

Critical Analysis of Childcare Institutions in India

Author- Jolly Singh

Xth Semester, B.A.LL.B. (Hons.), Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India

Co- Author- Kanika Tariyal

Xth Semester, B.A.LL.B. (Hons.), Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India

Co- Author- Mr. Manish Bharadwaj

Asst. Professor of Law, Law College Dehradun, Uttarakhand University, Dehradun- 248007, Uttarakhand, India

ABSTRACT

Children are the emblem of what a country is going to be in the coming years and hence the protection and rehabilitation of children is a very important aspect that needs to be discussed and taken care of every now and then. All the 195 countries in the world today are taking initiatives best in their capacity to ensure that the children of their respective countries develop into the capable human resources for the future of their country depends on them only. International conventions, legislations, local laws and various development programmes are being framed and run to ensure the same. In India as well, various laws have been framed both at the central and state level for complete protection and rehabilitation of children other than the development laws. One of them includes the provision of childcare institutions for children to cater the needs of those children who lack proper resources or are in conflict with law. These childcare institutions includes children homes, open shelter home, observation homes and many more established under Juvenile Justice Act, 2015. But a great gap has come to notice with the on paper provisions and on site execution of the same. Corruption has found its home in the sacred deed of protecting and rehabilitating the children as well who are the future of our country ultimately putting the country's future at stake. This paper is an attempt to discuss all the on paper provisions and how its execution is failing on ground level and children are being subject to abuse and exploitation instead of protection and rehabilitation in childcare institutions in India.

INTRODUCTION

"Children are the future of our society" has been always quoted time and again. It is them on whom our future depends. But, 153 million children worldwide are orphans, every 13 second a child dies from the effects of hunger. To overcome all these problems faced by our future assets of the world, the concept of childcare has been introduced.

The Constitution of India through its various provisions ensures the safeguarding of the rights of the children and protects them from other vulnerabilities that they might face. Many international conventions has also been ratified by various countries to as a step forward to

protection and rehabilitation of children. In this article we are generally concerned with the children in need of care and protection. One of the step is childcare and setting up of childcare institutions. According to the Ministry of Women and Child Development's assessment, the country has over 9,500 facilities that house over 3,70,000 children. Here we would be talking about these Child Care Institutions (CCI's) and whether they have been successful or not in providing protection and rehabilitation to children in the right and appropriate manner, how illegal rackets are being run in childcare institutions and what changes are important to cater the void that has been created by the mismanagement, vague implementation of

provision and lack of proper supervision by the concerned authorities to make certain the overall development of the children.

BASIC CONCEPT OF CHILDCARE

Childcare in general refers to the care, supervision, guidance of a child provided by a person other than the child's parents or guardian or by the custodian for a period of more 24 hours on a regular basis. The main aim of these homes is to provide support, education, love and support so that they can groom themselves and after attaining a particular age can go and live in the society like a free bird and can lead a respectable life and provide for their future family. In order to provide the same legislations and conventions has been drafted and signed across the world among various nations to aim at achieving the maximum degree of protection from these scarcity and rehabilitation of children. Likewise India also strives to achieve the same. Major issues related to childcare in India includes malnutrition, poverty, illiteracy, child trafficking, gender inequality and many more. These issues are the reason for both why childcare is to be provided in the first place and from what the child is to be protected as well. Since children are not a complete political, legal entity in true sense and are also physically, mentally and economically defenceless, they remain the minority disadvantaged group and have to face the problems like those mentioned above.

POLICIES IMPLEMENTED BY THE CENTRAL AND STATE GOVERNMENT FOR CHILDCARE

Child rights conventions and policies for the improvement of children and their welfare have been enacted several times. The five-year planning commissions (now known as NITI AAYOG) provide evidence that the Indian government and legislators have always taken child welfare measures into account in order to attain the aims of child protection.

