

Role and Functions of the Court Advisers of the Court for Children in Malaysia: Lessons Learnt from Selected Jurisdictions

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Abstract

Court advisers form an important component in the setup of the Court for Children in Malaysia. They are appointed to assist the magistrate in matters relating to children who are brought before the court. These children include children in need of care and protection, children in need of protection and rehabilitation, children beyond control, children who are trafficked and abducted, and children in conflict with the law. However, this article will only focus on children in conflict with the law. Section 11(2) of the Child Act 2001 provides that the court advisers are responsible to advise the magistrate on the order to be made once the child is found guilty. Not only that, they may also advise the parents or guardian of the child to the extent that they may be considered as the protector of “the welfare component” of the legal process in dealing with a child that has been brought before the Court For Children. However, their functions are not clearly explained as the relevant provision in the Child Act 2001 is too general. Therefore, this article intends to explore the role and functions of the court advisers in Malaysia by analysing the position in Singapore and India. These two countries are amongst the British Commonwealth countries in Asia that have roles similar to court advisers in their Juvenile Justice System. Hence, this article will compare and contrast the role and functions of the court advisers in Malaysia with these two jurisdictions in order to identify the best practices. This would in turn enhance the role of the court advisers in Malaysia and in the long run, safeguard the welfare of the children produced before the Court for Children.

Keywords

Children, Conflict with Law, Court Advisers, Functions, and Comparative

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Introduction

Realising the need to have a special court to handle cases involving children, the Malaysian Government established the Court for Children through the Child Act 2001 (CA 2001). Prior to the enactment of the CA 2001, cases involving children would be heard in the Juvenile Court which was constituted under section 4 of the Juvenile Courts Act 1947 (JCA 1947).¹ The main objective of the JCA 1947 was to treat the young offenders differently from adult criminals in accordance with the said Act.² After the JCA 1947 was repealed, the Court for Children replaced the Juvenile Court. It was timely at that point of time as it was more than 50 years since the Juvenile Court was first introduced, with the aim of making some adjustments to the set-up of the Court due to rapid changes in the society and the Juvenile Justice System. Basically, the Court for Children deals with five types of children, which are, children in need of care and protection, children in need of protection and rehabilitation, children beyond control, children who are trafficked and abducted, and children in conflict with the law. However, for the purposes of this article, the discussion will focus only on children in conflict with the law. Thus, a child who has committed any offence will be brought before the Court for Children as the court may hear all cases involving children, except offences which are punishable with death³ and children who are jointly charged with an adult.⁴ Section 2 of the CA 2001 defines a “child” as a person under the age of eighteen years and for the purpose of the criminal proceedings, a person who has attained the age of criminal responsibility, i.e., between 10 and under the age of 18 years old.

Since the main objective of the Court for Children is different from the normal court, the composition of the former also differs. The Court for Children comprises a magistrate, two court advisers⁵ and a probation officer. These four are the important components of the Court for Children in dealing with children, especially those who are in conflict with the law. The magistrate will be assisted by the court advisers in deciding the order to be made on the child. This is in accordance with section 11(2) of the CA 2001, which provides that:

A Court For Children shall consist of a Magistrate who, in the exercise of his functions as a Court For Children except when making an order under subsection 39(4), 42(4), 84(3) or 86(1), as the case may require, shall be assisted by two advisers to be appointed by the Minister from a panel of persons resident in the State.

The court advisers will assist the magistrate in making an order except in situations that fall under subsection 39(4), 42(4), 84(3) or 86(1).⁶ The need for the magistrate to be assisted by the

¹ This Act was enforced on 1 December 1949 in West Malaysia, 1 October 1972 in Sabah and 6 February 1976 in Sarawak. It was later repealed by the Child Act 2001.

² *Govindarajoo v Registrar of Criminal Appeals* [1974] 1 MLJ 112.

³ Section 11(5) of the Child Act 2001. See *Lim Hang Seoh v Public Prosecutor* [1978] 1 MLJ 68 and *Public Prosecutor v KK* [2007] 6 CLJ 341.

⁴ Section 83(4) of the Child Act 2001.

⁵ One of the court advisers shall be a woman as provided under section 11(3) of the Child Act 2001.

⁶ These sections are about the removal of a child to a place of refuge (section 39(4)), bail (section 84(3)) and the custody of the child not discharged on bail after arrest (section 86(1)). However, section 42(4) of the CA 2001 has been deleted by the Child (Amendment) Act 2016 (Act A1511).

court advisers was aptly explained by the court in the case of *Public Prosecutor v Mohamed Zairi bin Abu Bakar & Anor*⁷ as follows:

The reason behind this is not too difficult to comprehend. The decision to increase the juvenile's period of detention, to transfer him to another home or to confine him to a more rigid and rigorous detention involves serious consideration which any magistrate, especially a young one, might find it difficult to make without the assistance of advisers.

Apart from the fact that some of the magistrates being too young, as mentioned in the above case, they also may have little/no experience at all in dealing with children.⁸ Thus, the assistance of the court advisers in helping the magistrate to make decisions regarding the order to be made upon the child offenders is pertinent.

Court advisers in the court for children

The court advisers are appointed from a panel of persons who reside in the State. For example, for the appointment of court advisers in Terengganu, the candidates must reside therein. This is due to the fact that when they are appointed, they will serve the Court for Children within their community. As part of the community, they may know the child offenders and families personally,⁹ which may help them when advising the magistrate in making the right decision regarding the order. Moreover, they would also be aware of the local issues and sentiments which will be beneficial later when giving their advice.

Nevertheless, there is also a situation where court advisers are appointed to serve the Court for Children outside their residences.¹⁰ It may be in a different district or state. For example, a person who resides in Seremban is appointed to be a court adviser in the Court for Children in Kuala Lumpur. This is not an issue provided that the person is willing and able to serve whenever they are called during their appointment term.

The appointment of a court adviser is made by the Minister in the Prime Minister's Department in charge of the legal affairs, upon the recommendation of the Social Welfare Officer and supported by the magistrate. In certain places, the magistrates will take their own initiatives to interview the candidates before their application is supported. There are specific criteria for the appointment of the court adviser that have been set by the Department of Social Welfare (DSW).¹¹

⁷ [1985] 1 LNS 144.

