

"If we are to teach real peace in this world...we shall have to begin with the children."

Mahatma Gandhi

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Child Protection in Uttar Pradesh



Dr. Ram Manohar Lohiya National Law University, Lucknow is one of the premier national law schools in the country. From its inception it has stood with its unwavering commitment to its purpose of fostering excellence in the field of law. The University lays special emphasis on research based legal and justice education and has left no stone unturned in improving the overall quality of legal education and advocacy. In discharge of its social responsibility, the University aims at strengthening child protection system and enforcing child protection laws and implementation of schemes. The University has proudly associated itself with UNICEF and Home Department/Police Department, Government of Uttar Pradesh, to create protective environment for children and women. This newsletter is an outcome of the joint project between RMLNLU and UNICEF. The Newsletter presents updates of all child rights related initiatives in the State of Uttar Pradesh.

Quarterly Newsletter

Editorial Note

It gives me immense pleasure to announce that Dr. Ram Manohar Lohiya National Law University, Lucknow is publishing its inaugural newsletter on Child Protection in Uttar Pradesh. At the outset, I would like to thank Prof. (Dr.) Gurdip Singh, Vice-Chancellor, Dr. RMLNLU, for having taken special interest on child rights his continuous support provided to us.

The Newsletter is the result of collaboration between the University and UNICEF, which has shown tremendous faith in us in undertaking this project. I would also like to express my gratitude towards Prof. B.B. Pande for his valuable guidance and supervision given to us in making a contribution in the field of child rights. I appreciate the sincerity and hardwork shown by UNICEF Project Coordinators, Associate and my students, who have been instrumental in bringing out this newsletter.

-Dr. K.A. Pandey, Associate Professor & Project Director

Dr. Ram Manohar Lohiya National Law University, Lucknow



Message from Vice-Chancellor



Prof. (Dr.) Gurdip Singh
Vice-Chancellor, RMLNLU

I feel glad that Centre for Criminal Justice Administration, Dr. Ram Manohar Lohiya National Law University, Lucknow is bringing out a newsletter on child rights and child protection. The newsletter is first of its kind in the University and is based on information regarding various child rights advocacy and initiatives being undertaken by the University in association with UNICEF.

I must congratulate the faculty concerned, UNICEF Project Coordinators and the students involved in bringing out this newsletter. The University is committed to create protective environment for children. I offer my best wishes to all the members of University family and others associated with it, who are working incessantly to achieve

with financial support from

UNICEF



UNICEF in Uttar Pradesh: Touching New Milestones

With a population of more than 200 million, Uttar Pradesh (UP) in India's most populous state, roughly equal in size to Brazil. UP has struggled with one of the highest infant and child mortality rates in India. While the state has made significant gains on several key indicators over the past decade, according to the 2011 census, the child sex ratio has deteriorated and the number of children forced into work has increased.

UNICEF is supporting the Government of UP in addressing key concerns, from improving the reach of routine immunization programmes to the creation of care units for sick newborns at district hospitals. It is partnering in the

creation of Nutrition Rehabilitation Centres and the extensive training of health workers to properly identify and treat common childhood diseases.

UNICEF is helping build protective environments through raising awareness amongst various stakeholders and communities about child rights. It also has a focus on supporting the government on the rollout of the Right to Education Act, to address issues of access to education for all children. Protection of children from vulnerable and marginalized groups is another key area for UNICEF. It has carried out a substantial amount of work in UP to change attitudes, behaviours and practices that impact children.

WHAT'S NEW IN CHILD RIGHTS?

Social Audits are Compulsory: Supreme Court

In *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*- orders dated 31/7/2015, the Hon'ble Supreme Court ordered Compulsory Social Audit of all Child Care Institutions under the Juvenile Justice Act, 2000 to Ministry of Women and Child and thereto to all State and Union Territories.

It said: "*Social Audits are mandated for all Child Care Institutions, both Government and Non-Government Organization, under Section 36 of the Juvenile Justice (Care and Protection of Children) Act 2000 and Rule 64 of the Juvenile Justice (Care and Protection of Children) Rules, 2000.*"

Juvenile Justice Act, 2015 came into force

The Juvenile Justice (Care and Protection of Children) Act, 2015 came into force from January 15, 2016. This Act replaces the old Juvenile Justice (Care and Protection of Children) Act, 2000. The new Act allows children aged 16 to 18 years and in conflict with law to be tried as adults in cases of heinous offences.