The first five-year plan included provisions for social welfare programmes and policies for children, as well as the physically and mentally impaired (specially-abled children). However, the majority of the responsibility for the working programmes was delegated to self-help organisations and private volunteers. The second and third year program focused on women healthcare and education. The fourth

year plan combined all prior programmes and provided a stronger framework for children's welfare by entrusting the state government with the obligation of establishing elementary schools in rural regions as well as providing secondary and higher education. The 'National Policy for Children' was adopted after the concept of ICDS (Integrated Child Development Scheme) was introduced. The sixth plan was fairly similar to the fourth year plan in that it integrated and extended previously existing policies and programmes while simultaneously launching new policies Establishment of pre-schools in underserved regions, establishment of a voluntary action bureau to investigate and reduce crimes against children and women etc. The UNCRC standards were utilised to create the eighth year plan, which primarily focused on child survival, development, and protection. It launched two national programmes, the first of which was focused on children's health, nutrition, education, water, and other issues, and the second of which was targeted primarily at girls in areas of gender prejudice.

The national strategies for children and girls described in the eighth plan were expanded in the ninth year plan. Various policies and schemes were also introduced during the tenure of this plan to support the policies of the plan, including the Balika Samridhi Yojana in Udisa, crèches and day care centres for children of working/ill mothers, Mid-Day Meals, and A Programme for Juvenile Justice aimed at strengthening the implementation of the Juvenile Justice Act 1986, among others. The tenth five-year plan included a number of different programmes and strategies for child development and care for mothers of children, as well as survival measures. The eleventh and twelfth plans included provisions for child labour and child trafficking for sexual and beggary reasons, as well as preserving the same sex ratio, avoiding child maltreatment, and providing basic services to the poor.

After assessing all the five year plans and schemes launched in accordance with the five year plans, following drawbacks have been found by the researcher-

1. Unrealistic plans- The most serious flaw with Indian plans is that they are based on assumptions that are almost always incorrect.

2. Absence of Pragmatic Approach- a practical viewpoint is lacking. This has been established based on specific beliefs rather than the actual difficulties that the country faces. The aims and dreams expressed in each plan paper are the same. There is little doubt that the majority of time has been spent coining new words and slogans to appeal to the general public rather than addressing the country's myriad serious challenges.

3. Poor implementation—until the Sixth Five-Year Plan, the shortcomings in execution were mostly attributable to poor project design at the outset. It leads to schedule slippages and poor performance. Other issues have been recognised as contributing to the poor execution of plans.

4. Lack of funding and research- We have a lot of goals in our plans. The planners were unconcerned about the fact that we lacked the necessary financial and administrative means to carry out such massive ambitions.

5. Non- coordination- There is also a lack of coordination between the federal and state governments, which is a major cause of plan failure. Furthermore, the private and public sectors are at odds with one another. The working groups are primarily dominated by bureaucrats, despite the fact that the private sector controls a significant portion of the economy.

ANALYSIS OF CHILD CARE INSTITUTIONS (CCI's) UNDER JJ ACT, 2015-

The National Policy for Children 2013 is the well versed attempt of India's commitment to children who are in need of care and protection (CNCP) and children who are in conflict with the law (CCL) in accordance with the Convention on the Rights of the Child. It states that, "The state will try to get the privileges of children briefly or for all time denied of parental consideration, by guaranteeing family and local area based care plans like sponsorship, connection, child care and reception, with systematization being the final retreat keeping in view the wellbeing and quality norm of care and security". The JJ Act, 2015 hence provides for the setting up of institutional care centres for children. According to JJ Act 2015 every state government would set up observation homes

according to the need in every district which should be through governmental or non-governmental organizations but they need to be registered. Further there should be proper arrangements for keeping children's according to their genders, age, physical and mental status.