⁸ Norbani Mohamed Nazeri. (2007). *Welfare: The key to juvenile justice in Malaysia?* [Paper presentation]. The 4th ASLI Conference, Singapore. https://eprints.um.edu.my/13495/1/the_key_to_juvenile.pdf. The Working Committee on the Study and Enactment of Legislation Regulating Social Problems had suggested that a Sessions Court's Judge should chair a Court for Children instead of a magistrate when they were preparing the preliminary draft of the Child Act 2001. This was due to their experience, maturity and seniority to handle the heavy tasks. Please refer Mimi Kamariah Majid. (2002). *Akta Kanak-Kanak 2001: Cadangan Pindaan Undang-Undang 2001 Berkenaan Gejala Sosial*. In Siti Zaharah Jamaluddin Norchaya Talib and Jal Zabdi Mohd Yusoff (Eds.), *Siri Undang-Undang Mimi Kamariah: Akta Kanak-Kanak 2001* [pp. 4-5]. University of Malaya Press. and Farah Nini Dusuki. (2010). *Criminal Law and the Rights of the Child in Malaysia*. In Nisrine Abiad and Farkhanda Zia Mansoor (Eds.), *Criminal Law and the Rights of the Child in Muslim States: A Comparative and Analytical Perspective* [pp. 193]. British Institute of International and Comparative Law.

⁹ Interview with two court advisers from Court for Children in Terengganu on 21 September 2021 and 26 September 2021.

¹⁰ Interview with a court adviser from Court for Children in Kuala Lumpur on 11 October 2021.

¹¹ The DSW is one of agencies under the Ministry of Women, Family and Community Development, which is responsible for screening and selecting the potential candidates to be appointed as a court adviser. See also Norazla Abdul Wahab, Nur Zulfah

These criteria are a basic guideline used as an indicator in the selection of candidates to be appointed as a court adviser. However, it may vary from one state to another.¹²

The criteria required in the appointment of a court adviser are as follows:¹³

1. A Malaysian citizen.
2. Not less than 40 years old and not more than 75 years old.
3. Have academic qualification at least SPM/MCE/SPVM.
4. Fluent in speaking and writing in Bahasa Malaysia/English.
5. Have good health.
6. Not bankrupt.
7. A government or private retiree who is active and knowledgeable in aspects of child development and welfare.
8. A resident in the area where the Court for Children is located.
9. Only a government or private retiree is allowed to apply.
10. Willing to serve in the Court for Children at any time required for a period of three years.
11. Disciplined and highly committed.
12. Have to attend workshop once gazetted as a court adviser.

Based on the criteria provided by the DSW, the appointment of the court advisers focuses mostly on the knowledge and experience in the matters relating to the child's development and welfare. It is important because the main duty of the court advisers is to advise the magistrate on the suitable order to be made in dealing with cases in the Court for Children.¹⁴ Apart from that, the successful candidate may attend training conducted by the DSW. The training may include briefings, talks, and mock trials.¹⁵ The training of the court advisers is conducted by the respective State Social Welfare Departments and it may differ among the states. So far, there is no module provided to the court advisers except a Module for the Court Advisers which was prepared by the DSW.¹⁶ The module was developed as a result of a collaboration of the DSW and the University of Malaya Consultancy Unit. It covers nine modules, such as the justice system in Malaysia, the procedure of the Court for Children, the role of the court advisers and child welfare.

Functions of the court advisers

Md Abdul Salam and Hammad Mohamad Dahalan. (2021). Legal Framework of the Advisor of the Court for Children in Malaysia: An Analysis. *Asian Journal of Law and Governance* 3(1), 101.

¹² Despite the above, the decision to appoint court advisers is in the hands of the Minister. The Department of Social Welfare only provides the list of potential candidates to be appointed. Interview with an officer from the Children Division, Department of Social Welfare, Putrajaya on 3 June 2022.

¹³ The criteria are stated in the Department of Social Welfare's website. Please refer to the Department of Social Welfare, *Kriteria Penasihat Mahkamah*. Retrieved April 9, 2021, from <https://online.jkm.gov.my/keahlian-penasihat-mahkamah>.

¹⁴ See section 11(4) of the Child Act 2001.

¹⁵ Interview with three probation officers from Department of Social Welfare in Kuala Lumpur and Terengganu on 27 September 2021, 29 September 2021 and 7 October 2021.

¹⁶ It should be noted that in certain states, this module is still being used in the training of the court advisers, especially the new ones even though it is outdated.

Basically, the court advisers have two functions in the Court for Children. It is stated in section 11(4) of the CA 2001 as follows:

- (a) To inform and advise the Court For Children with respect to any consideration affecting the order made upon a finding of guilt or other related treatment of any child brought before it; and
- (b) If necessary, to advise the parent or guardian of the child.

The court advisers are not only responsible to advise the court in relation to the order to be made on the child offender but also to advise the parents or guardian of the child if it is needed. Advising the parents or guardian is an additional task placed on the court advisers. According to the previous act, the JCA 1947,¹⁷ the court advisers had to advise the court only with regards to the order to be made upon the child offender. The amendment of the court advisers' functions in the CA 2001 is made to acknowledge the importance of the court advisers' role, so that they can play their role efficiently.¹⁸ Furthermore, the CA 2001 acknowledges that the family, as the basic unit in a society, is very important in the development of a child and has a responsibility towards the child. For example, the Act encourages the involvement of the parents or guardian in the process of rehabilitation of the child, especially those who are in conflict with the law.¹⁹

Before the court advisers can advise the magistrate, the probation officer needs to submit a probation report to the court to be considered. This is based on section 90(13) of the CA 2001. It provides that once the child is found guilty, the court will direct the probation officer to submit the probation report of the child to the court within 30 days. The probation report contains information about the child, such as his/her general conduct, home surroundings, school records and medical history, as well as the recommendation from the probation officer on the appropriate order to deal with the child offender. From the probation report, the court advisers will get the information about the child before they can advise the magistrate as to the suitable order to be made regarding the child offender. The court advisers may give their opinion similar to or different from what has been recommended by the probation officer.

In any decision regarding the order to be imposed on the child offender, the magistrate has to ascertain the opinions of the court advisers and it needs to be recorded.²⁰ The magistrate, however, is not bound to follow the opinions of the advisers, as long as the reasons for dissenting from the opinions are recorded.²¹ The reason for the opinions to be recorded, including the reason for dissenting, is an assurance that the magistrate has taken into consideration the advice of the court advisers before he can make any decision regarding the order to be made upon the child. Basically, the advice given by the court advisers is based on their experience in the matter relating to the children, which is one of the criteria for their appointment. Moreover, it should be noted that the

¹⁷ The Juvenile Courts Act 1947 was repealed by the Child Act 2001 which came into force in August 2002.

