FOSTER CARE IN INDIA AND SOUTH ASIA: LEGAL FRAMEWORK, INSTITUTIONAL PRACTICE, AND THE ROAD AHEAD

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ABSTRACT

Foster care occupies a modest but growing space in the child protection systems of India and its South Asian neighbours, positioned as a family-based alternative to institutional care for children who cannot live with their biological parents. This article traces the legal and policy architecture governing foster care in India, from its first statutory recognition under the Juvenile Justice (Care and Protection of Children) Act, 2000, through the Model Guidelines for Foster Care, 2016, to the substantially revised Model Guidelines for Foster Care, 2024, which liberalised eligibility criteria, centralised the application process, and shortened the timeline for conversion of foster care into adoption. It situates the Indian experience within the broader South Asian region, where informal kinship care remains the dominant form of family-based care and where, according to comparative reviews, India and Sri Lanka are the only two countries with foster care expressly recognised in domestic legislation. Drawing on empirical literature, including interview-based research with foster mothers in Mumbai, a regional survey of the mental health of institutional caregivers during the COVID-19 pandemic, and quantitative research on the educational outcomes of orphaned and abandoned children, the article highlights persistent gaps between the formal architecture of foster care and its ground-level implementation, including low public awareness, lengthy application procedures, weak post-placement support, and the absence of systematic family-strengthening efforts aimed at reunification. The article argues that while the 2024 Guidelines mark a genuine improvement, particularly in easing eligibility and consolidating the application process through the Central Adoption Resource Authority, the sustainable expansion of foster care in India requires investment in the professional assessment of children and prospective foster parents, mandatory pre-placement training, and stronger linkages between child protection functionaries and social protection schemes. The article concludes that the future of foster care in India depends less on further guideline revision than on building the administrative capacity needed to operationalise the guidelines already in place.

Keywords: Foster Care; Alternative Care; Child Protection; South Asia; Juvenile Justice Act; Model Guidelines for Foster Care

I. INTRODUCTION

Family is widely regarded, in law and in social policy, as the natural environment for a child's growth and development, and the starting point for any discussion of alternative care is the recognition that children have a right to grow up within a family wherever this is possible.[1] Yet millions of children across South Asia grow up outside the care of their biological parents, separated from them by poverty, migration, illness, death, abandonment, incarceration of a parent, or family breakdown.[2] For most of these children, the region's historical response has been institutional: children's homes, orphanages, and residential facilities of widely varying size, quality, and oversight, run by governments, non-governmental organisations, and faith-based bodies alike.[3] Foster care, understood as the placement of a child in need of care and protection in the domestic environment of an unrelated or extended family other than the child's own, under the supervision of a competent authority, for a defined and temporary period, has existed as a legal category in India for over two decades.[4] It has, however, never displaced institutional care as the default response to child separation, either in India or in the wider South Asian region.

This article examines the legal and policy framework governing foster care in India, situates that framework within the broader South Asian landscape, and draws on the available empirical and practitioner literature to assess how far ground-level practice has kept pace with the law on paper. Foster care must be distinguished at the outset from adoption, since the two are frequently confused in public discourse in India.[5] Foster care is temporary in nature; it does not sever the legal relationship between the child and the biological family, and the child acquires no inheritance rights in relation to the foster family.[6] Adoption, by contrast, effects a permanent legal transplantation of the child into a new family, extinguishing legal ties with the birth family and conferring on the adopted child all the rights, privileges, and responsibilities attached to a

[1]Ratna Saxena & Bhavyaa Bhardwaj, "Policies, Laws and Schemes Supporting Foster Care and Adoption in South Asia," 8(2) Institutionalised Children Explorations and Beyond 193 (2021).
[2]Id.
[3]Catherine Flagothier, Alternative Child Care and Deinstitutionalisation in Asia: Findings of a Desk Review 28-38 (SOS Children's Villages International, June 2016).
[4]Juvenile Justice (Care and Protection of Children) Act, 2015, ss. 2(14) and 44; Tuhina Sharma, "Alternative Care for Children: A Case for Foster Care," 56(16) Economic and Political Weekly (17 April 2021).
[5]Sharma, supra note 4.
[6]Sharma, supra note 4.

