

OPERATIONAL ISSUES IN INSTITUTIONAL TREATMENT AND COMMUNITY-BASED TREATMENT METHODS FOR JUVENILE OFFENDERS IN SRI LANKA

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I. INTRODUCTION

At this time, where great attention is paid regarding children, the time is ripe for the implementation of rehabilitation programmes needed for juveniles who have gone astray. Sri Lanka is a developing country in the Asian region and the reason for the increase in the number of children who get used to wrong deeds & behaviour is due to their involvement in various difficulties which is a problematic situation.

In the legislative enactments, the meaning for “child” is illustrated in many ways. There is some confusion in Sri Lankan Law as to the definition of a “child”. Different laws define a “child” differently.

- The penal code specifies crimes relating to children of the ages of 8, 10, 12, 14, 16, 18.
- The Children and Young Persons Ordinance defines a “child” as a person under 14 years of age, and a “Young Person” as a person between the ages of 14 and 16 (below 16 years—Juveniles)
- Under the Employment Women, Young persons and Children Ordinance, a “child” means a person under 14 years of age, and a “young

person” means a person who is over 14 years but is under 18 years of age.

- According to the children’s charter of Sri Lanka a child means any person under the age of 18.
- In Sri Lanka, several Institutes/ Departments are formed to mediate and take decisions regarding children, where necessary.
 - Courts
 - Department of probation and childcare services
 - Police Department
 - Prison Department
 - Labour Department

A. Juvenile Offenders

The initial steps with a juvenile offender are taken by the Police, the relevant reports are supplied by the Department of Probation and Childcare services. Decisions are taken by the courts and rehabilitation activities are provided by the Department of Probation and Childcare Services. The prison department takes decisions for children whom imprisonment is necessary and where child labour is concerned the Department of Labour offers their services. Due to the 13th amendment of the Constitution, the function of the Probation and Childcare services came under the Provincial Councils. The Law Courts, Police, Labour Department and Prison Department are under the Central Government. Institutional rehabilitation and community based rehabilitation of children are directly under the Provincial Department of Probation and Childcare

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Services. For this reason Institutes are formed on a Provincial basis.

There are four remand homes (separating the males from females) where the children are kept separating them from the adult offenders until they are produced in court.

B. The Objectives of this Report

I would like to discuss the following:

- The lawful oaths pertaining to children in Sri Lanka.
- The present state of the institutional rehabilitation activities.
- The organizing structure and usage of resources of the institutes connected to institutional rehabilitation.
- Problems and issues encountered in the above activities.
- How to implement community based treatment processes to child offenders in Sri Lanka and the institutions connected thereto.
- Problems and issues in that process.

C. The Aims of the Institutional Rehabilitation Activities

The aims of the institutional rehabilitation activities are as follows:

- Mental development of children
- Increase development of professional training opportunities
- Moulding towards good qualities
- To make an individual acceptable to society

Although experienced staff are required for this purpose the dearth of such staff is a main problem. Another problem is that the increase in the number of children is not parallel to the number of institutes. The children who cannot be rehabilitated by the community based system and those others who cannot be rehabilitated in the home

environment due to the gravity of the commitment are directed to institutional training. Children not interested in education show voluntary interest in the professional training units. It should be stated that the main objectives of this institutional rehabilitation training are to train the child offender to a suitable and profitable profession, thereby contribute towards the development of the country. Due to economic deficiency in Sri Lanka the contribution from the family unit, towards family based rehabilitation is less, and as a state, such institutes are maintained with limited financial & human resources. It could be emphasized that the activity of rehabilitation is not an easy task.

II. THE LAW

In this chapter we will consider the law that is applicable to juvenile offenders. The Children's Charter, Sri Lanka's version of the CRC, will not be discussed because it lacks binding authority upon the judiciary.

A. The Children and Young Persons Ordinance (CYPO)

The CYPO. No. 48 of 1939 (as amended) continues to function as the basic law dealing with children.