¹⁸ Mimi Kamariah Majid. (2002). Akta Kanak-Kanak 2001: Cadangan Pindaan Undang-Undang Berkenaan Gejala Sosial. In Siti Zaharah Jamaluddin, Norchaya Talib, Jal Zabdi Mohd Yusoff (Eds.), *Siri Undang-Undang Mimi Kamariah: Akta Kanak-Kanak 2001* [pp. 6-7]. University of Malaya. and Mimi Kamariah Majid. (2002). Akta Kanak-Kanak 2001: Pendekatan Undang-Undang untuk Menangani Masalah Kanak-kanak dan Remaja di Malaysia. In Siti Zaharah Jamaluddin, Norchaya Talib, Jal Zabdi Mohd Yusoff (Eds.), *Siri Undang-Undang Mimi Kamariah: Akta Kanak-Kanak 2001* [pp. 25-26]. University of Malaya.

¹⁹ For example, section 88 of the Child Act 2001 provides that the parent or guardian is required to attend the proceedings of the child. Failure to do so without any reasonable cause is an offence.

²⁰ Section 90(17) of the Child Act 2001.

²¹ Section 90(18) of the Child Act 2001.

Court for Children's procedure is not the same as a criminal court. Since the objective of the Court for Children is to rehabilitate children who have committed an offence, the procedure is less formal than ordinary criminal courts. Besides, the parties who can be present in court are limited to the parties who are involved only, which includes the magistrate, court advisers, probation officer, child, his/her parent or guardian, witnesses and lawyer.²²

The CA 2001, save for sections 11 and 90, does not discuss further as to how the court advisers are expected to carry out their functions in the court. The acknowledgment of the role of the court advisers in advising the magistrate in the Court for Children is mentioned in *Public Prosecutor v A (A Child)*:²³

Notably, this Court for Children is constituted by a Magistrate who is assisted by two advisers and the functions of the advisers are to advise the Magistrate with respect to any consideration affecting the order made upon a finding of guilt or other relates treatment of the Child brought before the Court and also to advise the parent or guardian of the Child if necessary [s. 11(4), Child Act 2001]: -

In the proceeding, this Court had asked the advice and information from the two advisers and the said advisers respectively confirmed the recommendation given by the probation officer in the form of good bond behaviour order;

The magistrate in this case had asked the advice of the court advisers before she made a decision regarding the order to be made upon the child offender. This shows that the magistrate understands the role played by the court advisers. Failure to follow the requirement as to the composition of a Court For Children, i.e., a magistrate and two court advisers, where one of them is a woman under section 11(2) and (3) of the CA 2001, may cause the proceedings to be declared null and void.²⁴ The reason for the presence of the court advisers throughout the proceedings in the Court for Children is highlighted in *Public Prosecutor v Ayasamy*,²⁵ where Briggs J stated that:

Although the active functions of the advisers only begin after the accused is found guilty, and so becomes liable to punishment or other treatment, they have other passive functions at earlier stages of the proceedings. It is in my view necessary for them to be present during the hearing in order that they should have a full and complete view of the circumstances of the case, since without this they would not be able properly to advise on punishment.

As highlighted at the outset, there are two functions played by the court advisers. The first refers to passive functions i.e., the court advisers merely attend court and listen to the case. The court advisers should not interfere with the case at this stage as it is merely a passive function. This is due to the fact the proceeding is handled by the Judicial Officer i.e., the magistrate, as it involves judicial functions. However, after the finding of guilt and the probation report is tendered, the court advisers will then play an active function, i.e., giving advice to the Court for Children. This is

²² Section 12(3) of the Child Act 2001.

²³ [2019] 5 LNS 107.

²⁴ *Public Prosecutor v Ayasamy* [1955] 1 MLJ 64; *Pendakwa Raya Iwn Muhamad Fikri bin Mahmood* [2018] MLJU 578, para [23]; *Pendakwa Raya v Mohd Zairul Iman Zainon* [2014] 1 LNS 610, para [12].

²⁵ [1955] 1 MLJ 64.

important as the court will make a decision once the court advisers give their advice. Thus, in order to give proper advice to the court, it is important for the court advisers to attend the proceedings from the beginning until the end of the case and not just before the court makes an order regarding the child offender. This is explained in the same case as follows:

“I also think that to give the power of advising on punishment or treatment to an adviser who had not heard the whole of the proceedings would be a clear breach of the principle that justice must be seen to be done. I am of opinion, therefore, that it is not competent in law for a President to sit as a Juvenile Court for purposes of conducting a trial, unless he has the assistance of two advisers throughout the proceedings. (Emphasis added)²⁶”

What is important to note is the quality of advice given by the court advisers. It is doubted whether the court advisers would be able to give appropriate advice on the suitable order, when in the first place they did not hear the evidence personally concerning the circumstances of the case (especially the testimony of the witnesses).²⁷ The court advisers will only appreciate the facts of the case if they attend the whole proceedings. Furthermore, the Court For Children will only be properly constituted if a magistrate is assisted by two advisers, save for the circumstances mentioned in section 11(2) of the CA 2001. Thus, if this requirement is not fulfilled, the implication is that the Court for Children is not legally or properly constituted.

The presence of the court advisers is crucial in assisting the magistrate in the court pertaining to the order to be made upon the child offender, as it will affect the future of the child concerned. Section 91(1) of the CA 2001 provides that the Court for Children once satisfied the child has committed an offence has the power to give one of the orders below:

- (a) Admonish and discharge the child;
- (b) Discharge the child upon his executing a bond to be of good behaviour and to comply with such conditions as may be imposed by the Court;
- (c) Order the child to be placed in the care of a relative or other fit and proper person-
 - (i) For such period to be specified by the Court; and
 - (ii) With such conditions as may be imposed by the Court;
- (d) Order the child to pay a fine, compensation or costs;
- (e) Make a community service order;
- (f) Make a probation order under section 98;
- (g) Order the child to be sent to an approved school or a Henry Gurney School;
- (h) Impose on the child, if he is aged fourteen years and above and the offence is punishable with imprisonment and subject to subsection 96(2), any term of imprisonment which could be awarded by a Sessions Court.

Looking at the range of orders that can be made by the Court for Children under the above section, it is obvious that one needs to fully understand the nature of the case before giving advice as to the relevant or suitable order to be made against the child. Each of the orders has a different effect on child offenders. It is pertinent to note we are dealing with the future of a child who may

²⁶ *Ibid.*

²⁷ Chan, W. C. (1994). Changes to the Juvenile Justice System. *Sing. J. Legal Stud*, 448-456.

need proper guidance and assistance so that he or she will not repeat the same mistake in the future. Thus, it is submitted that the presence of the court advisers throughout the case is important so that they can appreciate the facts of the case and advice as to the appropriate order according to the seriousness of the offence committed.

