

For
Department of Justice
Ministry of Law and Justice, Government of India

DRAFTING POLICY FRAMEWORK TO SECURE RIGHTS OF ORPHAN
CHILDREN AND GOVERN ORPHANGES IN JAMMU & KASHMIR

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The Research team of KFORD under the supervision and guidance of the Department of Justice,
Government of India, conducted this study.

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Abbreviations and acronyms

PRI	Panchayati Raj Institutions
RBC	Residential Bridge Bourses
UNICEF	United Nations International Children's Emergency Fund
UNESCO	United Nations Educational, Scientific and Cultural Organization
KFORD	Kashmir Foundation for Organization Research and Development
WECs	Ward Education Committees
VEC	Village Education Committee
CWSN	Children with Special Needs
HH	Household
HoH	Head of Household
J&K	Jammu and Kashmir
NCERT	National Council of Educational Research and Training
NCT	National Capital Territory
NSS	National Sample Survey
OBC	Other Backward Classes
OVC	Other Vulnerable Children
PPS	Probability Proportional to Size
PSU	Primary Sampling Unit
ORGI	Office of Registrar General of India
RTE	Right to Education
ICPS	Integrated Child Protection Scheme
JJ Act	Juvenile Justice Act
GOI	Government Of India
CPC	Child Protection Committee

Executive Summary

A. State Vs. Community run Orphanages:

There are 201 orphanages where 12,716 children are already enrolled. Government supports only 14; whereas 187 orphanages are mostly run through charities with uncertain income. The origin of these charities is local community members in several areas. The significant source of support is either by cash or by kind.

Whereas less number of orphanages is run by the state is a good indication. However, the high number of orphanages run by community also legitimizes demand for donations. This is largely done through a cadre of remunerated volunteers which needs an urgent regulation.

B. Statutory Registrations:

Out of 201 orphanages, 95 of the orphanages are not even registered. A large percentage of respondents (96%) had no information about section 35(3) of the JJ Act of Jammu and Kashmir, which mandates registration of all homes. The respondents did not even know anything about the JJ Act. It is more ironical that the government has not done much to enforce Section 35 though a detailed guideline for registration have been issued and the registrars were designated.

Interestingly 88.45% pointed out that orphanages should be registered with the government and 8.55% of the respondents added that orphanages should not be only registered with the government but also follow the government guidelines.

C. Lack of Government Support:

Government sponsored orphanages under Social Welfare Department is directly supporting 14 orphanages. Out of 187(201-14=187), 92 orphanages are registered in the government records. The study found that none of these registered orphanages have received any kind of State support for their programs.

D. Infrastructure:

In the survey findings, general condition of the orphanage sites is satisfactory but none of them are fenced. Almost all of the surveyed orphanages have only one building, however, there is a proper arrangement for water and electricity in each orphanage. Out of 201, 163 orphanages do not have construction plans and do not

comply with the minimum standards detailed in Juvenile Justice (Care and Protection of Children) Act, 2013.

E. Playground and Recreational Facilities:

It was found that 117 orphanages do have some space for playground but 93 of the surveyed orphanages do not have proper space for playground which is very important for the physiological development of the child. Majority of these institutions do not emphasize much on recreational aspects of children. Most of the resources in orphanages are utilized for food, clothing and education.

F. Child-Caretaker Ratio:

Based on the survey of 201 orphanages, Children–caretaker ratio ranges from 10:3 to 45:3 with the exception of one orphanage having a ratio of 2:1.

G. Community Care:

There were 76.47% Respondents at the community level believed that community care is better for overall development of the child. Only 14.75% of the respondents are of the opinion that only orphanages can take care of the orphans, whereas 5.83% of the respondents said both Community Care and Orphanages are best caretakers for the orphans; furthermore, 2.94% had no opinion about the issue.

H. Awareness about Child Rights:

In the survey findings some distressing results were found, a larger number of community members do not know anything about the Rights of the Children. 86.07% of the respondents were not familiar with the child rights, and as indicated in the above-mentioned pattern, less than 8% people know about any of the four important categories of child rights as detailed under UNCRC.

I. Interface with Orphans:

63.56% of the respondents have directly or indirectly come across the Orphans and their issues in their lifetime; this ratio is an indicator about the large number of orphans in the community, whereas 36.44% has never interacted with any orphan.

J. Adoption:

Respondents were not aware about the role and procedures of the child adoption mechanism in J & K. More than 60% people have been interviewed who were unaware about any such guidelines and procedures. 84.54% of the respondents believe that the role of community towards orphans is to provide quality education and development support.

K. Understanding on Orphan Vulnerabilities:

Less than 15% respondents pointed out the need of protection and safe environment, however, a very less percentage of the population thinks it is an important duty of the residential area to ensure quality health care, though all the parameters are very significant for the holistic evolution of these vulnerable children.

L. Reintegration of Orphans:

A large number of people believe that the word Orphan- or “Yateem” is itself a stigma for these children in the society. This has led to the physiological disorders among these children and 50.17% respondents are of the opinion that orphans who are being neglected must be reintegrated in the society.

Chapter -1

Introduction

Department of Justice (DOJ), Ministry of Law and Justice Government of India is mandated to implement a rights based project on “Access to Justice in the North East and Jammu and Kashmir” {also referred to as A2J (NE&JK) }. Primarily, it focuses to address the legal issues, narrow down the gaps in existing legal framework and fulfill the legal needs of thousands of marginalized and vulnerable sections of the society i.e. women and children, scheduled Castes, scheduled Tribes and other backward communities.

The project aspires to strengthen the justice implementation system in the country and side by side improve the capacities inside the system to address the demands of the people in a much better way as well as create a robust cadre of social justice Lawyers and Paralegal volunteers. To ease the process of justice to link between the laws, the courtrooms and marginalized section of society by the bottom up approach. Whereas, the project also endeavors to raise legal awareness among people and enhance the ability in ensuring their rights.

Presently, the A2J project (North East and JK is being implemented in nine states i.e. Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur, Tripura, Sikkim and Jammu & Kashmir.

The aim of the project and this policy paper in the context of Jammu and Kashmir is to direct concerns towards the issues of orphaned children living in orphanages. Due to the internal security issues in Jammu and Kashmir, countless people have lost their lives and a large number of minors have become vulnerable. The growing number of orphanages in Jammu and Kashmir has raised a range of social concerns. Several studies have put the number of orphans in Jammu & Kashmir at 2.14 lacs, out of which 37 percent are orphan because of internal security issues in the state.

The number of orphans is highly fluidic number due to the children crossing eighteen and assuming adulthood and also because the violence continues to add the number. There has been no such quantitative research or survey to know the number of orphans either in communities or in the orphanages running in the state of Jammu and Kashmir. Furthermore, there is no well-built mechanism to regulate the performance of such orphanages to ensure basic standards and rights of these children.

As a result of the absence of a systemic regulatory mechanism in place in the state of Jammu and Kashmir, an ‘Assessment Study’ was proposed to identify the number of orphans and orphanages in J&K. This work has also been extended to identify and enlist the State sponsored schemes for children in general and

orphans in particular, also, to identify gaps in the legal transfer of benefits to these children and understand the operation of these orphanages such as the access and availability of health and educational facilities in these institutes.

Henceforth, a policy framework is expected to guarantee to the rights of orphaned children as already mandated under the provisions of the Indian Constitution, Constitution of J&K, various laws and in various executive orders. It is anticipated that the framework would suggest the establishment of a regulatory structure for the registration, upkeep, hygiene, standard of living, education, recreational activities for orphans and also the mode of receiving funds by the orphanage.

In view of the issues and concerns of vulnerability of children across the state, this document is an attempt to envisage the condition of orphanages and to develop consensus between the stakeholders.

The document has tried to cover all possible issues raised by the stakeholders from the community in/and the institutions, in order to culminate this attempt of building a culture towards a framework, which embraces the care and protection issues of orphaned children.

The study is based on primary and secondary data, the respondents in the primary data collection were relevant stakeholders in the society such as community members and orphanages were mapped to get an idea of existing gaps and the problem statement. Some of worrisome issues have been brought out through the study, which need to be highlighted. Ranging from infrastructural problems to lack of awareness of rights in the community, the data gives the reader a picture of the vulnerability of orphans concerning their hardships and the functioning of the orphanages, all of which combine to raise a number of questions through the course of the study.

Chapter: 2

Objective, Methodology, Research Tools:

A. Objective (s) of the Study

The objectives of the study include:

The aim of this subject is twofold, one is *to set up a policy framework to secure the rights of Orphans and establish a framework to exercise control over the operation and monitoring of Orphanages (Both government aided and private).*

The policy purpose is to defend and protect the rights of all orphaned children irrespective of any discrimination, in the fields of child survival, child growth, child protection and child participation.

The policy framework also seeks to ensure that orphans and vulnerable children have their basic survival needs met, and protect orphans and vulnerable children from all forms of abuse, exploitation, and discrimination.

Specific Objectives of the study are:

1. Understand the nature, type, functioning and management of orphanages and how far they comply the existing legal provisions.
2. Undertake in-depth interview and compile the findings which will inform a policy framework for regulation of orphanages of Jammu and Kashmir

B. Methodology:

The study was conducted to examine the existing conditions of the orphanages, orphans and the cracks in the existing policy as well as to draft the framework for the operation of orphanages and ensure the rights of the orphaned children. The survey was taken in seven (7) Districts out of the aggregate of 22 districts in J&K. Three (3) Districts in Jammu Division, three (3) in Kashmir and one (1) in Ladakh Division.

The proposed target area has been seven districts covering three divisions of J&K state namely: -

- Kupwara, Bandipora and Budgam district in Kashmir Province.
- Doda, Poonch and Rajouri in Jammu Province
- Leh district in Leh Province

The study has used both primary and secondary sources. The study takes a multifaceted approach with qualitative as well as quantitative methods of inquiry supported by participatory research techniques. Qualitative data are largely (but not exclusively) generated by key informant interviews and focus group discussions. Cost effective automated tools were used to ensure expected level of quality and discourage duplicity.

The secondary data used in this study has been guided by the terms of reference and available data, reports and findings on Orphans and Orphanages published by various credible sources in the state and also at international level.

A multistage purposive sampling procedure has been employed in the selection of the survey population. The various sampling unit of the survey has been caretakers of orphanages, key officials of the department of social welfare; NGOs working on similar issues and children living in orphanages.

C. Data Collection Methods

Desk Review of key issues and challenges related to the rights of children with special focus on Orphans. The desk review, which includes all the secondary source data available on the subject of orphans and orphanages, survey reports, research studies and government led initiatives and reports have been taken into consideration. Library archives, best practices, case studies, and newspaper reports pertaining to the subject have been one of the tools used for desk review.

D. Questionnaires

- i. The basic method used in this survey has been in the form of a scheduled key informant questionnaire targeted at relevant stakeholders such as key officials of the department of social welfare, caretakers of orphanages; NGO's working on similar issues and children living in orphanages among others. Two sets of questionnaires were formulated for individual interviews and relevant institutions.
- ii. Data Processing and Analysis.
- iii. A data code sheet developed by the team was used to code the data uniformly for data entry purposes. The field data was then analyzed using the SPSS program and MS Excel etc.
- iv. Aggregation, Tabulation, Explanation, and Analysis: Prior to compilation of research findings, the collected primary data was tabulated and analyzed in a manner to document in the report with graphic representation in the form of charts, which is easy to illustrate.

Chapter: 3

Existing Legal Framework:

The situation of Orphan Children in context of field study analysis/National/state policy framework and international convention:

A. INTERNATIONAL CONTEXT:

The child rights and welfare concerns have repeatedly been brought forth in a number of International Conventions, Standards, and announcements, including the holy book of Child Rights - UN Convention of the Rights of the Child (UNCRC) 1989.

The Convention on the Rights of the Child (CRC) is the most comprehensive document on the rights of minors. Based mostly on the substantive rights, it sets forth an array of substantive rights and distinct implementing measures. It is the most detailed United Nations human rights treaty in force and it does not simply address the granting and implementation of rights in the time of peaceful conditions, but is also a guiding precept for the treatment of children in situations of armed fight.¹

The CRC is momentous because it enshrines, “for the first time in binding international law, the principles upon which adoption is based, viewed from the child’s view”².

The CRC is mainly concerned with four important aspects of child rights, which covers; 1) participation by children in the most vital decisions affecting them; 2) Prevention of any harm; It incorporates provision of assistance to children for their basic needs; and at the same time protection of children against all forms of discrimination, neglect and exploitation.³ For the purposes of the CRC, a child is defined as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier” (Article 1).

CRC shaped new rights for children under international law that earlier were not in existence, such as the child’s right to keep his or her individuality (as per Article 7 and 8 of the CRC), the rights of vulnerable children like refugees to special protection, and indigenous children’s right to practice their culture (Articles 8 and 30). As mentioned in Article 28(3) of CRC that “States Parties shall promote and

¹ (UNCRC, 1989) ‘U.N. Convention of the Rights of the Child’ (UNCRC).

²(Bueren G. V., 1998) ‘The International Law on the Rights of the Child’, Martinus Nijhoff Publishers.

³(Peters, 2006) ,How Children Are Heard in Child Protective Proceedings in the United States and Around the World in 2005. Springer.

encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods". In this regard, particular account shall be taken of the needs of developing countries. Article 39 – also stress on States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

The CRC also replaced non-binding recommendations with binding standards (e.g., safeguards in adoption procedures and with regard to the rights of disabled children) (Article 21 and 23).

Ultimately, the CRC sets forth an express ground obligating States Parties not to discriminate against children's enjoyment of CRC rights.⁴ The main aim of the convention is that the child for the fullest and harmonious development of his or her individuality should grow up in a family environment. It is important to understand that wherever a child lives, should have a family environment, where it is expected to have an atmosphere of happiness, love and understanding. Furthermore the convention considers that the child should be fully prepared to live an individual life in society brought up in the spirit of the ideas proclaimed in the United Nations Charter, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

B. Other International Legal Instruments on Child Rights;

- i. The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985,
- ii. The UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990,
- iii. The Hague Convention on Inter-country Adoption, 1993,
- iv. Sustainable Development Goals 2015, (earlier there was Millennium Development Goals, 2000)

C. Child Rights in India.

The Government of India ratified the UN Convention on the Rights of the Child (UNCRC) in 1992.⁵ The Convention prescribes standards to be adhered to by all State parties in securing the best interest of the child. It emphasizes social reintegration of child victims, without resorting to judicial proceedings. The UNCRC outlines the fundamental rights of children, including the right to be protected from

⁴(Bueren V. , 2001)

⁵(www.treaties.un.org, 2006)

economic exploitation and harmful work, from all forms of sexual exploitation and abuse, and from physical or mental violence, as well as ensuring that children will not be separated from their family against their will. The Constitution of India recognizes the vulnerable position of children and their right to protection.