- It provides for the establishment of juvenile courts; located separately from others in a different building or room, to be presided over by a Magistrate to the hearing of cases involving "juvenile offenders". The proceedings of such courts are not open to the general public.
- To protect the privacy of the child, the CYPO prohibits the publication of reports of any proceedings before a juvenile court, or proceedings involving a child in any other court.

- The CYPO established categories of different “offenders”,
 - (i) “Child”—a person who is under the age of 14 years.
 - (ii) “Young person”—attain the age of 14 but not 16.
 - (iii) “Youthful person”—reach the age of 16 but not 22 years.
- The CYPO specially deals with the detention of the arrestee who comes under the category of “Young Persons”. They are required to be kept separated from adults in police stations and courts.
- The CYPO stipulates several requirements in relation to the proceedings involving children in the juvenile court;
 - (i) The court should explain matters to the child in simple language.
 - (ii) If the offence is an indictable one under the Penal code, the court shall ask the child whether he wishes to be tried by it or a higher court.
 - (iii) The children should be informed that they have the right to consult with their parents or guardians before making the decision.
- The CYPO spells out the punishments and sanctions which can be imposed upon children who face judicial proceedings under its provisions.

A “child” cannot be imprisoned, while “young persons” can be imprisoned only if the court certifies that they are so “unruly” or “depraved” that they cannot be institutionalized.

Alternatives to imprisonment

- (i) An offender under the age of 16—could be sent to a remand home (detained to produce at the Courts) for a period not exceeding one month
- (ii) An offender between the age of 12–16—could be committed to a certified school for a period of 3 years.

B. The Penal Code

The Penal Code of 1883 was amended by the Penal Code (Amendment) Act No: 22 of 1995 which came into force in October 1995. It is the basic (main) legal document which describes the punishment and sanctions for offences. The amendments introduced several new sections relating to offences committed by children (minimum age of criminal responsibility is 8 years).

These are:

- Obscene publications relating to children for the purpose of adoption and custodial rape of girls under the age of 16.
- Cruelty to children (covers ill treatment, neglect, etc.)
- Sexual exploitation of children.

C. Probation of Offenders Ordinance No: 42 of 1944 (Amended in 1947, 1948)

On the matter of probation of “offenders”, this ordinance is applied. It is used as the community based treatment method. This ordinance applies to amend the law relating to the release of offenders on probation and to the supervision of such offenders, and to provide for the establishment and administration of a Probation Service.

D. Youthful Offender (Training Schools) Ordinance. No: 28 of 1939 (amended in 1943, 1944)

This ordinance makes provisions for the establishment of training schools, for the detention, training and reformation of youthful offenders and for purposes connected therewith. Youthful offenders between ages of 16–22 who have been convicted of certain offences and have previous convictions or have violated probation orders.

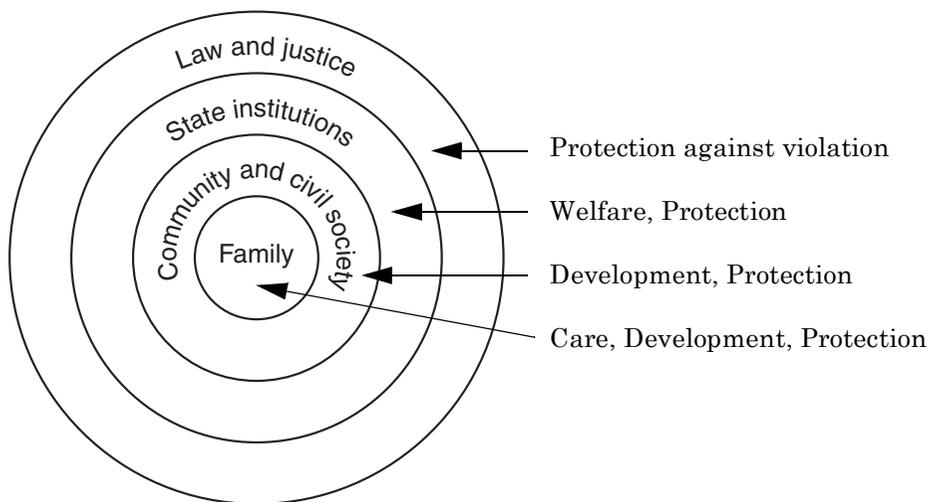
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In terms of judicial proceedings there are two statutes which are important, the Code of Criminal Procedure No: 15 of 1979 (as amended), and the Evidence Ordinance No: 14 1895 (as amended.)

