

CHILD PROTECTION BULLETIN

STATE CHILD
PROTECTION
SOCIETY, ASSAM

MONTHLY BULLETIN OF ACTIVITIES CONCERNING CHILD PROTECTION IN ASSAM

EDITORIAL

Child Protection is an issue which needs special attention. Those involved in child protection need to follow certain principles which are mandatorily to be adhered to while dealing with children. The principles are the guidelines which give a direction to working with children. When these guidelines are followed in the workplace a lot of issues and problems can be averted.

Children should not be discriminated on any ground. They are the innocent children of God; hence, their innocence should not be the reason for their being exploited. This month's Child Protection Bulletin deals with the General Principles of Child Protection and discrimination of children living with HIV/AIDS. The reading will help the reader to introspect himself / herself and help him/ her to give right direction in their work.

Editorial Board,
State Child Protection Society,

General Principles of Care and Protection of Children

Children are our Nation's most precious resource, but as children, they often lack the skills to protect themselves. It is our responsibility, as parents and guardians, to safeguard children and to teach them the skills to be safe. This pamphlet is designed to help you talk to your children about how to protect themselves against abduction, exploitation, and painful experiences. Every home should teach children about safety and protection measures. As a parent, you should take an active interest in your children and listen to them. Teach your children that they can be assertive in order to protect themselves against abduction, exploitation, and uncomfortable situations. And most importantly, make your home a place of trust and support that fulfills your child's needs. Together we can protect our Nation's children by teaching them to be smart, strong, and safe. Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) prescribes that the Central Government, the State Governments, the Board and other agencies, as the case may be, while implementing the provisions of JJ Act, 2015, shall be guided by the following fundamental principles, namely:

Principle of presumption of innocence

Any child shall be presumed to be an innocent of any malafide or criminal intent up to the age of eighteen years. This principle presumes that anything done by the child or the child in conflict with law has been done without mensrea or malafide intention. This principle operates right from the initiation of the proceedings and ends at the aftercare programme. It simply states that whatever be the act committed and whatever be the circumstances and whether it is done by himself or under the control of the adults or with the influence of peer group should always be considered that the said Act has been committed without mensrea i.e. the Principle of presumption of innocence should be applied for all those activities which has been covered or explicitly stated in the Rule.

Principle of dignity and worth

All human beings shall be treated with equal dignity and rights. This principle mandates the agencies involved in

the JJ Act are to treat the child with dignity and worth and not to label, stigmatize or discriminate the child. It also mandates the authorities to respect the personal identity and such other things relating to the child right from initial apprehension till the aftercare is over.

Principle of participation

Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child. Children's right to be heard shall include creation of developmentally appropriate tools and processes of interacting with the child, promoting children's active involvement in decisions regarding their own lives and providing opportunities for discussion and debate.

Principle of best interest

All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. Children differ from adults in their physical and psychological development and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.

Principle of family responsibility

In a family, a child is introduced to emotions like love and security. The social values and cultural aspects of the community are inculcated in the child within the family background i.e. the primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be. Though many functions of family like education, health, recreation etc. are being taken up by other social

"Every child has the right to love, care and protection"



institutions, the family retains its importance as a constituent entity and building block of all societies and communities. Thus, the principle of family responsibility plays a vital role in the administration of juvenile justice as an informal care and all authorities functioning under the JJA should take all the necessary decisions of the child with the active involvement of the family of the children, who are in conflict with law.

Principle of safety

All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter. It also mandates that the state shall not use restrictive measures in the name of safety of the child.

Positive measures

All resources are to be mobilized including those of family and community, for promoting the well - being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act. The term positive measures include the - avenues for health, education, relationships, livelihoods, leisure, creativity and play. The Principle wants to achieve the objective of facilitation in establishing the personal identity of the child and to enable the child to equip himself to achieve the developments in all the processes relating to the individual growth.

Principle of non-stigmatizing semantics

Adversarial or accusatory words are not to be used in the processes pertaining to a child. For example, it mandates to avoid the following wordings in the process of administration of Justice relating to children, who are in conflict with law. It includes the following - arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail.

Principle of non-waiver of rights

No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

Principle of equality and non-discrimination

There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability, health, status, race, religion, cultural practices, work, activity or behaviour of the child in conflict with law or that of his parents or guardians, or the civil and political status of the child. This principle also includes that equality of access, opportunity and treatment shall be provided to every child.

Principle of right to privacy and confidentiality

Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process. In other words, no report

in any newspaper, magazine, news - sheet or audio - visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime. No staff/stakeholder should divulge/ disclose any details to any one regarding any case of CNCP (Child in Need of Care and Protection) or CCL (Children in Conflict with Law) or identification of the same .

Principle of institutionalization as a measure of last resort

Deprivation of liberty has negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. Deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured. A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The principle objective of institutionalization and detention in the juvenile justice system should be to ensure that the offender is free of criminal behaviour as soon as possible.

Principle of repatriation and restoration

Every child in the juvenile justice system shall have the right to be reunited with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest. (This principle should be read alongside of principle of family responsibility).

