child by making an adequate rapport and by making a genuine attempt to come closer to his reality. Noting the non-verbal behaviour such as the body language, facial expressions, predominant emotions such as fear, anxiety, restlessness etc.
- In order to get a clearer sense of a particular event, we could hypothesize before hand and then ask detailed questions related to a particular event/events.
- Perhaps also look into the gaps in the story as they emerged this time, identify them and go back to them the next time wanting to acquire greater clarification around those issues.
- Explore the child's familial reality, his/her relations with his mother, father, and siblings; if he/she has any friends, what do they do/talk about? How the parental figures are represented in his/her head? i.e. how does he/she view them? What are the child's perceptions of them and his/her understanding of how they see him/her?
- Try and explore when does the child have arguments with the family or friends and about what issues? What is the difference between his projected image of his/her self and the reality as we understand it?
- Are there any bruises on the child? How has his/her health been? Are there signs of alcohol/drug use? Is he/she unkempt in his/her appearance?
- What is his/her predominant emotion? Are there other, more fleeting emotions which point to a different reality, which represent the child's reality as it stands?
- Without being too insensitive, inquire about the said event.
- Get a clear sense of the child's thinking about what happened vis-à-vis the event and what rationalizations/defences he/she is presenting to himself/herself? Often when he/she talks about what a significant other said to him/her, we need to keep in mind that it could be the voice of the internalized imago as represented in the child's internal reality which may/may not be the real other. We need to keep on exploring to get a real, deeper understanding of the same.
- Understand that the experiences do vary and it is not for us to judge the child but try and understand as to where he/she is coming from without condoning his offence yet our work does not involve a lopsided view of things and we need to balance things quite actively in our dealings with the children.
- Get a holistic understanding of the child's reality and help him/her address the problems/issues which hinder a fuller development and lead to a pattern of causing and/or suffering trauma which keeps on being acted out time and again.

Based on what the above information about the child one could:

- Get closer to the self of the person as the self is determined by his/her familial/social/sexual/emotional/physical/social-cultural/cognitive/internal and external milieus and then to help the individuals dealing with him/her to understand the same so that when decisions are being made about his/her placement, social rehabilitation and reintegration, a proper, tailor made program can be formulated which caters to the child's interests and way of being and is not too removed from the needs and reality of the child.
- Try linking up the child with other organizations and resources after having come to a better understanding of the child's needs and aspirations and the lack of opportunities he/she could have faced and work towards bridging this gap
- Help the family understand the child's needs and personality better and to see how both the family and the child feed into each other's conflicts and issues, in order to enable them to understand these said patterns which can then be then looked at in a different way if not altogether addressed.
- Having formed a fuller understanding of the child's reality and the circumstances which propelled him/her to reach the system, actively work towards communicating this to the Juvenile Justice Board and in some cases the Child Welfare Committee or the Welfare officer/Probation officer or the Superintendent to try and help them form a comprehensive and deeper understanding of the child and not just reduce him/her to a repository of a particular pattern of behaviour and nothing beyond that.
- On realising that the child who has committed some sort of an offence is actually a child in need of care and protection given his/her circumstances work towards addressing this if the possibility exists. The best way is to encourage the Board to declare the child as one who needs care and protection and order that he/she be produced before the Child Welfare Committee

Way Forward

Children who have been in conflict with law are brought before the juvenile justice system. The basic philosophy behind the creation of a separate Juvenile Justice System is to ensure their reform and re-integration into society. This is only possible if these children are given appropriate psychological and mental support combined with education, mentorship and training that enables them to be gainfully employed as adults and live with dignity.

In the context of the above, HAQ: Centre for Child Rights wants to work closely with the Corporate Sector to design a joint initiative for the children who are in conflict with law. The objective of such a joint initiative is to provide vocational skills, counselling and mentoring services to the children in the Observation Homes for Boys – I & II, Delhi, while they are inside the institution as also once they are released.