S. 2(33) of the Act states: "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (IPC) or any other law for the time being in force is imprisonment for seven years or more. The heinous offences under the IPC can be stated as per following provisions: S. 121, S. 195A (part second), S. 302, S. 304B, S. 311, S. 326A, S. 370(2), S. 370(3), S. 370(4), S.

370(5), S. 370(6), S. 370(7), S. 376(1), S. 376(2), S. 376A, S. 376D, S. 376E, S. 397, and S. 398.

Child Labour Amendment Act, 2016 came into force

The Union Cabinet has notified the Child Labour (Prohibition and Regulation) Amendment Act, 2016 (No. 35 of 2016) on 29th July, 2016.

The Amendment Act has renamed the old "Child Labour (Prohibition and Regulation) Act, 1986", as the "Child and Adolescent Labour (Prohibition and Regulation) Act, 1986". "Adolescent" has been defined meaning a person who has completed his fourteenth year of age but has not completed his eighteenth year; children to those under 14 years.

The Amendment Act prohibits "the engagement of children in all occupations and of adolescents in hazardous occupations and processes". It, however, allows the child to work in "family or family enterprises" or allows the child to be "an artist in an audio-visual entertainment industry" provided that no such work under this clause shall effect the school education of the child. Besides, it provides for "a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both" to an employer who employees a child or adolescent. Under the new law, even the parents and guardians are liable if they permit such child

or adolescent to work in contravention of the provisions of the amended Act.

The amendment also provides for constituting of Child and Adolescent Labour Rehabilitation Fund to which the amount of the fine realized from the employer of the child and adolescent shall be credited.

Resolution adopted in the Chief Justices' Conference, 2016 (22nd & 23rd April, 2016)

One of the Resolutions adopted in the Conference is that: The Chief Justices in their capacity as Patrons-in-Chief of SLSAs (State Legal Services Authority) shall take necessary steps to ensure that legal awareness programmes are conducted in jails and juvenile homes.

The Conference has also noted the necessity for ensuring institutional support for juveniles in conflict of law and children in need of care and protection. It resolved that:

- (i) cases pending for a period in excess of one year be disposed of on priority by the JJBs;
- (ii) Juvenile Justice Committees of the High Courts shall monitor the pendency and disposal of adoption cases and applications for declaring children free for adoption on a priority basis;
- (iii) steps be taken to ensure that every district is equipped with a Child Protection Unit, Special Juvenile Police Unit, Observation Homes and Children Homes;
- (iv) pending cases of orphaned, abandoned and surrendered children be monitored by the Juvenile Justice Committees of High Courts;
- (v) training and refresher training be imparted to judicial officers;
- (vi) vacancies in juvenile justice institutions be filled up on a mission mode basis in three months; and
- (vii) State Legal Services Authorities should actively discharge their role.

Case law

In "*A*" v. *State of Uttar Pradesh*, 2016 (1) ALJ 625, the Lucknow Bench of the Allahabad High Court held that it is the responsibility of State government to take care of minor rape victim and her child. The Division Bench comprising of Justices Shabihul Hasnain and D.K. Upadhyaya directed

the State to ensure provision of health facility and education to the victim.

The issue in the case revolved around the minor rape victim's pregnancy and her resultant trauma. As per the order of court a select team of doctors ruled out the possibility of abortion as the termination of pregnancy will lead to the delivery of a life preterm baby. The counsel for the petitioner had appealed to the Court to look into the matter from the point of view of Article 21 of the Constitution of India and pleaded that not only the minor rape victim but also "would be born child" had a right to live a life of dignity and liberty. The court said the concept of rehabilitation emanates from the concept of right to life and in common parlance will mean to ensure all those facilities of life which were being enjoyed by the person who has been uprooted from a particular environment. It held that the power to grant compensation to the victim for violation of fundamental rights especially right to life and personal liberty is well recognized and independent of the provisions of Sections 357 and 357-A CrPC or/and any scheme framed in pursuance to or independent thereof. It held that the victim petitioner is entitled to be a beneficiary of two schemes i.e. The Uttar Pradesh Victim Compensation Scheme 2014 and Uttar Pradesh Rani Lakshmi Bai Mahila Samman, 2015. The Court not only determined the rights of the victim petitioner but also of the newly born child. It held that the newly born child of the victim is clearly a child in need of care and protection as per Section 2(d)(iv) and Section 2(d)(v) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Perusing Para 2(d) of the Uttar Pradesh Victim Compensation Scheme, 2014 which defines 'victim' as "a person who himself has suffered loss or injury as a result of crime and requires rehabilitation and includes his dependent family members", the Court held that this definition of victim would also include the child born out of illegal act of sexual abuse with minor. It said: "The new born child is a victim in the sense that she/he is forced to live a life of shame and stigma without his/her fault. She/he is brought in this world destined to suffer because while the father refuses to lend his name to the child, the mother abandons her/him for social reasons. Injury to reputation is a violation of right to live with dignity. The child is the victim of circumstances. She/he definitely suffers injury of being left in this world to fend for himself without any support." The Court on perusing

