



Child Care Policies in India: Issues and Challenges

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Abstract

"There can be no keener revelation of a society's soul than the way in which it treats its children"~ Nelson Mandela.

In simple words the behaviour and character of the society can be revealed or be known by examining how they treat its children's. The child abuse is something which is termed as the most heinous crime which has ever been done by the humans. In present scenarios there is an urgent need of drafting "new" policies for child care and protection. The subject matter of paper is need of policies regarding child protection and it covers the past acts and present laws which are applicable in today's time and recent drafts and rules issued by "Ministry of Women and Child Care Development" (WCD) an also regarding the lacunas in present regimes which are the reasons for the development of effective and sound child care and protection policies. Though there are various laws and provisions for protection of children's against malpractices done by evil-beings many of these laws and provisions are working in efficient manner but some provisions does not fulfil the requirements.

Keywords: Child Abuse, Child Care, Protection, Related Acts, Laws, Policies And Rules

Introduction

Child abuse is defined as crimes against children's of the society. These crimes generally includes sexual assaults, physical or/and psychological maltreatment of a child by parents, guardians, caretaker or any other individual related or not related to the child.

WHO has defined it as - Child maltreatment is the abuse and neglect that occurs to children under 18 years of age. It includes all types of physical and/or emotional ill-treatment, sexual abuse, neglect, negligence and commercial or other exploitation, which results in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power. ((WHO), World Health Organisation)

From the above definition it can be construed that child abuse is a very sensitive matter to talk about. It involves A to Z coverage of assaults and harassments caused to a child either physically or mentally by relatives, knowns or unknowns (that is 3rd parties).

In India as per some reports 49% of children face the problem of child abuse . As per national crime bureau the abuse mostly consist of rape of girl child and murder and the saddest part is many of these cases are not reported and they never see the light of justice.

Apart from sexual abuse there are other abuses in forms of neglect, neglect from family or society or both. This paper is about how the government and other associations and body consistently tried to uplift the standards for children and why the authorities have failed in India to reach their targets, and do we require new policies or better implementation of previously formulated policies [1-3].

The Past and Present

There are conventions on rights of child and policies for betterment and welfare of children's health and protection.

Evidences can be brought forward from the five year planning commissions (NITI AAYOG now) that Indian government and lawmakers have always taken the children welfare measures into consideration to achieve the goals of child protection.

Protection of children's and their welfare has been the top most priority of Indian government and evidences can be drawn from the

5- planning commission policies. But in early stages these policies didn't worked out well for the country. It was in 11th plan when the true child protection initiative was achieved.

- Brief of child protection and care related policies (that is 5 year plans in context to child care policies) in five year plans are given below (Das, 2011)
- 1st five year plan laid down provisions for social welfare programs and policies were framed for welfare of Children, and of the physically and Mentally Disabled(specially-abled children's) . But the responsibility of the working programs was primarily left on the shoulders of self-help groups and private volunteer individuals.
- 2nd five year plan provided
 - a) Extension of social welfare programs
 - b) Introduction of defence programs for protection of women's and girl child against immoral trafficking,
 - c) Introduction of probation of offender act and other acts like acts
 - d) Setting up of maternity and child health centres.

The main emphasis was on health care and education of child and women.
- 3rd plan focused on education (it is an extension of 2nd year plan)
 - a) Setting up of primary school in rural areas
 - b) States were given responsibilities on secondary education and higher education.
 - c) Introduction of holiday homes and concerning on the education