biological child.[7] The two processes are governed by distinct legal procedures in India, though the most recent revision of the foster care guidelines has shortened the pathway by which a stable foster placement can, in appropriate cases, be converted into an adoption.[8]

II. THE LEGAL AND POLICY FRAMEWORK IN INDIA

Foster care first received statutory recognition in India under the Juvenile Justice (Care and Protection of Children) Act, 2000, and the framework was substantially reworked with the re-enactment of the law as the Juvenile Justice (Care and Protection of Children) Act, 2015.[9] Under the 2015 Act, a "foster family" means a family found suitable by the District Child Protection Unit to keep children in foster care, and foster care itself is treated as one of several forms of non-institutional, family-based care available to a child in need of care and protection.[10] The Ministry of Women and Child Development issued the first Model Guidelines for Foster Care in 2016 to operationalise these statutory provisions, setting out three principal categories of foster care: kinship care, meaning family-based care provided within the child's extended or joint family; pre-adoption foster care, meaning the placement of a child in the custody of prospective adoptive parents pending a formal adoption order from a competent court; and group foster care, meaning family-like care provided in a registered facility with the aim of giving children in need of care and protection a sense of personalised belonging that larger residential institutions cannot offer.[11]

The trajectory of Indian foster care policy did not begin in 2000. Its deeper roots lie in earlier non-institutional welfare schemes and in the broader child rights architecture that developed through the final decades of the twentieth century. The first non-institutional scheme for children in India was introduced by the state of Maharashtra in 1972 and was subsequently revised and renamed the Bal Sangopan Scheme for non-institutional services.[12] India's ratification of the United Nations Convention on the Rights of the Child in 1992 was followed, over the next two decades, by the National Charter for Children in 2003, the establishment of the National Commission for Protection of Child Rights in 2005, and the introduction of the

[7]Sharma, supra note 4; Juvenile Justice (Care and Protection of Children) Act, 2015.
[8]Satyajeet Mazumdar, "Family First: What Foster Care Needs to Succeed in India," India Development Review (24 September 2024).
[9]Mazumdar, supra note 8.
[10]Juvenile Justice (Care and Protection of Children) Act, 2015, s. 44; Sharma, supra note 4.
[11]Ministry of Women and Child Development, Model Guidelines for Foster Care, 2016, as summarised in Sharma, supra note 4.
[12]Sharma, supra note 4.

Integrated Child Protection Scheme, which laid the institutional foundations, at the district level, for the Child Welfare Committees and District Child Protection Units that now administer foster care across the country.[13]

The Model Guidelines for Foster Care, 2024, superseded the 2016 Guidelines and introduced several significant changes intended to make foster care both more accessible to prospective families and more protective of children's interests.[14] All children in need of care and protection above the age of six, as defined under the 2015 Act, remain eligible for foster placement, and the 2024 Guidelines introduced two new categories of children for special attention: "children with no visitation," referring to children who have not been visited by a parent or relative for more than a year, and "children having unfit guardian," referring to children whose parent or guardian is unwilling, unable, or otherwise unsuitable to continue parenting.[15] These definitions were added specifically to draw attention to children who, in practice, tend to remain in institutional care indefinitely, without any active plan for either reunification or adoption.

Procedurally, the 2024 Guidelines replaced the earlier state-by-state application system, under which practice varied considerably from one state to another, with a centralised online application process administered through the Central Adoption Resource Authority.[16] Eligibility criteria for prospective foster parents were also substantially liberalised. Under the 2016 Guidelines, only married couples could apply to foster a child; the 2024 Guidelines instead permit any individual between the ages of thirty-five and sixty, regardless of marital status, to apply, although single men are permitted to foster only male children while single women may foster a child of either sex.[17] The mandatory waiting period before a foster placement could be converted into an adoption was reduced from five years under the 2016 Guidelines to two years under the 2024 Guidelines, a change intended to address the particular difficulty faced by older children in foster care, who might otherwise age out of eligibility before an adoption could realistically be finalised.[18] The 2024 Guidelines further removed the minimum household income eligibility criterion that had applied to foster families, replacing it with a broader requirement of financial stability, with targeted financial support made