In case of children that are under some trial, they should not be treated as offenders and should be provided with proper assistance and guidance. The staff should treat them with equal love and care as if they are their own and should make them feel like home and should provide them with proper assistance and guidance so that they can be financially and emotionally self-reliant and should provide them with proper help like education, therapy and psychiatrist so that when they enter society life they will not commit crime. The institution also needs to be mandatorily registered according to the procedure that has been prescribed under the Act within six months after the date of the Act's enactment irrespective of the fact of whether they get any funding or assistance from the federal or state governments. This is the ideal situation that our legislative makers had in their mind while making juvenile justice act 2015 but the reality is far left behind in the real world.

Child care institutions were made with an intention to provide a healthy mind and a healthy body to the children's but they failed in doing so as a survey titled Mapping and Review Exercise of Child Care Institutions was conducted by Ministry of Women and Child Development according to which only 46.7% homes were having enough number of staff to look after the children's and more than 1000 homes were not able to provide dorms to the children.

This act mainly talks about the establishment of observation, safety homes but failed to mention about its regulation. Due to absence of such regulations proper number, qualification of care takers is still unknown which hampers the growth of children's in such home. The JJ Act and Rules 2015 put a focus on aftercare services and proposed a few measures, however there is no clear regulatory structure for monitoring and implementation. Aftercare planning for children should be in place, and the state government should establish an aftercare strategy in conjunction with CCIs and other

stakeholders to provide better care for inmates at CCIs. The biggest drawback of this Act is that it fails to mention the period in which surveys should be conducted of such child care institutions to make sure that they are providing enough facilities and are not misusing the funds allotted to them. Further the sanction mentioned under this Act are not enough to stop corrupt people from misusing these innocent children's, the sanction should be of such effect that they should create deterrent effect on the wrong doers. There are many institutions which are running on paper only and in reality not even a pillar is standing on the ground in its name and no regulatory measure has been provided to prevent that.

ANALYSIS OF ACTIONS IN PURSUANT OF JJ ACT, 2015 BY THE GOVT. -

Regardless of having Over 3, 70,000 children are housed in 9,500 facilities across the world. However, childcare institutions are much of the time treated as the last resort. By marking the regulated consideration if all else fails we are gambling with the satisfaction of commitments that we owe to the children who are living in these institutions and moreover, where would they be if not these child care institutions which are majorly run by the non- profit organisations. The central and state government appoints care takers and officials in child care institutions under JJ Act, 2015 to ensure that the children in these institutions are provided with the best of care and ensuring their rehabilitation and development towards a better and bright future for them. But at the same time it would not be an understatement to quote that the childcare institutions has now become one of the hell holes in the country where children once pushed in renders it next to impossible only to come out without any abuse or exploitation. The children in these childcare institutions are being subjected to sexual abuse, torture, ill-treatment, in addition to being forced to live in deplorable circumstances. Also the funds released by ICPS (Integrated Child Protection Scheme) for childcare facilities are based off on vague data and not the updated one due to lack of regular inspection mentioned under section 54 and supervision of total number of children existing in respective childcare facilities which results in compromised disbursement to meet various essential expenses guaranteed to every child under the Act, 2015. The audit conducted

by NCPCR figured out that arbitrary visits by state examination advisory groups were not completed in 2,837 (39.6%) childcare institutions and 28.4% were not assessed by child welfare committee or JJ board.

Provisions have also been made under Section 46 of the Act ensuring the aftercare and financial aid to the youngsters after they attain 18 years of age so that they can properly amalgamate in the mainstream society and carry on with their life. But this aftercare has mostly remained just in papers and isn't even an area of focus for the officials. Udayan Care, a non-governmental organisation, conducted the research with UNICEF's assistance, Tata Trust and the state government of Delhi, Gujarat, Karnataka, Maharashtra and Rajasthan found out that there are many government functionaries and potential beneficiaries who know nothing about the lawful arrangements available regarding aftercare. Under JJ Act, 2015, care leavers should get a payment during professional preparation, grants for advanced education and monetary guide till the day they are utilized. There ought to be appropriate arrangements and courses of action through the National Skill Development Program for skill training and job placement and different other projects however, report in actuality proclaims that care-leavers were ineffectively taught and prepared during their visit in childcare institutions which are important to set them up to push forward throughout everyday life and become independent. Around 40% were dropouts, whereas only 14% and 13% in Rajasthan and Delhi, respectively, had concentrated past school. Most boys are forced to undergo vocational skill training irrespective of their academic interest and ambition in order to become economically independent so that they can at least secure low- paying jobs to run their livelihood, while on the other hand, for the young girls, rehabilitative technique is utilized wedding them off and disregarding them which frequently prompts aggressive behaviour at home and broken marriages. Care leavers instead should be identified on the basis of minimum qualification and skilled certificate attained rather than through age criteria plus it should be made sure that the basic documents like voter id, bank account handling, aadhar card, etc. are available with them both to boys as well as girls. Tests should be conducted to identify if care leavers are actually physically,

