

CHILD IN NEED OF CARE AND PROTECTION IN INDIA: with special
reference to the Tinsukia District of Assam

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ABSTRACT

Children are the precious asset of every nation and the future of every nation depends upon how they are treated during their early years. If the development of a child is hampered during their childhood due to problems like malnutrition, inadequate social scheme, and inequality in opportunity they will end up as a burden to the society. Therefore, a child's development cannot be secured and protected by framing child-related laws but a change in the approach to impart education is a must. A change in curriculum, structure building professional knowledge, and pedagogical practices is required to imbibe skills, values, behavior, and knowledge about sustainable society. Considering these facts it has become imperative for the state to provide a holistic environment to protect the children who need care and protection.

KEYWORDS: Child, Social responsibility, child in need of care and protection, welfare legislation, reintegration, rehabilitation etc.

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“Having survived their infancy, many children in developing countries, and quite several industrialized countries as well, find themselves in a situation of Neglect, abandonment, and exploitation. The 1990s should see concerted efforts to find more effective and innovative ways to help children already in such circumstances and to tackle the root causes, which created the situation in the first place”...

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A child has been subjected to punishment, protected, endeared, endangered, hurt, and healed at the same time in today’s society or in the past. The protection of a child from all kinds of miseries by society and the victimization of a child in the same society run parallelly. It is a matter of fact that a child is though, protected by various enactments but is the same time due to the impact of various social and environmental conditions there are some persistent and pervasive problems faced by a child in the present, past, or even in the future.

Due to the adverse situations, many times and in most societies have ignored violence against children as a tolerable aberration of certain families' troubles by the trauma of domestic disorganization³ It is, therefore, the foremost duty of a state to protect a child to avoid future criminalization of society as children are the future of the state as lamented by the Hon’ble supreme court in Sheela Borse and another vs Union of India⁴ a child is a national asset.

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In India, there are several legislations relating to the age of a child. As provided

³ “GUPTA, M.C, ‘Child Victims of crimes’ problem and perspective’, Gyan publishing House, New Delhi, 2001, P-58

⁴ AIR 1986 SC 1873

under section 2 (a) of the Immoral Traffic Prevention Act, 1956 of child is a person who has not completed 16 years of age. A “minor” under this act means a person whose age lies between 16 and 18 years. Section 27 of the Code of Criminal Procedure, 1973 states that “JUVENILES” means a person who is under the age of 16 years. As per section of the child labor (Prohibition and Regulation) Act, 1986 (61 of 1986) a child means a person who has not completed his 14 years or such age as may be specified in the Right of Children to free and compulsory education act, 2009 or whichever is more. According to the Convention on the Rights of the Child, a child means a person male or female who is below 18 years of age.⁵ The constitution of India declared a child as a person under 14 years of age.⁶ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.⁷ declares the provisions to be implemented for the various categories of children under 18 years of age.⁸ To provide the mandate of equal rights for children 7 (Article 15 (3) of the Indian constitution) and also ensure its obligation as a signatory to the United Nations Convention on the Rights of the Child, the United Standard Millennium Rules, 1989 the Hague Convention on Protection of children, to co-operate in Intercountry Adoption, 1993 and other International obligation, the JJ Act was further amended in the year 2021.

The JJ Act of 2015 provides that for the application of the Act to all matters concerning children, they are categorized into –

- 1) Child needs care and protection (hereinafter CNCP)
- 2) Child in conflict of law (hereinafter CCL)

Both the categories need care and protection but their needs are different the child in need of care and protection is given rehabilitation adoption re-integration

⁵ Tripathi and Arora, S.C and Vibha ‘Law relating to women and children, central law publication. Allahabad fourth edition : 2010, Pg – 342

⁶ Article 24 of the Indian Constitution

⁷ The Act is ratified version of the existing Juvenile Justice (Care and protection of Children) Act, 2015 and Implemented on 1st Sep 22

⁸ Section 2(12) of JJ Act, 2015

and restoration and the CCLS are required to be apprehended, detained, persecuted, fined or imprisoned, rehabilitated, and socially reintegrated.

The Juvenile Justice (Care and Protection of Children) Act, 2021 has been empowered to make special provisions for children by following certain principles of policy to secure their childhood and to further provide opportunities and facilities to develop in a healthy environment with freedom and dignity.

Objectives:-

- To study the present scenario of child care in India.
- To study the various provisions under the Juvenile Justice Act, 2021 to provide care and protection to children.
- To know about the challenges faced by a child in the society.
- To study how to ensure the right of Children and especially CNCP and to provide suggestions.

RESEARCH METHODOLOGY:-

The methodology used in this study is doctrinal method of research both primary sources and secondary sources of data have been used to study. Primary sources include the constitution of India, International treaties and instruments, statutes and judgments of various courts. Secondary sources includes book, journal and internet sources.