[13]Sharma, supra note 4.
[14]Mazumdar, supra note 8.
[15]Mazumdar, supra note 8.
[16]Mazumdar, supra note 8.
[17]Mazumdar, supra note 8.
[18]Mazumdar, supra note 8.

available, where required, through the Mission Vatsalya scheme.[19] Finally, the 2024 Guidelines require that priority in the selection of a foster family be given, in descending order, first to the child's extended family, then to unrelated families already known to the child, then to unrelated families generally, and only thereafter to group foster care, while also requiring that the child's own consent and wishes be given weight throughout the selection process.[20]

These reforms respond to problems well documented before 2024. A 2018 mapping exercise conducted by the Ministry of Women and Child Development found that, of the roughly 3.7 lakh children then living in child care institutions across India, more than 50,000 children in the "orphan, abandoned, and surrendered" category were between seven and eighteen years of age, precisely the cohort for whom foster care, rather than adoption, offers the most realistic route into a family environment, since data on adoption preferences indicate that a substantial majority of prospective adoptive parents in India seek to adopt children under the age of two.[21] The Supreme Court of India has itself expressed concern about children with parents deemed "unfit" languishing indefinitely in institutional care without being actively considered for either foster placement or the adoption pool, underscoring that the problem identified by the 2024 reforms had already attracted judicial attention.[22]

III. FOSTER CARE ACROSS SOUTH ASIA: A COMPARATIVE PICTURE

India's difficulties in operationalising foster care are not unique to it; they reflect a wider South Asian pattern in which formal, state-supervised foster care remains comparatively underdeveloped relative to informal kinship care.[23] A comparative review of the policies, laws, and schemes supporting foster care and adoption across South Asia, covering Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka, found that children across the region face heightened risk of violence, exploitation, abuse, and neglect when outside parental care, and that the combined pressures of widespread poverty, prolonged armed conflict, recurrent natural disasters, and, more recently, the COVID-19 pandemic, place extreme strain on both families and the limited social services available to support them.[24] A wider desk review of alternative care systems across developing Asia found that, of the eight

[19]Mazumdar, supra note 8.
[20]Mazumdar, supra note 8.
[21]Mazumdar, supra note 8.
[22]Mazumdar, supra note 8.
[23]Saxena & Bhardwaj, supra note 1; Flagothier, supra note 3.
[24]Saxena & Bhardwaj, supra note 1.

South Asian countries surveyed, only India and Sri Lanka include foster care as such in their domestic legislation, and that even where such legal provisions exist, weak implementing systems limit their practical reach on the ground.[25] Elsewhere in the region, foster care survives largely as an informal or small-scale pilot practice rather than as a state-administered system: in Afghanistan's Panjshir province, an informal foster care programme places children in need of care with community members, subject to informal monitoring, while in Nepal small-scale foster care initiatives implemented by local civil society organisations, with the support of international non-governmental partners, formalise individual placements through a three-party agreement between the foster parents, the implementing organisation, and a government child rights officer acting as the state's representative.[26]

What the region shares far more extensively than formal foster care is kinship care, the informal or formally sanctioned placement of children with members of their extended family.[27] Regional household survey data show that in nearly every South Asian country for which comparable data exist, upward of ninety per cent of children living outside parental care and residing within households are cared for by relatives rather than by unrelated caregivers, a pattern rooted in extended-family obligation norms that considerably predate any formal child protection legislation in the region.[28] This tradition is not incidental to modern foster care policy; it is arguably its cultural foundation. Writing on kinship care practices across Asia, one child rights and alternative care specialist has described the practice as a revered communal approach in which extended family members readily assume the role of primary caregiver when biological parents are unable or unavailable to do so, characterising kinship care as an enduring tradition that safeguards cultural heritage while cultivating resilience among children raised within it, rather than as a concept imported from Western child welfare systems.[29] India's own Model Guidelines register this reality by placing kinship care first in the order of priority for placement, ahead of unrelated foster families and group foster care alike.[30] At the same time, the literature cautions that informal kinship care, precisely because it is rarely regulated or actively monitored by the state, exposes children to risks including discrimination between biological and non-biological children within the same household, instances of abuse and

