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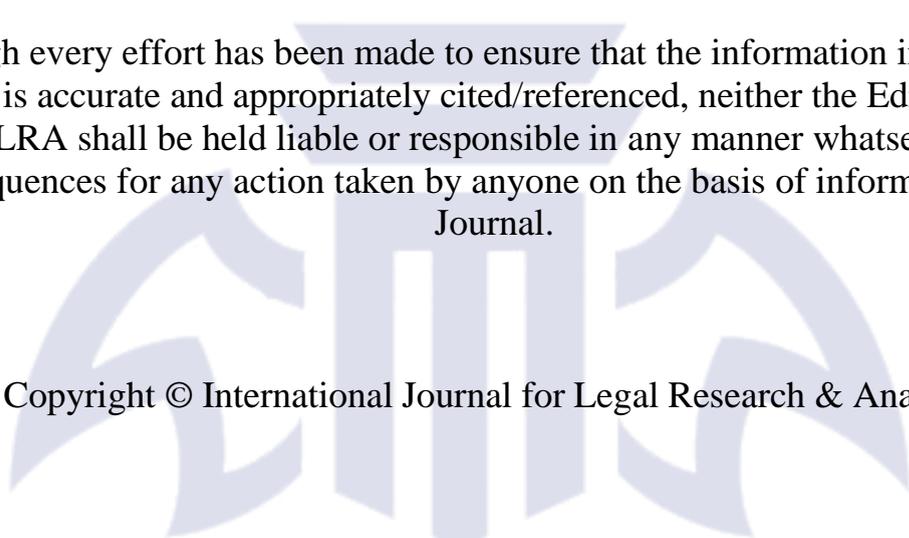
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CHILD RIGHTS PROTECTION – A FICTION

Authored By- Dr.M.Vidhyalakshmi

Introduction

Children constitute over 400 million of the one billion plus population of India. It is indeed an important factor in shaping the future of the nation if childhood can be endowed with the minimum requisites for healthy growth and development. Unfortunately, it is not happening today despite some of the key initiatives of the government and a number of significant interventions of the judiciary and international as well as civil society organizations. Children are the potential beneficiaries who stand to make the greatest gains from the sustainable development. Lack of sensitization, commitment, enforcement mechanism and trained personnel is the major obstacle in providing child rights. There is a need for a comprehensive law on children that integrates the four sets of civil, political, socio-economic and cultural rights of every child- their right to survival, protection, development and protection.

Advocacy is much needed at different levels: the individual, child, parent, family, community, and society. Several child rights have been the result of persistent advocacy campaigns emerging out of the efforts of social action groups at the grass roots, social movements, people's organization, regional and national coalitions.¹

The law, policy and the practice of child welfare has undergone a significant change from the historical perspective. It was an established common law doctrine that the father had absolute rights over his children. After this, the welfare principle was reflected in the dominant ideology of the family. The Indian traditional view of welfare is based on daya, dana, dakshina, bhiksha, ahimsa, samya- bhava, swadharma and tyaga. The essence of which were self-discipline, self-sacrifice and consideration for others. The rights approach is primarily concerned with the issues of social justice, non-discrimination, equity, and empowerment. The rights perspective is embodied in the United Nations Convention on the Rights of the Child, 1989² which is a landmark in International human rights legislation. India has ratified the Convention on the Rights of the Child in December, 1992³.

The word, 'child' has been used in various legislations as a term denoting relationship, as a term indicating capacity, and as a special protection. Underlying these alternative specifications are

¹ Asha Bajpai, "Child Rights in India, Law, Policy and Practice", Oxford University Press, 2nd edition, 2006, p.33.

² UN convention on the Rights of the Child, 1989.

³ Department of Women and Child Development, Ministry of Human Resource Development, Government of India.

very different concepts about the child. These include children as a burden which invokes rights to maintenance and support, regarding children as undergoing temporary disabilities making for rights to special treatment and special discrimination, treating children as especially vulnerable for ensuring rights to protection, recognizing children are resources for the country's development necessitating their nurturing and advancement.

Women And Child Development:

Efforts were made to strengthen the ongoing approach of converging the basic services of health, nutrition and pre-school education towards promoting the holistic development of the young child through Integrated Child Development Scheme (ICDS), which continued to be the major intervention during the Ninth plan for the overall development of the children. The main aim of the scheme was to cater the pre-school children below 6 years and expectant and nursing mothers with a package of services i.e immunization, health check-ups, referral services, supplementary nutrition and health education.