Review of Literature

During this period the researcher has gone a book by Dr. Krishna Pal Malik, Administration of Juvenile Justice in India(Juvenile in conflict with law) Allahabad Law Agency,1st edition 2012.This book explores importance of child rights and challenges before the stakeholders of administration of juvenile justice in India. The book talks about the role of newly constituted Special Juvenile Police

Unit, Child Welfare Committees, judiciary, probation officers, social workers, institutional istraton care takers, free legal service authority , Non Governmental Organisation etc and their obligation to follow fundamental principles of juvenile justice. The chapter twelve of the book narrates the law applicable to inst institutional care with maintenance of minimum standard in the institutions. The author has prescribed law of rehabilitation and social reintegration applicable to both juvenile and the child in need of care and protection.

The researcher has also gone through Ahmed Siddique, Criminology Penology and Victimology, Eastern Book C ompany, lucknow,17th edition. The author of the book has mentioned certain objects and reasons for the enactment of the Juvenile Justice (care and Protection)Act, 2015, and further discusses about general principle of care and protection, rehabilitation, and social reintegration of a child. The author pens certain suggestions to ensure proper care, protection, development, treatment, and child child-friendly approach for the best interest of the child.

The researcher has gone through Dr.K.P Singh and Chitrangada Singh, A Handbook on Juvenile Justice, The Bright Law House, New Delhi, 2010. This book specifically talks about the promotion of physical, mental, and emotional health among adolescents, through sports, character building, and providing requisite care, counseling, and services for adolescents affected by various problems in society. The author also talks about the development of education programmed to ensure social defense and protection from all forms of social, economic, and sexual exploitation of children.

After going through the existing literature the researcher has observed that though child rights are recognized and protected in every corner of the world, there are various challenges which put hindrances in the development of child rights in various parts of the world.

Discussion Relating to the Juvenile Justice Act:-

India has the most significant diversity of religions and ethnic practices, different topography, and the economic development in various states is also incomprehensive. The largest democracy has the longest population of children. Almost 39% of the total population of India is children.⁹ In 1990, the Govt. of India adopted a National Plan of Action for children with goals for a decade and these action plans were taken respectively for children under 18 years. The Hague Convention on the Protection of Children and International Cooperation in Inter-Country Adoption was signed in 1993 and ratified on June 6, 2003¹⁰.

The Department of Women and Child Development (DWCD) was established in the year 1985 and is the nodal agency to formulate policies and programs, i.e. for enacting, amending legislation, and implementing various provisions for the development of women and children. The Integrated Child Development Scheme (ICDS) was launched in 2010. Which had three schemes for children in need of protection namely –

- The Juvenile Justice program for children needs care and protection as well as conflict with the law.
- The integrated program for street children
- The scheme for assistance to children's homes.

The scheme was however renamed as “Child Protection Services Scheme” and again in 2021-22 as mission Vatsalya. The mission of Vatsalya aspires to secure a healthy and happy childhood for every child in the country.

- The ensure opportunities to enable them to discover their full potential and assist them in flourishing in all respects, in a sustained manner, assist states and UTs in delivering the mandate of the Juvenile Justice Act, 2015, and

⁹ <http://toystory,children In India, 4.4 PM 05/09/2022>

¹⁰ [Indiatime.com http: //m.economicstimes.com](http://m.economicstimes.com)

achieve the Sustainable Development Goal (SDGS)¹¹. Therefore the objectives of the Juvenile Justice Act of 2015 will be fulfilled in the days to come through Mission Vatsalya

As per the Juvenile Justice Act of 2015, a child in need of care and protection is explained in section 2 (14)¹² wherein the CNCs are categorized into 12 clauses. The new Amendment of Act 23 of 2021 has substituted clause (vi) and inserted those children who do not have parents, are abandoned, surrendered, or whose body is willing to take care of these children.

To take proper care of and provide protection to these children the JJ Act of 2000 makes it mandatory to establish one child welfare committee in each district which will act as the final authority to dispose of cases and would also provide for their basic needs and protection of human. They will dispose of cases for the care, protection, treatment development, and rehabilitation of children in need of care and protection.¹³

However, the Act provides to follow certain general principles¹⁴ while implementing the Act. One of the 16 principles mentioned principle of best interest should be implemented as a primary consideration. In Dr. Navtej Singh Vs State of NCT and another¹⁵ the Supreme Court held that all agencies should base their decision in respect of a child on the primary consideration that they are in the best interest of the child.

PROVISION OF REHABILITATION AND REINTEGRATION:

The Juvenile Justice Act of 2015 provides child care home¹⁶ which means children's Homes, shelters, observation homes, special homes, places of safety, specialized Adoption Agency, and fit facilities recognized under this Act for

¹¹ Mission Vatsalya drishitiias.com 5.14 pm 05/09/2022

¹² Section 2(14) of the Juvenile Justice (care and protection of children) Act, 2015 12.29 dt. 07/09/2022

¹³ ibid

¹⁴ sec 3 of the JJ (C and P) of children Act 2015

¹⁵ Indian kanoon.org dt 10/09/22 9.54 am

¹⁶ section 21 of JJ Act, 2015

providing care and protection to children who need such services.