It is of course important to remember that the 1978 Constitution of Sri Lanka accords specific rights which children can enjoy in common with other citizens or other persons.

III. TREATMENT OF JUVENILE OFFENDERS

The institutional treatment and the community based treatment processes are interconnected in the proceedings of rehabilitation of juvenile offenders.



The responsibility of the family unit is to provide care and protection to the children and develop them mentally and physically.

The subject of trial and treatment of juvenile offenders as distinct from adult offenders was first considered in Sri Lanka in the 1920 s. The juvenile justice administration was first introduced in 1939 with the enactment of the Children and Young Persons Ordinance (CYPO) and the Youthful offenders 'Training School' Ordinance (TSYO.)

The CYPO Provides for the establishment at Juvenile Courts, the

supervision of juvenile offenders and the protection of children and young persons.

The TSYO Provides for the establishment of training schools for youthful offenders for their detention, training and rehabilitation.

Juvenile justice administration laws have never been subject to any amendments since their enactment nearly 60 years ago and the need for their review to suit current circumstances has received the attention of the relevant authorities.

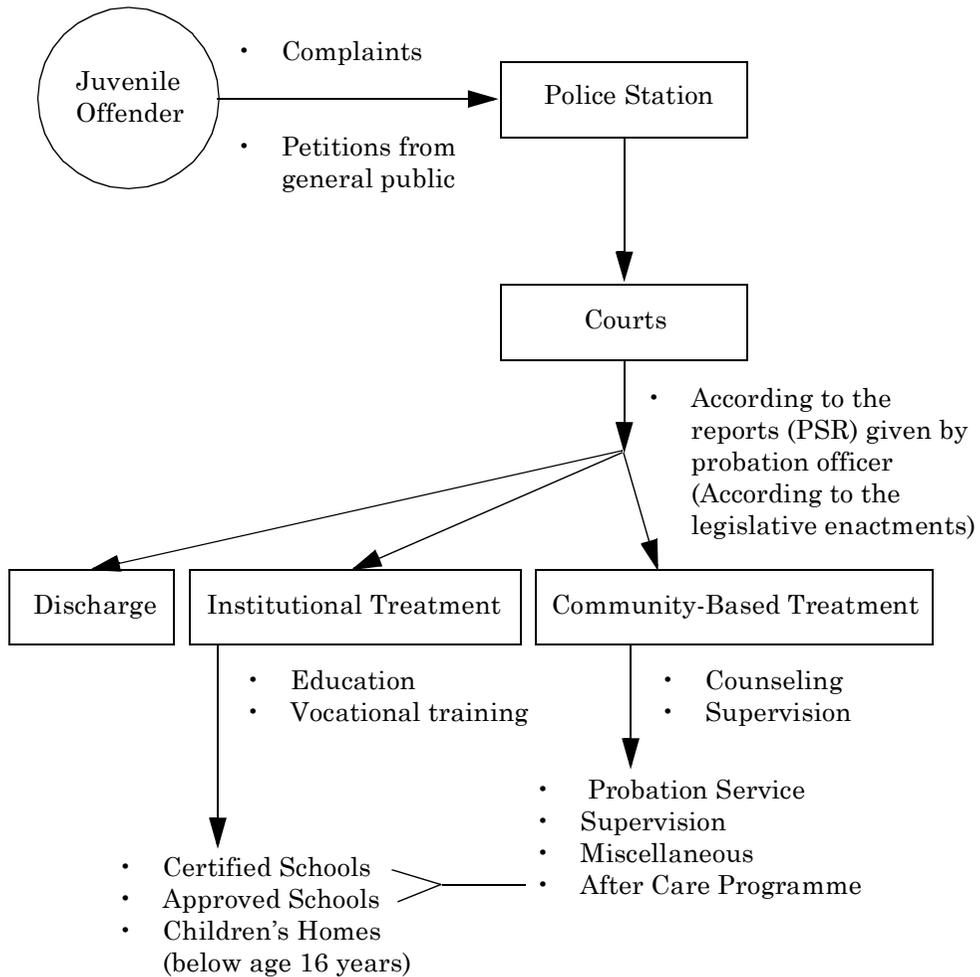
In 1997, the Law Commission of Sri Lanka has identified the following