It is indeed disheartening to note at this juncture that in reality, the functions of the court advisers are not taken seriously, to the extent that there are cases where the magistrate fails to call both the court advisers to assist the court during the trial of the child offenders. In fact, in certain cases, the court advisers are present only on the day the order is delivered and the name of both the court advisers are not recorded.²⁸ In some cases, it is difficult to confirm the presence of a woman adviser.²⁹ These situations should not occur as they will affect the validity of the constitution of the Court For Children due to the failure to observe the requirements under section 11(2) and (3) of the CA 2001. As a result, the child offender could be said to not have gone through a proper trial in the Court.

Court advisers: Lessons from selected jurisdictions

The role similar to the court advisers in Malaysia can be found in other jurisdictions such as Singapore and India. In Singapore, they are known as advisers while in India, they are known as social workers.³⁰ Though they are called by different names, their functions are almost similar, i.e., to assist the Court/Board regarding the order to be made upon the child offenders.

a. Singapore

In Singapore, there is a panel of advisers whose role is to advise a judge in the Youth Court. In determining the appropriate order to be passed for the child or young person³¹ who has committed an offence, the judge shall sit with two advisers from the panel of advisers appointed.³² It is after a written report³³ of the child or the young person is obtained.³⁴ However, the judge may sit with an adviser or alone in circumstances where the court cannot be adjourned provided that it would be inexpedient in the interest of the justice.³⁵ In fact, the judge can handle the cases alone without the assistance of the advisers and it would not affect the cases.

The appointment of the panel of advisers is made by the President of Singapore on the recommendation of the Ministry of Social and Family Development (MSF).³⁶ The panel of advisers

²⁸ Please refer to *Pendakwa Raya v Muhamad Fikri bin Mahmood* [2018] MLJU 578.

²⁹ *Ibid.*

³⁰ The term ‘social workers’ is used in this article referring to the social workers in the Juvenile Justice Board.

³¹ The definition of “child” in Singapore is different from Malaysia and India. Section 2 of the Children and Young Persons Act 2001 provides different definitions for a child and a young person. A “child” means “a person who is below 14 years of age”, while a “young person” means “(a) for the purpose of section 35, 36(1), 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 49, 50, 60(1), 79, 80 or 81, a person who is 14 years of age or older but below 16 years of age; and (b) for the purpose of any other provision in this Act, a person who is 14 years of age or older but below 18 years of age.”

³² Section 38(1) of the Children and Young Persons Act 2001 (Chapter 38).

³³ A written report is similar to the probation report which contains the information about the child such as his background, family history and school record.

³⁴ Section 38(1) of the Children and Young Persons Act 2001 (Chapter 38).

³⁵ *Ibid.*

³⁶ Singapore. Family Justice Courts. *Youth Court*. Retrieved June 17, 2021, from <https://www.familyjusticecourts.gov.sg/what-we-do/youth-courts>.

appointed consists of individuals and professionals in the community with wide experience working with the youths.³⁷ They come from various backgrounds including social workers, educators, mental health professionals and people from the corporate sector.³⁸ Different fields of expertise and experience may give different perspectives when they give their advice and opinion to the Court.

However, there is no clear criteria in the selection of the panel of advisers except for the fact that individuals and professionals have working experience with the youths.³⁹ Moreover, the Children and Young Persons Act 2001 (CYPA 2001)⁴⁰ does not discuss more about the panel of advisers except for the role and functions as stated under section 38(1) and (2) of the CYPA 2001.

Functions

The functions of the panel of advisers are almost similar with the court advisers in Malaysia. Section 38(2) of the CYPA 2001 provides:

The function of the panel of advisers referred to in subsection (1) is to inform and advise the Youth Court with respect to —

- (a) Any matter or consideration which may affect the treatment of any child or young person; or
- (b) Any order that may be made in respect of any child or young person brought before the Youth Court.

In the court, the advisers are only responsible in relating to the order to be made upon the child. They are not responsible to advise the parents or guardian of the child like the court advisers in Malaysia. The functions of the advisers in Singapore are similar to the previous functions of the court advisers as provided in the repealed Malaysian Juvenile Courts Act 1947, where they are responsible to advise the court regarding the order to be made upon the child offender only.

Apart from that, in Singapore, the advisers are only active at the sentencing stage. At that time, the judge and the two advisers will sit together when presiding over a case concerning a child or young person. The judge will only seek their intervention and opinion at the end of the inquiry. There is no prior 'statutory opportunity' to discuss the case with the judge or any other panel of advisers.⁴¹ Thus, before the judge of the Youth Court passes any order in relation to a criminal matter, he needs to discuss the probation report⁴² with two advisers from a panel of advisers in

³⁷ *Ibid.*

³⁸ Nathen, C., Lee, Y., Lim, H., & Gan, R. (2018). Child protection cases engagement, involvement, empowerment. *Singapore Academy of Law Journal*, 30(Special Issue), 676 and Loh, V. H. (2003). Reflections of a Panel Adviser. In Magnus, R., Min, L. H., Mesenas, M. L. & Thean, V. (Eds.), *Rebuilding Lives, Restoring Relationships – Juvenile Justice and the Community*. Times Media Pte Ltd.

³⁹ There are no any basic criteria or qualifications as pre-requisites for the appointment of the advisers in the Act. In addition, there is no requirement that one of the advisers has to be a woman. See Saibaba, A. (2012). Juvenile justice: Critically juxtaposing the models in India and Singapore. Working Paper Series No. 028. Asian Law Institute, Singapore. <https://law1.nus.edu.sg/asli/pdf/WPS028.pdf>. See also section 4(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁴⁰ Chapter 38.

⁴¹ Saibaba, *supra* note 39.

⁴² A probation report is similar to the Malaysian's probation report. It is prepared by a probation officer and contains information about the child and the family. See section 42(9) of the Children and Young Persons Act 2001.

order to determine what is the best for the child.⁴³ The advisers will scrutinise the report, seek clarifications on the evidence and conclusions, and also at the same time, to provide their perspectives on the case.⁴⁴ They may also offer practical plans and solutions to deal with the matter based on their expertise and experience.⁴⁵

b. India

Meanwhile in India, the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) categorises children into two groups, which are, 'Child in Need of Care and Protection' and 'Child in Conflict with Law'. Both groups are handled by two different competent authorities. The Child Welfare Committee (CWC) is responsible for the children in need of care and protection while the Juvenile Justice Board (JJB) handles the children in conflict with the law.⁴⁶ The JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of First Class as a Principal Magistrate with at least three years' experience and two social workers.⁴⁷ One of the social workers shall be a woman.