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- and development of disabled (handicaps and infirm) children's.
- d) The child beggary problem was taken into consideration.
 - 4th year plan consolidated the previous policies and gave a better frame work for children welfare and provided for-
 - a) setting up of institutes for handicaps and mentally or physically disabled students
 - b) creation of special job opportunities to these specially abled children's
 - c) benefits to students and children's lower section of societies (SC/STs)
 - d) introduction to anti-child labour concept
 - 5th plan is considered as the most important in the history of development of childcare policies as-
 - a) It was in this plan the "National Policy For Children Was Adopted"
 - b) The concept of ICDS (Integrated Child Development Scheme) was introduced in which the approach shifted from social welfare to child development by integrating i.e. summing the efforts of previous policies and adding development programs for the development of children.
 - c) ICDS gave 6 basic facilities - health check-up, immunization, referral services, supplementary feeding, non-formal pre-school education and health and nutrition education for children below 6 years and expectant and nursing mothers living in the most backward areas through a single window delivery agency called 'Anganwadi Centre'
 - d) The top priorities were given to elementary education in backward area so that the basic education could be provided to all.
 - 6th plan like 4th plan consolidated and expanded the previous policies/programs and during this plan below mentioned policies were formed
 - a) Setting targets for mortality rates as base framework for forming early child survival policies.
 - b) Setting up of voluntary action bureau for solving and reducing crimes against children and women's
 - c) Setting up of pre-schools in backward areas
 - d) Making necessary arrangements for providing equity in respect of education in backward areas.
 - 7th plan focused on early child survival plans and policies and programs for eradicating hunger and diseases like polio along with these it brought forward-
 - a) Policies and rules for ICDS (integrated children development scheme) were framed and thus making it an effective and strong programs for the whole nation.
 - b) The policies for pre-schools, educations, health of children's were re-assessed and necessary changes were brought
 - c) The policies and programs for fighting common but deadly diseases of that time like polio, childhood tuberculosis, diarrhoea etc. were formulated for protection of health of children's and also for family planning.
 - d) It was during this time period the Juvenile Justice Act and Child Labour Prohibition and Regulation Act came into force and policies for child labours were framed.
 - e) The development in respect of education of physically and mentally challenged children's was at priority list of this plan as various institutes for this purpose were set up and opened.
 - 8th plan focused on –
 - a) Child survival, development & protection
 - b) This plan was made in accordance with the treaties and charter of (UNCRC) that is United Nation Charter on Rights of Children. As in the year 1992 the India ratified the UNCRC.
 - c) The government made two national plans at this time for fulfilling the demand of the charter
 - i. One is for children's in areas of health, nutrition, education, water, sanitation and environment etc.
 - ii. Another one specifically for girl child in areas of gender related biasness with respect of living standard development protection and education and formulating laws more effective to avoid killing of girl child.
 - d) The campaigns for Health for All and Education for All were started.
 - 9th five year plan is extended the policies laid of previous plan and included
 - a) Giving priority to young children's in terms of health and development
 - b) Extending the national plans for child and girl child mentioned in 8th plan the initiatives were taken to increase survival rates of child born and to avoid illiteracy and death of any child because hunger or any common illness
 - c) During the tenure of this plan various policies and schemes were introduced to give backup to the policies of plan , some of those schemes are Balika Samriddhi Yojana, Udisha, Creches and Day Care Centres for children of working/ailing mothers, Mid-Day Meals, A Programme for Juvenile Justice aimed at strengthening the implementation of Juvenile Justice Act 1986 and many others
 - 10th five year plan laid various other schemes and plans for child development and care for mothers of child for providing benefits regarding survival policies. Some of the scheme launched were-
 - a) Rajiv Gandhi National Crèche Scheme
 - b) Integrated Programme for Street Children- Preventing destitution of children; providing shelter, nutrition, health care, education, recreation, and protection against abuse and exploitation.
 - c) 'Assistance to Homes (Shishu Greh) for Children'
 - d) Nutrition Programme for Adolescent
 - e) Kishori Shakti Yojana and many others
 - The 11th and 12th plans laid provisions for child labour and trafficking of children's for sexual and beggary purposes, maintaining same sex ratio, preventing malpractices against children's, providing basic facilities to unprivileged ones
 - ψ It was during the duration 11th plan the "Ministry of Women

and Child Development “was formed which was earlier a department under human resource ministry.

The 12th plan was the last plan so made by the planning commission as in the year 2015 the commission was dismissed and NITI AAYOG was formed who took its place for making and recommending policies for overall development of the country

The NITI AAYOG has a separate division for recommending policies regarding women and child development. In the words of NITI AAYOG

“The Women and Child Development Division (WCD) is the nodal division in NITI Aayog that provides policy guidance and oversees programme implementation of the Ministry of Women & Child Development for ensuring overall survival, development, protection and participation of women and children, broadly guided by twin objectives to empower the women to live with confidence, dignity and economic and educational ability and to nurture their children to develop to their full potential, make them safe, healthy and protective environments. It also has special focus to improve nutritional outcomes and over all development of children and adolescent girls”

The division has recommending powers to the ministry of women and child development and it is the ministry who has the deciding power whether to accept the recommendation or not. It also guides the ministry in formulating and implementing the law

The Ministry has powers to make policies and rules for the development of women and children for serving it purpose of development and protection.

The ministry has come forward with many drafts and policies for welfare of children of the nation. One of it is for child labours and their protection.