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general areas as requiring consideration for change:

- a. Terms used to define categories of juveniles.
- b. To ensure the segregation of juveniles from adult detainees at all stages of the legal process.
- c. The classification and conditions of places of detention of juveniles.
- d. Protection for juveniles involved in the legal process.
- e. The need to develop community based treatment for the treatment of juveniles in conflict with the law.

Legal Process for Treatment of Juvenile Offenders



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**IV. INSTITUTIONAL TREATMENT
OF JUVENILE OFFENDERS IN SRI
LANKA**

There are a number of state agencies which are required to play main roles in the workings of the legal process in respect of juveniles:

- The Courts.
- The Department of Probation and Child Care Services (DPCCS).
- The Provincial Departments of Probation and Child Care Services (PDPCCS).
- The Police Department.
- The Prison Department.
- The Labour Department.

Institutional treatment of juvenile offenders is implemented mainly by the Provincial Department of Probation and Child Care Services.

Under both the CYPO and the Probation of Offenders Ordinance, the Department of Probation and Child Care Services effectively became the lead state agency for the protection, care and rehabilitation of children in need of care and protection and the children who came into conflict with the law.

The devolution of powers to the Provincial Councils from the 13th amendment of the constitution and the enactment of the Provincial Council Act No. 42 of 1987 meant that the Provincial Departments of Probation and Child Care Services started functioning as the main agencies for unprotected children. The PDPCCS function under the supervision of the Provincial Commissioners of the PCCS.

A. Institutional Arrangements

There are three categories of state institutions which deal with children who are involved in the legal process.

- Remand Homes
- Detention Homes
- Certified Schools

The Government provided improved institutional care facilities for those who were placed in Remand Homes, Detention Homes and Correctional Institutions. Children in the institutions referred to were provided with both formal education and vocational training during their stay in the centers.

1. Children in Remand Homes (below the age of 16 years)

Table 1

Year	No. of children
1994	1995
1996	1997
1998	1110
1654	1379
1652	1711

There are 3 Remand Homes which are maintained for boys and only one Remand Home for girls.

Boys Remand Homes	2	Western Province
	1	North Central Province
Girls Remand Homes	1	Western Province

Source: The Department of Probation and Child Care Services

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2. Children in Detention Centers

There is only one Detention center meant for both boys and girls from 5 to 16 years of age, which is located in the Southern Province.

Table 2

Year	No. of children
1994	1995
1996	1997
1998	1999
2000	138
165	109
95	141
191	260

Source: The Department of Probation and Child Care Services

3. Correctional Institutions

Four certified schools, (one for girls and three for boys), continue to provide correctional services to children referred to them by courts of law. The number of children admitted during the relevant period is given in Tables 3, 4, 5, and 6.