The appointment of the social workers of the JJB is made by the State Government on the recommendation of the Selection Committee.⁴⁸ The Selection Committee is a committee constituted by the State Government under rule 87 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (JJ Model Rules, 2016).⁴⁹ The State Government may appoint one or more JJBs in each district in India provided that it is made through a notification in the Official Gazette.⁵⁰ The constitution of more than one JJB is needed because of the pendency of cases, area or terrain of the district, population density or any other consideration.⁵¹

To be appointed as a member of the JJB, the social workers must fulfil certain qualifications in the JJ Act, 2015. Section 4(3) of the JJ Act, 2015 provides that:

No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

⁴³ Menon, S. (2015, November 3). *Keynote address: Harnessing the law to benefit our youth*. Conference on At-Risk Youth 2015: Achieving Connecting and Thriving, https://www.supremecourt.gov.sg/Data/Editor/Documents/Achieving_Connecting_and_Thriving_031115.pdf.

⁴⁴ Min, L. H. (2014). *Juvenile Justice: Where Rehabilitation Takes Centre Stage*. Academy Publishing, 42.

⁴⁵ *Ibid.* See also Loh, *supra* note 38, at 152.

⁴⁶ In India, under the Juvenile Justice (Care and Protection of Children) Act, 2015, a "child" is defined as a person who is under the age of 18 years old. However, any child who is 16 years old and above and has committed a heinous offence can be tried as an adult in the Children's Court.

⁴⁷ Section 4(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁴⁸ Rule 4(2) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

⁴⁹ The Committee consists of a retired judge of the High Court as the Chairperson, a member secretary and five other members. Please refer to Rule 87 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

⁵⁰ Section 4(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Rule 3 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. For example, in Delhi, there are three JJBs. Please refer to Government of N.C.T of Delhi. Department of Women and Child Development. *List of Juvenile Justice Boards*. Retrieved June 5, 2021, from <http://wcd.delhigovt.nic.in/wps/wcm/connect/doi/wcd/wcd/Home/Contact+Us/Juvenile+Justice+Board>.

⁵¹ Rule 6(7) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

However, priority is given to those who have a basic legal background since ‘social welfare’ expertise may be gained through experience by time.⁵² Apart from having working experience with children for at least seven years or professional practice in the area mentioned in the section, he or she must not be less than 35 years old to be appointed as a social worker.⁵³ Not only that, the appointed social workers, including the Principal Magistrate of the JJB, need to undergo induction training and sensitisation provided by the State Government within a period of sixty days from the date the appointment is made.⁵⁴ It focuses on the care, protection, rehabilitation, legal provisions and justice for children.⁵⁵

In the selection of the social workers, section 4(4) of the JJ Act, 2015 provides:

- (4) No person shall be eligible for selection as a member of the Board, if he—
- (i) Has any past record of violation of human rights or child rights;
 - (ii) Has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
 - (iii) Has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
 - (iv) Has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

No person is eligible to be appointed as social workers unless he/she is free from any of the past records as the above-mentioned section. The appointment of the social workers is made for not more than three years from the date of appointment and it is for a maximum of two terms.⁵⁶ The social worker may resign at any time provided that one month’s notice in writing is sent to the State Government.⁵⁷ However, except for the Principal Magistrate, any member of the JJB’s appointment may be terminated after being enquired by the State Government if he/she:⁵⁸

- (i) Has been found guilty of misuse of power vested under this Act; or
- (ii) Fails to attend the proceedings of the Board consecutively for three months without any valid reason; or
- (iii) Fails to attend minimum three-fourths of the sittings in a year; or
- (iv) Becomes ineligible under sub-section (4) during his term as a member.

The vacancy of the post of any member of the JJB due to resignation, termination and death will be filled up by a suitable candidate from the panel of names prepared by the Selection Committee.⁵⁹

⁵² Mukundan, K. A. (2017). *Social Work Intervention in Juvenile Justice*. In Chong, M. D., & Francis, A. p. (Eds.), *Demystifying Criminal Justice Social Work in India*. Sage Publication.

⁵³ Rule 4(3) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

⁵⁴ Section 4(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁵⁵ *Ibid.*

⁵⁶ Rule 5(1) and (2) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

⁵⁷ Rule 5(3) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

⁵⁸ Section 4(7) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁵⁹ Rule 5(4) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Functions

Unlike the advisers in Malaysia and Singapore, the social workers in the JJB have several functions and responsibilities. The functions of the JJB are not limited to those provided in the JJ Act, 2015 but also to those provided in the model rules which are known as the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (JJ Model Rules, 2016).⁶⁰ Section 8(3) of the JJ Act, 2015 provides the functions and responsibilities of the JJB as follows:

- (3) The functions and responsibilities of the Board shall include—
- (a) Ensuring the informed participation of the child and the parent or guardian, in every step of the process;
 - (b) Ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;
 - (c) Ensuring availability of legal aid for the child through the legal services institutions;
 - (d) Wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;
 - (e) Directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;
 - (f) Adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;
 - (g) Transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;
 - (h) Disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;
 - (i) Conducting inquiry for declaring fit persons regarding care of children in conflict with law;

⁶⁰ Section 110(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 empowers the State Governments to make their own rules based on the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 enacted by the Central Government. Unless the State Governments have enacted their own rules, they are bound to follow the JJ Model Rules, 2016 especially in matters relating to the children in need of care and protection and children in conflict with law.

- (j) Conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (k) Order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;
- (l) Order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;
- (m) Conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer that child to an observation home or place of safety, as the case may be; and
- (n) Any other function as may be prescribed.