the contentions and the concerned statutory provisions, observed that the victim is capable of giving her child for adoption. The Court also observed that there is need of a proper legislation regarding rehabilitation of rape victim. It said that "the reason for this lack of legislation is perhaps the fact that no study has ever been undertaken by any study group or research centre regarding compensation of victims and therefore, the whole picture has never been comprehended by the legislative machineries".

In *Ajay Kumar Patel v. State of U.P.*, PIL No. 3334 of 2016, the petitioner raised a seminal issue before the Allahabad High Court in regard to the implementation of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 in relation to students belonging to the economically weaker sections. The petitioner's submission was that the salutary mandate of Section 12 (1) (c) of admitting at least twenty-five percent students from children belonging to the weaker sections and disadvantaged group in the neighborhood has been defeated by the State Government. It was brought before the Court that the State Government has issued Government orders dated 3 December 2012, 20 June 2013, 6 January 2015, and 24 February 2016 in the exercise of its administrative authority to regulate admissions under Section 12 (1) (c). In the writ petition, it has been stated that out of a total 56.53 lakh enrollments of students for Class 1 in primary schools in the State of Uttar Pradesh, 6.37 lakh enrollments representing a quota of 25% prescribed under Section 12 (1) (c) should have been filled up but as on 5 June 2015, only 2817 admissions were confirmed to have been granted under the said provision. The grievances of the petitioner were: "Firstly, it was submitted on the basis of the Government Orders dated 3 December 2012 and 6 January 2015 that the District Basic Education Officers have been directed that it is only where no seat is available in government schools or aided institutions that the provisions of Section 12 (1) (c) would apply. Secondly, it was submitted that as a result of an artificial distinction between the urban and rural wards, Section 12 (1) (c) is being applied only to urban wards with the result that the rural population is not obtaining the benefit of the provision".

The Division Bench, comprising Chief Justice Dr. D.Y. Chandrachud (As his Lordship then was) and Justice

Yashvant Varma, held that: "To read Section 12 (1) (c) in a contrary manner so as to import an obligation to admit students from the weaker sections and disadvantaged groups only where seats are not available in State run schools or aided institutions would be to defeat the object of the provisions". It said that laying down a hierarchy or condition for the availment of the benefits under Section 12 (1)(c) by restricting them only to a situation where admissions in schools which are conducted by the Government or in aided institutions are not available, would be contrary to the plain mandate of Section 12 (1) (c), and that such a policy cannot be laid down by the State Government in violation of the provisions of the Act of Parliament and would be ultra vires. As per the Court, the plain effect of the policy would be to mandate that a child belonging to the weaker section or disadvantaged groups cannot aspire for admission to an unaided institution under Section 12 (1) (c) so long as admissions are available in State run schools or in aided institutions.

The Court also held that it would be impermissible for the State Government to postulate, as a matter of policy, that the provisions of Section 12 (1) (c) will be applicable only to the urban as distinct from rural areas, as neither the Act nor the Rules make any such distinction. It directed the State Government revisit its earlier formulations so as to bring them in conformity with the mandate of Section 12 (1) (c) as interpreted in the judgment no later than within a period of two months from the date of receipt of a certified copy of the order.

In compliance of this order, the Government of U.P. has issued an order dated May 11, 2016, as per which, a Basic Shiksha Adhikari will now be required to ensure admission of EWS students in the neighbouring private schools up to 25 per cent of that school's total strength. Therefore, a student now has the option of taking admission into a school of his or her own choice.

In *Sampurna Behrua v. Union of India*, Writ Petitions Civil Nos. 473/2005, vide order dated 24th July 2015, the Supreme Court observed that there could be more than one JJB per district to tackle the backlog of cases, going as far as directing that that there should not be more than 100 pending cases so that these can be disposed off in the stipulated four months.