India has adopted a number of laws and formulated a range of policies to ensure children's protection and improvement in their situation including:

- i. The Guardian and Wards Act, 1890
- ii. Factories Act, 1948
- iii. Hindu Adoption and Maintenance Act, 1956
- iv. Probation of Offenders Act, 1958
- v. Bombay Prevention of Begging Act, 1959
- vi. Orphanages and Other Charitable Homes (Supervision and Control) Act 1960, National Policy for Children, 1974
- vii. Bonded Labour System (Abolition) Act 1976,
- viii. Child Marriage and Restraint Act 1979,
- ix. Immoral Traffic Prevention Act, 1986
- x. Child Labour (Prohibition and Regulation) Act 1986, (Amendment 2016)
- xi. National Policy on Education 1986, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1987,
- xii. National Policy on Child Labour 1987,
- xiii. Infant Milk Substitutes, Feeding Bottles and Infant Foods Act, 1992 & Amendment Act, 2003.⁶
- xiv. Protection of Children from Sexual Offenses Act, 2012
- xv. Juvenile Justice (Care & Protection) Act, 2000

D. Jammu and Kashmir Constitution and Right to Education

Right to Education is mentioned in three key international instruments: Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, and the Convention on the Rights of the Child, 1989. India is a signatory of all the three mentioned instruments. However, until 2002, "free and compulsory education" was only a Directive Principle of State policy, in the whole of India, by way of the then Article 45 of the Constitution of India, which provided that "the state shall endeavor to provide for free and compulsory education for all children until they complete the age of fourteen years." In the year 1993, in the landmark case of *Unni Krishnan vs. State of A.P.* AIR 1993 SC 2178, the Supreme Court of India stated that Article 45 in Part IV of the Constitution must be read in harmonious construction with Article 21 (Right to

⁶Line, C. (2011, February). ICPS. Retrieved November 2015, from childlineindia: www.childlineindia.org.

Life) in Part III, since right to life, (the Court said) is meaningless if it is without access to knowledge.⁷

Right to Education is not a fundamental right in J&K. The 2002 amendment, also 86th to the parent Constitution, inserted Article 21-A in part III, which mentions that the State shall provide free and compulsory education to all children, from six to fourteen years of age, in such manner as the State may, by law, determine, and; introduced the new Article 45 -to take care of early childhood attention and preparation.

Article 370 of the Constitution of India determines the relationship of Jammu and Kashmir with the Indian Union. The provisions of the Constitution of India with regard to the fundamental rights have been given to the ground through the Constitution (Application to Jammu and Kashmir) Order, 1954 promulgated by the President. So conceived, any new amendment to the fundamental rights, i.e., Part III of the Constitution of India can be made applicable to the State only by an enabling order promulgated by the President of India as per the 1954 constitutional order.

Unlike other Fundamental Rights, the Right to Education, as assured under the Constitution of India, requires an enabling legislation to be in force because Article 21-A reads as 'in such way as the commonwealth may, by law, determine.' Post 2002 amendment the Indian Parliament finally came up with an enabling enactment in the conformation of the Right of Children to Free and Compulsory Education Act (RTE), 2009, which came into force on April 1, 2010. The RTE Act, 2009 is a detailed and comprehensive piece of statute law which includes provisions for the enforcement of the new Fundamental Right to Education under Article 21-A of the Constitution of India. Now education being a concurrent study, according to Article 254 of the Constitution of India, all the existing state statute laws on education stands overruled by this 2009 Act. However, amendments to the Act, at the State level, would require presidential assent.

The only law, having provisions for compulsory elementary education, which was not, superseded, by the Jammu and Kashmir School Education Act, 2002.

Likewise, unlike at the fundamental tier, the Jammu and Kashmir State needs not demand a new enabling legislation for making the correct impression. All it needs to do is to amend its 2002 School Education Act on the lines of the 2009 central

⁷ Unni Krishnan vs. State of A.P. AIR 1993 SC 2178.

⁸ http://jklegislativeassembly.nic.in/Costitution_of_J&K.pdf

Act. That means it will be more convenient and will take lesser time than making a new legislation altogether.⁹

E. Child Rights under Constitution of India, 1950

Indian constitution enshrines the child's right to education under various provisions:

i. Right to Education: Article 21-A, the definition of the article starts with mention of legal entitlement under which states are bound to provide free and compulsory education to all children between six to fourteen years of age in such a manner as the state may, by law determine. "Right to Life" is the ultimate expression of all those rights, which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct, which the individual is free to pursue. The Right to Education flows directly from Right to Life.¹⁰

ii. Article 45; Provision for early childhood care and education for children below the age of six years- it directs states to provide the free and compulsory education for children.

iii. Rights against Child Exploitation: Article 23 of the Indian Constitution talks about prohibition of traffic in human beings and forced labour. Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. In pursuance of Article 23, the bonded labour system has also been abolished and declared illegal by the bonded labour system (abolition) act, 1976. Additionally, Article 24 mentions the prohibition of employment of children in factories, etc. - No child below the age of fourteen years shall be employed to work in any factory, mine, or be engaged in any hazardous employment¹¹.

iv. Child Labour: Articles 23 and 24 of the constitution establishes the term "child labour". The Child Labour (Prohibition and Regulation) Act, 1986, this act was enacted on 23rd December 1986 by the parliament and was enforced on 26th May 1993 by the Central Government¹².

v. Article-15 (3) of the Indian Constitution authorizes the state to make special provision for women and children.

vi. Article-24 provides that no child below the age of 14 shall be employed to work in any factory, mine, or be engaged in any other hazardous employment. Article 39 (E) proclaims that the State shall apply its policy towards securing that children are

⁹(Majid, 2012)

¹⁰(India, Introduction to Constitution of India, 2005)

¹¹(India, Introduction to Constitution of India, 2005)

¹²(Line, 2011)

not forced by economic necessity to enter avocations unsuited to their age or strength.

vii. Article 39(E) enjoins that childhood and youth are to be protected against exploitation, against moral and material abandonment. In Article-45, the Constitution also endeavors to provide free and compulsory education for all children until they reach the age of 14 years. The general provisions under Articles 38, 42, 43, 45 and 47 of Directive Principles of State Policy provides a strategy for indirectly promoting the welfare of children. Article-38(1) provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may secure a social order in which justice, social, economic, and political shall be ensured¹³

F. Child Specific Acts

i. Juvenile Justice in India: The Juvenile Justice (Care and Protection of Children) Bill, 2015 was passed in parliament in 2015. The Bill that was passed incorporated certain amendments in May 2015. The Juvenile Justice (Care and Protection of Children) Act, 2000 provides a framework to deal with children who are in conflict with the law and children in need of care and protection.

In the Indian context, a juvenile or child is any person who is under the age of 16 years. Nevertheless, the Indian Penal Code stipulates that a minor cannot be charged for any criminal offence until he has reached seven years of age.¹⁴

According to the National Crime Records Bureau (NCRB) crimes committed by juveniles, particularly by those in the 16-18 years age group are on the rise, when determined in proportion to total crimes, there has been an increase from 1% in 2003 to 1.2% in 2013.¹⁵ The Act seeks to replace the existing 2000 Act and lays down the procedures to deal with both categories of children. It lies down that two main bodies will deal with these children, which is to be set up in each district: Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs). It offers information regarding adoption procedures and penalties applicable under the jurisprudence. The Act provides for children between 16-18 years to be tried as adults for heinous crimes. The three cases of offences defined by the Act are: (i) a heinous offence is an offence that attracts a minimum punishment of seven years imprisonment under any existing law, (ii) a serious offence is one that gets imprisonment between three to seven years and, (iii) a petty offence punished with up to three long time incarceration.¹⁶

¹³ (Bilal Ahmad Bhat, 2010)

¹⁴ (Code, 1860)

¹⁵ (Mathur, 2015) Juvenile Justice: 3 years on, Govt sits on implementation of ICPS. Retrieved 2015, from Greater Kashmir : www.greaterkashmir.com

¹⁶ (Mathur, 2015)

ii. Protecting the Future of the Child-Juvenile Justice Act: The directions provided by the path breaking features of 1986 Juvenile Justice Act, paved way for special treatment of juveniles involved in crimes. This act not only helped to segregate the juveniles from the adults, but also conceptualized the idea of protecting the future of the child. This act with all its limitations was fundamental in raising the concern for safe and secure future of the children of this country under every difficult circumstance. The rise of the social defense movement across the globe and persistent fight by the academicians and child rights activists put(s) more focus on rehabilitation rather on penology. Thus providing a boost to the idea of juvenile justice in India the academicians, activists, parliamentarians, and non-governmental organizations strongly advocated for reorienting the Juvenile Justice Act.

The Juvenile Justice Act 2000 is advancing to the earlier ones. However, even after having enacted the laws for the betterment and special care of the children, the problem of juveniles being treated as adult offenders persists in most parts of the country. A wholehearted implementation of the Juvenile Justice Act is still a challenge before governments and civil society. It is important to mention here that increase in urbanization and rise in number of cities and urban agglomerations have made this challenge more complex. Developing nations like India are confronted with the issues of children more gravely. The incidences of crimes done to children and crimes done by children are 'regular happenings'. Extensive media coverage and visibility provided is a matter of deep concern for all of us working in the field of childcare and protection. Therefore, the cause of concern with respect to the care and protection of children is need of the hour and there is a dire need to focus on the implementation of the Act In addition, there is the issue of crystallizing many significant features of the JJ Act at the implementation level to establish its efficacy.

Features like the determination of the age of children, constituting the Juvenile Boards and so on need a sincere and contextual interpretation.

iii. Juvenile Justice Act and the Orphans: The JJ Act addresses children in need of care and protection. When a child is found to be orphaned, abandoned, or surrendered, he is brought before a Child Welfare Committee within 24 hours. A social investigation report is conducted for the child, and the Committee decides to either send the child to a children's home or any other facility, it deems fit, or to declare the child to be free for adoption or foster care. The JJ Act outlines the eligibility criteria for prospective parents. It also details the procedures for adoption, and introduces a provision for inter-country adoption, so that prospective parents living outside the country can adopt a child in India: ¹⁷

¹⁷(www.ndtv.com, 2015)

Currently, the Guidelines Governing Adoption of Children 2015, under the 2000 Act, regulates adoptions. The Ministry of Women and Child Development have also recently released Model Guidelines for Foster Care, 2015.

iv. Juvenile Justice and J&K

The Jammu And Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 was passed in the assembly, largely seen as landmark legislation, this act subscribes for constituting State Advisory Board or a District Advisory Board, as the case may be, and the state has to set up Juvenile Justice Boards (JJBs).

Jammu and Kashmir has a unique status as a constituent state of India due to Article 370. Many central laws are not applicable to the state because of that special status. The historical Juvenile Justice (care and protection) Act was enacted in the State in 2013 and the rules were notified in 2014. However, the implementation of the act remains a big challenge due to the paucity of resources and technical expertise.

v. Scenario in Jammu and Kashmir: The implementation of juvenile justice system in Jammu and Kashmir depicts a (very) gloomy picture. The approach of governance has also been very lukewarm in terms of modifying the Juvenile Justice Act 1997 as well as the proper implementation of the act till 2000. Jammu and Kashmir Juvenile Justice (Care and Protection of children) Act 2013 was gazetted on 25th April, 2013. The Rules for the main act were notified on March 4th, 2014. The Act is a long pending demand of civil society. The aspirations of civil society are yet to be realized since the operation details are yet to be notified.

The importance of child care and protection assumes importance since children constitute about 23% of the total population. There is scanty data available on different regions-Jammu-Valley-Ladakh in terms of delinquency, crime rate and types of crimes. The recent data on crime released by the police bureau is also inadequate.¹⁸ However, the overall issues pertaining to childcare are for everybody to see. There are various study reports (like Asian Centre for Human Rights, 2011) that clearly show us how children in conflict with law are being kept in prisons with adults and hardly produced before the courts. Many cases have come up with respect to the functioning of the juvenile homes. The yet to be constituted juvenile boards and other machineries in Jammu and Kashmir are the biggest drawback in the proper implementation of the Juvenile Justice Act.

The number of children in conflict with law is very high in Jammu and Kashmir because of the prevailing political, economic and social circumstances in the state. Across India, school certificates are used to determine the age of a juvenile,

¹⁸ (Mathur, 2015)

however as per ACHR report¹⁹, 2011 this is not the practice in J&K. The J&K Police in all cases argue that those detained are adults. Until their age is medically assessed or ruled by the Judge, juveniles are assumed to be adults and are detained in adult detention facilities placing them at very high risk of abuse in clear violation of national laws and international human rights standards. Even if age can be determined, the lack of juvenile justice facilities such as juvenile homes means that detained delinquents are routinely detained in police lock-ups or in prisons with adults.

A big section of the children covered by the amended act, are those (children) in need for care and protection. There is a need for sensitizing stakeholders on this neglected aspect of juvenile justice. The law and rules themselves call for a holistic and comprehensive approach to care and protection. The event will give an opportunity to explore and highlight this key component of juvenile justice system.

This foregrounds the need to include the situation of children in need of care and protection and not only focus on children in conflict with law; and also the necessity to include the setting up of the statutory bodies as mentioned in the Act along with the systems and procedures in place.

¹⁹ Ali, R. F. (2015). Kashmir: Orphans, Nurture and Challenges. Lambert Publishing Germany

Chapter: 4

Detailed Findings of the Study:

Detailed findings are divided into three categories:

Infrastructure,

Opinion of community,

Response from institutions.