*Admissions to Certified Schools (year 1995–1999)
(As per race, religion, age and offence committed)*

**Table 3
Per race**

Race*	No. of offenders				
	1995	1996	1997	1998	1999
Sinhalese (s)	180	140	153	176	195
Tamil (T)	36	45	38	26	56
Muslim (M)	21	21	20	17	25
Others (O)	13	1	1	–	–
Total	250	207	212	219	276

*. Population ratio: S (72%), T (20%), M (5%), O (3%)
Population (in 1997): 18,552,000

**Table 4
Per religion**

Religion	No. of offenders				
	1995	1996	1997	1998	1999
Buddhism	176	133	152	174	189
Hinduism	35	45	38	26	54
Islam	21	20	3	17	25
Catholic	18	9	19	2	8
Total	250	207	212	219	276

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Table 5
Per age

Age group	No. of offenders				
	1995	1996	1997	1998	1999
Between 8–12 years	28	17	4	11	37
Between 12–14 years	91	108	79	62	94
Between 14–16 years	107	58	86	115	112
Over 16 years	24	24	43	31	33
Total	250	207	212	219	276

Table 6
Per offence committed

Offence	No. of offenders				
	1995	1996	1997	1998	1999
1. House breaking and theft	88	108	130	84	85
2. Disobedient to parents	49	34	19	49	33
3. Usage of alcohol/drugs and marketing	1	5	3	13	15
4. Care and protection	1	52	33	44	92
5. Suicide	–	–	–	–	–
6. Others	21	8	27	29	51
Total	250	207	212	219	276

4. Children Confined in Remand Homes

Since children remanded through Courts are confined for a short period, the training programmes in these Institutes are also short. To develop the juveniles'

religious and general knowledge, educational programmes and slight vocational training are given. Special staff are available for that purpose.

5. Certified Schools

The four certified schools in Sri Lanka came into being several years back.

Table 7

Certified Schools	Year established	No. of children (year 2000)
1. Makola (Boys)	1959	125
2. Hikkaduwa (Boys)	1951	135
3. Keppetipola (Boys)	1961	60
4. Ranmuthugala (Girls)	1961	160

A child offender in the age group of 12–16 who commits an offence is directed by the Courts to these Certified Schools where activities are conducted for rehabilitation.

The main object is to give a systematic vocational training to the children admitted to Certified Schools. In all Certified Schools, training is provided in motor mechanics, metal work, carpentry, electrical work, sewing, agriculture and TV/radio repairs, etc.

Children who show enthusiasm in education are admitted to surrounding government schools, with all facilities provided.

B. Case Management System

1. Reporting, Maintaining Case Files, Progressing Reviews

Individual case files are maintained for juvenile offenders admitted to the Institutes. The system of maintenance of those files is as follows:

- (i) Filing of court order relevant to the offender
- (ii) Obtaining the Social Report from the probation officer
- (iii) To discover the child's skills, by that report and discussing it with the child
- (iv) Directing children to educational and vocational training, accordingly
- (v) Study the child's behaviour daily and make entries in the files. (The house master, in charge of the children, records the health and mental condition of the children)
- (vi) Every two months a case committee is held, for which the following participate:
 - Provincial Commissioner of Probation and Child Care
 - Probation Officers
 - Principal of the Certified School

- House Masters
 - Juvenile Offenders.
- (vii) Submission of monthly detailed report of relevant institute to the Provincial Commissioner by the Principal of Certified Schools.
- Number of children
 - Children who left after completing vocational training and those who escaped.
 - Other problems.

2. Functions of the Case Committee

- Discuss child's progress.
- Discuss child's short-comings and problems, and find solutions.
- Decisions to be taken regarding children who could be released prior to the prescribed period.
- Decisions to be taken as regards donation of equipment to children who have successfully completed the vocational training.
- Make inquiries of the progress after the After Care Programme.