Meanwhile, rule 7(1) of the JJ Model Rules, 2016 provides for the additional functions of the JJB as follows:

Functions of the board: (1) The Board shall perform the following additional functions, namely:

- (i) Whenever necessary, the Board shall provide a translator or interpreter or special educator who shall be paid not less than Rs.1500 per day and in case of translator, not exceeding Rs.100 per page. For the said purpose, the District Child Protection Unit shall maintain a panel of translators, interpreters and special educators who shall forward the same to the Board, the qualifications of the translator, interpreter and special educator shall be as prescribed under the POCSO Act, 2012 and rules framed thereunder;
- (ii) Wherever required issue rehabilitation card in Form 14 to the child in conflict with law to monitor the progress made by the child;
- (iii) Wherever required, pass appropriate orders for re-admission or continuation of the child in school where the child has been disallowed from continuing his education in a school on account of the pendency of the inquiry or the child having stayed in a Child Care Institution for any length of time;
- (iv) Interact with Boards in other districts to facilitate speedy inquiry and disposal of cases through due process of law, including sending a child for the purpose of an inquiry or rehabilitation to a Board in another district or State;
- (v) Inspect Child Care Institutions for children in conflict with law, issue directions in cases of any noticeable lapses, suggest improvements, seek compliance and recommend suitable action, including against any employee found in dereliction of duty to the District Child Protection Unit;
- (vi) Maintain a suggestion box or grievance redressal box in the premises of the Board at a prominent place to encourage inputs from children and adults alike which shall be operated by the nominee of the Principal Magistrate;

- (vii) Ensure smooth functioning of Children’s Committees in the Child Care Institutions for children in conflict with law, for realising children’s participation in the affairs and management of such Child Care Institutions;
- (viii) Review the Children's suggestion book at least once in a month;
- (ix) Ensure that the Legal cum Probation Officer in the District Child Protection Unit and the State or District Legal Aid Services Authority extends free legal services to a child; and
- (x) Deploy, if necessary, the services of student volunteers or non-governmental organisation volunteers for para-legal and other tasks such as contacting the parents of child in conflict with law and collecting relevant social and rehabilitative information about the child.

As could be observed above, both the Act and Model Rules list out a number of the functions and responsibilities of the Board. Their functions are wide and heavy compared to the advisers in Malaysia and Singapore. They do not merely focus on disposing of the cases concerning children who are brought before them by making the final order only. The JJB also focuses on the pre and post-care of the children’s welfare, like conducting regular inspections of the adults’ jails and residential facilities for children in conflict with the law. It is to protect the best interest of the children and at the same time to ensure that the process of rehabilitation of the children is in line with the preamble of the JJ Act, 2015.

Apart from that, even though the JJB consists of two social workers and the Principal Magistrate, the absence of any of the members will not affect the order made by the JJB as long as there are at least two members, including the Principal Magistrate, at the time of the final disposal of the case or in making an order to transfer the trial of the child to the Children’s Court as provided under section 18(3) of the JJ Act, 2015.⁶¹ The proviso to section 7(3) of the JJ Act, 2015 provides that:

A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings:

Provided that there shall be at least two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under sub-section (3) of section 18.

The presence of at least two members of the JJB is important to ensure the document of the final order to be valid as it has to be signed by them.⁶² In making the final decision, the JJB, including the Principal Magistrate, will sit together. When there are disagreements among the members of the JJB, the opinion of the majority will prevail.⁶³ However, if there is no such majority, the opinion of the Principal Magistrate will prevail.⁶⁴

⁶¹ Section 7(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁶² Mukundan, *supra* note 52.

⁶³ Section 7(4) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁶⁴ *Ibid.*

Similarities and differences

Based on the discussion above, no matter whether the persons are called court advisers, advisers or social workers, the objective of their roles is to assist the court/board. At the same time, they help children, especially those who are in conflict with the law. It is to protect the best interest of the children who have committed offences. Therefore, it is not impossible to enhance the role of the court advisers in Malaysia by looking at the best practices in Singapore and India. This section will look into certain improvements that may be suggested as follows:

a. Minimum knowledge and experience

The criteria in the selection of the court advisers is important. It gives an idea to the candidates what he or she should possess before they can apply for the post. Moreover, based on the criteria given, the public has an idea of the quality of the court adviser that will be appointed. The similarity in the selection among Malaysia, Singapore and India is that the appointment is made from the public who has knowledge and experience in matters relating to children.

Even though the selection of the court advisers requires knowledge and experience, it does not provide the length of experience they should possess in order to make them qualified to be appointed. Singapore also does not provide the minimum experience required for the panel of advisers working with the youths. It merely provides that they are individuals or professionals with wide experience. The interpretation of the word “wide experience” is subjective. In fact, there is no basic criteria or qualifications for the appointment of the panel of advisers that can be referred to.

However, it is different in India. Both the social workers and magistrate are required to have a minimum knowledge and experience relating to the children as provided in the Act and the Model Rules before they can be appointed as JJB’s members. The JJ Act, 2015 clearly states that the social workers need to be actively involved for at least seven years in health, education, or welfare activities pertaining to children or practising professionals with a degree in child psychology, psychiatry, sociology or law. Meanwhile, the Metropolitan Magistrate or Judicial Magistrate of the First Class has to possess at least three years’ experience to be appointed as the Principal Magistrate. The Principal Magistrates are given training by the State Judicial Academy.⁶⁵ The Academy is responsible to develop a training module and training manual for the Principal Magistrates at the state level which covers child psychology, the use of child-friendly procedures and ensuring child-friendly environment, care, protection and rehabilitation of children.⁶⁶ The minimum requirement of the experience of dealing with the children is important as it will ensure only a competent person will be appointed.

b. Age

Age is also one of the factors that have to be considered in the appointment of the adviser. The person that will be appointed as an adviser must be mature enough to handle the cases concerning children, especially those who are in conflict with the law. For example, in Malaysia, the age to be

⁶⁵ Rule 89(6) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

⁶⁶ *Ibid.*

appointed as a court adviser must be between 40 and 75 years old. While in India, a person must be not less than 35 years old to be appointed as a social worker. In Singapore, the age to be appointed as an adviser is not stated. The qualified experience and knowledge about the children along with a mature age will help the advisers in assisting the magistrate/judge in making suitable decisions in the best interest of the children. The age of the advisers is important as they are not only responsible to advise the magistrate/judge but also the children and their parents or guardians. Moreover, giving advice is not easy, especially when it involves the future of a child as it requires an experienced person, especially those who have experienced the same phase of life. The advice from a person who is of the same age as the parents or guardians or younger than them may be taken lightly.