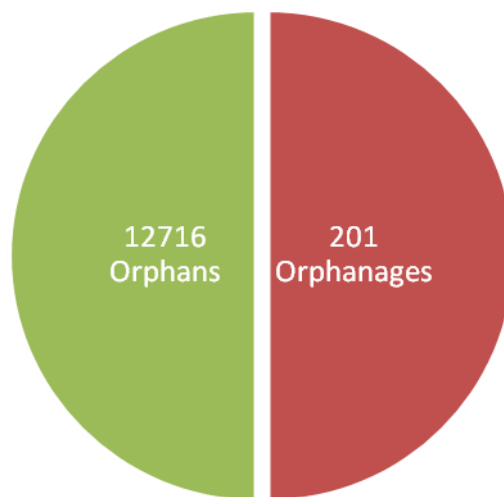
A. Functioning and Infrastructure of Orphanages in J&K:

As per the data collected, there are 201 orphanages in which 12,716 children are already enrolled. Out of these 201 orphanages, Government supports only 14; where as 187 orphanages functional at local community level, which are mostly run through disorganized and unbalanced charities. The origin of these charities is local community members in several areas. The significant source of support is either by cash or by kind.

According to the primary data available, a large number of these orphanages are just 5 years old. This upward trend in the number of orphans & orphanages has been discovered in the last 10 years. The community owned orphanages face shortage of finances due to unorganized sources of finances.

Orphaned Child Population in Orphanages in J&K

Figure 1



Quality Standards of Care for Orphanages in Jammu and Kashmir, 2010²⁰

In 2010, international childcare agency Save the Children and Social Welfare Department had in a document- 'Quality Standards of Care for Orphanages in Jammu and Kashmir' – The quality standards have been classed under different categories and they purport to pass over every sphere of activity in an orphanage. Some of the guidelines from the papers are shown below:

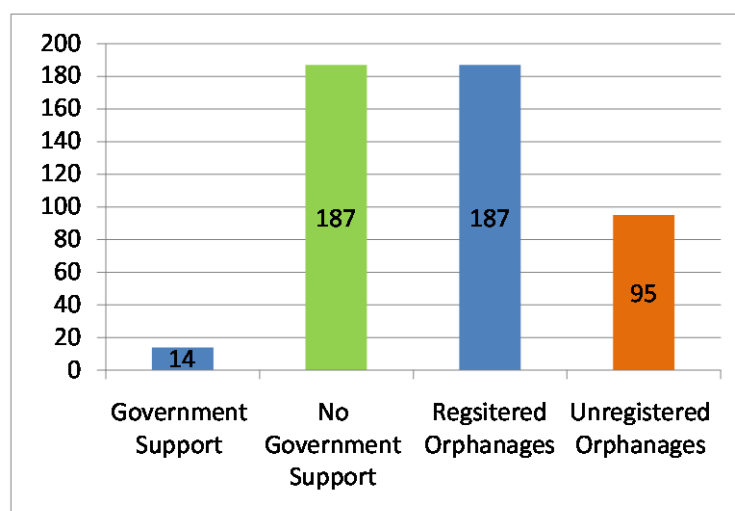
- Orphanages have to follow the monitoring mechanisms of the Department of Social Welfare, community, and civil society to ensure the welfare, care, and protection of children.
- Orphanages are expected to keep records of the daily affairs of children allowed in at that place.
- Serious health and hygiene practices must be ensured through supportive services and a clean environment sounds out the document.
- Principles and practices should be in place to ensure that children are not discriminated against because of caste, class, gender, religion, or ethnicity in an orphanage.
- Orphanages should be safe spaces for children with security provided at all times through effective implementation of safety measures, rules, and regulations.
- The orphanages should provide a safe and protective environment and the staff should have good child protection practices.
- The document says that children must have access to quality medical care and psychosocial or counseling support services.
- Orphanages should ensure quality education and development opportunities according to the child's gender, age and needs.
- The orphanages are to / should appoint professional caregivers.

B. Orphanages Registered/Unregistered /Supported by Government:

Figure 2

Government sponsored orphanages under the flagship of social welfare department is directly supporting 14 orphanages.

Out of a total of 187 only 92 orphanages are actually registered in the government records. The study also found that none of these registered



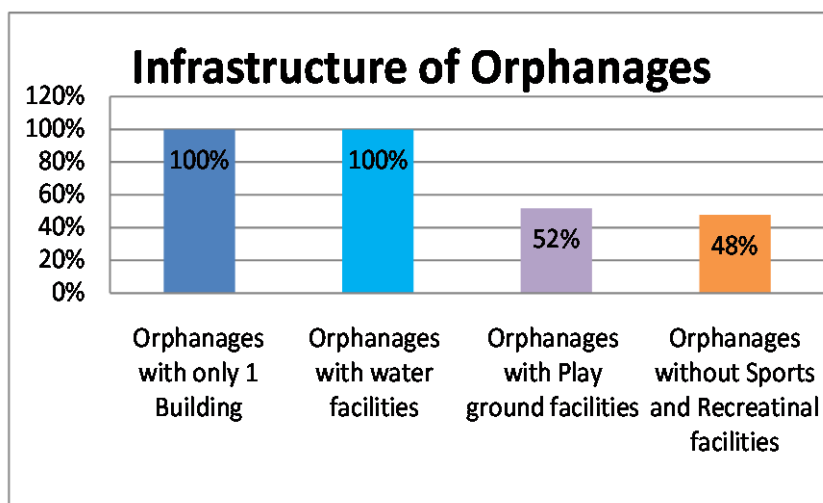
²⁰OneWorld South Asia, 2010.

orphanages have received any kind of support for their programs.

C. Infrastructure

In the survey findings, general condition of the orphanage sites is satisfactory, but none of them are fenced. Almost all of the surveyed orphanages have only one building, however there is a proper arrangement for water and electricity in each orphanage, Out of 201, 163 orphanages don't have construction plans, (see figure 5).

Figure 3



As per the illustration in figure 2, it was found that the 93 of the surveyed orphanages do not have a proper space for playground, 117 orphanages were found to have some space for playground, which is very important for the physiological development of the child.

D. Caretaker-Children Ratio:

Children in Orphanages Most of the children living in the orphanages have single parent(s). The children enrolled in 181 of the orphanages visit their respective homes four times in a year, while children in the other 20 orphanages get to visit their homes thrice a year. Orphanages enrollment and caregiver ratio for 201 orphanages are as follows:

S.no	Number of Orphanages	Care giver– Orphan Ratio
1	73 Orphanages	3:15
2	28 Orphanages	3:25
3	58 Orphanages	3:20
4	37 Orphanages	3:10
5	3 Orphanages	3:30
6	1 Orphanage	3:45
7	1 Orphanage	1:2

E. Opinion of inhabitants about Community care or institutional care:

76.47% Respondents at the community level and important stakeholders in the society believed that community care is better for overall development of the child.

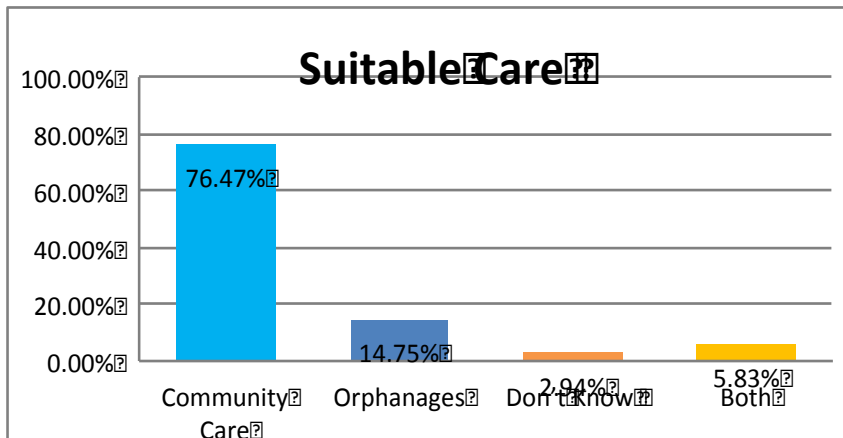


Figure 4 Opinion

14.75% of the respondents are of the opinion that only orphanages can take care of the orphans, where as 5.83% of the respondents said both Community care and Orphanages are best caretakers for the orphans; furthermore, 2.94%

had no opinion about the issue.

{It is significant to mention here that a big number of people from the community consider community care best form of maintenance and shelter for orphans rather than enrolling orphans in Orphanages.}

F. Awareness about child rights in community :

In the survey findings some distressing results were found, a larger number of community members do not know anything about the Rights of the Children.

86.07% of the respondents were not familiar with the child rights, and as indicated in the above-mentioned pattern, less than 8% people know about any of the four important rights which come under child rights.

Amongst these, only less than 8% percentage of people were aware of all of the Child rights and some of the people knew about only two rights and some were acquainted with only three rights, as is evident from the graph above.

The analysis of the above data collected from the field survey implies that a large number of people are unaware about child rights which necessitates sensitization at the grass root level through awareness efforts on child rights. This has to be ensured that these rights are well realized, implemented and substantially move beyond the primary stage.

In the absence of a sound knowledge on child rights, the society would not be capable to protect the most vulnerable group i.e. orphaned children.

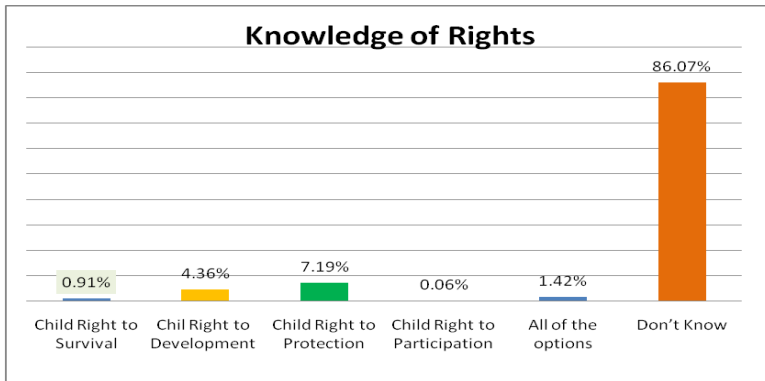


Figure 5

G. Management of orphanages:

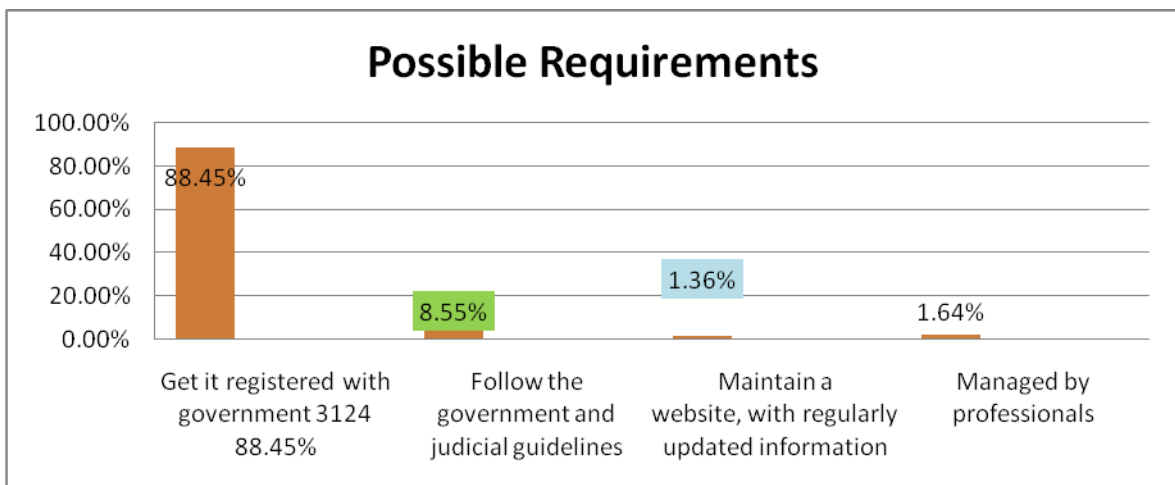


Figure 6

Respondents were required to show their opinion for the functioning and conditions of orphanages in their vicinity.

There was a mix of different responses:

88.45% pointed out that orphanages should be registered with the government, on the other side 8.55% of the respondents added that orphanages should be registered with the government and follow government guidelines.

More or less of the respondents (1.36%) stated that it is required for all orphanages to maintain an official website, with all the necessary information updated to ensure accountability and transparency, where as 1.64% were of the opinion that orphanages should be run/ administered by professionals only.

The response of the interviewees revealed that there is a general acceptance regarding the need to monitor and supervise orphanages and the necessity to abide by some protocols in the best interest of the minor.

H. Awareness about Juvenile Justice Act:

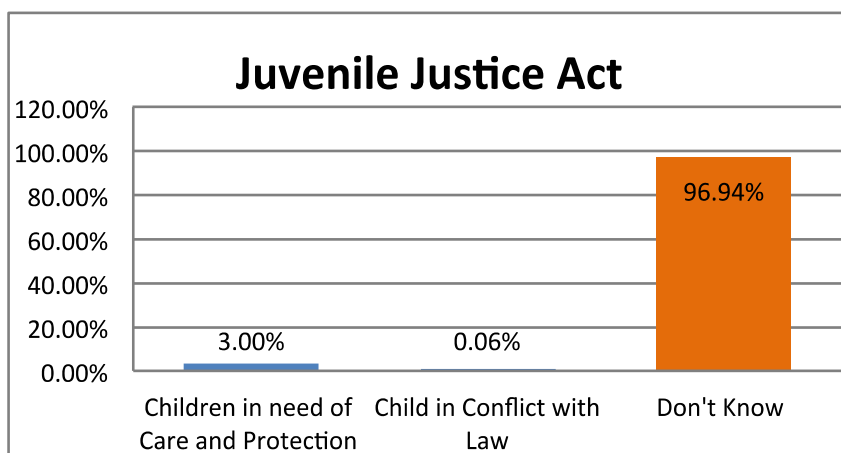


Figure 7
96.94% of the respondents had no information about the JJ act of Jammu and Kashmir, only 3% of the respondents knew about CNCP- Children in Need of Care and Protection under JJ act, and a

very low number/percentage of people know what the children in conflict with law provision under the JJ act means.