The Ministry issued a notification F.no. CW-II-30/92/2018-CW-II DATED 14/Dec/2018 through which it issued a draft on National Child Protection Policy through which it issued the guidelines for institutions, organisations and establishments (including media houses) of government or private sectors regarding protection of child and directing them to get sign of employees on annexure one form their employees so as to achieve the target of protection to children’s

The annexure is given below in Figure 1

The MoWCD is consistently trying to achieve its objective of protection of children’s by reviewing the policies, formulating new drafts removing drafts which were ineffective etc.

The vision and mission statement of the Ministry makes it very clear that they are ready to work in any domain to achieve the target of providing equality, justice, nutrition, education, protection to the women and children’s of the country.

The ministry has set long terms goals for development and protection for this have made their objective clear by formulating vision statement (telling the purpose of the ministry) and mission statement (indicating its objective and its approach to reach those objective).

The vision and mission statement is given below in Figure 2 –

Apart from the policies of 5-year plans, the WCD of NITI AAYOG and The Ministry for WCD the Indian government also recognises the ECCE-Early Child Care Education (a program by UNESCO- United Nations Educational Scientific And Cultural Organisation) which works with the aim and objective of providing healthy environment to child around the globe and education to every child during his/her development years that is starting from 0 to 8yrs of age (but in India it is taken as 0 to 6years of age). In words of UNESCO-

“Early childhood care and education (ECCE) is more than preparation for primary school. It aims at the holistic development of a child’s social, emotional, cognitive and physical needs in order to build a solid and broad foundation for lifelong learning and wellbeing. ECCE has the possibility to nurture caring, capable and responsible future citizens” (chandra, 2016)In the year 2013 the Ministry of WCD (MWCD) formulated the National ECCE Policy, 2013; National ECCE Curriculum Framework (MWCD, 2013a); Quality in ECCE: Pictorial Handbook for Practitioners, 2014; Age Appropriate Assessment Cards; Quality Standards for ECCE (MWCD, 2013b) and National ECCE Council, 2014.

There are 8 quality standards formulated by MoWCD for ECCE to achieve the goals of the policy these are given below-

- Standard I: Interaction of students and teachers
- Standard II: Health, Nutrition, Personal Care and Routine
- Standard III: Protective Care and Safety

Annexure 1:

Declaration by all employees

I,(name and position of the employee),
from..... (name of the organisation) hereby declare that:

- i. I will always respect all children, regardless of age, disability, gender, racial heritage, religious belief, sexual orientation or identity;
- ii. Support their right to equal protection from all types of harm or abuse;
- iii. I will not employ any child as defined under *Child Labour (prohibition and regulation) Amendment Act, 2016*.
- iv. I will always report any case of child abuse, exploitation and neglect which comes to my knowledge to appropriate authority and will not harm or abuse any child physically, emotionally or sexually.

(Name of the employee)

Figure 1: Annexure Declaration By All Employees.

Department under the Ministry of Human Resources Development.

The Ministry was constituted with the prime intention of addressing gaps in State action for women and children for promoting inter-Ministerial and inter-sectoral convergence to create gender equitable and child-centred legislation, policies and programmes.

Vision and Mission

Vision

Empowered women living with dignity and contributing as equal partners in development in an environment free from violence and discrimination. And, wellnurtured children with full opportunities for growth and development in a safe and protective environment.

Mission

Promoting social and economic empowerment of women through cross-cutting policies and programmes, mainstreaming gender concerns, creating awareness about their rights and facilitating institutional and legislative support for enabling them realize their human rights and develop to their full potential. Ensuring development, care and protection of children through cross-cutting policies and programmes, spreading awareness about their rights and facilitating access to learning, nutrition, institutional and legislative support for enabling them to grow and develop to their full potential.

Mandate:

The broad mandate of the Ministry is to have holistic development of **Women and Children**. As a nodal Ministry for the advancement of women and children, the **Ministry formulates plans, policies and programmes; enacts/ amends legislation**, guides and coordinates the efforts of both governmental and non-governmental organisations working in the field of Women and Child Development. Besides, playing its nodal role, the Ministry implements certain innovative programmes for women and children. These programmes cover welfare and support services, training for employment and income generation, awareness generation and gender sensitization. These programmes play a supplementary and complementary role to the other general developmental programmes in the sectors of health, education, rural development etc. All these efforts are directed to ensure that women are empowered both economically and socially and thus become equal partners in national development along with men.

Figure 2: Vision and mission statement.

