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## **IMPLEMENTATION OF CHILD PROTECTION LAWS IN INDIA: A STUDY OF THE JUVENILE JUSTICE ACT, 2015**

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### **ABSTRACT**

Child protection continues to be among the most important concerns in relation to the law and society in India, primarily because of their susceptibility to abuse, exploitation, neglect, abandonment, and various other kinds of maltreatment. To ensure that the process of enhancing child protection initiatives takes place successfully, several noteworthy steps have been taken by the Indian legal framework, the application of which has led to numerous accomplishments in the field in question. One such step is the adoption of the Juvenile Justice (Care and Protection of Children) Act of 2015, which is an example of a very innovative legislative measure. This act provides for the implementation of the concept of welfare, which involves the adequate care, protection, development, and rehabilitation of needy children through a legislative and institutional foundation. Nevertheless, even in the presence of such a well-developed legal mechanism, there is no denying the fact that the implementation of the Act still suffers from several obstacles, which ultimately makes it less effective.

The current research will conduct an analysis of the functioning of the institutions, namely, Child Welfare Committees, District Child Protection Units, and Child Care Institutions, each of which plays a vital role in protecting and rehabilitating children. The article further discusses the challenges like decision-making delays, coordination problems between various organizations, lack of proper infrastructure facilities etc as well as socio economic challenges respectively. The research further examines the gap that exists between the legislative framework of the act and the practical reality. Further it concludes by giving some recommendations.

**Keywords:** Child, Committee, Protection, Juvenile, Justice, Rights, Rehabilitation.

## 1. INTRODUCTION

Children can be seen as the future of a country and they are an important part of the growth of the nation from various aspects including social, economic and cultural. The development of children, both mentally as well as physically is very important not just for their individual development but also for the development of society in general. In the developmental stage of life, children need an environment in which they would be provided support to develop in terms of body, mind and emotions. Taking into consideration the significance of protecting the interest of children, the Indian legal system has taken many initiatives in order to make provision for better rights of children.<sup>1</sup> One of the major laws formulated in this direction is the Juvenile Justice (Care and Protection of Children) Act, 2015.<sup>2</sup> This act is referred to as JJ Act, 2015 in the remaining parts of the paper.

Although there exists an effective and advanced framework of laws relating to the rights of children, the efficient enforcement of the said laws is still a major cause for concern.<sup>3</sup> For any law, its success lies in both the formulation as well as in its implementation, but in reality, there exist several barriers that prevent efficient functioning of the mechanism provided by the law. Problems like delay in decision-making, lack of coordination between different bodies, poor infrastructure facilities, and shortage of trained manpower prove to be bottlenecks in realizing the objectives of the law. This affects the overall performance of the process in terms of providing adequate and timely protection to children at risk. Hence, there arises an absolute need to evaluate the implementation of the Juvenile Justice Act of 2015, to pinpoint the problems present within the system and find solutions to the same.

## 2. INSTITUTIONAL MECHANISM UNDER THE JJ ACT, 2015

According to Juvenile Justice Act, 2015, a well-structured and organized institutional mechanism has been devised for ensuring the efficient execution of child protection policies in the nation. This mechanism aims at catering to the needs of children facing difficulties in their life by adopting a coherent and multi-departmental approach towards it. With this aim in mind, this act has allocated different duties and responsibilities to various departments so as to form an integrated mechanism capable of not only attending to the cases of vulnerability of children

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<sup>1</sup> Ministry of Women and Child Development, *National Policy for Children* (Government of India, 2013).

<sup>2</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, Acts of Parliament, 2015 (India).

<sup>3</sup> National Commission for Protection of Child Rights, *Status of Implementation of Child Protection Laws in India*(NCPCR, 2018).

but also helping in their rehabilitation process. The efficiency of this mechanism depends upon how efficiently these institutions perform their assigned tasks.