It is significant to note that people in the same residential area where these orphans live, have no knowledge about the JJ Act, {Particularly in the Jammu and Kashmir context where there is insufficient implementation of this Act, it is likely that people would have limited knowledge about the act.}

I. Information of Child Welfare Committee:

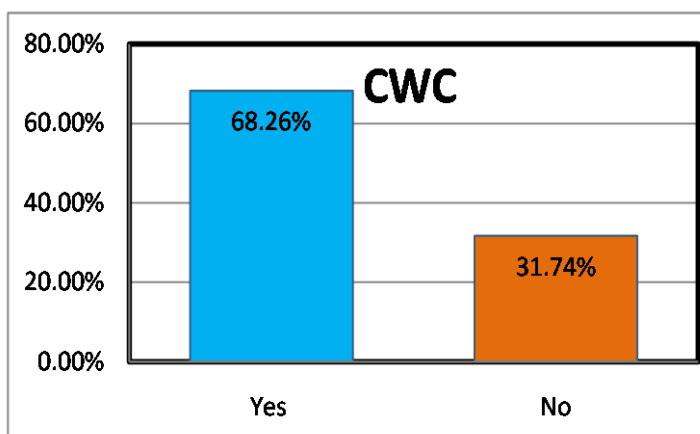


Figure 8
Among the respondents who have some knowledge about the JJ act, only 68.26% among them are aware of the Child Welfare committees, and 31.74% did not know anything about it. Despite the fact that people know about JJ act, but among them a larger number of people did not

know about all the provisions of the Act.

J. Information about Adoption Agency:

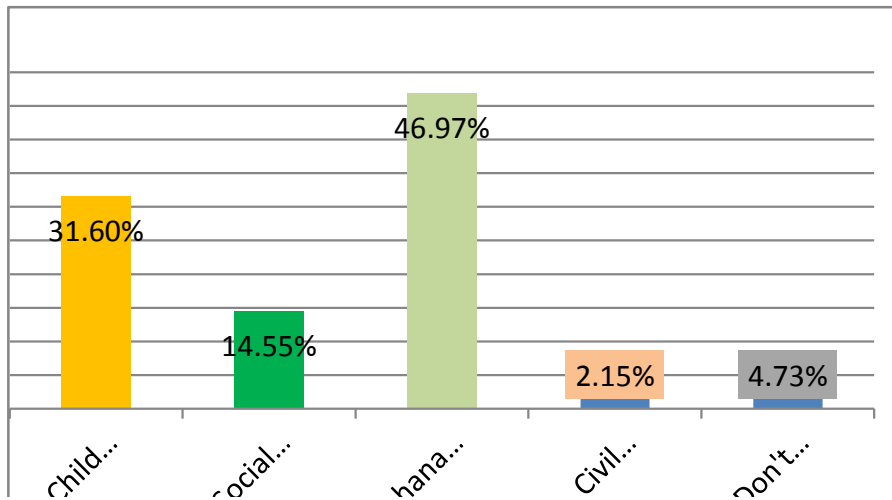
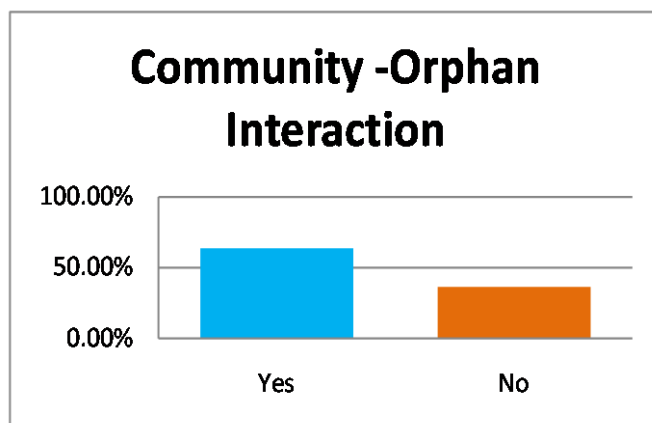


Figure 9

The first thought that comes to mind regarding an orphan is that of orphanages, Child Welfare Committee and civil society etc. Being a Muslim majority state, adoption is not a common or popular idea as it is contradictory to the religious school of thought. Though there may be some scope for adoption by foreigners, however, it is being a very sensitive issue, therefore, the foreign adoption scene is quite negligible.

K. Community –Orphan Interaction:



63.56% of the respondents have directly or indirectly come across Orphan children and their issues; this ratio is an indicator about the large number of orphans in the community, where as 36.44% has never interacted with any orphan.

Figure 10

Case study

Lack of support to orphaned Suhail leads to his sisters attempting to suicide. But a simple initiative saves the family.

Suhail (Name Changed), a 16-year-old orphan from Budgam is the only breadwinner for a family of eight members, which consists of his five sisters, one younger brother, and ailing mother. His father Ghulam Mohammad passed away in the cross firing incident in Srinagar. The death of his father came as a shock for the whole family.

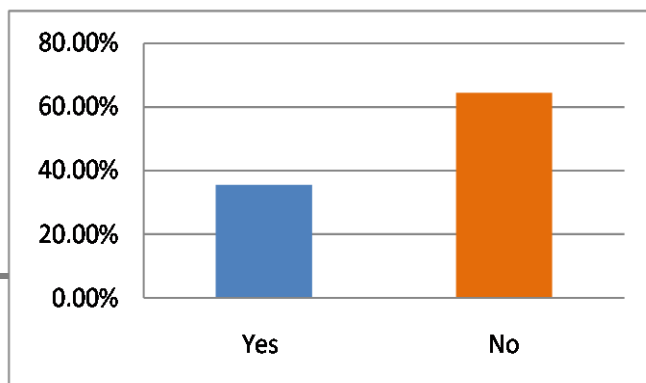
Some of his relatives and neighbors did the last rites of Ghulam. As the family was in shock after the death of Ghulam, they realized after a week that there was no money left in their home to purchase foodstuff. Suhail didn't lose hope and started working at a Dhaba in Budgam town where he was being paid Rs 80 a day. But the meager income was not sufficient to feed the whole family. To add to his miseries, Suhail had to purchase medicines for his ailing mother, which made the situation worse.

Seeing the miserable condition of their family, Suhail's younger sisters, Sara, Nusrat and Jabeena once attempted to commit suicide. This situation made Suhail very disturbed, but his elder sisters helped him out. One of his sister joined a tailoring shop and another joined a knitting center to earn some money. With assistance from elder sisters, Suhail decided to send his/the younger sisters to school and all of them have passed 10th now. His younger brother is in 5th standard.

During the hard times no one came forward to help the poor family. Suhail has recently done computer course and is now working as computer operator in some private firm at Srinagar. And one of his sister is about to get married for which Suhail is working hard. Suhail has never been told about the scheme available for orphaned children with the local government and the only helping hand the local community that assists the family to overcome past miseries. Thus, community care as traditional practice can challenge the narrative of institutional care says Mr. Advocate Javid – a local law expert.

K. Information about other (any) Good practices:

Figure 11



Some people in the community are aware about few success stories across other nations that regulate orphanages in a proper fashion, but a large portion of the people have missed such information.

Orphanages in collaboration with government can adopt a model in the state of Jammu and Kashmir, which has proved to be successful elsewhere.

It is evident that most of the people do not know of any good practice due to the limited knowledge about norms and rights. Since orphanages are still largely community owned, they could think of a model or framework and implement it in the state with the government.

While the community would like to have a suitable framework for orphanages, the need for proper channelization and sensitization cannot be overlooked. It would also be useful if the government could look at successful practices and help adopt and incorporate the same in J&K in collaboration with the community.

L. Information on Guidelines and Procedures of Adoption:

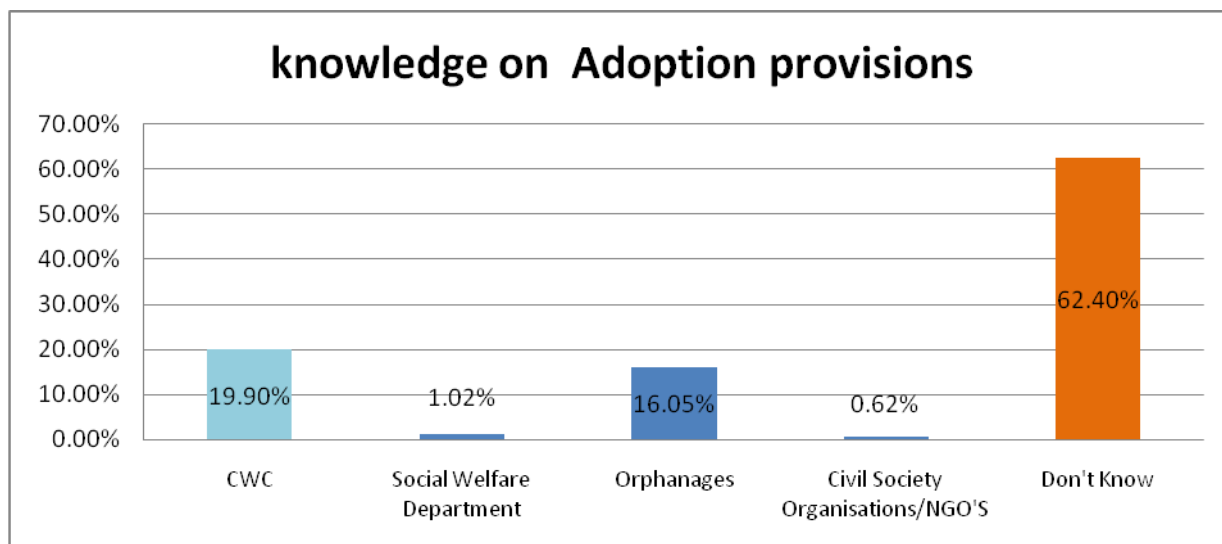


Figure 12

Respondents were not aware about the role and procedures of the child adoption mechanism in J & K. More than 60% people were interviewed who were unaware about any such guidelines and procedures (See fig 12).

M. Alternative Care Options:

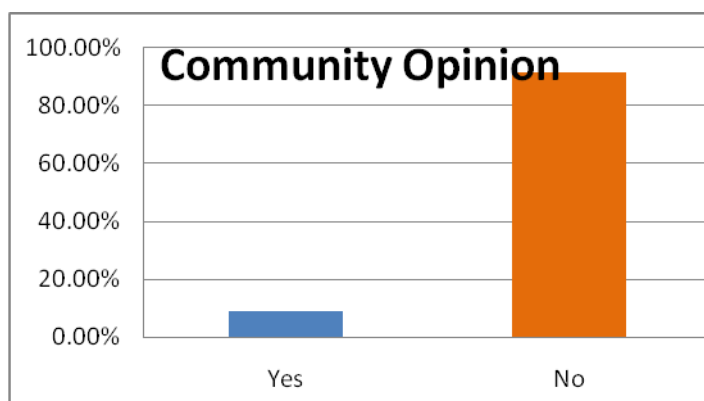


Figure 13

Community understands that only orphanages cannot be the last resort for the care and protection of orphans however, they have very few options and alternatives in mind. These options can be explored when the community knows about the good practices and sensitizes itself with the issues and concerns of Orphans. Government has a big role to play either in strengthening the existing structure of Orphanages or come up with a new sustainable one.

N. What does community in J&K thinks are their duties and responsibilities towards orphans?

84.54% of the respondents believe that the role of community towards orphans is to provide Quality education and development support.

Less than 15% respondents pointed out the need of protection and safe environment; however, a very less percentage of the population thinks it is an important duty of the residential area to ensure quality health care, though all the parameters are very significant for the holistic evolution of these vulnerable children.

It can be observed, as per the above-mentioned data, that people must be sensitized about the fundamental rights of the children. It is not limited to quality education and development support alone, but includes other essentials like (as illustrated in the above-mentioned options) ensuring appropriate after-care, security and access to quality health care, all of which are interconnected and is the demand of the hour.

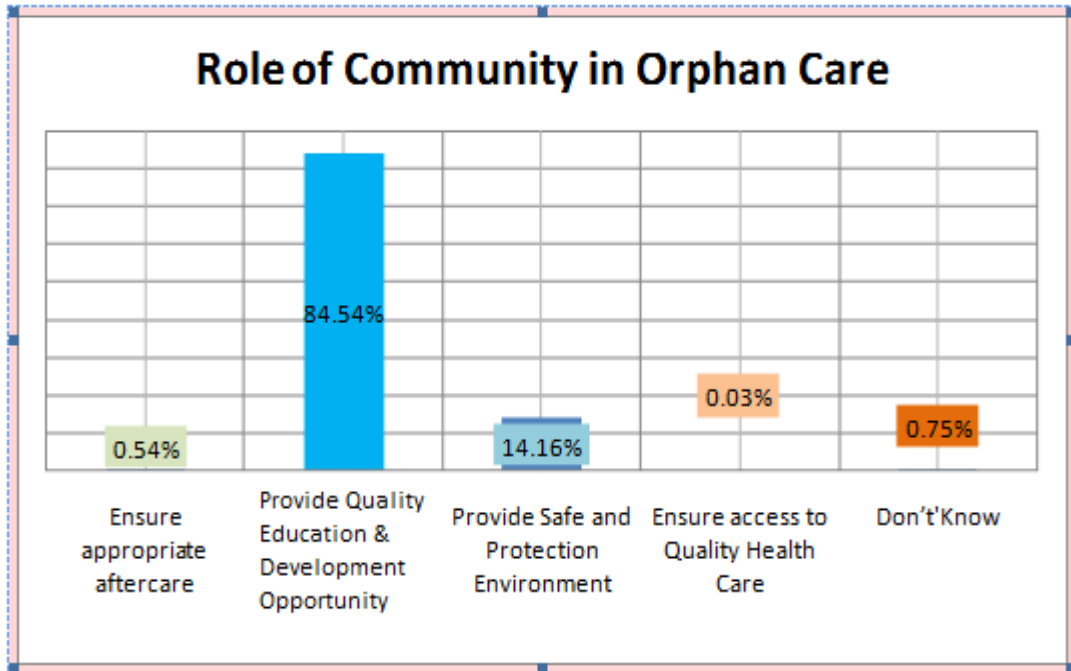


Figure 14

O. Issues and Concerns of Orphan Children :

Orphaned children face many issues in the society, very few people are aware that orphans are discriminated because of their particular situation, and they feel that this section of the population has been neglected by the society.

50.17% respondents are of the opinion that orphans who are being neglected must be reintegrated in the society. A large number of people believe that the word Orphan- or “Yateem” is itself a stigma for these children in the society and this has led to the physiological disorders among these children.