[25]Flagothier, supra note 3, at 26-27.
[26]Flagothier, supra note 3, at 27.
[27]Flagothier, supra note 3, at 23-25.
[28]Flagothier, supra note 3, at 24-25.
[29]Khadijah Madihi, "Kinship Care Practices in Asia: Nurturing Children through Communal Wisdom," ISS International Research Centre Newsletter (Aug.-Sept. 2023).
[30]Mazumdar, supra note 8.

exploitation by kin, and the practical difficulty faced by kinship carers, who are frequently elderly relatives with limited financial means, in adequately meeting the needs of additional children placed in their care.[31]

Regional social protection research adds a further dimension to this comparative picture. Family-friendly policy design across South Asia must reckon with persistently low female labour force participation, a labour market in which more than ninety per cent of workers are engaged informally or under informal employment arrangements, multi-generational household structures, family units built around adolescent parents, and extensive internal and international labour migration that frequently separates children from one or both parents for extended periods.[32] These structural features shape both the demand for alternative care across the region, since migration and insecure informal work are recurring drivers of family separation, and the constraints on building formal, state-supervised foster care systems at scale, since the fiscal and administrative capacity required to register, fund, monitor, and support foster placements is limited in several South Asian states.[33]

IV. GROUND REALITIES: EVIDENCE FROM THE FIELD

Formal policy architecture in India has consistently outpaced ground-level uptake of foster care. The practice has existed in Indian juvenile justice law since 2000, yet it has never gained anything like the traction that policymakers evidently intended, a fact attributable in significant part to low public awareness, which in turn results in relatively few prospective parents coming forward to register as foster carers.[34] Interview-based research with foster mothers working with an adoption and child welfare agency in Mumbai illustrates both the potential and the strain involved in the practice.[35] Women who had fostered well over a hundred children across decades of service described deep and lasting emotional attachments to children who ultimately moved on, whether to adoptive families or back to their own biological families, alongside a persistent social confusion in India regarding the distinction between foster care, adoption, guardianship, and surrogacy.[36] The same research found that foster families absorb real, uncompensated financial and emotional costs, including curtailed social lives, unpaid time

[31]Flagothier, supra note 3, at 25; Madihi, supra note 29.
[32]Jennifer Waidler, Bindu Sunny & Gwyther Rees, Family-Friendly Policies in South Asia (UNICEF Office of Research - Innocenti, September 2021).
[33]Waidler, Sunny & Rees, supra note 32.
[34]Mazumdar, supra note 8.
[35]Sharma, supra note 4.
[36]Sharma, supra note 4.

spent navigating hospital visits and school admissions on a fostered child's behalf, and a form of grief upon a child's departure from the household that receives little formal institutional acknowledgment or structured support, since foster parents are, in effect, expected to anticipate and accept such loss as an inherent feature of the arrangement they have undertaken.[37]

Public health emergencies expose the fragility of alternative care systems across the region more generally. A rapid regional assessment of caregivers working in child care institutions across seven South Asian countries during the COVID-19 pandemic found that a majority of caregivers reported an increased workload, restricted contact with their own families during lockdown periods, and measurable psychological strain, with a meaningful proportion reporting symptoms of stress, reduced self-esteem, and disrupted sleep; the study recommended stronger organisational support structures, including regular supervisory check-ins, buddy systems pairing experienced and less experienced caregivers, and access to structured mental health services, as an integral part of any alternative care system rather than as an afterthought introduced only during a crisis.[38] Although this particular study focused on residential caregivers rather than on foster families specifically, its findings underline a point of direct relevance to foster care policy: the well-being of the adult caregiver, whether in an institution or a foster home, is inseparable from the well-being of the child in that caregiver's care, and any alternative care system that fails to support its caregivers will struggle to deliver good outcomes for the children who depend on them.[39]

Quantitative research on orphaned and abandoned children in India further demonstrates the practical stakes of getting alternative care arrangements right. A study applying hierarchical logistic regression to data collected from orphaned and abandoned children across three Indian states found that caregiver characteristics, including the caregiver's own health and educational attainment, were significantly associated with the child's educational outcomes, and cautioned that children cared for by non-biological caregivers in resource-constrained settings face heightened vulnerability relative to children raised by their own biological parents.[40] This finding lends empirical support to the emphasis, embedded in India's 2024 Guidelines, on