3. After Care Programme

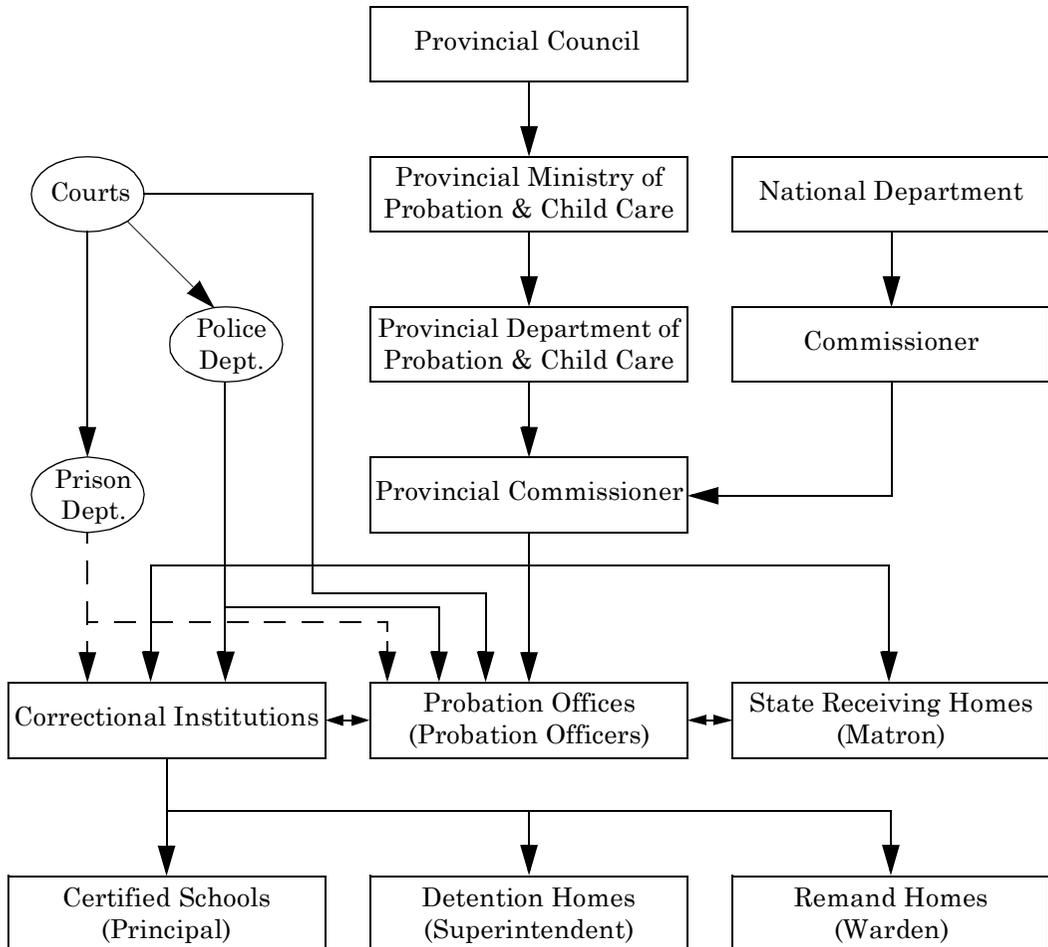
Supervision in the home environment of children who have completed the vocational training and education is the aim. This is performed by the probation officers. Here, inquiries are made of the employment engaged in by the children who have completed vocational training and counseling is given to them and their guardians. The probation officer has to arrange a suitable homely atmosphere and also provide a place of work for juveniles before being sent out from the Institute.

Apart from the foregoing vocational training for the children, excursions, parties/functions, New Year festivals, Vesaks, Christmas, Parents' days etc. are celebrated. Exhibitions are held to display children's creations so as to give the general public an idea of the Institute and its activities.

V. MANAGEMENT OF ORGANIZATIONS

A. Organizational Structure

The Organizational Structure of the Department of Probation and Child Care Services and it's officers can be displayed as follows:



Since this was decentralized to the Provincial Council the activities are organized in accordance with the supervision and direction of the Provincial Commissioner. The Principal is the head of the Correctional

Institution. The management of the other Staff is under him/her. The staff work according to a shift basis—day and night service is performed.