## 2.1 Child Welfare Committees

The Child Welfare Committee is the main body set up by the statute to cater to children requiring care and protection. The CWC acts as quasi-judicial committees having powers to take decisions in matters concerning children and their care, custody, rehabilitation, and social integration.<sup>4</sup> Some of the responsibilities assigned to CWC include:

- Examining the situation of the child.
- Evaluating the requirements and background of the child.
- Deciding on the best way to handle the child's welfare.

These committees ensure that children are provided care either by institutions or through adoption or foster care facilities. The friendly approach of these proceedings is noteworthy since it allows children to express themselves without being afraid of any intimidating environment.<sup>5</sup>

## 2.2 District Child Protection Units

DCPU is important as it helps coordinate child protection activities in the district. DCPU functions as the nodal agency that carries out all programs, policies, and schemes that are meant to enhance child welfare. Some of the duties of DCPU include:

- Compilation of records about children in need of care and protection.
- Facilitating the operations of CWC and other similar organizations.
- Coordinating among different agencies.
- Conducting sensitization campaigns and capacity building exercises.

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<sup>4</sup> Ministry of Women and Child Development, *Model Rules under the Juvenile Justice Act* (Government of India, 2016).

<sup>5</sup> National Commission for Protection of Child Rights, *Child Welfare Committees Guidelines* (NCPCR, 2018).

- Supervising child protection activities in the district.

Through DCPU, state bodies can coordinate their efforts with local institutions to enhance child protection activities in their jurisdictions.

### **2.3 Child Care Institutions**

Child Care Institutions are set up in order to take care of and protect those children that cannot be taken care of in families because of different reasons like abuse, abandonment, and neglect.<sup>6</sup> These institutes are meant to be temporary homes for children who will receive vital services, including:

- Services related to food and shelter
- Education
- Medical care
- Emotional and psychological counselling

Child care institutions should run in a way that meets all the needs of the children in terms of health, education, and emotional welfare. But besides that, these institutions should take part in rehabilitating the children back to society via family-related methods.

### **2.4 Role of Police and First Responders**

First responders like the police have a vital role to play at the very beginning in cases where children need care and protection. They have to:

- Rescue the child who is subjected to neglect, abuse, exploitation, and abandonment
- Guarantee immediate protection
- Bring forth the child before the Child Welfare Committee without any delay

Child-sensitive approach towards the matter is expected of the first responders. How efficient these individuals prove can be gauged from their training, knowledge, and prompt reaction towards the problems of children. It also involves their cooperation with CWC, DCPU, and

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<sup>6</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, Acts of Parliament, 2015 (India).

NGO in the matter.<sup>7</sup>

## 2.5 Role of NGO and Support Agencies

NGO and support organizations have a complementary and supplementary function in the child protection mechanism. Organisations like Childline India Foundation and National Commission for Protection of Child Rights make substantial contributions in areas such as:

- Immediate help
- Counselling and psychological aid
- Awareness programs
- Rehabilitation and reintegration

The NGOs can be seen as an intermediary between the child and the legal process. They assist in bridging any lacunas that may exist in the system for the benefit of the children.

## 3. LEGAL FRAMEWORK OF CHILD PROTECTION IN INDIA

Juvenile Justice (Care and Protection of Children) Act, 2015 establishes a comprehensive structure of the legal system that can address various problems associated with two different categories of children namely children in conflict with law and children in need of care and protection. This Act rests on a few guiding principles including best interest of the child principle, child-friendly procedures, principles of dignity and equality, and principles of rehabilitation and social reintegration.<sup>8</sup> All the principles mentioned above contribute to putting a child at the centre of all actions undertaken by law enforcement agencies. The Act not only includes various legal norms and requirements but also considers the human needs and peculiarities of development associated with children. By applying different procedural guarantees and non-adversarial approach, the Act establishes an atmosphere in which it is possible to take care about children's interests using humane and sensitive methods.