[37]Sharma, supra note 4.
[38]Kiran Modi, Gurneet Kalra, Leena Prasad & Najeebullah Babrakzai, "COVID, Its Impact on the Mental Health of Caregivers in Childcare Institutions of South Asian Countries and Their Coping Techniques," 8(2) Institutionalised Children Explorations and Beyond 223 (2021).
[39]Modi et al., supra note 38.
[40]Aakanksha Sinha, Margaret Lombe, Leia Y. Saltzman, Kathryn Whetten, Rachel Whetten & Positive Outcomes for Orphans Research Team, "Exploring Factors Associated with Educational Outcomes for Orphan and Abandoned Children in India," 3(1) Global Social Welfare: Research, Policy & Practice 23 (2016).

assessing the suitability of prospective foster families before placement rather than treating formal eligibility criteria as a mere administrative formality to be verified and then set aside.[41]

Practitioner commentary on the 2024 Guidelines converges on a fairly consistent set of remaining implementation gaps. Although the Guidelines mandate monthly inspection of foster families by the Child Welfare Committee once a placement has been made, they do not mandate any structured programme of pre-placement training for prospective foster parents, leaving orientation practices inconsistent from one district to another and dependent largely on local initiative.[42] Nor do the Guidelines specify concrete family-strengthening obligations to be discharged by the District Child Protection Unit, even though reunification with a rehabilitated biological family remains the stated ultimate objective of foster care as a temporary arrangement; in practice, family-strengthening work of this kind is frequently left to non-governmental organisations to carry out, rather than being systematically driven by the statutory child protection machinery itself.[43] Post-placement support, including assistance with school admissions where a fostered child lacks the documentation ordinarily required, help in securing identification documents needed for medical care, insurance, and travel, and access to counselling for children who have experienced trauma or prolonged institutionalisation before placement, is likewise recognised in the practitioner literature as necessary but is not comprehensively addressed in the text of the Guidelines themselves, leaving many foster families to navigate these bureaucratic and logistical hurdles largely on their own initiative.[44]

V. CONCLUSION: THE ROAD AHEAD

The trajectory of foster care law in India, running from the Juvenile Justice Act of 2000 through the Model Guidelines of 2016 and on to the Model Guidelines of 2024, demonstrates real and progressive liberalisation: broader eligibility for prospective foster parents, a centralised and considerably simplified application process, a shorter and more realistic timeline for the conversion of stable placements into adoption, and closer statutory attention to the specific circumstances of long-institutionalised and unvisited children.[45] Yet the comparative South Asian picture, together with the empirical and practitioner literature on

[41]Mazumdar, supra note 8.
[42]Mazumdar, supra note 8.
[43]Mazumdar, supra note 8.
[44]Mazumdar, supra note 8.
[45]Mazumdar, supra note 8; Ministry of Women and Child Development, Model Guidelines for Foster Care, 2016 and 2024.

implementation within India itself, both suggest that legal liberalisation, however welcome, is a necessary but insufficient condition for foster care to become a genuine, at-scale alternative to institutional care. Kinship care, rather than formal state-supervised foster care, remains the dominant form of family-based care across the region, sustained principally by deep-rooted cultural norms of extended-family obligation rather than by public administration or state financing.[46] Where formal foster care does exist, as it now does in India in a considerably improved legal form, its practical expansion is constrained less by the text of the guidelines than by the administrative capacity available to identify suitable children, assess and prepare prospective foster families, monitor placements meaningfully once made, and support both children and foster parents through what remains, for everyone concerned, an emotionally demanding arrangement.[47] Strengthening India's foster care system going forward will accordingly require sustained investment in professional social work capacity at the district level, mandatory and standardised pre-placement training for prospective foster parents, systematic family-strengthening protocols genuinely aimed at reunification wherever this is in a child's best interest, and considerably better data collection on both the number of placements made and the outcomes those placements produce for children over time.[48] These are investments that no further redrafting of the guidelines, however well intentioned, can substitute for.

[46]Flagothier, supra note 3; Madihi, supra note 29.
[47]Mazumdar, supra note 8.
[48]Mazumdar, supra note 8.