10.39% of respondents have revealed that orphans are subjected to physical and mental abuse. It is an issue of immediate concern. The community holds the opinion that orphans should not be considered as a separate category of people, which would make the orphans feel isolated

{There is a need to re-integrate them in the society; some of the members of the community raised the concern of quality education and health care for orphans}

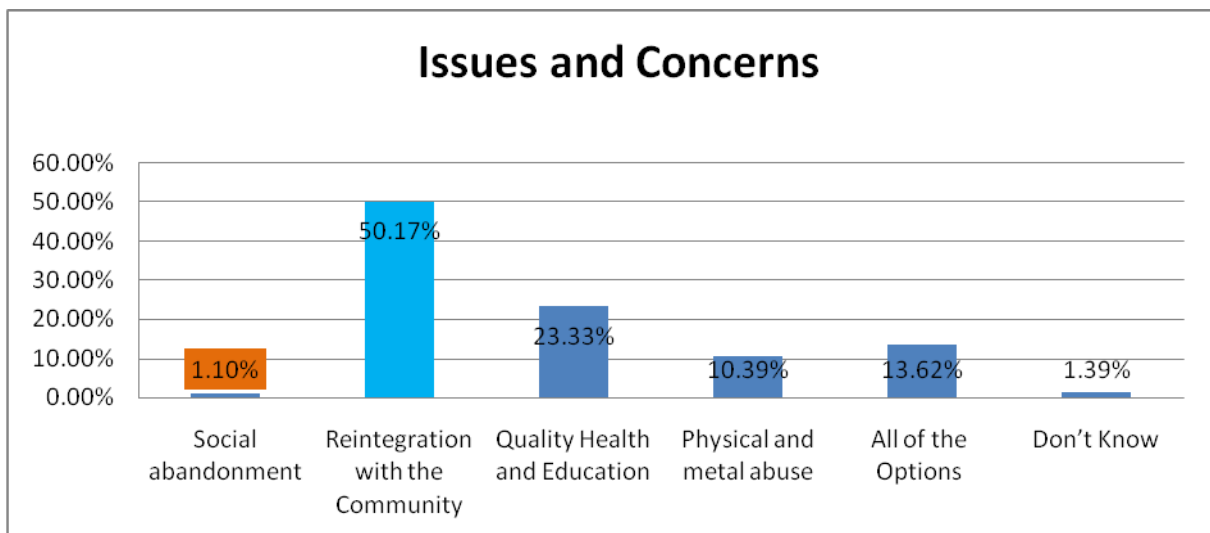


Figure 15

Case Study

The absence of services and support land Akhtera like orphans either in orphanages or psychiatric hospital. Invariably all children having lost either of the parents develop serious mental health issues:

Akhtera (Name changed) 14 years old from Doda district of Jammu and Kashmir is suffering with psychiatric disorder. Her father was disappeared in 1997 when Akhthara was just one-year-old. For next one year, Akhthara's mother Raja Begum searched for her husband everywhere. She went everywhere in the Army camps to interrogation centers and pleaded for help, but all in vain.

As Akhthara grew, she started realizing that she was an orphan. Her mother started to tell her that how her father who used to work at border area never returned home. The incident has left a scar on the psyche of Akthar due to which she suffered from psychiatric problems. As if disappearance of her father wasn't enough punishment for young Akhthara, people started discriminating her and started calling Akhthara "pagal" (insane).

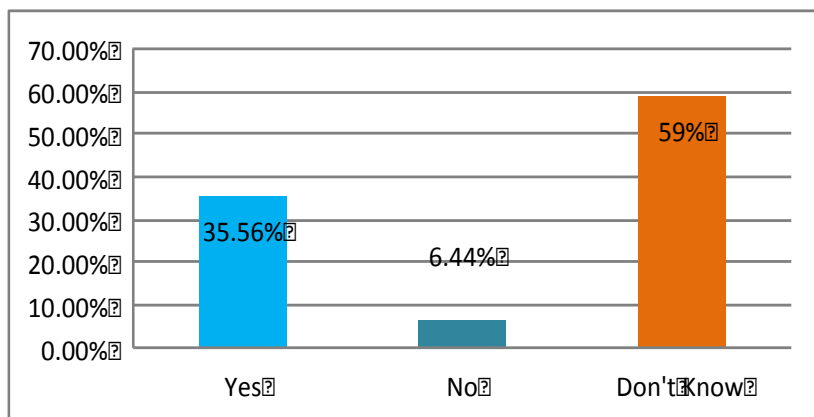
After the disappearance of her husband Akhthara's mother started working as a domestic help to feed herself and her ailing daughter. Nobody in the village ever helped the poor family. she wasn't even allowed to join the school. The mother-daughter duo has to live a tough life as they didn't have enough resources to purchase food, clothes and other necessities of life. Even they didn't have money to purchase medicines for Akhthara.

Akthara's mother fears for the safety of her daughter after her death. Her mother admitted Akhthara to the nearby orphanage where Akhthara is excluded as a psychiatric patient and nothing extraordinary has been done so far for her special treatment. Since the mother is now remarried, she is planning to get Akhthara back after series of consultations with the local committee and Akhthara's step-father.

However, Akthara's fate is uncertain and the orphanage management can only provide clothes and medicines to the poor Akhthara, says Nazir Ahmad warden of the orphanage.

P. Government or Private Control on Orphanages:

A larger number of respondents believe that government should have complete control over the regulatory mode of orphanages, which it indicates that this percentage of people is apprehensive about the functioning of orphanages. People are of the opinion that in view of better organization, monitoring and



evaluation procedure, orphanages cannot dictate their own terms and conditions when it comes to the functioning of orphanages.

35% community members opine that orphanages

Figure 16

should have complete control of their administration.

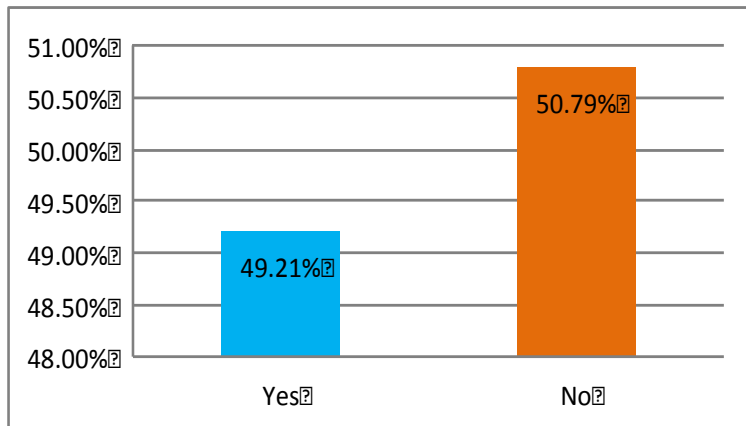
Only 6% do not want orphanages to come under the umbrella of the government. 59% have nothing to say about it.

{There should be a uniform set of regulatory framework in place directly linked with Government departments}

Q. Community Monitoring of Orphanage:

Figure 17

Around half of the total respondents interviewed have never visited an orphanage.



People have their assumptions and views based on secondary source. However an equal number of respondents have visited orphanages and have seen the issues first hand, whose views largely match with the set of issues and concerns of those who have never visited. This gives researchers an indication

that the views and opinions collected from the field validate the data largely.

R. Religious Influence on Orphanages:

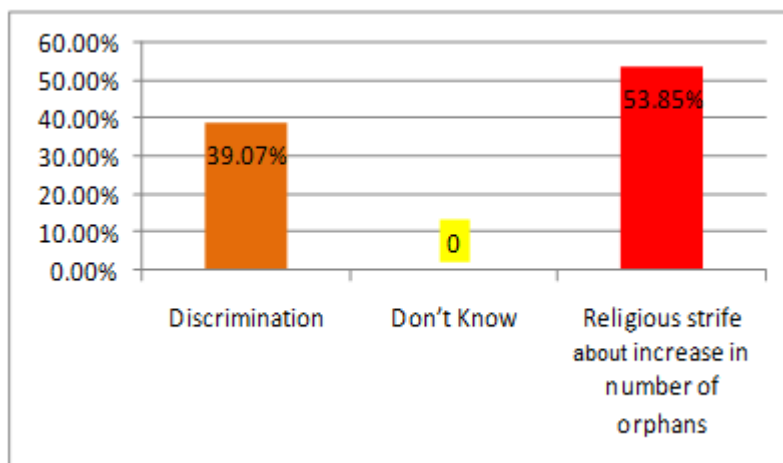


Figure 18

The regulatory body of the orphanages is largely associated with the lines of religion. There are number of religious sects in Jammu and Kashmir as per respondents' views, which is a prime concern as it affects the future of these children.

Still, there are no such valid, authentic data available, but some people who were questioned, believe that orphans are subjected to discrimination on the ground of

their association with a particular faction. In addition, prejudiced against on grounds of religion due to an increasing religious influence in orphanages. Furthermore, when probed about the angle of dip of only religious teaching imparted in these orphanages, the story tells something else which is handled in the next survey question below:

S. Religious Education in Orphanages :

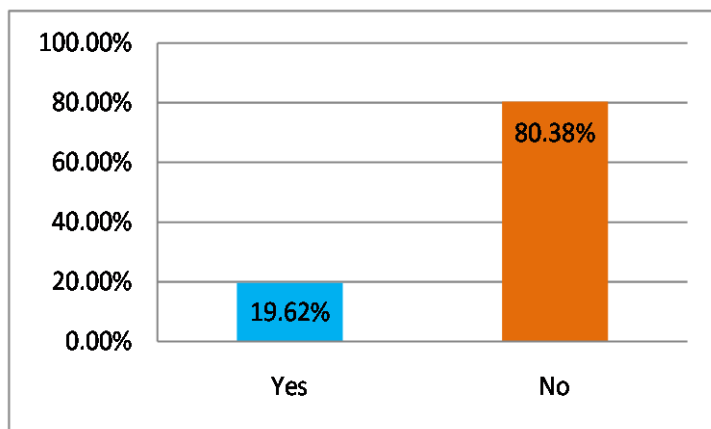


Figure 19

A large number of orphanages and individual respondents were probed to know if there is only religious education given in these orphanages. A sizeable number of natives have ruled out this assumption but less than 20% believed that only religious education is taught

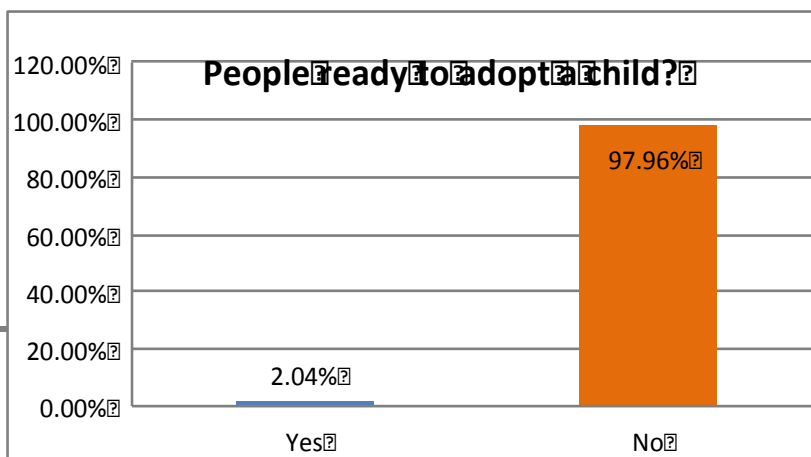
in these orphanages. When orphanages were contacted, they also answered that in orphanages education is not limited to religious education alone, other aspects of education are also focused upon.

Since religious heads of the community manage a large number of orphanages, one can assume that some orphanages are only focusing on religious education; however, that is not the case for all the orphanages.

T. Adoption among Local Community:

Figure 20

Adopting a child is less common in Jammu and Kashmir; mostly adoptions are intra family, which is due to number of reasons.



Somewhere it is the lure for a male child and somewhere it is actually a family relative who foster an orphan in certain conditions where both the parents of the

child have died or parents abandon child. Adopting a less privileged or vulnerable child by a family is not so common in Jammu and Kashmir, only 2% of the surveyed population have actually adopted an orphaned child, which is very less in number and the reasons of adoption vary from case to case.

U. Information about adoption (Legal framework):

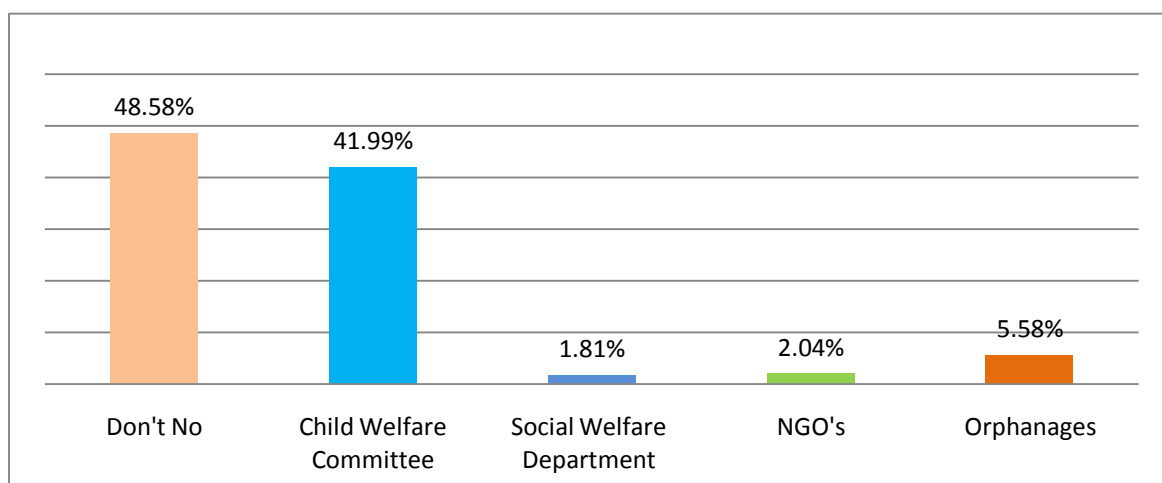


Figure 21

In case public want any information on adoption agencies for orphans in a particular city, there is no such platform available. There is a need of creating an information center containing details about all adoption agencies which should be easily available, (even when it is very common) as people do not know whom to contact (Department) in that case. Therefore, there is a need to create a Legal Information Resource Centre on Adoption.