Each Officer's duties are briefly given below:

- Principal—Supervision of the Institute and administration.
- House Masters—Maintenance of "subject files" and study children's progress.
- Vocational Instructors—Provide vocational training to children.
- Graduate Teacher—Conduct classes and counseling for literally weak children.
- Overseers—Safeguard children and provide their needs, directing 'Units'
- Matrons—Preparation of diet charts and supply food accordingly and maintaining records.
- Cooks—Preparation of food.
- Watchers—Provide security to the Institute and children.
- Labourer—Cleaning up the Institute.

Although Officers are categorized as above, the shortage of required staff is the main handicap.

B. Financial Resources

The required financial allocation to these Institutes is provided by the relevant Provincial Councils. Since Provincial Councils function in various ways the financial allocation varies.

The financial allocation to the Keppetipola Certified School in Uva Province is substantial. Although financial allocation is made according to the prepared estimates towards the children's welfare which is not a problem, the financial allocation for the general maintenance work of the Institutes is insufficient (telephone, electricity, water supply and staff payments). The smooth functioning of the Institutes is therefore a problem.

C. Staff Training

Special training is provided for the Institutional Staff in the fields given below:

- (i) Legislative enactments
- (ii) Counseling methods.
- (iii) Care and protection of juveniles.
- (iv) Maintenance of case files.
- (v) Planning children's programme.
- (vi) Knowledge in vocational training.
- (vii) Office management and public relations.

While in-service/on-the-job training is practiced, short-term training programmes (syllabuses) are specially used. Facilities are provided for six months training programme for abused children with activities for rehabilitation.

VI. PROBLEMS AND ISSUES IN INSTITUTIONAL TREATMENT METHODS

When the Institutional treatment method is adopted this department is mainly confronted with numerous problems.

A. Shortage of Institutes

In Sri Lanka, the number of institutes available for the treatment of juvenile offenders amounts to four. Of these, three are for male and one is for female children. Since the yearly intake is about 300, providing them with hostel and building facilities is a problem. Since only one institute is allocated for girls, the number of children admitted to the institute is far in excess of the facilities' capacity. In the Ranmuthugala (Girls') Certified School, the facilities available are for sixty children only. Now 160 are housed there.

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B. Children not Accepted by Guardians after Rehabilitation

Although children, after institutional rehabilitation, should join their family unit, in many instances, it is not possible.

The reasons are:

- (i) In such family units, the financial stability is low. (Inability to provide required facilities to children)
- (ii) Parents are separated and the family environment is detested and unsuitable for children.
- (iii) Children within family units whose mothers are abroad are not rightfully provided protection and welfare.
- (iv) Children detest their home environment due to father's addiction to liquor and cruelty.
- (v) Absence of guardian to accept children, (street urchins, and orphans)

In the above instances we are faced with immense problems.

Since no Institutions are available in Sri Lanka to re-admit such children, they are provided with employment opportunities and the Probation Department has to supervise (guide) them for a lengthy period. With the limited number of Officers it is very difficult to perform such tasks/services.

C. Financial Constraints

Financial constraints are revealed in a myriad of ways;

- from unfilled staff positions to the deterioration of the physical plant.
- from difficulties of obtaining raw materials for the vocational training classes at the Certified Schools.
- to problems in transport because of the unavailability of vehicles.

D. Staffing

There are two aspects to the staffing issues:

- unfilled positions
- the inadequacy of the qualifications of those who hold appointments

E. Congestion

The children's institutions accommodate far greater numbers than those for which they were designed. This creates a host of problems, ranging from the obvious logistical problems of providing for the accommodation out of congestion.

VII. COMMUNITY BASED TREATMENT METHODS

The aim is to rehabilitate the juvenile offenders in a residential atmosphere and society. For this, the Department of Probation and Child Care Services adopts some key methods:

- (i) Probation Service
- (ii) Supervision Orders
- (iii) After-care Programme

For this, Probation of Offenders Ordinance, Children and Young Persons' Ordinance and legislative enactments are adopted. These services are performed by probation officers. These supervision activities are conducted by a Court order.