mentally fit to leave and if not should be retained in homes and provided with extra care till they become fit to leave.

The childcare institutions which are majorly run by non- governmental institutions most of the time have strong determination but lack the necessary expertise and workforce. According to JJ Act, 2015, all childcare institutions need to enlist according to the law and at the hour of enrolment the state government should try to record capacity and motivation behind every establishment. When NCPCR commissioned between 2018 and 2020, a social audit project that assessed all institutions, it was found out that out of 7,163 childcare institutions, 2,039 or 28.5% are still not registered with the state government. Those who succeed in getting approval and getting registered for acting as childcare institutions, 38% of them don't have adequate measures to forestall any type of physical and psychological mistreatment of children. Only 52% childcare institutions have adequate number of counsellors, 49% are equipped with critical first line care givers i.e. the house mother and house father. Just 1,883 childcare institutions had sufficient number of child welfare officers, probation officers, case managers and 3,256 had a clinical official or doctor including the 'on standby' specialist.

RECENT CASES OF EXPLOITATION IN CARE HOMES-

Childcare institutions in India have been found in an administrative blind spot after cases of sexual abuse and exploitations of inmates has been reported in various childcare homes across the country. An institution meant to protect children and provide rehabilitation and overall development has turned into the predator's den. A shocking rot in the management of such childcare are constantly being discovered everyday recently and the same has also been reported to the higher officials and apex court. In the case of *Sheela Barse vs. Secretary, Children's Aid Society* 1987 AIR 656, 1987 SCR (1) 870, the Court taking suo motu action after receiving a letter from a reporter detailing complaints regarding the Children's Aid Society's observation houses held that the youngsters should not be forced to stay in the observation home for an extended amount of time. In another case of *Sampurna Behrui vs Union of India & Ors* [writ petition (c) No. 473 of 2005, decided on February 9, 2018] state

governments were accused for non-compliance with the JJ Act, 2015 provisions and drew attention to the appalling circumstances at children's homes in Punjab, Bihar, Maharashtra, and others. The Court ruled that police and civil members of the society be included in the State Child Protection Society and District Child Protection Units. Other recommendations and directions included the monitoring of NCPCR, State Commissions for the Protection of Children's Rights, and the establishment of a Juvenile Justice Board in each district that could work on a daily basis to resolve a large number of cases, as well as a six-month audit to ensure the Juvenile Justice Act's implementation.

Recently, in the rape case at the Muzaffarpur shelter house, 34 out of 42 prisoners residing in Muzaffarpur, Bihar's 'Sewa Sankalp Evam Vikas Samiti' in 2018 matured somewhere in the range of 7 and 17 years were assaulted persistently for a really long time. Brajesh Thakur, head of the state-subsidized NGO was arrested by the police for the same and after additional examination it was likewise figured out that 11 ladies were absent from one more asylum home ran by his NGO. Young girls were supposedly compelled to go through early termination of pregnancy and one was even killed and covered in ground after an argument with the staff.