Standard IV: Infrastructure/ Physical Environment

Standard V: Organisation and Management

Standard VI: Children Experiences and Learning Opportunities

Standard VII: Assessment and Outcome Measures

Standard VIII: Managing to Support Quality System

In addition the above mentioned policies, acts, amendments, plans, curriculums and statutes The Indian constitution gives various rights to the children's of the nation and after 86th amendment in Indian constitution the education for children was made a fundamental right as per article 21 plus various other provisions were added in The Constitution which recognises the rights of child some of them are mentioned below-

- Under article 21 – Right to education
- Under article 23 and 24 – rights against exploitations (child labours and trafficking)
- Under article 45- provisions for early childhood care and education below age of six years.

These were some of the provisions given under The Indian Cosntitution and thus providing the constitutional as well as fundamental rights to the children's of our nation.

India being signatory of convention for children's welfare, United Nations Convention on Rights of Child (UNCRC), has implemented various plans and policies for their welfare of children's in the country. Evidence can be taken from the 12th five year plan which explicitly talked about child labours as mentioned above.

In India (apart from the constitutional rights) there are different statutes formed by the lawmakers of the country to maintain decency, peace and morality in the country and for safeguarding the rights of children's. Name of some of these statutes are mentioned below-

- Juvenile Justice(Care and Protection of Children) Act 2012
- Pre-Conception and Pre-Natal Diagnostic Techniques(Pcpndt) Act 1994
- Comission for Protection of Childs Right Act 2005
- Right of Children To Free And Compulsory Education Act 2009
- Prohibition of Child Marriage Act 2006
- Child Labour (Prohibition And Regulation) Amendment Act 2016

These are some of the acts (not limited to these) passed by the legislature to protect the children from the criminal assaults and harassment. Even there are special provisions given under various acts whether from procedural or substantive law aspect.

Recent judgement of the court-

Juvinile Justice Board-

Clause 10 of section 2 of The Juvenile Justice (Care and Protection of Children) Act, 2015 defines “board” as the-Juvenile Justice Board constituted under section 4 of the said act.

CHAPTER III of the act specifically talks about “Juvenile Justice Board” under section 4 to section 9 of the said act.

Gist of the sections given under this chapter-

- Section 4- Juvenile justice Board
 - 1) The act mandates the state government to form a Juvenile Justice Board in every district(or one board for one or more district) for exercising powers and duties related with children in conflict with law,
 - 2) Constitution of the board would be –
 - a) Metropolitan magistrate, or
 - b) Judicial magistrate of first class not being chief metropolitan magistrate or chief judicial magistrate
 With experience of 3 years or more
 - c) Two other social workers as members (only those workers who have actively participated and have minimum experience of 7 years in health, education, or welfare activities related to children or in an practising professional in field of psychology, psychiatry, sociology or law and such member must not fall into the prohibited category) out of whom one shall be women, selected in manner prescribed.
 - d) Training of such member regarding laws and provision for justice rehabilitation, care and protection within the period of 60(sixty) days from the date of appointment.
 - e) Term of office of the members, that is, the tenure and manner of resignation would be as per the manner prescribed.

In recent case of Ishwari Prasad Tiwari v State of UP, The Allahabad high court directed the state government to take necessary steps to maintain the constitution by filling vacancies of the board and regulate

its functioning efficiently.

Facts of the case- the petitioner was the eligible candidate for the appointment as member of the board and made contentions that-

- i. After the enactment of 2015 a notification was published on 14/ December/2016 regarding the establishment of a Board in all the districts of the state.
- ii. The term of the Board was fixed for period of 3 years
- iii. The term of Board expired on 14th December 2019
- iv. As per rules the secretary of selection committee was responsible to initiate the process of filling vacancies before 6 month of vacancies arising after the end of tenure of the Board, thus the board should be formulated prior to the end of tenure of the committee
- v. The state government issued a notification stating that till the time fresh selections are made the CJM or any JM nominated by district judge would perform the duty of Board
- vi. Later in case of Anoop Gupta vs UOI the order of government was held to be not in line with the provisions and rules framed under 2015 enactment. It was further stated that selection committee shall make recommendations to State Government and then the government would make the appointment within 10 days of recommendations.
- vii. In case of Praveen Kumar Sharma vs State of UP instructions were given by the court to standing counsel to constitute the board.
- viii. The contention was made that the courts instructions were not followed and there was no formation of the constitution of the board.