V. Constraints on Adopting a Child:

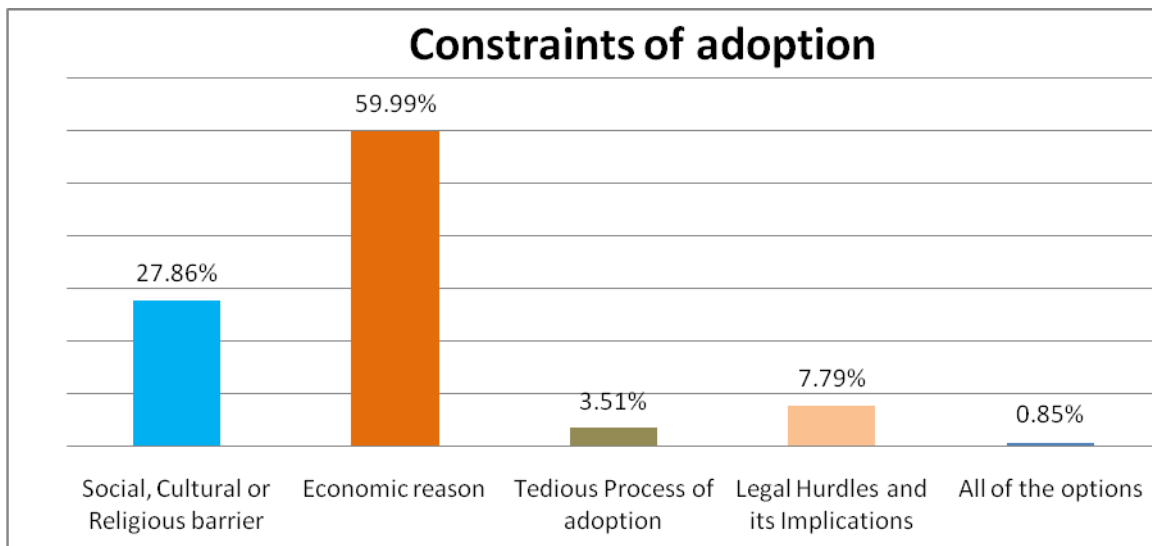


Figure 22

Family is the best place for all the children, particularly for children who are in the 0-18 year age group. If at all local people are ready to adopt a child, there are constraints in doing so in Jammu and Kashmir. Large number of citizens cannot afford to adopt a child due to economic reasons.

It would be difficult for the middle –class category in J&K to adopt a child, and the highest percentage of population constitutes this socio-economic class in the state. In addition, there are social, cultural, and religious barriers in adopting a child.

The study found that 27.86% local inhabitants have no plans of adopting an orphan child due to these barriers (Social, Cultural, and Religious). Those who are not influenced by any such barrier (Social, economic, religious, etc) are not interested in adopting a child because feel the procedure of adoption is a lengthy process. People generally avoid getting into the legal hurdles, and as the aforementioned data reveals, less than 10% consider it as tiresome and full of legal hurdles so they restrain from adopting a child.

{In central JJ Act, there is a detailed mention of Adoption, which lacks in the Jammu and Kashmir 2013 Act}

W. Local community raises funds for orphanages:

A large number of people in Jammu and Kashmir donate to these orphanages, being out of religious obligation or responsibility of the citizens. However, it is

important to understand that this source of donation is primarily uneven and unorganized.

{There should be an organized source of funding in addition to the traditional one, which should be sustainable. There is also a fear of corruption in this scenario of unorganized economic support as there is no accountability and transparency in such orphanages and no procedure of checks and balances is followed.}

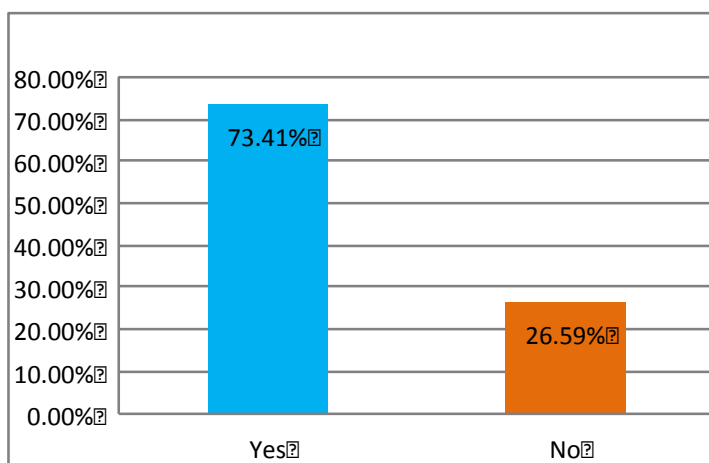


Figure 23

Chapter: 5

Constraints and Opportunities

Government with the assistance of national and international organizations has implemented numerous programmes to address the needs of vulnerable children, notably separated children and orphans.

Keeping in view, the scope of problems related to orphans, other vulnerable children and children at risk, it is not surprising that the Government of J&K and its partners meet serious challenges in the implementation of comprehensive and area covering programmes.

A. Some of the general constraints are:

- i. Partially developed legal framework
- ii. Lack of resources for all programme areas
- iii. Difficulty to prioritize the issues with a set of achievable goals and objectives
- iv. Inadequate enforcement of existing laws and conventions
- v. Weakness in co-ordination among government agencies as well as with civil society organizations with regard to vulnerable children
- vi. Lack of monitoring and follow up systems at all levels
- vii. Under-staffed social affairs units at all levels, ranging from central to decentralized levels
- viii. Problems related to modernization, such as individualism
- ix. Destruction of traditional values, such as solidarity

B. Vulnerable children and institutions providing support meet the following specific problems and constraints:

- i. Lack of family support and/or family life
- ii. Burden of early responsibility and the ensuing loss of opportunities in education, play etc
- iii. Lack of access to education, health and rehabilitation services
- iv. Lack of appropriate shelter
- v. Marginalization and stigmatization
- vi. Geographical outreach of many of the programmes is limited and does not cover remote areas
- vii. children, families, communities and professionals lack knowledge about existing support services
- viii. Lack of psychosocial support, counseling services and lack of trust of children towards official structures and/or government institutions

C. Opportunities:

A number of opportunities can be listed which have the potential to contribute towards improved assistance for vulnerable children:

- i. Political will for the protection of children and the promotion of their rights exists at all levels
- ii. Decentralization enables the establishment of participatory and community based institutions.
- iii. Poverty reduction strategies address the needs of poor households
- iv. J&K culture is child centered and the population needs to be sensitized about the rights of the child/child rights
- v. A commitment to increase community based support systems and reduce institutional care
- vi. ICPS (Integrated Child Protection Scheme) to be implemented properly
- vii. Government agencies, NGOs, associations, CBOs, faith based organizations already provide assistance to vulnerable children and collaborate in many areas
- viii. Improvement in the capacity of educational facilities
- ix. Committed to improve the quality of education

Chapter: 6

Recommendations:

The work provides for both a macro as well micro lens to examine one complex development challenge i.e. condition of orphanages and framework for securing the rights of orphaned children in Jammu and Kashmir. A clear pattern has emerged on triangulating the literature and a master data source, that is –security challenges, poverty and inadequate adult care and attention, in particular, appear and prove to pose stronger challenges to education than orphan-hood. It is the overlapping of these categorical situations that is often mislead to be used interchangeably.

Recommendations:

There are following recommendations as per the study outcome under different categories

A. Child Rights Inclusive Policy:

There is a demand to incorporate the Child rights policy: Orphanages should be accountable under proper legislation within the ambit of four fundamental rights: Right to Life, Survival, Development and Protection.

Orphanages should compulsorily declare and notify all forms of abuse and developmental malpractices suffered by children as unacceptable. The implementing agencies should be seen to take substantial steps to protect children and their families from exploitation. The orphanages should take apprehensions of abuse of children by staff, presenters, or partners seriously and should work to prevent them. The orphanages through this Child Protection Policy should be asked to express the concerns and endeavors to adopt bills for protecting and keeping children safe from maltreatment, neglect, victimization, and ferocity. Child Protection should be mainstreamed as a collective as well as an individual duty.

B. Volunteering & Recruitment

- i. All present & future employees, volunteers and members of the orphanages should be informed about the Child Protection Policy. They should be required to sign a declaration for upholding child protection as part of the appointment or membership process.
- ii. For all future assignments in the orphanage, a reliable character reference should be obtained and special care should be paid to the existing/prevalent areas of concern related to child protection. During the interview process, applicants should be asked about their experience of working with children.

- iii. All staff members and volunteers are to be imparted training about the Orphanage Child Protection Policy and should be offered a copy of the Policy and required to sign a declaration to the impression that they have received and read the contents.
- iv. Those who are hired as contractors or suppliers should necessarily be offered a copy of the Child Protection Policy and required to sign a declaration to the effect that they have known and understood it and that they will do zilch, which breaches the provisions of this policy.
- v. It should be ensured through a monitoring mechanism that confidential information relating to children is not leaked / misused. The child's dignity is upheld in all conditions.
- vi. Where there is information of child abuse, concerned officials should inform the principal of the organization managing the orphanage. Staff supervising the subject area for prolonged periods should be briefed about the incidence and the indicators of child maltreatment.

C. Behavioral Protocols:

Behavior protocols are rules of appropriate and proper conduct, which are designed to protect children and are designated to prevent adults from false accusations, inappropriate conduct, and abuse regarding children.

These protocols should be applicable to Employees, Volunteers, members, workers, contractors, patrons, and visitors to the Orphanages.

- a) It should be accordingly laid down that persons associated with the orphanage/s in whatever manner/capacity or visitors shall not:
 - i) Stay only with one or more children or minor, whether in staff accommodation, project assumptions, or elsewhere?
 - ii) Hire minors as "House Helpers". A minor is determined as a person under the age of 18 years.
 - iii) Fondle, hold, hug, or touch minors in an inappropriate or culturally insensitive manner.
- b) Where possible and practical, "the two adult" rule, wherein two or more adults supervise all activities where minors are affected and are present at all times, shall be observed.
- c) Orphanage personnel are should sensitized and need to be mindful that the children, because of the circumstance and abuses they have experienced, may use a relationship to hold "special attention" which suffers to be kept

off. The adult is always considered responsible even if a child behaves wrongly.

- d) Inappropriate behavior towards children shall be substantial grounds for punitive action.
- e) Orphanage personnel must be careful about perception and usage of their terminology and actions and relationships with youngsters.

D. Procedures for Reporting Abuse of Children in Orphanages

1. Any member of the organization managing orphanage and receiving information about, or observe actual or suspected abuse at a project site, he/s shall forthwith inform the warden of the orphanage. Wherever deemed necessary, the matter should be referred for further investigation to any supervisory official or department concerned.
2. Any member of staff who has knowledge or suspicion that a youngster is at risk must report this to the chief of the organization who is managing the orphanage, who will decide what action is to be considered/undertaken.

E. Code of Conduct:

- a) All print material and visual documents about children should use photos that are adequate and presentable, not representing the children as victims or distressed. Minors shall be adequately dressed. Before submitting their pictures, careless poses and attitudes of children shall not be recorded. Language that implies a relationship of power shall also be kept off. The child's dignity shall preserve in all situations and circumstances.
- b) Websites and other promotional materials shall not use scanned images of children without formal permission of the caretaker and the parent(s)/Guardian(s) of the child. This permission shall be in writing.
- c) Child's where about that can be used to identify the location of a child within a state shall not be used on websites or in any other form of communication related to child.
- d) Individuals or organizations seeking use of orphanage resources such as videos or photographs should be required to tender an undertaking with the orphanage, for the proper use of materials.

The undertaking should include a provision to the effect that if the material is used for a purpose or in a manner other than the one agreed upon, the borrowing individual or organization will be subject to legal action.

F. Safe Arrangements & Structures:

- i. The Orphanages should ensure that arrangements and structures are in place to make sure that children are kept safe from harm.
- ii. It should ensure that Policies and Practices are revised at regular intervals, usually at least every three years for better achievement of results.
- iii. It will be ensured that any matter of child abuse is reported properly and action taken thereof as soon as possible.

G. Social Policy

A child is primarily defined by age, with most common agreement being less than 18 years.

The age range of 18 to 21 years are considered as early adulthood ultimately, some as dependence of child on parents or caretakers feels the age of child in pragmatic terms. The period of dependence can be extended considerably by many situations, including unemployment or extended studies. There are particular situations of physical and mental handicap or of severe illness where this dependence is further extended.

In Jammu and Kashmir, the past 27 years of internal security challenges has resulted in an alarming increase in the number of orphans. A survey conducted by Kashmir based voluntary organization puts the figure at 0.015 million in the category of internal security challenges, spotted in various orphanages of Jammu and Kashmir, but others say 0.10 million. According to a survey conducted by the University of Kashmir (KU) Department of Sociology (2012), it is stated that Kashmir has 0.214 million orphans but government puts the figure around 0.100 million orphans in Jammu and Kashmir.

Therefore, it is the prime duty of state government to develop a concrete policy on orphan care, their identification and revaluations of data meant to nurture the orphan(s) and subscribe ultramodern approach for their rehabilitation.

H. Recreational facility and physical safety:

Childhood play activities for orphans are recognized as the medium through which relationships are formed, consolidated and worked through, as well as teaching orphans, the essential life skills such as teamwork and working towards goals specifically the area surrounding them.

Government at first and foremost must ensure that such buildings should be constructed for orphans as hostels, where there is serene ambience in and around, so that these children can play safely. Thus, “A Chance to Play” programme must be incorporated in government orphanages as a new policy paradigm, where orphans can easily gather for the purposes of play, under the guidance of full time coordinators.

Orphans being vulnerable, as already described, their sound development depends in their recreation, leisure and play and a proper focus needs to be given to them. Furthermore, government must ensure that the recreational activities and innovations are inculcated in such activities to enhance participation of children [orphans] and make sure that these children are provided a leisure time. Promotion of outdoor games should be given due importance, in addition, advanced arrangements for the same are to be carved at government level by getting consultancies from internationally reputed organization working on orphan care²¹.

I. Advocacy:

Government’s ulterior aim should mean that Orphans get a proper voice. Through advocacy coordinators government should maintain active involvement in processes relevant to the work being undertaken and the people who are committed in Participant Social Service (P2S) meant for the Development of Orphans and on several other local and most importantly in Social Service Structures (3S), be encouraged, with a special focus on:-

- i. Strategic guidance to the policy developments of orphans.
- ii. Advice on the implementation of research/capacity building/program development projects meant for orphans.
- iii. Contribute to poverty eradication by ensuring that programmes and services, which are aligned with the objective to develop a proper mechanism for orphan- care and ensuring the sustainability of social spending through the improvement of possible job creation within the framework of existing state economy.