The Act has defined a very comprehensive list of children in need of care and protection to ensure that none of the vulnerable children falls out of the purview of the law.<sup>9</sup> The Act covers

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<sup>7</sup> National Police Academy, *Training Manual on Juvenile Justice and Child Protection* (NPA).

<sup>8</sup> United Nations, *Convention on the Rights of the Child*, 1989 (ratified by India in 1992).

<sup>9</sup> UNICEF, *Child Protection Strategy* (UNICEF, 2008).

all kinds of children who are either abandoned, orphaned, or are victims of abuse and neglect or those who are at the risk of being victimized because of their unfavourable socio-economic backgrounds. The provisions of the Act cover children from various backgrounds in order to understand the causes of their vulnerability. Besides, the provisions made by the Act also have created various institutions for the benefit of these vulnerable children to be protected and helped through the process of rehabilitation. Child Welfare Committee, District Child Protection Unit, Special Juvenile Police Unit, and Child Care Institutions are some of the important institutions created under the Act to cater to the interests of the said children.<sup>10</sup>

One important aspect of JJ Act, 2015 is that rehabilitation and reintegration, rather than mere institutionalization have been given prime importance. It was understood by legislators that the extended period of stay at the institution may not be in the best interest of the development of the child. Therefore, family-type placements have been recommended in the form of adoption, foster placement, and sponsorship. Such placements would help give a safe environment, similar to a family to the child for his or her psychological development. The JJ Act, 2015 has made a conscious effort to deviate from the old punitive approach and the approach of incarceration of the child to that of welfare and development of the child. Rehabilitation in addition to prevention has been taken as the key goal of the legislation.

#### **4. IMPLEMENTATION CHALLENGES**

While there exists an elaborate and detailed legal and institutional structure as provided for in the Juvenile Justice Act, 2015, there still exist various difficulties that affect the proper implementation of the provisions of the Act. These difficulties tend to affect the objectives that the Act seeks to achieve, creating a difference between the spirit of the law and its actual impact on the ground. The operation of various institutions within the Act is often influenced by various issues such as administrative incompetence and coordination problems that ultimately affect the care and protection of the children involved.<sup>11</sup>

##### **4.1 Delay in Decision-Making**

Another serious issue associated with the implementation of JJ Act, 2015 is that of delay in

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<sup>10</sup> Ministry of Women and Child Development, *Integrated Child Protection Scheme (ICPS)* (Government of India, 2009).

<sup>11</sup> National Commission for Protection of Child Rights, *Assessment of Implementation of Juvenile Justice Act* (NCPCR, 2018).

decision-making on the part of Child Welfare Committees. The reason for this is that the CWC have to deal with a high volume of cases, and therefore, they cannot attend to every case with the due amount of seriousness. Due to this reason, there is a great deal of delay in both the processes of inquiry and decision-making, thereby delaying the process of rehabilitation and integration of children. Adjournments in these proceedings can make things worse for such children who already find themselves in vulnerable situations. There is a possibility that such delays will cause many children to be placed in institutions or even in temporary facilities for a long time, adversely affecting their emotional well-being.

#### **4.2 Lack of Trained Personnel**

Another important problem pertains to the lack of qualified and specialized personnel within the child protection regime. The working of organizations like the CWC, DCPU, and CCI necessitates people who have sufficient knowledge about child psychology, child rights, and legal frameworks. Yet, in many cases, members and personnel are not trained enough or sensitized, making it difficult for them to make child-friendly decisions. A lack of expertise can result in a failure to deal with complex cases in the right manner, resulting in a lack of best interest consideration for the child. Lack of consistent professional development and training opportunities further hampers the efficacy of these organizations.<sup>12</sup>

#### **4.3 Poor Coordination Among Agencies**

The successful operation of the JJ Act, 2015 necessitates coordination amongst many players, such as the police, CWC, DCPU, NGO, and other agencies that help out. Unfortunately, there may be instances when the communication and coordination between these agencies are not effective. The delay in the rescue, production, and rehabilitation of children becomes inevitable because of inefficiency in coordinating the efforts of concerned agencies. There will also be wastage of time, effort, and resources since duplication of efforts will be unavoidable without an effective process to coordinate between these agencies.