Principle of fresh start

While children who have offended must be held accountable for their action, every child has the capacity to change for the better and must have a second chance - a right to a fresh start. The principle of fresh start signifies a new beginning in the life of the child in conflict with law. All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

Principle of diversion

Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

Principles of natural justice

Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

A Victim of Child Sexual Abuse can file a complaint at any time irrespective of his/her present age

The Ministry of Women and Child Development had recently consulted Ministry of Law in view of the overriding provisions of the Protection of Children from Sexual Offences (POCSO) Act over other criminal laws and provisions of mandatory reporting of such offences. The Ministry of Law after examining the provisions of POCSO Act vis-à-vis provisions of CrPC has advised that there appears no period of limitation mentioned in Section 19 in regard to reporting of the offences under the POCSO Act, 2012. The POCSO Act does not provide for any period of limitation for reporting the child sexual offences. On receipt of the opinion of Ministry of Law, Ministry of WCD stated that "Now any victim, at any age, can

"Don't be ashamed of your story, it will inspire others"

complain the sexual abuse faced by him/her as a child". The Ministry has urged the victims to report the cases through POCSO e-Box. Often, children are unable to report such crimes as the perpetrator in most cases is either a family member, a relative or closely known person. Studies have also shown that the child continues to carry the trauma of sexual abuse till very late in life. In order to overcome this trauma many grown up people have started coming out to report the abuse faced by them as children. The Protection of Children from Sexual Offences Act (POCSO), Act 2012, came into force on 14.11.2012. It is a gender neutral Act which has been enacted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography.

Discrimination of children living with HIV / AIDS

Introduction

People living with HIV/AIDS face discrimination, especially in the villages, where they are often treated as outcasts. Their children also suffer - whether they have HIV/AIDS or not - as they are treated with contempt in schools and the community. When the parents of these children die, no one comes forward to take their responsibility, not even their relatives. The rights of children affected by HIV/AIDS are violated in many ways. They are discriminated by the community; they are deprived of opportunities of education and development; they are not able to avail proper services, remedies and assistance; they are made to sit separately in schools and sometimes even denied admission in schools. They are left to fend for themselves.



What the law says about children affected by HIV/AIDS

The Indian government has developed policies that work as solutions for children affected by HIV/AIDS. National Aids Control Organisation (NACO) is working towards prevention and cure of HIV/AIDS. While a specific law to protect the rights of HIV positive people is in the process of being formulated, there are certain basic rights that the constitution of India guarantees to all citizens and stand applicable even if a person is HIV positive like, right to informed consent, right to confidentiality, right against discrimination etc.

Role of panchayat members in addressing the issue

It is important that panchayat members are themselves aware of the rights of children affected by HIV/AIDS. This information should be shared with other residents of the village through gram sabhas. If a case of HIV/AIDS comes up in the village, the panchayat members should seek assistance from the government for protection of the affected children

Glimpse of One Day Capacity Building Programme for Social Worker of DCPI's



"Incredibly, the impact of HIV and AIDS on children is still being ignored"

Status Report on the functioning of the Juvenile Justice Boards and Child Welfare Committees in Assam for the month of September 2018

Sl. No.	Districts	Juvenile Justice Boards			Child Welfare Committees		
		No. of cases instituted	No. of cases disposed	Total cases pending	No. of cases instituted	No. of cases disposed	Total cases pending
1	BAKSA	Cases are jointly dealt with Nalbari JJB			4	4	0
2	BONGAIGAON	4	2	21			35
3	BARPETA	4	2	125	26	18	250
4	CACHAR	1	2	14	10	4	15
5	CHIRANG	5	4	22	6	3	18
6	DARRANG	3	6	51	4	3	20
7	DHEMAJI	2	5	12	4	1	12
8	DHUBRI	4	1	104	6	6	11
9	DIBRUGARH	3	6	22	31	28	14
10	DIMA HASAO	2	0	19	1	2	16
11	GOALPARA	3	3	42	3	2	11
12	GOLAGHAT	1	6	20	6	8	14
13	HAILAKANDI	0	2	14	9	6	8
14	JORHAT	10	5	41	20	15	25
15	KAMRUP (M)	6	2	76	127	69	496
16	KAMRUP (R)	3	7	30	47	39	53
17	KARBI ANGLONG	2	4	36	17	2	21
18	KARIMGANJ	3	9	42	3	0	21
19	KOKRAJHAR	4	3	149	6	4	24
20	LAKHIMPUR	2	3	46	29	25	17
21	MORIGAON	1	7	21	11	9	24
22	NAGAON	8	7	165	24	27	17
23	NALBARI	0	2	13	11	7	88
24	SONITPUR	5	4	68	5	5	25
25	SIVASAGAR	13	4	84	10	6	78
26	TINSUKIA	1	0	17	35	30	49
27	UDALGURI	1	3	14	21	5	92
	Total	91	99	1268	476	328	1454

Corrigendum : The cases of JJB published in the month of September 2018 (case details of August) for Karbi Anglong district should have been read as 38 instead of 36, and the total pendency of JJB cases should be read as 1276 instead of 1274.

For any feedback, write to :
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DSW, Government of Assam