c. Presence of advisers

In Malaysia, the court advisers must attend the proceedings of the child offender from the beginning until the end of the case. The absence of either one of them or both may affect the whole proceedings as they have passive functions and active functions as discussed earlier throughout the proceedings as stated in the case of *Ayasamy*. However, there is an exception for the presence of the court advisers, i.e., when the magistrate makes the order under subsection 39(4), 42(4), 84(3) or 86(1) as provided under section 11(2) of the CA 2001. In these situations, the magistrate may make an order without the presence of the court advisers. This is in contrast with Singapore as the judge of the Youth Court can dispose of the case alone without the assistance of the advisers or only with the presence of one adviser and it will not have any effect on the case.⁶⁷ In fact, the advisers will only be called at the sentencing stage. While in India, the presence of at least one of the social workers together with the Principal Magistrate is needed at the final disposal of the case or to make an order to transfer the trial of the child to the Children's Court. This shows that the court advisers in the Court for Children in Malaysia are tasked with an important role throughout the whole case so that they can fully understand and appreciate the relevant facts and issues in the case. This will ultimately assist them in giving advice to the Magistrate.

d. Women adviser

The gender of the court advisers is important in the constitution of the Court for Children. One of the court advisers must be a woman.⁶⁸ The failure to observe the requirement of a woman adviser as provided under section 11(3) of the CA 2001 may affect the validity of the proceedings.⁶⁹ The same goes for the social workers in India as one of them shall be a woman. But, in Singapore, there

⁶⁷ It is in contrast with the old Children and Young Persons Act where the advisers had to assist the court throughout the proceedings. See Chan, *supra* note 27, at 448-449.

⁶⁸ However, the Court for Children can be formed with the presence of two women advisers if there are no man advisers available at the time, but not *vice versa*. Interview with an officer from the Children Division, Department of Social Welfare, Putrajaya on 3 June 2022. However, it should be noted that the Court For Children should be constituted according to the Child Act 2001, where one of the two court advisers must be a woman.

⁶⁹ See also *Pendakwa Raya v Muhamad Fikri bin Mahmood* [2018] MLJU 578.

is no requirement for one of the advisers to be a woman. It can either be both men and both women.

e. Training

No matter how strict the criteria in the selection of the court advisers are, it needs to be aligned with the training provided for them. It should be noted that not all court advisers appointed have an idea of their roles. In fact, they may never have had the experience of sitting in the Court for Children as they are laymen who are appointed based on their knowledge and experience in matters relating to children. Thus, the training, especially for the newly appointed court advisers, is crucial because it will help them to understand their roles and functions and at the same time, to understand how the Court for Children is expected to function. These include the procedure of the court and the effect of each of the orders given under section 91(1) of the CA 2001. The training also will prepare the court advisers with the challenges that they will face in dealing with the vulnerable group of people, which is the children.

In Malaysia, the Social Welfare Department is responsible to provide training to the court advisers, especially the new ones. In certain states, the newly appointed court advisers are only given a briefing upon the appointment. However, the training among the states may be different depending on the respective State Social Welfare Department. In India, social workers have to undergo induction training and sensitisation under the State Government within sixty days from the date the appointment is made. The members of the JJB have to undergo training for a minimum period of fifteen days which includes the introduction of the Act and the rules; orientation on child welfare, care, protection and child rights; induction training of the newly recruited personnel; refresher training courses and skill enhancement programmes, documentation and sharing of good practices; and conferences, seminars and workshops.⁷⁰

f. Functions of the advisers

The functions of the court advisers in Malaysia and advisers in Singapore are almost similar. Their functions are clearly provided in the CA 2001 and CYPA 2001 respectively. They are responsible to advise the court on matters relating to the order to be made upon the child offenders. In addition, the court advisers also have to advise the parents or guardians of the children, if needed. On the other hand, the functions of the social workers are not limited like the court advisers and the advisers. The functions of the social workers include to ensure the informed participation of the child and his parent or guardian, protect the rights of the child throughout the process of apprehending, inquiry, aftercare and rehabilitation, direct the probation officer or social worker⁷¹ to submit a social investigation report of the child before the JJB and dispose of the cases of children in conflict with the law.

⁷⁰ See rule 89(2) and (3) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

⁷¹ Social worker here refers to a social worker who is responsible to prepare a social investigation report of the child to be submitted to the court and not the social worker members of the Juvenile Justice Board. For further reference, please refer to Rule 2(xviii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Table 1: Comparison of advisers in Malaysia, Singapore and India

Countries Comparison	Court Advisers (Malaysia)	Advisers (Singapore)	Social Workers in JJB (India)
(i) Minimum experience	<ul style="list-style-type: none"> ● Active and knowledgeable in aspects of child development and welfare. 	<ul style="list-style-type: none"> ● There is no minimum experience to be appointed as adviser stated. ● Only need to have wide experience working with the children. 	<ul style="list-style-type: none"> ● Actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.
(ii) Age	<ul style="list-style-type: none"> ● Between 40 years old and 75 years old. 	<ul style="list-style-type: none"> ● Not stated. 	<ul style="list-style-type: none"> ● Not less than 35 years old.
(iii) Presence of advisers	<ul style="list-style-type: none"> ● Both the court advisers to be present throughout the proceedings. ● The absence of either one or both will affect the validity of the proceedings. ● However, the magistrate may make an order without the presence of the court advisers in circumstances provided under subsection 39(4), 42(4), 84(3) or 86(1). 	<ul style="list-style-type: none"> ● The judge may hear the cases with the presence of either one of the advisers or alone. ● Their absence would not affect the case. 	<ul style="list-style-type: none"> ● The absence of any of the members will not affect the order made by the JJB as long as there are at least two members which includes the Principal Magistrate at the time of the final disposal case or in making an order to transfer the trial of the child to the Children’s Court.
(iv) Woman adviser	<ul style="list-style-type: none"> ● One of the court advisers must be a woman. 	<ul style="list-style-type: none"> ● There is no requirement for one of the advisers to be a woman. 	<ul style="list-style-type: none"> ● One of the social workers shall be a woman.

(v) Training	<ul style="list-style-type: none"> ● Normally, training is provided only for the newly appointed court advisers. ● The training depends on the Social Welfare Department. Each state may provide different training. 	<ul style="list-style-type: none"> ● Not stated. 	<ul style="list-style-type: none"> ● Need to undergo induction training and sensitisation provided by the State Government within a period of sixty days from the appointment is made. ● The training is held for a minimum period of fifteen days.
(vi) Functions of the advisers	<ul style="list-style-type: none"> ● To assist the magistrate in the matter relating to the order to be made upon the child. ● Also to advise the parents or guardian of the child. 	<ul style="list-style-type: none"> ● To advise the Youth Court with respect to any order that may be made in respect of any child or young person brought before the Youth Court. 	<ul style="list-style-type: none"> ● Not limited to functions provided in the JJ Act, 2015 but also the JJ Model Rules, 2016. ● The functions of the JJB may be different between the states as the State Governments may enact their own rules according to section 110(1) of the JJ Act, 2015.