J. Strategies:

While there are specific strategies for each category of vulnerable children, there are some general strategies which will allow addressing the needs of orphans and other vulnerable children in a crosscutting manner:

²¹(Welfare)

- i. Raise awareness on all matters concerning orphans and other vulnerable children addressing children, parents, caretakers, service providers and the general population. This includes the promotion of the rights of the child as well as the popularization of existing policies and laws, the promotion of cultural values and traditional support and the sensitization of parents regarding their responsibilities.
- ii. Undertake research and identification of orphans and other vulnerable children where necessary for the development of appropriate programmes and interventions based on reliable data and the participation of rights holders.
- iii. Develop legislation, procedures and regulations in order to assure consistent and child rights focused programmes and services in favor of orphans and other vulnerable children.
- iv. Establish community based support structures for the protection, prevention of separation, follow up and service provision. These structures will take into account the decentralized structures as well as civil society organizations and the community based associations.
- v. Strengthen the capacity of staff and organizations involved in service provision to orphans and other vulnerable children.
- vi. Establish co-ordination mechanisms for all aspects pertaining to orphans and vulnerable children.
- vii. Facilitate the access to basic services for orphans and other vulnerable children, such as education, health, nutrition, housing, extension services, income generation, and credit. Promote the establishment of other services such as counseling services.

K. Strengthen the legal framework:

Legislation that supports the care and protection of orphans and vulnerable children includes regulating orphanages:

- i. Prohibiting discrimination in health care, schools, employment, or other areas based on actual orphan status
- ii. Providing placement and guardianship for children who lack adequate adult care
- iii. Ensuring women's rights to own property and hold jobs
- iv. Protecting the inheritance rights of orphans and widows
- v. Protecting children against abuse, neglect and sexual contact with adults

- vi. Eliminating the worst forms of child labour
- vii. Eliminating barriers that keep the poorest children from attending school or accessing health care
- viii. Protecting children who live on the streets or living in orphanages
- ix. Developing policies that encourage and support family-based placements for children without adequate family care
- x. Establishing specific standards for alternative care of children without family support, including steps to prevent separation of siblings, first preference for family-based placements, and use of institutional placements as a last resort and temporary measure, and the involvement of children in decisions regarding their placements.

L. Orphanage Care:

Recommendations towards formation of Policy Framework for Orphan Care:

Information collected through focus group discussion (FGD) and with small consultative meetings on the status of orphans in institutions evolved mixed responses;

- i. First, it should be noted that orphans living in orphanages are not likely to talk freely about their conditions, as they would not want to be seen as being critical of the managements. It is not easy to conduct these interviews free of the sphere of influence of the managements. The team tried to gather as much information as possible formally or informally in order to unfold the basic understanding ranging from management to the standard of living in these institutions.
- ii. Based on the data analysis and consultative meetings with stakeholders, following are some of the key concerns and recommendations drawn towards the formation of Policy Framework for Orphan Care in the state of Jammu and Kashmir.
- iii. The positive aspects of the existing joint family system should be tapped for building compassion towards orphans.
- iv. Legal awareness needs to be built among orphans and their guardians as well as in institutions about the rights and entitlements of orphans, through various forms of media and public statements by policy makers.
- v. NGOs should be provided training in the legal rights and entitlements of orphans.

- vi. The procedures necessary for receiving entitlements for orphans should be simplified.
- vii. Child Protection Committees and children's groups should be set up through NGOs at the village and urban ward levels, with their members sensitized about the rights of orphans and their educational, psychosocial and health problems.
- viii. Children's groups should be sensitized about the psychosocial, educational and other needs of orphans.
- ix. A component should be built into the training programmes for teachers, personnel in public health facilities and ICDS, on the psychosocial needs and problems faced by orphans. NGOs should be encouraged to take up this activity.
- x. Measures should be initiated to identify and rehabilitate orphans who are working as child labour.
- xi. Appropriate livelihood options should be made available for the guardians of orphans.
- xii. Orphans in the 15-18 years age group should be provided education, which suits their interests, including vocational skills.
- xiii. Trained Counselors should be appointed in five government schools in every block.
- xiv. In addition, more importantly, a regulatory framework with clearly laid out standards on infrastructure, educational and health facilities and psychosocial and legal services should be formulated for orphans. This framework should also be supported by an implementation and monitoring mechanism with adequate funds and staff to ensure the continuous implementation of standards.
- xv. Large orphanages should have counselors attached to them and smaller ones should have counselors on call.

M. Better Approaches on Child Protection Mechanism:

Child protection is often described as unpinned by the rights based approach. If the rights of children, for example, are provided for and protected, then children will have a greater chance to develop in a healthy environment and to be protected

from potential forms of abuse or harm. This respect for the rights of children, however, also needs to be balanced with the rights of other members of the community, including parents, with a special reference to orphans.

- i. Non-discrimination promotes the idea that every child has rights and is thus entitled to support without exception. Discrimination can be based on a range of factors, but not limited to gender, race, ethnicity, political affiliations, religion or internally displaced person including orphans.
- ii. All actions taken on behalf of orphans should be based on a simplicity—what is in their best interest. Sometimes, establishing the best interest of the child can be challenging, and it is important not to see orphans as isolated individuals unworthy of attention but as part of a family or community because it is possible that their best interest may be met by providing support to the family or community even orphanages. Careful analysis is needed.
- iii. Respect for cultural values and positive indigenous practices. Families, orphanages and communities already have a range of strategies, mechanisms and practices for protecting children. Also, it is important to understand and not dismiss or overlook them when it comes to developing child protection strategies.
- iv. Involve children [including orphans], families, and communities as social agents with the capacity to influence their situation in a positive way. Children, families and communities possess a unique insight into their own situation, and it is important for them to be involved and participate in actions concerning their life situations. It is common to view marginalized groups, displaced communities, or victims of abuse as damaged or lacking the ability to take care of them. However, the focus should not just be on people's needs but also on any strength, resources or capacities so that they could form the basis of protection activities and programmes.
- v. Everybody has needs, and in general, these are met through everyday structures, such as the support provided by families, friends, and communities. For some reason, these may stop working or break down during crises, such as - a situation of internal disturbance, displacement or because of the threat of ongoing insecurity, thus orphans hostel are ensured as safe places.
- vi. Child protection issues are complex, arise for a variety of reasons, and are found across different settings, there is only so much that child protection actors can do; however, it is important to make others aware of protection concerns.

- vii. It is important to use initial and ongoing need assessments to know the causes and extent of child protection concerns thus make appropriate action with special accentuation on orphans.
- viii. Lastly, work through existing structures or services, such as schools, youth clubs, orphanages, health clinics, or community programmes. It is essential that exposure to risk is reduced, the problems are spotted as early as possible, and that individuals have access to the all kinds of care or support needed to resolve these problems. Developing community-based programmes that encourage self-help and reinforce people's natural resilience [ability to cope with problems] is a very effective way of creating environments that are more protective for children, especially orphans.

Chapter: 7

7. Observations and Suggestions of KFORD Research Team:

- a. Most of orphanages are registered under J&K Trust Act, 1920 but only registration under the above Trust Act does not serve the purpose of regulating such orphanages. There is a need to register orphanages under JJ Act, this will also bring them under the purview of various sections and rules of JJ Act, which pertain to the residential institutions.
- b. State government in coordination with voluntary organizations must support orphans at community level without isolating them from the spatial cultural settings along with structured follow-up mechanism vis-à-vis education, health care and guaranteeing their constructive social security at all levels. Importantly, obliterating hostel or orphanage culture or to do such activities only during emergencies.
- c. Strong Information, education and communication related to the legal awareness needs to be built among orphans, their guardians as well as in institutions about the rights and entitlements of orphans.
- d. Orphanages in the state should be declared as “Zones of Peace”.
- e. Government should involve honest, sincere and dedicated people for inspections of management, administration who look after the orphans in orphanages. People must belong to the area where Orphanages/hostels are intended to be established or situated to be called as peoples’ committees.
- f. Government must carry out a quantitative analysis on orphans living in hostels, orphanages or with community or those having the status of street children. Furthermore, it should be mandatory for government to provide travel documents to each of the meritorious orphan in terms of passport without any discrimination and give the exposure of outer world, for this purpose the structured linkages should be ensured by State with international NGOs.
- g. Sensitize Judges of honorable courts about the child protection mechanism so that they can give directions for the rights of orphan children.
- h. Orphanages are not capable to continue higher education of orphans; hence, the State should make necessary arrangements to continue the further education of orphans. The emphasis should be given for higher education of orphans besides creating the culture of vocational education. This necessitates a robust aftercare plan which should take care of orphaned children upto 21 years of their age.

- i. One of the limitations of orphanages is the lack of technical and specialized staff for care and protection of orphans. Thus, the role of state is to prescribe and regulate the various posts under prescribed specialization.
- j. There is a need of comprehensive health assistance policy and education policy to be devised by state for orphans. Moreover, the state should assign a Special Privilege Health Card to all orphans, by which they will be able to avail health service at any government health centre or hospital free of cost.
- k. Child protection Committees and children's groups should be set up through Civil Society/NGOs at the village and urban ward levels , with their members sensitized about the rights of orphans and their educational, psycho-social and health problems.
- l. Children's groups should be sensitized about the psychosocial, educational, and other needs of orphans.
- m. A component should be build into training programmes for teachers, personnel in public health facilities and ICDS, on the psycho-social needs and problems faced by orphans. Voluntary organizations should be encouraged to take up this activity.
- n. Measures should be initiated to identify and rehabilitate orphans who are working as child laborers.
- o. One professional psychologist should be appointed in every educational zone/ block, which must have specialization in applied child psychology. Training should be provided to children in the 15-18 years age group in addition to education in areas that suits their interests, including vocational skills.
- p. Trained counselors should be appointed in every government school of every block /zone with a special focus on orphan education.
- q. A regulatory framework with clearly laid out standards on infrastructure, educational and health facilities and psycho-social and legal services should be formulated for orphans. This framework should also be supported by an implementation and monitoring mechanism with adequate funds and staff to ensure the continuous implementation of standards.

- r. Appropriate livelihood options should be made available for the guardians of orphans.
- s. There is the need for the special reservation for orphans in the government jobs. In addition, there should be standing orders from government under Corporate Social Responsibility to grant a special privilege in jobs to orphans in private organizations/ corporate houses.
- t. State must strive to provide the funds to the orphanages under a policy so that, their role is not hampered. There should be an external auditor for the orphanages to be appointed by government to foster the principle of transparency.
- u. State must provide space for the sport/physical activities of orphans, as most orphanages lack enough space for orphans to play.
- v. Orphans staying in hostels ought to be exposed to a life outside of these enclosed spaces through organized meetings and conferences, and frequent tours and excursions to historical, cultural and religious places. Besides establishments which make practical use of the applied sciences – all of which require a concrete regulation by the state.

Annexure:

Annexure -1

Baseline Metrics

Questions	Total	Percentage
Male	2993	84.74%
Female	539	15.26%
	3532	
Q.1) Do you know anything about Child Rights? If yes, please mark your acquaintance on following rights?		
Don't Know	3040	86.07%
A-Child Right to Survival	32	0.91%
B-Child Right to Development	154	4.36%
C-Child Right to Protection	254	7.19%
D-Child Right to Participation	2	0.06%
All of the above(ABCD)	50	1.42%
District Covered		
Kupwara	981	27.77%
Badgam	741	20.98%
Bandipore	793	22.45%
Doda	260	7.36%
Rajouri	214	6.06%
Poonch	296	8.38%
Leh	247	6.99%
Q.2) Do you know anything about Juvenile Justice Act (Care and Protection Act) If yes, please mark your familiarity on following.		
Don't Know	3424	96.94%
Child in need of care and protection	106	3.00%
Child in conflict with law	2	0.06%
Q.3) Do you know about "Child Welfare Committee?		
Yes	2411	68.26%
No	1121	31.74%
Q.4) Do you know who should be contacted, if you come		

across any orphan child?		
Don't Know	167	4.73%
Child Welfare Committee	1116	31.60%
Social Welfare Department	514	14.55%
Orphanages	1659	46.97%
Civil Society Organizations/ NGOs	76	2.15%
Q.5) Have you encountered with any of the orphan in your life?		
Yes	2245	63.56%
No	1287	36.44%
Q.6) Do you know anything about the policies/ regulation / rule /Acts Or Good Practices (like PalanharYojana which is being implemented in Rajasthan) that regulates Orphanages?		
Yes	596	16.87%
No	2936	83.13%
Q.7) Do you know about guidelines/rules/procedure for the adoption of orphan children?If yes, from where orphan children can be adopted		
Child Welfare Committee	703	19.90%
Social Welfare Department	36	1.02%
Orphanages	567	16.05%
Civil Society Organizations/ NGOs	22	0.62%
Don't Know	2204	62.40%
Q.8) Do you see orphanage as last resort for orphans or the only option for orphan care?		
Yes	310	8.78%
No	3222	91.22%
Q.9) Is Institutional Care (Orphanages) best care for orphans or the Community Care?		
Community Care	2701	76.47%
Orphanages	521	14.75%
Don't Know	104	2.94%
Both	206	5.83%

Q.10) What is the role of Community in Orphan Care?		
Ensure appropriate aftercare	19	0.54%
Provide quality education and development opportunity	2986	84.54%
Provide safe and protected environment	500	14.16%
Ensure access to quality health care	1	0.03%
Don't Know	26	0.74%
Q.11) How do you see role of media in highlighting issues of Orphans in the state of Jammu and Kashmir?		
Publicize child helpline number	290	8.21%
Publicize existing institutional mechanism, if any	2594	73.44%
Don't Know	9	0.25%
Highlight success story of individuals	639	18.09%
Q.12) What are the issues and concerns you think Orphans are facing?		
Social abandonment	39	1.10%
Reintegration with the community	1772	50.17%
Quality health and education	824	23.33%
Physical and mental abuse	367	10.39%
All of the above	481	13.62%
Don't Know	49	1.39%
Q.13) Do you think that government should have the complete control on orphanages with a dedicated department and a defined regulatory framework?		
Yes	1256	35.56%
No	2276	64.44%
Q.14) Have you ever visited an Orphanage		
Yes	1738	49.21%
No	1794	50.79%
Q.15) What can be better way of managing an orphanage?		
Get it registered with government	3124	88.45%
Follow the government and judicial guidelines	302	8.55%
Maintain a website, with regularly updated information	48	1.36%
Managed by professionals	58	1.64%