On contrary to these the standing counsel informed the court that-

- 1) The state government has constituted selection committee under the chairmanship of retired judge Mr. Vinay Kumar Mathur,
- 2) In the view of lockdown the steps for filling the vacancies could not be undertaken, however, the selection process has commenced and hopefully be completed before 31st January 2021

Court held that-

The contentions and insurrections are silent as to why steps were not taken steps were not taken for fulfilling the vacancies prior to the occurrence of the vacancies.

The court directed the state government to expeditiously take necessary steps fill the vacancies and create an appropriate constitution of the board.

The court further held that- "if the Board is not functioning properly, it amounts to violation of article 15(3) which empowers state to make special laws for women and children and treaty of UNCRC ratified by Indian government."

The court added that the objective of the act (viz. 'To consider all the matters relating to children need of care and protection and which those children who are in conflict with law. It also includes the matters of i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law and ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care

and protection) would not be served properly if the board didn't function appropriately and as per requirements of the act. And also stated that "We hope and trust that the State Government shall take necessary steps for fulfilling the laudable objects of the Juvenile Justice (Care and Protection of Children) Act, 2015."

Analysis

From the above mentioned points and policies, plans, acts or amendments formulated and initiated by the government inferences can be drawn that the government and government like bodies and special bodies like UN, World bank, ILO, UNESCO, UNICEF etc are consistently trying to develop the 4 areas for betterment of the children and these are given below-

- Health- by formulating various policies in educational sector for urban, rural and backward areas
- Equality- with respect to education and rights for child and specifically for girl child
- Development- by formulating plans and developing pre-school and elementary schools in backward areas so that the children of backward area be developed in their growing years.
- Social policy- so that the child get equal standards of living in the society
- Education for all is the policy accepted by the authorities
- Protection by developing different statutes for protection of children against the criminal activities and framing legal framework against child labours.

But in spite of having such policies acts plans drafts etc there are crime against children's and various child abuse recurring on daily basis. Even during this lockdown and covid-19 era the abuse against children rose with significant rate some of the news articles are given below in figure 3

There are numerous reasons because of which such crimes take place in our society some of them are-

- 1) Improper implementation of laws and policies
- 2) Lack of political will
- 3) Internal factors like large population, male dominating society etc
- 4) Corruption may prevail
- 5) Lack of awareness among the citizens regarding child laws and rights.

There are policies and plans on the papers but when it comes to implementation of laws it is where the system lags behind and thus fails to fulfil the targets and standards set by the ministry and other authorities.

From the analysis it could be seen that there are policies and rule for betterment of the children but they are not implemented well and it is the only reason why targets are not achieved yet.

Economical, sociological, and legal aspect of child care and protection

- 1) Economical- if we achieve the targets of providing education to all then the country will have a large no. of educated working force and thus it would help in raising the GDP and economical level