Juvenile offenders committed to the probation services are supervised for three years, and children on a court order are supervised for 1 or 2 years and for a maximum period of 3 years. During these periods, the concentration of the probation officer is as follows:

- (i) To improve the juvenile offenders' behaviour by counseling.

- (ii) If the child is at school, send him to school again and provide an opportunity to gain education and later make observations (follow-up action)
- (iii) If interest is shown in a career, admit to a Professional Training Institute and have him trained.
- (iv) Provision of equipment after training and guide him/her to an employment opportunity and later follow-up supervision (later observation).
- (iv) By counseling juvenile offenders, their parents and relatives makes the family environment a pleasant one.

A. When Adopting Community-Based Treatment Method (C.B.T)

- a. Maintaining individual case files for juvenile offenders.
 - b. If a school-going child, afford follow-up action and supervision by going to his home and school.
 - c. If employed, meet the employer at the work place and discuss.
 - d. Counseling
 - e. Continue supervision without a break (during the prescribed period and later generally)
- Probation officers pay special attention to these matters.

*Community-Based Treatment for Children on Court Order
(Uva Province only) [Year 2000]*

Table 8

Province	Probation Office	No. of Officers	No. of Juvenile Offenders (CBT)
Uva	Badulla	3	45
	Bandarawela	2	42
	Monaragala	2	58

Taking into consideration these figures it is evident that among the duties, the performance of these activities by the probation officer is not easy.

the number of officers who could handle duties in several languages are very few. Therefore, for this purpose strong dedication and interest is called for, but scarcity of such staff is a problem.

B. Problems and Issues in C.B.T. Method

When adopting C.B.T. method, facts to be considered mainly are the problems arising therefrom which can be described as follows:

1. Shortage of Efficient and Trained Staff

Since Sri Lanka is a multi-national/racial/religious country, it is necessary to design programmes so that all nationalities could be represented. But,

2. Limited Public Participation

After committing an offence, the child is branded by the Society as an offender. The removal of such an impression from society is not easy. Therefore, the provision of employment opportunities, re-admission to school, and gaining public confidence is rather difficult. However, as far as possible, probation officers act as mediators and solve this problem.

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3. Family Environment in Unpleasant State

In families where parents are separated and in families where mothers are abroad, due to the disruptive atmosphere within family units, refining child offenders is difficult. In such instances counseling and mediation enable us to solve this problem to a certain extent.

4. Inadequate Attention from Courts Towards C.B.T. Method

Mostly court orders are given to child offenders to confine them to institutes. Although the probation officers who understand the importance of C.B. and furnish reports for that purpose, children's confinement in institutions under court order has been a problem.

VIII. RECOMMENDATIONS

Today, it is very essential that juvenile offenders are rehabilitated. For reasons such as carelessness of elders, breakdown within family units, mental disorder and want of guidance, children get involved in various activities and thereby the number of offenders increases. Therefore, when performing institutional training or Community Based Treatment, the practical problems arising therefrom have to be sorted out before putting it into operation.

For that purpose the following recommendations can be given:

1. Recruitment of a trained and dedicated staff.
2. Provide them with further training.
3. In order to provide the necessary facilities to children, the state and voluntary organizations should contribute.
4. Provision of suitable salary scales, office facilities, housing facilities and transport facilities to the staff. (To ensure job satisfaction)
5. To re-scrutinize court activities.
6. To revise the legislative enactments to suit the present times.
7. To gain more public participation, their attitudes have to be changed. Therefore, awareness has to be instilled.
8. Provision of the necessary financial allocation by the state.
9. Co-ordination with relevant organizations [court, police, probation department, prisons department].
10. Implementation of policy formulation and planning considering the present necessities.
11. Familiarize with advanced methods such as data collection, preparation (data) and assessment (valuation) of progress.
12. While conducting various pieces of research, a study has to be made to revise and improve rehabilitation methods according to the changing social conditions.

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