Balika Samridhhi Yojana:

It was launched to extend a special package of girl children belonging to families living below the poverty line to ensure that all girl children enter into schools.

Kishori Shakthi Yojana:

It was introduced as an enriched version of the scheme of adolescent girls being implemented as a part of ICDS to improve the nutritional and health status of girls in the age group of 11-18 years and to equip them with vocational skills so that they can be gainfully engaged.

Udisha: It was launched to strengthen the on-going ICDS training programme into a dynamic, responsive and comprehensive training cum human resources development programme. For the implementation of the UDISHA, World Bank had extended financial assistance to the extent of Rs. 600. 50 crore⁴. The Scheme of Creches and Day Care Centers for children of working and ailing mothers, being a non-expandable scheme, maintained the same level of 12470 creches benefiting about 3.12 children. However to meet the growing demand for more crèches, a National Creche Fund (NCF) was set up in 1994 with a corpus of Rs.19.90 crores.

Right to Family Environment and Adoption:-

Adoption is the act of establishing a person as a parent to one who is not in fact or in law his child. Thus adoption signifies the means by which a status or legal relationship of parent and child between persons who are not so related by nature is established or created.⁵ Adoption is widely

⁴ Supra 2.

⁵ Britannica Inc., "The World Book Encyclopediad", Chicago, Illinois, 1998, Vol I, p.66.

recognized that it can be characterized as an almost worldwide institution with historical roots traceable into antiquity.

The traditional approach for adoption was institutionalization of destitute, neglected, marginalized children and children in especially difficult circumstances. This approach resulted in the child being separated from the family environment. The trend today is towards non-institutional services. During the last few decades, the significant role that a family plays in a child's nurture and his her physical, psychological, mental and social growth, development has been increasingly realized.⁶

Foster care provides temporary substitute care for children. It is different from adoption where the child severs all ties with his own natural parents. In foster care, the child is placed in another family for a short or extended period of time depending on the circumstances. When a family is undergoing a temporary crisis, like the death of a parent or a sudden illness, children experience a lot of stress and tension. They may need to be removed from their natural home to prevent heir neglect. These children can be placed in foster families till the crisis is over. Unwed mothers and the single parents can also be helped through foster care⁷.

Indian Adoption Laws:

The laws concerning adoption and guardianship of children in vogue in India are the Hindu

- i. Adoption and Maintenance Act, 1956,
- ii. The Juvenile Justice (Care and Protection) of Children Act, 2000,
- iii. The Guardian and Wards Act, 1890,
- iv. The Hindu Minority and Guardianship Act, 1956,
- v. The Hindu Succession Act, 1956.

A Protective Environment For Children:

One of the fundamental changes the new India is seeing is a realization that governance is not a matter of welfare but a matter of right. The people are awakening to their rights and where they do not get the service they are demanding it through public interest litigations, socially conscious journalism, and civic forums and so on. Child protection means the creation of a protective environment in the home, school, community and society so that children are protected from any kinds of harm and harmful situations.

While children's rights are human rights, the need to focus on the child and the rights of the

⁶ Article 9 of the United Nations Convention on the Rights of the Child states that the child should be ideally brought up in a family environment that is secure, nurturing and protects its rights.

⁷ Asha Bajpai, "Child Rights in India, Law, Policy and Practice", Oxford University Press, 2nd edition, 2006, p.41.

child specially, has been recognized and world over. The Constitution of India recognizes the vulnerable position of children and their right to protection. Therefore, following the protective discrimination, it guarantees in Article 15 special attention to children through necessary and special laws and policies that safeguard their rights⁸. India's National Policy for children 1974 provides a framework for policy and planning for children.

In 1992, India acceded to the United Nations Convention on the Rights of the Child, committing itself to take measures to ensure the survival, protection, participation, and development of its children⁹. At the World Summit for children in 1990 India adopted the World declaration for Survival, Protection and Development of Children. Additionally India adopted the Optional Protocols on the Involvement of Children in Armed Conflict, Sale of children, Child Prostitution and Child Pornography. It also reaffirmed its commitment to children by adopting the Millennium Development Goals and the objectives of World fit for children.