In this regard, the children's homes are established by the state government through voluntary non-governmental organizations in every district or group of districts. It mainly works on the rehabilitation of children in need of care and protection in open shelter homes and foster care the two other ways to rehabilitate a child who needs such protection under foster care a child is by the approval of child care committees for alternative care is the domestic environment of a family, other than the child's biological family¹⁷ A child is given foster care temporarily so that his ongoing needs are met. It ensures a healthy and stable environment where he can overcome trauma and complex feelings.

A sponsorship program is a way to reintegrate a child where the child will be financially benefitted. Where a mother is a widow, divorced or abandoned by family, orphan children living with extended family, or parents are victims of a life-threatening disease or incapacitated due to accident, (section 45 in the Juvenile Justice Act 2015, Indian Laws info.com dt. 07/09/2022).

Supplementary support may be given to the family. The Act also provides such support to children's homes and special homes to meet the medical, nutritional, educational, and other needs of the child.

Aftercare programs can be availed by any child who has completed 18 years of age in a childcare institution. The child is financially supported until he attains 21 years of age. Aftercare program helps a child to re-integrate into the mainstream of society.

In Sampurna Behera Vs Union of India

(Civil Original Jurisdiction through writ petition Civil No. 473 of 2005) The Supreme Court of India, while deciding about children, physically or mentally challenged persons, etc. has issued several directions to comply with the provision under the Juvenile Justice Act.

¹⁷ Sec 30 of JJ Act, 2015

The Supreme Court further impresses upon all the state Governments to establish a Juvenile Justice Board, wherever it is not set up. The S/c urges to all the chief justices of the High Court to oversee the condition of observation homes and the judges may come up with suggestions. The order of the honorable court also directs for quality infrastructure and services to the children's home and mandatory registration of the children's home.

The Supreme Court of India time to time has issued a number of directional for judicial officers, and state Legal services Authorities to discharge their function.

CONCLUSION AND SUGGESTION:

From the discussion, it can be seen that international conventions and agreements have adopted various and sufficient measures to minimize suffering of the children during vulnerable situations as regards to a child. The Constitution of India under articles 14, 15, 21A, 23, 24, etc has various provisions and special provisions. Though the international conventions and agreements are not directly implemented in India under article 253 the conventions and agreements can be adopted after it is legislated and passed in the parliament. As far as the societal aspect of India is concerned, despite globalization and liberalization a mass of people and especially the children folk are fighting from several disadvantages and misery such as broken families, early marriages, unhappy family situations, insecure life, sexual and physical or mental abuse, lack of education to name a few. In many occasions inequality among genders are seen in the middle class sect of the society also. The health of the child be t malnutrition, non availability of vaccines are also a tough concern. Amongst all these a child is far from universal education as they are still bound to work in hazardous conditions by compulsion.

Therefore, the implementation of Government schemes, policies, enactments which favors welfares, care, protection to child is indeed a need in the homogenous society like ours. Rehabilitation of the children who are in actual care and protection should be the concern of the government. There may be implementation

of the following suggestion:

- For rehabilitation of a child the primary concern should be the best interest of the child. Child welfare committees should work proactively work to protect the rights of their concerned districts.
- The concerned governments working towards implementation of programs and policies should work towards the betterment of children.
- The general public should abstain from employing children. Children are employed mostly due to cheap labor and their adaptability in any situations. Such employer who are indulged in child labors should be
- Punished properly and promptly and the district task force should be more expertise in their working to grab the employers.
- Education of children should be monitored effectively. The Anganwadi workers should be given proper trainings to bring each and every child of the locality to the centers. In this regards the grass root health workers should also be educated about proper family planning.
- The implementation of the New Education Policy, 2019 which imbibes the provision of vocational training from class six onwards may be helpful to provide some skill-based training to the children. The state governments should implement this provision properly.
- The District child protection unit works towards awareness of government schemes for the needy and people living in far-flung areas of their concerned district.
- The rehabilitation should be looked into in both institutional and noninstitutional. Government schemes like sponsorship programs, and foster care programs can play an important role in bringing vulnerable children into the mainstream.

BIBLIOGRAPHY:

1. Gupta,M.C, “Child victims of crimes’, Problem and prospective, Gyan Publishing House,New Delhi,2001
2. Tripathi and Arora,S.C and Viva “ law relating to women and children, central Law Publication, Allahabaad fourth edition,2010
3. The Juvenile Justice (care and Protection of children)Act, 2015,professional Book Publishers Delhi
4. Jain,MP,”Indian Constitutional law,”Lexis Nexis , seventh edition,2014
5. Indiatime.com <http://economictimes.com>>India
6. <https://toybank.in>>children in India dt.5/9/2020
7. <https://scpsassam.org>>statutory body dt.7/9/2022
8. Mission Vatsala dristiias.com 5/9/2022
9. Indiankanoon.org dt 10/9/2022