#### **4.4 Overcrowding and Poor Infrastructure in CCI**

There are many problems with Child Care Institutions. Such institutions are supposed to offer

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<sup>12</sup> National Institute of Public Cooperation and Child Development, *Training Manual on Child Protection Services*(NIPCCD, 2017).

children temporary shelter and take care of them. Nevertheless, CCIs can face such problems as overcrowding and poor infrastructure. The first problem means that the number of children who live there is bigger than it is planned. It results in various consequences. Firstly, basic things like accommodations, hygiene, health care, and education can be inadequate. It can influence the well-being of children negatively. Another consequence of overcrowded places is neglecting the needs of children, inability to pay attention to them, and the increase in conflicts among children.

#### **4.5 Weak Monitoring and Accountability**

Poor monitoring and failure to put in place accountability mechanisms also constitute an important issue regarding the implementation of the Act.<sup>13</sup> Monitoring and evaluation of child care institutions like the CCI as well as other organizations that deal with child protection is vital to ensure that the required standards are met. But in many cases, the monitoring mechanism is either poor or poorly implemented. This situation makes it possible for mismanagement and negligence to occur in some institutions, and in extreme cases, even abuse can take place. The lack of proper accountability measures makes it even more difficult to monitor the operations of the institutions.

### **5. SOCIO-ECONOMIC FACTORS AFFECTING IMPLEMENTATION**

The issue of child protection cannot be considered as an isolated one. The role that laws and institutions play in ensuring child protection can largely depend on the economic situation, the social environment, and the degree of public knowledge about the issue. In the case of India, which has wide social disparities and social diversity, such elements can have a large impact on whether or not child protection measures will even come into play.<sup>14</sup>

#### **5.1 Poverty and Unemployment**

Poverty still constitutes one of the biggest hindrances to child protection. For those that have no means for survival, fulfilling even their children's primary necessities such as education, healthcare, proper nutrition, and safe housing becomes extremely difficult. Due to lack of resources, the kids might end up being involved in labour or begging in order to contribute

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<sup>13</sup> Ministry of Women and Child Development, *Child Protection Services Scheme* (Government of India).

<sup>14</sup> Ministry of Statistics and Programme Implementation, *Children in India: A Statistical Appraisal* (MOSPI, 2018).

towards meeting family needs. This becomes all the more difficult for parents that have been jobless for years, leading to neglect or even exploitation. Lack of access to education due to poverty creates another vicious circle of vulnerability, especially if there is a lack of social safety nets like welfare programs for impoverished families.<sup>15</sup>

## 5.2 Migration and Urbanization

Urbanization and mass migrations, especially that of rural-to-urban migration, have changed many things when it comes to family and community dynamics. These migrants tend to move into informal communities where the availability of educational facilities, health services, and sanitation becomes inadequate. Without an extended family structure or community network for protection, children become vulnerable to different dangers ranging from child labor, child trafficking, and abuse among others. These children experience disruption in their education because of movement from one place to another as well as language and documentation problems. What's more, anonymity of urban life makes it harder for authorities to take necessary steps when there is abuse.

## 5.3 Lack of Awareness

One of the key problems in the implementation of child protection laws is that many people lack awareness on the legal and rights frameworks that govern children in their respective jurisdictions.<sup>16</sup> Many parents and caregivers fail to know about the existing laws and welfare measures aimed at addressing the plight of vulnerable children. As a result, under-reporting is quite common since many parents and caregivers fail to report abuses. Some communities are reluctant to approach the authorities because of their traditions and cultural backgrounds. The problem is not just a matter of ignorance among the general public, but the local authorities lack sufficient training as well.