UNIVERSITY INITIATIVES

First Social Audit under Juvenile Justice Act, 2000 conducted by RMLNLU

On behalf of Department of Women and Child Development (WCD), Govt. of Uttar Pradesh, the university conducted Social Audit of all Child Care Institutions across the State, covering 31 districts.



The social audit team of the University, comprising of two faculty members and eight students, used pre-devised questionnaire shared by Ministry of Women and Child, Government of India, for assessing the factual and legal compliance with the law in running of the CCIs managed by the NGOs and funded by the Government of Uttar Pradesh. Physical verification of all the parameters was done by the social audit team in a short time of 10 days. This was for first time in India that Social Audit was conducted under Juvenile Justice Act, 2000.

The University prepared a detailed report titled "Report on Social Audit of Child Care Institutions (CCIs) in Uttar Pradesh (Phase-1)" and submitted it to Govt. of Uttar Pradesh. Acting on the report the Government of Uttar Pradesh took action and released funds fully/partially only to those NGO-run CCIs which passed the social audit test. The University also presented the report in front of Juvenile Justice Committee of Hon'ble Allahabad High Court.

After completion of Social Audit-Phase 1, Govt. of UP then asked the University to conduct a rapid



Presentation of Social Audit Report before WCD Dept., Govt. of UP

assessment of CCIs managed directly by the government. The rapid assessment was conducted on the same parameters and using the same tools that were used for conducting the Social Audit of CCIs. During the course of rapid assessment, 11 CCIs across the following 6 districts were covered- Barabanki, Hardoi, Kanpur, Lucknow, Meerut and Noida. On 20th May, 2016, the University submitted the report titled "Report On Rapid Assessment Of Government Run Child Care Institutions (CCIs) in Lucknow, Kanpur and Meerut Divisions".

Two day Consultation of Deans/HODs/ Faculties on Child Protection Curriculum for LL.B. Programme, March 12-13, 2016

Dr. Ram Manohar Lohiya National Law University, Lucknow in collaboration with the UNICEF, Uttar Pradesh organized this Consultation with an agenda to bring the representatives of the various Universities in the State to one platform for a fruitful dialogue on the current practices in their respective universities and to mainstream the juvenile justice education curriculum at the graduate level, thereby empowering the future stakeholders as RMLNLU believes that universities can play a significant role in changing the landscape of prevailing juvenile justice and child protection system by incorporating child laws in their respective curriculum which will ensure sensitization and early training of the students.



The Consultation was inaugurated by Mr. S.S. Upadhyaya, Legal Advisor to the Hon'ble Governor, Uttar Pradesh. The Consultation was divided into 4 technical sessions. The first technical session on the theme "Paradigms of Research in Child Rights in Education" was chaired by Prof. Dr. G. S. Bajpai, Registrar, National Law University, Delhi and President, Indian Society of Victimology. Prof. Bajpai argued that we have moved beyond the primary level where doubts as to feasibility of child rights law as a separate course in LL.B. program were raised. He stressed upon the fact that we have adequacy of laws in regard to child protection (Fundamental rights, Directive Principles of State Policy, Labour Laws, Juvenile Justice Act, POCSO, Cr. P. C. and IPC), but the problem is that of perspective. The second session on the theme "Teaching Methodology of Child Protection Laws" was chaired by Prof. (Dr.) V.S Elizabeth, Professor & Coordinator, Centre for Child and Law, NLSIU, Bangalore. She argued that the first thing we need to do is to appreciate the need of child rights, for which we must look into the historical connotations of this right movement and how and when child rights were recognized as vested in children's and not to the people who are not at par with a child and understanding the need to safeguard those rights. The third technical session on "Integration of Child Rights in Clinical Legal Education" was chaired by Ms. Bharti Ali, Director, HAQ, New Delhi. Ms. Ali started the session by emphasizing on the point that the Juvenile Justice Board, the Child Welfare Committee and the State Commissions for Protection of Child Rights have to work closely in co-ordination for providing a number of benefits like awareness generation and victim assistance.