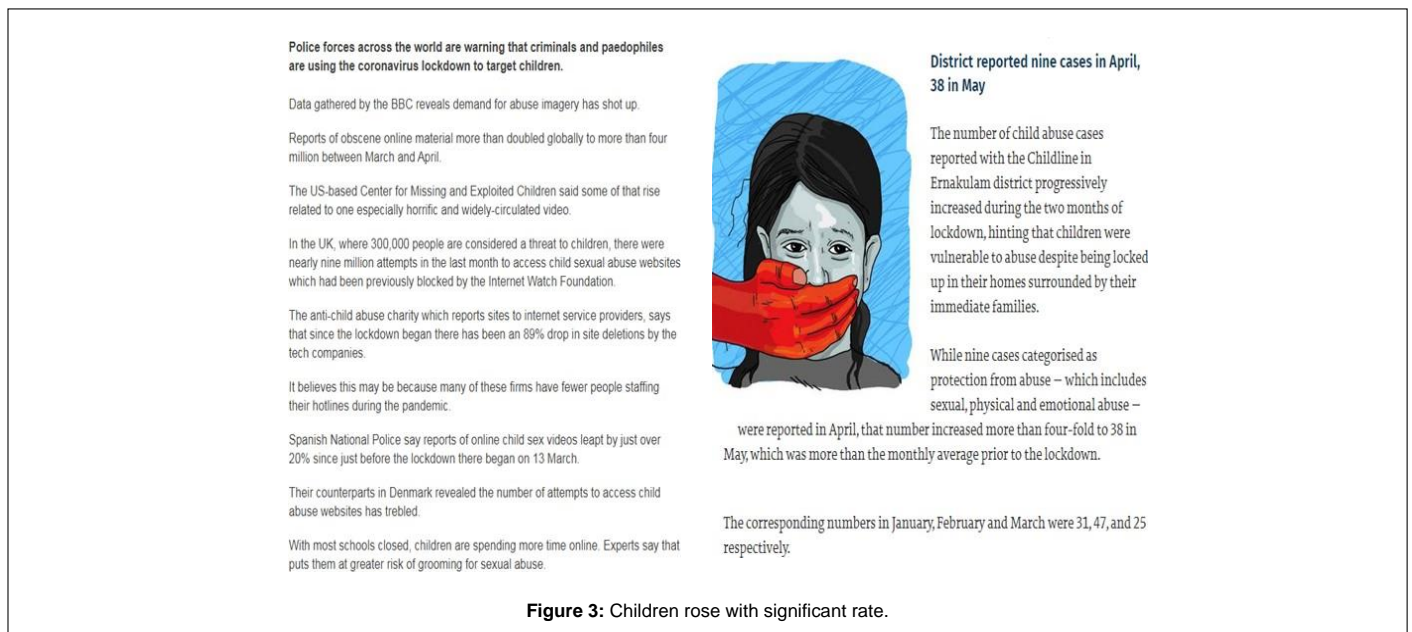


Figure 3: Children rose with significant rate.

and standards of the country. But to fulfil the job opportunities in the country would have to be a high level to support the educated class otherwise there would be benefit to both the country and the educated workforce.

- 2) Sociological aspect- once the targets are achieved the change in the sociology could be seen and felt as there would be no difference in the children's with respect to basic educational and development level which would eventually lead to equality and upliftment of society in and thus could help in abolishing caste biasness and other related issues .
- 3) The legal aspect- with development in various fields of children would result in overall betterment of society. As the educational and development level increases along with protection level of children the children who will become adult someday would take the responsibility of protection and education of the children of their generation in succession. Thus increasing the vigilance in the society and less crime relate to children.

Need of holistic approach in form of “The child protection code”

The government bodies and various NGOs are working on the welfare of the children of the nation and all these bodies and institutions are working under the scattered framework giving in the various legislations passed by the legislature. If a legislature of revenue generating sources can be codified in form of Insolvency and Bankruptcy Code then the child protection and welfare code be made like any other uniform code stating the substantial provisions and procedural aspects related the same.

Conclusion

In the end it can be concluded that there are various policies and plans which are developed by the government and government like authorities but the formation and implementation of these policies must go hand in hand otherwise it would disrupt the essence of making policies and they will only left written on papers and would not result in betterment and fulfilment of any purpose, without efficient

implementation the targets will always be underachieved any the whole plan would eventually fail.

In today's era we do not require new policies for child development but we need policies for implementation of policies of child development.\

- Policies making and formulation is ¼ of the work
- Acceptance of the policies by individuals is 2/4th of the work
- Effectively evaluating the policies made is the ¾th work
- And proper implementation help the achieving overall objecting and thus making a full circle of development

The policies have been made for sectors where the development is required with respect of health education, protection, but these policies are so scattered that the overall result of implementing these policies is very low and thus we need to bring all the policies rule and act in one single code like “the child protection, development and education code” so that the check could be done on what policies are there what new policies have been made and what is required to be done.

Suggestion

The development and education are somehow correlated to each other and objectives related to both could be achieved by regulation one authority that is the SCHOOLS where a child gets education. These schools are not business houses but organisations for extending help to government to achieve its child related goals.

The sector of health is something not related to school but it could come under the circumference of school authorities by developing a strategy for compulsory health insurance for children studying in schools

How can this be done ?

We have a frame work of Esic- Employees State Insurance Corporation where the employer and employee contribute some % amount of employee salary and give it to ESIC authorities.

Based on the same framework some %of school fees be given to

similar institution (which would be regulated by the government bodies authorities like IRDA SEBI etc) by the parents and school authorities (against which government could provide exemptions and other benefits to the schools as an incentive). This would remove the health related burden of children from the shoulders of parents and would eventually help in achieving the health related targets setup by the government.

And thus the goals of related to the health be achieved.

For protection of children it is not only the government who is responsible but we as citizens of the nation must be vigilant enough to raise voice against any criminal activity happening with any child.

More efficient laws for heinous crimes against children with insertion of capital punishment clause be formulated.

“laws must not only be made but must be efficiently implemented for the better functioning of legal system”

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