In an address to Lok Sabha, Minister Smriti Irani informed that as per the latest report by NCPCR, 49 child sexual exploitation and harassment allegations in childcare institutions have been received in four years of 2016- 2020 where Uttar Pradesh had the highest number of instances reported. The state/UT government is in charge of enforcing the Juvenile Justice Act and the central government has constantly been trying issue advisory to them for the actions to be taken to ensure proper execution of the Act and in the event of disturbance to the existence of children and any terrible occurrence of misuse in childcare institutions. While monitoring the rehabilitation of victims of the Muzaffarpur shelter home case the apex court questioned the Central government about the actions being taken by them to ensure a break on reporting of these incidents. Justice Gupta additionally said that auditing should not be limited to gathering measurements yet a functioning assessment of the states of children

in childcare homes when the local government presented a review report led by NCPCR citing that 1,575 youngsters in cover cultivators were casualties of sexual maltreatment.

In another case, two childcare homes recognized as 'Umeed Aman Ghar' for young boys and 'Khushi Rainbow Home' for young girls situated in south Delhi and laid out by the Center for Equity Studies were reserved again in similar fortnight by the police for monetary inconsistencies, cheating, falsification and criminal break of trust after a grumbling was gotten by NCPCR. In the prior matter, they were booked for alleged sexual abuse cases at boys home and at girl's home for taking the children to the anti- CAA protests at Jantar Mantar last year.

STEPS TO BE TAKEN TO ENSURE THAT THE GAPS ARE FULFILLED-

Juvenile Justice Act, 2000 was repealed and 2015 Act was enacted in order to fill the gaps left out in the earlier but what was common and still left undealt with in both the Acts were on the ground execution and stringent provisions to make sure all the provisions are complied without leaving out any scope for misconduct and miss- outs. Recently, number of cases has been reported in the media few of them which has been discussed above relating to children's sexual exploitation in childcare institutions defragmenting the image of these childcare institutions. These reporting are impeding the image of the institutions as a whole and contributing to donors who are unwilling to contribute because of the risk to their reputation. These abuse can be put on a stop to only by creating an environment and system where the abuse and exploitation is unacceptable within the institution and the reporting of the same is to be done to the higher authorities so that strict actions can be taken.

The inmate children would give unfiltered data of what is being provided to them and what is not, provided that it is made sure that the children are not intimidated by the interviewer and are asked about in a stress free environment. This would ensure that assuming an institution meets the fundamental wellbeing results, instructive and professional preparation results, it would consequently fit the bill for specific quantum of ICPS assets for a superior nature of dispensing of offices and preparation

stages. In this manner disbursal of assets can likewise be made straightforward, limiting the debasement. The information gathered can be stayed updated by digitalisation of the different registers kept and maintained under the JJ Act, 2015 as opposed to keeping in paper which is hard to examine and total. This would change how the childcare institutions are supervised by the legal administrators as well as District, State and Central levels.

To make sure that aftercare is provided to care-leavers, preparation should start while they are 14 or 15 years of age in childcare institutions. Since basic education, career awareness, financial literacy are important to be independent and stand ready to amalgamate in the mainstream society after turning 18 years, proper mentoring and counselling should be provided very much in the same manner a parent guides his child in his growing years to be ready for his coming years. Childcare institutions should also be linked with more aftercare institutions to ensure the maximum support to the care-leavers.

CONCLUSION AND SUGGESTIONS –

As examined above, there are regulations and rules in India concerning childcare institutions yet what is the need of the hour is an instrument for stricter execution by the assembly and leaders and then only we can expect a superior spot and life for youngsters in childcare institutions, being a definitive objective of the JJ Act, 2015 and other conventions signed into for protection and rehabilitation of children. There are still thousands of kids can still be spotted roaming on the roads despite of all the running programs. However, detailed list of suggestions can be derived for the above discussed issues:

1. There must be adequate number of childcare institutions in every state with proper trained staff for various classes of homes under the ambit of JJ Act, 2015 and made sure that it is registered so that every child can be taken care of without being neglected due to lack of amenities and human resources with proper monitoring of every childcare institutions and its inmates in it.
2. Child security strategy should be perused to and endorsed by every single staff, the executives or grown-up managing children in conflict with law or children in need of care

and protection. A thorough screening and background check of the persons who would be dealing with these children should also be done to ensure maximum safety and prevention of any kind of child maltreatment and exploitation.