She gave an example as to how the Delhi Commission for Women, the Delhi Legal Services Authority along with an NGO provide legal aid and referral service to the victims, along with case to case assistance. The theme of the fourth technical session was "Integrating Child Protection Education in Existing Curriculum", which was chaired by Dr. Kavita Singh, Associate Professor, WBNUJS Kolkata. Dr. Singh discussed about the following inherent rights that children have: Due Process Rights which includes protection against abuse of legal system such as imprisonment without trial, excessive punishment etc; Liberty Rights which include right to belief, expression, association, assembly, movement; Equality Rights which includes non-discrimination; Social Rights which includes provision for education for all children, protection against poverty and starvation; Legal Rights which includes the Civil and the Constitutional Rights; and Security Rights which includes protection against crimes such as Rape, Murder etc. She then emphasized on inclusion of study of these rights in the LL.B. curriculum.

Review Meeting & Technical Input Sessions for SJPU



Review Meeting & Technical Input Sessions are being conducted every month in the 10 target districts. The aim of the meetings and the sessions is to bring the SJPU as a Unit together and assist them in better functioning by strengthening the network and synergy amongst the stakeholders under the JJ Act including the Child Welfare Committee (CWC), the Juvenile Justice Board (JJB) and District Child Protection Unit (DCPU), Childline, Labour Department.

Two Day Training Programme for Public Prosecutors on Child Protection Laws, July 30-31, 2016

A two-day pilot training programme was jointly organized by Dr. Ram Manohar Lohiya National Law University (RMLNLU), Lucknow, Home Department, Government of Uttar Pradesh (U.P.), UNICEF and Directorate of Prosecution, Government of Uttar Pradesh on 30-31st July, 2016 for 20 Public Prosecutors of various districts of Uttar Pradesh with an aim to train and sensitize public prosecutors in matters of child protection under various laws including the Juvenile Justice Act, 2015 and the Protection of Children from Sexual Offences Act, 2012 (POCSO).



The programme was inaugurated by Dr. Surya Kumar, DGP (Prosecution), Ms. Ministhy S. Nair, Special Secretary, Home Department (Govt. of UP) and Aftab Mohammad, Child Protection Specialist, UNICEF. During the inauguration, Ms. Ministhy S. Nair also informed that the State Government has decided to establish 10 model SJPU (Special Juvenile Police Units) and to also train 250 public prosecutors and 75 DGCs with the financial support of UNICEF. RMLNLU has been identified as knowledge partner by UNICEF for the training and developing the model SJPU in the state. The two day training program was divided in 5 technical sessions where "Core Principles of Juvenile Justice", "Overlap between Juvenile Justice Act, 2015 and POCSO", "Role of Public Prosecutor under Juvenile Justice Act, 2015", "Issues in Bail, Age Determination, Investigations, Transfer of Cases and Final Order in case of Offences by Children" were discussed.

Student Participation in Child Rights

12 students from the University undertook Uttar Pradesh State Commission for Protection of Child Rights (UPSCPCR) Work Integrated Learning (WIL) Internship during July, 2015 and prepared a detailed ground report on child rights in various districts.

The visit of the respective districts was conducted by UPSCPCR during 6th-24th July, 2015.

UPCOMING INITIATIVES

- Mainstreaming of Child Protection Laws in B.A. LL.B./ LL.B. Curriculum of the Universities of Uttar Pradesh (August 27-28, 2016)
- Training of Public Prosecutors working in Juvenile Justice Boards (JJBs) of Uttar Pradesh (September- October, 2016)
- Training of SJPU on Child Protections Laws and Policies (September- October, 2016)

"There is much to fear in a day that begins without a meal, without a friendly school to go to along with other children, without relief from illness and maladies that are constantly present in a precarious childhood, and, not least, without anything much to look forward to in the future.

The tragedy in all this lies not only in the bleakness of the real world in which Indian children live, but also in the fact that these developments are not hard to overcome, even within the means that India now has. Our children remain in the dire state in which they are mainly because of the lack of political and social engagement, not because of the lack of resources."

- Amartya Sen, The Country of First Boys, Oxford University Press, New Delhi (2015), page 97.



Around the world, 6th February is observed as International Day of Zero Tolerance for Female Genital Mutilation. This first issue of the newsletter has been made colour coordinated with this cause.

FGM means all those procedures which involve altering or injuring the female genitalia for non-medical purposes. It is one of the most heinous and disgusting practice. It is clear violation of human rights and rights of younger girls. Globally it is estimated that at least 200 million girls and women alive today have undergone some form of FGM. If current trend continues 15 million additional girls between ages 15 to 19 will be subjected to it by 2030. To promote abandonment of FGM, coordinated and systematic efforts are needed with special focus on encouraging societal dialogue on gender equality and sexual and reproductive health of

To,

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