## 5.4 Social Stigma and Discrimination

Stigma and discrimination on the basis of caste, class, gender, disability, or ethnicity against children pose critical obstacles in securing their protection. Children who belong to socially weaker groups are likely to be victims of exclusion, discrimination, or denial of access to

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<sup>15</sup> World Bank, *Poverty and Shared Prosperity Report* (World Bank).

<sup>16</sup> National Commission for Protection of Child Rights, *Awareness and Child Protection Report* (NCPCR).

protective services, or even the denial of redressal of complaints. Child victims of physical abuse and sexual exploitation become victims of stigmatization and social ostracism, dissuading them from approaching the courts for justice. Discrimination against girls forms another significant reason, where they are more vulnerable to being victims of early marriage, exploitation, or physical abuse. Sociocultural factors make children more vulnerable and reduce the effectiveness of legal measures.<sup>17</sup>

The UNICEF publications highlight the obvious relationship between socio-economic disadvantages and increased vulnerability among children. This helps justify the need for implementing socio-economic strategies along with legal measures to ensure the safety and security of children.

## 6. GAP BETWEEN LAW AND PRACTICE

The problem that has emerged regarding the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 can be identified as the wide disparity between the extensive legal structure and the practical implementation process. While the Act has been formulated to ensure that children are at the centre of everything and focus is placed on their care, protection, rehabilitation, and social reintegration, these principles have often been compromised owing to the presence of procedural and structural constraints.<sup>18</sup> For instance, the functioning of Child Welfare Committees and Juvenile Justice Boards may be hindered by factors like delays, lack of proper training, and ambiguities concerning the duties of the relevant individuals. In addition, the differences across states regarding the implementation process have led to discrepancies in its implementation.

One of the primary reasons behind the occurrence of the above discrepancy is inadequate resources. Several centres dedicated to child care still suffer from the problem of being crowded as well as lacking adequate facilities.<sup>19</sup> In addition, they lack qualified personnel such as counsellors, probation officers, and social workers. The problem directly influences the quality of the services that are provided to children and their capacity to develop personalized rehabilitation programs for the sake of helping them. Financial problems and a lack of appropriate budget allocation aggravate the issue, especially when referring to less developed

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<sup>17</sup> UNICEF, *Ending Violence Against Children Report* (UNICEF).

<sup>18</sup> National Commission for Protection of Child Rights, *Assessment of Implementation of Juvenile Justice Act* (NCPCR, 2018).

<sup>19</sup> Ministry of Women and Child Development, *Child Protection Services Scheme* (Government of India).

areas. Children end up staying in institutions longer than is necessary, although there is an emphasis on alternatives like adoption and sponsorship by the law.

Apart from limitations due to the availability of resources, problems that arise within the system, including delays in proceedings and inadequate coordination among the relevant parties, have hindered the success of the Act.<sup>20</sup> The cases concerning children usually take a lot of time due to bureaucracy, backlog of cases, and lack of effective communication among agencies like the police, courts, and departments that handle child welfare cases. As a result of these inefficiencies, the process of rehabilitation and reintegration takes too long for the benefit of the affected children. There is also a lack of adequate means of monitoring to correct these inefficiencies.

It can be said that the Juvenile Justice (Care and Protection of Children) Act, 2015 has brought about a revolutionary change in terms of child protection laws because it adopts the rights approach, thus making it congruent with child rights standards worldwide, where the emphasis is laid upon the dignity of the child, best interest of the child, and rehabilitation of the child. It should be noted that while the previous laws were based upon the concept of welfare of the child, the present law focuses on putting the child at the centre stage of the legal process. Nevertheless, such an approach cannot materialize itself unless it is effectively implemented.

The problems raised here make it quite clear that the main problem does not pertain to any lack or insufficiency of laws, but it pertains to the way in which the laws are enforced. The continuing use of institutional care despite the focus on family-based solutions like adoption and foster care in the Act shows the disparity that exists between what is expected by the legislation and how things actually play out in reality. This is worsened by the fact that there is a lack of adequately trained staff members like social workers, counsellors, and officials working under the ambit of child welfare services, all of whom play a very important role in ensuring a smooth procedure and proper rehabilitation of children.