Source: Author's analysis

Discussion

It can be concluded that the position of the court advisers in Malaysia is better than in Singapore and India in certain aspects. This can be discussed from two perspectives, which are, the presence of court advisers during the child proceedings and the requirement of a woman adviser. In Malaysia, save for the circumstances that fall under section 11(2) of the CA 2001, both the court advisers have to be present throughout the proceedings compared to Singapore and India. The absence of the advisers or social workers would not have any effect on the proceedings. In fact, in Singapore, the judge may hear the cases alone without the assistance of the advisers. As discussed in *Ayasamy's* case previously, the court advisers have to be present throughout the proceedings and not on the day when the order is made, as it will affect the validity of the proceedings. They have passive functions during the earlier stages of the proceedings. However, they begin playing an active part once the child is found guilty.

Apart from that, Malaysia and India require the presence of a woman adviser or social worker in the proceedings. It is believed that the presence of a man and a woman as advisers will balance the decision that will be taken by the court. The Court for Children is like a domestic space for the court advisers to extend their natural parental roles.⁷² Thus, the presence of a woman adviser should be appreciated as the nature of men and women differs. Due to the fact that women have a special capacity as mothers, they are more sensitive to the welfare needs of the children.⁷³ Moreover, women court advisers may understand the children's emotions and feelings better, especially child offenders.⁷⁴ Not only a woman adviser's approach is gentler, but the welfare of the children is also more secure. In fact, the mandatory requirement for a woman adviser as provided in the CA 2001 shows the intention of the legislature to protect the welfare of the children. This is because in the previous Act, i.e., the JCA 1947, it was not mandatory for one of the advisers to be a woman.⁷⁵

Nevertheless, there are a few improvements that can be made by referring to the position in Singapore and India. Firstly, the functions of the court advisers in the Court for Children. As mentioned above, the court advisers have two functions in the court, which are, to advise the court regarding the order to be made upon the child and if necessary, to advise the parent or guardian of the child. The main function of the court advisers' is to advise the court regarding the suitable order to be made upon the child once he or she is found guilty whereas for the other function, the word "if necessary" is left uninterpreted. The word may refer to an emergency situation which requires the court advisers to advise the parent or guardian for the best interest of the child. Perhaps, it should be explained clearly so that the intention of inserting such words is understood better.

Compared to India, the Malaysian court advisers' functions are not as wide as the social workers. The functions of the social workers are exhaustive as this could be observed in the JJ Act, 2015 and the JJ Model Rules, 2016. They are not only responsible to make an order upon the children but also have other related functions, including providing an interpreter or translator, directing the probation officer or social worker to submit a social investigation report and conducting the inspections on the residential facilities for the children in conflict with the law and jails. Hence, the social workers appointed should not hold a full-time job that may prevent them from giving necessary time and attention to their duties.⁷⁶ Moreover, it may cause an overburden of work for the social workers as they have a lot of functions and responsibilities. Even though the functions of the court advisers are not as much as the social workers, it is important for them to understand their role and are able to perform their functions accordingly so that the welfare of the child is safeguarded. Moreover, not all the court advisers appointed are retired persons or self-employed. Some of the court advisers are still working, either in the government or private sectors (i.e., teachers and NGOs).⁷⁷ They must juggle their commitment between their jobs and the role of

⁷² Logan, A. (2005). 'A Suitable Person for Suitable Cases': The Gendering of Juvenile Courts in England, c 1910-39. *Twentieth Century British History*, 16(2), 131-136.

⁷³ Chan, *supra* note 27, at 450.

⁷⁴ Thambapillay, S. (2002). Akta Kanak-Kanak 2001: Kesannya Terhadap Undang-Undang Keluarga. *Journal of Malaysian and Comparative Law*, 29, 16.

⁷⁵ Section 4(2) of the Juvenile Courts Act 1947.

⁷⁶ Rule 88(5)(i) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

⁷⁷ Interview with three probation officers from Department of Social Welfare in Kuala Lumpur on 27 September 2021, 29 September 2021 and 22 October 2021. Also interview with a court adviser from Court For Children in Terengganu on 26 September 2021.

court advisers. Rather than looking at the number of their functions, what is more important is the fact that they understand their role and functions and at the same time, their ability to balance it.

Secondly, is regarding the training of the court advisers. It cannot be denied that the knowledge and experience of the court advisers are needed in assisting the magistrate, especially regarding the order to be made. However, it is not sufficient. Their knowledge and experience need to be aligned with the training of the court advisers. According to Anuradha:⁷⁸

The Magistrate's expert legal knowledge, coupled with the panel advisors training and experience with dealing with problems from a socio-cultural perspective, strives towards strengthening the juvenile justice court.

Normally, the court advisers must undergo training once he or she is appointed. The training may be different among the states depending on the State Social Welfare Department. In certain states, only a briefing is provided for the newly appointed court advisers instead of training. In India, social workers have to attend training for at least fifteen days within a period of sixty days from the date of appointment. This kind of training is considered as intense training. Apart from that, training also is provided to the Principal Magistrates though they have a background in child psychology or child welfare.⁷⁹ The training like in India should be implemented in Malaysia as it is a good practice in elevating the role and functions of the court advisers. It will help the court advisers to understand their role better and at the same time to discover their potential in the court so that they will be able to function efficiently according to the CA 2001. Furthermore, depending on the knowledge and experience of the court advisers alone is not sufficient.

Conclusion

The role of the court advisers has been introduced in the Malaysian Juvenile Justice System since 1947 and continues to exist until today *via* the CA 2001. This shows how their roles are appreciated in safeguarding the welfare of the children who are brought before the court. Furthermore, their functions have been improved compared to the previous Act, i.e., the JCA 1947. However, the enhancement of the court advisers' role could be more than just focusing on their functions only. Another aspect which may help them to carry out their role more effectively could also be examined. Compared to India and Singapore, it is not denied that the role of the court advisers in the Court for Children is satisfactory. Nevertheless, there is always room for improvement, especially regarding their training and presence in the court in the future.

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⁷⁸ Saibaba, supra note 39. See also section 4(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁷⁹ Singh, A. K., & Bhadra, S. (2016). Constructing assessment tool for Juvenile Delinquents in India to assess the efficacy of Interventions based on life skills. *Integrated Journal of Social Sciences*, 3(1), 25. See also section 4(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

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