The Approach to Child Protection:

The Government's approach to child protection so far has addressed largely those children who have already missed the protective net and fallen into difficult circumstances. 'Child Protection' is about protecting children from or against any perceived or real danger or risk of their life, their personhood and childhood. It is about reducing their vulnerability to any kind of harm and in harmful situations. Child protection is integrally linked to every other right of the child. The failure to ensure children's right to protection adversely affects all other rights of the child. It must relate to children's capacity for self-reliance and self-defense and the roles and responsibilities of family, community, society and state.

Recent Initiatives

The Ministry of Women and Child Development¹⁰ is the nodal Ministry for all matters concerning children including planning and implementation of policies, programmes and other enabling measures for their survival, development and protection. Some of the significant initiatives in the recent past and planned future are detailed as follows:

1. Child Budgeting:

Children under the age of 18 constitute 40 percent of India's population. The very survival prospects for girls in particular are getting grimmer, with successive census figures revealing decline in the sex ratio. Despite a booming economy, investments in social development are insufficient and are also not yielding changes rapidly enough. The survival prospects for girls in

⁸ Article 15 of the Indian Constitution.

⁹ Supra 6

¹⁰ Department of Women and Child Development, Ministry of Human Resource Development, Government of India.

particular are getting grimmer with successive census figures revealing decline in the sex ratio. Child budgeting represents an important policy analysis tool that can help us take stock of our development investments for children and identify glaring gaps in the resource investment. As a proportion of GDP ¹¹(Gross Domestic Product), these investments are particularly low and increases are not commensurate with the overall increase in national productivity and income.

An analysis of the broad trends in budgetary allocations in India shows that as a result of the growing economy social sector expenditures have been increasing both as a proportion of aggregate government expenditure and real expenditure since 1990s. The child Budgeting exercise conducted by the Ministry of Women and Child Development revealed the persisting low level of fund allocation for the measures affecting children with resources for child protection the lowest of all.

2. Children's Commission:

In its effort to implement the provisions of the UN Convention on the Rights of the Child UNCRC, the Government of India formulated the Commission for 'The Protection of Child Rights Act', 2005, which provides for the constitution of a national commission and state commissions for the better protection of child's rights and for the matters connected therewith. The functions of the commission are to examine and review the legal safeguards provided by or under an law for the protection of child rights and recommend measures for their effective implementation, prepare and present annual periodic reports, inquire into violation of child rights and recommend initiation of proceedings in such cases, etc.

3. National Plan of Action for Children, 2005:

The National Plan of Action for children recognizes that UNCRC shall be guiding instrument for implementing all rights for all children up to the age of 18 years. It advocates that the rights of the child are articulated in the Constitution of India and UNCRC¹² should work in synchrony to ensure all rights to children. It also mandates the Government of India to ensure all measures and an enabling environment for survival, growth, development and protection of all children, so that every child can realize his or her inherent potential and grow up to be a healthy and productive citizen. This calls for collective commitment and action by all sectors and levels of governments and partnership with families, communities, civil society and children themselves.

Conclusion:

All over the world, recognition of child protection as a human rights concept has been fairly

¹¹ Gross domestic product is the sum of value added all resident product taxes not included in the valuation of output plus net receipts of primary income from abroad.

¹² National Plan of Action for children, 2005, government of India, Ministry of Human Resource Development, Department of Women and Child Development, New Delhi, India, 2005.

recent. The literary works of the times have only romanticized children and their conditions has viewed children as their father's property. Legally also, the father is see as the natural guardian of the child. The fact of working children, children in institutions and orphans living in inhuman conditions is not new to any civilization. The child rights movement in itself is young, much younger than the women's movement. However ever since the movement for betterment of a child's conditions started gaining momentum and acquired strength, there has been a paradigm shift from care and nurturance to protection in a healthy and caring environment. Social justice and the right to life and well-being form the new ideological basis for action.

In India, the concept of child rights and the need to create a protective environment has started to gain ground. However, there is still a great deal that needs to be done. The foremost thing required is the understanding of the fact that as a country with the highest child population in the world, and one that wishes to rest on the laurels of its human resource, it is essential for India to put in place the protective environment and the child deserves without any further delay. Besides the role of the government, the role of each and every individual, all communities and families is critical, as mindsets must change for an improvement to come about in the lives of our children. Just as peoples have come to understand the importance and relevance of education, and there has been a strong movement in the country in this regard, with people willing to even contribute as tax payers towards ensuring that all children are in school, protection of children must also receive similar priority. In this movement, all have to take part and cooperate with the government and work towards a coordinate effort.

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