Moreover, socio-economic issues become another challenge faced in implementing this Act, as they have made it very hard to accomplish positive results. Issues such as poverty, unemployment, migration, and social inequalities make children vulnerable while at the same time making it difficult for their families and society to assist them in their growth. They also

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<sup>20</sup> National Institute of Public Cooperation and Child Development, *Training Manual on Child Protection Services*(NIPCCD, 2017).

create barriers to accessing health services, educational opportunities, and legal protection, thus creating a cycle of neglect and exploitation of children.<sup>21</sup> Under such circumstances, it would not be possible to solve issues related to the protection of children using only legal instruments but require a combination of strategies to ensure socio-economic development of societies as well.

## 7. SUGGESTIONS AND RECOMMENDATIONS

In order to improve the process of implementation of laws regarding child protection, especially the Juvenile Justice (Care and Protection of Children) Act of 2015, there should be a holistic approach which takes into consideration the inadequacies both within the institution as well as society as a whole. In this connection, one of the most crucial steps is that of capacity building through periodic training of police personnel, members of Child Welfare Committees, Juvenile Justice Boards, and other entities within the child protection structure. This process of training should be broad-based and not only focus on knowledge of laws but also take into account areas like child psychology and so forth.

Another important point that must be considered is that there should be increased coordination between various agencies dealing with the matter of child protection. Coordinated efforts by institutions like CWC, JJB, police departments, District Child Protection Units, and NGO can go a long way in making the process more efficient. The lack of coordination usually results in delays in the process of rescue, rehabilitation, and re-integration, which may cause harm to children in precarious circumstances. Besides, infrastructural development of Child Care Institutions is also of utmost importance for the well-being of the children staying within them.

In addition, there is an urgent requirement for establishing proper monitoring and accountability systems in order to ensure that the institutions operate as per the laid down norms and standards. Inspections, audits, and effective grievance redressal mechanisms can aid in minimizing incidents of negligence, mismanagement, and abuse within the institutions. On the other hand, awareness programs can be organized to sensitize the community towards the issue of children's rights, their protection, and the existing support mechanisms. This will aid in reducing the problem of under-reporting of cases of exploitation of children. Lastly, efforts must be made in increasing awareness regarding alternative care options such as adoption,

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<sup>21</sup> UNICEF, *The State of the World's Children Report* (UNICEF).

foster care, and sponsorship in families. This will prove to be beneficial for the children due to the provision of a more secure environment as compared to institutions.

## **8. CONCLUSION**

According to the Juvenile Justice (Care and Protection of Children) Act, 2015, a progressive and comprehensive legislative framework has been established about the provision of protection, care, and rehabilitation of children within the Indian setting. This is due to the obvious inclination by stakeholders to adopt the rights-based approach in solving the problem of juvenile justice. Some of the important principles such as best interest of the child, respect of the dignity of children and social reintegration indicate the legislative intention in providing the legislative framework. The aim was to ensure that all children in need of care and protection and children involved in criminal offenses were respected in the implementation process. However, it should be acknowledged that the efficacy of the legislative framework is not dependent on the efficacy of legislative provisions alone but rather, their proper implementation. It is apparent from the discussion that a gap exists between legislation and implementation.

The problems discussed in the current investigation clearly demonstrate the importance of adopting an integrated approach that is going to involve not only reforming legislation but also tackling the issues that lie at the core of socio-economic inequalities. The presence of poverty, migration, ignorance, and inequalities results in the creation of a vulnerable environment and limits children from having an opportunity to enjoy the protection of relevant mechanisms. While significant advances have already been achieved in improving the system of child protection in India, the continued problems like dependency on institutions, delays in rehabilitation, etc., point to the need for making further efforts.