3. Intervention at the state level by the particular legislatures with the assistance of outer organizations should likewise be done to regularize funds, screen exchanges and acquire out straightforwardness the framework.

4. The stakeholders and authorities must conduct regular as well as surprise inspections to ensure all the guidelines are being followed by and no report of violence and exploitation and abuse is reported.

5. Youth clubs and psycho-social centres: Care leavers should have access to professional community support services such as youth clubs and psycho-social centres. NGO-government cooperation should provide psychosocial help to victims of different abuses, complete orphans, HIV-infected and impacted youngsters, or care leavers, among others. For such projects, a standard operating procedure (SOP) might be devised.

Bibliography

Agreements, U. D. (n.d.). Geneva Declaration of the Rights of the Child. *Geneva Declaration of the Rights of the Child*. Retrieved April 18, 2022, from <http://www.un-documents.net/gdrc1924.htm>

Bajpai, A. (2019, January 16). DNA India. *Child care institutions in India are in dire need of reforms*. Retrieved April 16, 2022, from <https://www.dnaindia.com/analysis/column-child-care-institutions-in-india-are-in-dire-need-of-reforms-2708362>

Convention on the Rights of the Child. (n.d.). UNICEF. Retrieved April 16, 2022, from <https://www.unicef.org/child-rights-convention>

hlife, w. h. (n.d.). *Hunger: Facts and figures*. welt hunger hlife. Retrieved April 2022, 15, from <https://www.welthungerhilfe.org/our-work/>

Humanium. (n.d.). *Right to Education: Situation around the world*. Humanium. Retrieved April 16, 2022, from <https://www.humanium.org/en/right-to-education/>

jain, v. (2019, May 1). idr. *Childcare institutions: The need for new approach*. Retrieved from <https://idronline.org/childcare-institutions-the-need-for-a-new-approach/>

Pandit, A. (2020, November 17). 28% child care homes not registered with state govts. *Times of India*. Retrieved April 18, 2022, from <https://timesofindia.indiatimes.com/india/28-child-care-homes-not-registered-with-state-govts/articleshow/79253513.cms>

Pandit, A. (2020, November 17). 28% child care homes not registered with state govts. *The Times of India*. Retrieved April 18, 2022, from <https://timesofindia.indiatimes.com/india/28-child-care-homes-not-registered-with-state-govts/articleshow/79253513.cms>

PTI. (2020, February 7). 49 complaints of sexual exploitation of children in child care institutions in last three years. *New Indian express*. Retrieved April 18, 2022, from <https://www.newindianexpress.com/nation/2020/feb/07/49-complaints-of-sexual-exploitation-of-children-in-child-care-institutions-in-last-three-years-2100364.html>

Rajagopal, K. (2018, August 14). 1,575 children in shelter homes were victims of sexual abuse: Centre to SC. *The Hindu*. Retrieved April 19, 2022, from <https://www.thehindu.com/news/national/what-action-has-been-taken-in-the-cases-of-child-sexual-abuse-sc-asks-centre/article24689378.ece>

village, S. C. (2021). *UN Data on the Plight of Children*. SOS Children's village.

villages, S. C. (n.d.). *UN Data on the plight of children*. SOS Childrens villages. Retrieved April 15, 2022, from <https://www.sos-usa.org/our-impact/focus-areas/advocacy-movement-building/childrens-statistics>

Yadavar, S. (2019, November 16). For thousands in childcare homes, turning 18 is a nightmare. Here's why. *Business Standard*. Retrieved April 18, 2022, from https://www.business-standard.com/article/current-affairs/for-thousands-in-childcare-homes-turning-18-is-a-nightmare-here-s-why-119111601292_1.html