Q.16) How do you link the religious aspect with the orphanages in the state of J&K?		
Discrimination on religious lines	1380	39.07%
Don't Know	250	7.08%
Religious strife abet increase in number of orphans	1902	53.85%
Do you think that orphanage education is limited to religious education only?		
Yes	693	19.62%
No	2839	80.38%
Q.17) Are you fostering a child at the moment, or have you/ any family member or friend ever fostered / adopted a child/ orphan before?		
Yes	72	2.04%
No	3460	97.96%
Q.18) Do you know who should be contacted, if one wants information on Adoption Agencies for orphan in a particular City If Yes What?		
No	1716	48.58%
Child Welfare Committee	1483	41.99%
Social Welfare Department/others	64	1.81%
NGO's	72	2.04%
Orphanages	197	5.58%
Q.19) If you are not prepared to foster/ adopt an orphan, what would your reason be?		
Social, cultural or religious barrier	984	27.86%
Economic reason	2119	59.99%
Tedious process of adoption and wait period for preferred child	124	3.51%
Legal hurdles and its implications	275	7.79%
All of these	30	0.85%
Q.20) Do you donate any money, clothing, food, time etc or make any other contributions towards Orphans?		
Yes	2593	73.41%
No	939	26.59%

Annexure -2

Questionnaire Institutions /Orphanage

History and Management:

- 1) How long has the Home been in existence? Date of when Home was established.
- 2) How did the Home come into existence?
- 3) What is the stated purpose or mission of home or parent organization?
- 4) Is the organisation/institution registered? If yes, with which institution and under which Act?
- 5) Information regarding the governance structure of the organization. Also describe of members, term of service, frequency of meetings, contact information for Chairperson)
- 6) What is the annual operating budget of the organization?
- 7) What is the source of funding?
- 8) What has been the pattern of the organization's budget over the past 3 years?
- 9) What are the most significant sources of support for the organization and what Kind of support are provided? (Cash, Kind, Ration etc)
- 10) Is the organization recognized/certified by the Department of Social Welfare or other relevant regulatory body? If yes, provide copy of the same. (PI see above)
- 11) Has the organization ever received awards or recognitions for its programs? If YES, please describe.

Infrastructure:-

- 1) What is the size of the land space on which the facilities being assessed is located?
- 2) Who owns the land on which the facilities are located?
- 3) What is the general condition or description of the site (urban, rural, Whether wooden, cleared, fenced compound, etc
- 4) Is the property fully fenced and risk free?
- 5) How many buildings are located at the site? Please give details of the number, type, age and condition of the buildings
- 6) What are the sources of water and electricity for the facilities?
- 7) Are any construction projects planned or in progress? If yes, please give details of type, estimated cost and timing.
- 8) Is there any space for play/playground facilities? Recreational and sports facilities
- 9) How many children living in the home are single parent children and orphans?
- 10) How many times do children go to their homes to visit their families

- during the vacations every year?
- 11) Which communities do the children largely belong to? Plz add

Assessment related to the Student/Resident population, Staffing, Living Conditions and Instructional Programs:-

- 1) How many orphanages are currently lodged? Please provide details as shown at right and any other comments below.
- 2) Are all of the Orphans residential or do additional ones commute? Please describe.
- 3) What are the channels through which residents come to the facility?
- 4) Are the basic needs of children sufficient
- 5) Do the children have individual care plans that include health and hygiene?
- 6) Are medical facilities available? Are there any health concerns?
- 7) Do they have basic facilities like toilets, electricity sanitation and recreational activities available at the home?
- 8) What are the common educational and vocational facilities?
- 9) What is the resident-care giver ratio
- 10) Are the care givers trained on child protection or have they received any other training?
- 11) Where do the children go for schooling

Individual responses

- 1) Do you know anything about Child Rights? If yes, please mark your familiarity on following rights
- 2) Do you know anything about Juvenile Justice Act (Care and Protection Act)?
- 3) Do you know about "Child Welfare Committee"?
- 4) Do you know who should be contacted, if you come across any orphan child?
- 5) Have you encountered with any of the orphan in your life?
- 6) Do you know anything about the policies/ regulation / rule /Acts or Good Practices (like Palanhar Yojana which is being implemented in Rajasthan) that regulates Orphanages?
- 7) Do you know about guidelines/rules/procedure for the adoption of orphan children?
- 8) If yes, from where orphan children can be adopted. Do you see orphanage as last resort for orphans or the only option for orphan care?
- 9) Is Institutional Care (Orphanages) best care for orphans or the Community Care?
- 10) What is the role of Community in Orphan Care?
- 11) How do you see role of media in highlighting issues of Orphans in the

- state of Jammu and Kashmir?
- 12) What are the issues and concerns you think Orphans are facing? Do you think that government should have the complete control on orphanages with a dedicated department and a defined regulatory framework?
 - 13) Have you ever visited an Orphanage?
 - 14) What can be better way of managing an orphanage?
 - 15) Do you think that orphanage education is limited to religious education only?
 - 16) Are you fostering a child at the moment, or have you/ any family member or friend ever fostered / adopted a child/ orphan before?
 - 17) Do you know who should be contacted, if one wants information on Adoption Agencies for orphan in a particular City?
 - 18) If you are not prepared to foster/ adopt an orphan, what would your reason be?
 - 19) Do you donate any money, clothing, food, time etc or make any other contributions towards Orphans

Annexure -3

Bibliography

- 1) Ali, R. F. (2015). Kashmir: Orphans, Nurture and Challenges. Lambert Publishing Germany .
- 2) Bueren, G. V. (1998). The International Law on the Rights of the Child. Martinus Nijhoff Publishers.
- 3) Bueren, V. (2001). The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child. Human Rights Quarterly 311 , 3-16.
- 4) Council, S. R. (n.d.). jksrc. Retrieved from jksrc.nic.in
- 5) Hamid. (n.d.). Mokerly of JJ act. Retrieved from www.greaterkashmir.com
- 6) India, G. o. Census . 2011.
- 7) India, G. o. (2005). Introduction to Constitution of India. Retrieved 2015, from <http://india.gov.in/my-government/constitution-india/constitution-india-full-text>
- 8) Kashmir, G. o. (2013). JJ ACT.
- 9) Line, C. (2011, Feburary). ICPS. Retrieved November 2015, from childlineindia: www.childlineindia.org.
- 10) Mathur, B. (2015). Juvenile Justice: 3 years on, Govt sits on implementation of ICPS. Retrieved 2015, from Greaterkashmir : www.greaterkashmir.com

- 11) Peters, J. K. (2006). How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005. Springer.
- 12) UNCRC. (1989). UN Convention of the Rights of the Child (UNCRC).
- 13) Welfare, D. o. The quality standards of care document developed .
- 14) www.treaties.un.org. (2006). Retrieved December Tuesday , 2015, from UN Treaties : <https://treaties.un.org>

Annexure -4

Glossary:

- **Adoption:** A permanent living arrangement for a child that confers him/her full and legal membership of the adoptive family. In some countries, especially those in which extended family responsibility for children is strong, the idea of adoption is alien. In other countries, informal adoption is carried out in accordance with customs and practices.
- **Alternative Care:** This term is used to refer to arrangements for a child to be cared for by people other than his/her birth family or other traditional care-givers. Alternative care may involve fostering, adoption, residential care and sometimes formal kinship care.
- **Care:** A term that encompasses a wide range of responses to the physical, psychological, spiritual, educational and protection needs and rights of people who are not fully independent. It is used more specifically for a range of activities involved in actually looking after a child (or adult) and meeting that range of needs and rights. This term has various other specific meanings.
- **Care taker:** The person who has the actual care of the child, without necessarily implying legal responsibility.
- **Child:** Every human being below the age of 18 years unless, under the law applicable to the child, adulthood is attained earlier. This is the UNCRC definition of a child.
- **Child Abuse:** Acts committed against children that cause significant harm. The term includes physical abuse (for example, hitting, shaking and burning), emotional abuse (for example, constant criticism, belittling and rejection) and sexual abuse (for example, inappropriate touching, involvement in pornography and rape).
- **Child Protection:** Measures and structures to prevent and respond to abuse, neglect, exploitation, and violence affecting children. Other definitions of child protection also exist, some implying a broader understanding that may encompass the protection of the full range of a child's rights.
- **Child Protection Committee (CPC):** A committee constituted at the local level to develop child protection mechanisms to prevent children from being exploited and abused. There are considerable variations in the tasks and roles undertaken by CPCs in different contexts.

- **Child Neglect:** Acts of omission with respect to children that cause significant harm. The term includes the failure to provide a child with adequate food, warmth, shelter, clothing, protection, and care.
- **Child Exploitation:** Involvement of boys and girls in activities for money, profit or any other consideration through coercion or influence by any adult or group. Examples of child exploitation include sexual exploitation (for example, involving children in the commercial sex industry) and labour exploitation (for example, bonded labour and child trafficking).
- **Community Based Care:** Care provided for a child within the community, usually – but not exclusively – in a family-based setting.
- **Fostering:** An arrangement whereby a child lives with an unrelated individual or family, usually on a temporary basis, without any implication of the birth parents losing their parental rights or responsibilities. Some organizations use the term to include children placed within extended families.
- **Orphan:** An orphan child may be defined as ‘a child below the age of 18 years who has lost one or both parents, having lost the chief wage earner or lives in a household where the chief wage earner has died (age 18-59 years) in the past 12 months or is living outside of family care.’
- **Orphanage:** A group living in an arrangement for orphans in which care is provided by paid adults within the wider community. In some contexts the more generic term Residential Care is used to mean any living situation that is not family-based. The terms Institutional Care, Institutions, and Children’s Homes are also frequently used in the international context with reference to the care of orphans and other children without parental or family based care.
- **Parent:** A child’s biological mother or father or another adult who has adopted the child.
- **Protection:** Protection involves safeguarding children from risks to their mental, physical, and emotional well-being including emergency situations, conflict with the law, violence, abuse, exploitation, neglect and discrimination.
Protection is so defined by UNICEF in the UNCRC context.
- **Psycho-social Support:** Support relating to both the psychological and the social aspects of a child.
- **Separated Child:** A child separated from both parents or from his/her previous legal or customary primary care-giver, but not necessarily from other relatives. This definition is included in the Inter-agency Guiding Principles on Unaccompanied and Separated Children.
- **Unaccompanied Child:** A child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so. This definition is included in the Inter-agency Guiding Principles on Unaccompanied and Separated Children.

- **United Nations Convention on the Rights of the Child (UNCRC):** An international convention setting out the civil, political, economic, social, and cultural rights of children.
- **Violence against Children:** The use of unsanctioned physical force that is likely to result in significant physical and/or emotional harm to children. The definition would include acts of sexual violence against children.

Notes from the Stakeholder's Consultation Conference

Stakeholder's Consultation on POLICY FRAMEWORK TO SECURE RIGHTS OF ORPHAN CHILDREN AND GOVERN ORPHANAGES IN JAMMU & KASHMIR
28th February 2017 Jammu (J&K) at Hotel Fortune reviver
One day consultative conference on POLICY FRAMEWORK TO SECURE RIGHTS OF ORPHAN CHILDREN AND GOVERN ORPHANAGES IN JAMMU & KASHMIR

A day long Stakeholder's Consultation on POLICY FRAMEWORK TO SECURE RIGHTS OF ORPHAN CHILDREN AND GOVERN ORPHANAGES IN JAMMU & KASHMIR was held today on 28th February 2017 at Hotel Fortune Riviera Jammu, this consultation was organised by KFORD (A J&K based research group). This framework is being supported by Department of Justice Ministry of Law and Justice, Government of India under the special initiative "Access to Justice in the North East and Jammu and Kashmir." {also referred to as A2J (NE&JK) } primarily to address the legal issues, narrow down the gaps in existing legal framework and fulfil the legal needs of thousands of marginalized and vulnerable sections of the society, in this context, particularly; women and children, scheduled Castes, scheduled Tribes and other backward communities.

The Welcome Address and Opening Remarks about the Program was deliberated upon by Director KFORD (Iqbal Lone) followed by the Key note Address by Badar Jahan from Department of Justice Ministry of Law and Justice, Government of India.

The secretary social welfare Mr. Sajad Ahmad Khan, Mr. Talat Parvez (MDICPS/MDICDS), Mr. Veerjee Hangloo (Director Social welfare Jammu) and other social welfare officers participated in this consultation.

Mr. Talat Parvez (MDICPS/MDICDS) introduced the Social welfare department with existing schemes and new initiatives of his department and appreciated the formation of this policy framework. The participants at the end of this session started questioning about the majors social welfare department has taken with reference to Orphan children and Mr. Talat Parvez explained the position of the department and most of the participants appreciated the afforts of the department with reference to Children.

The Summary of the Report – PPT was discussed in depth by Mr. Lone which included background / Summary and findings /recommendations of the draft.

The discussion followed after this presentation which include the question and answer session. Some questions dominated this session which include:-What is the process of registration of the orphanage and most of the participants who raised this question agreed that awareness about JJ Act 2013 and registration is required. Role of J&K social welfare department in regulation orphanages and after detailed discussion it was agreed by the participants that Kashmir Province having highest concentration of Orphanages needs special attention. The other question and discussion triggered after this session was how successive governments has missed the linkage of giving presence to the community care rather than institutional care.

Mr. Iftikar Kakroo (OSD to Hon'ble Minister for Social welfare, Science and Technology and ARI trainings) who has been deputed by the Hon'ble minister for this consultation participated in the entire deliberations from 11 am to 5 pm in which he answered the queries raised during the consultation. Mr. Kakroo and Secretary Social welfare Mr. Sajad Khan (IAS) announced that we will take forward this policy framework and will implement the recommendations through the ICPS department. The final had copy will be shared with the Hon'ble Minister with the hope that it will be included as a policy note for the department as agreed upon after this session was concluded.

- The Technical session was led by Mr. Hilal Bhat (UNICEF representative) On Orphanages in Jammu and Kashmir with special emphasis on Policy Framework.
- This session was followed by the discussion and most of the participants discussed and agreed upon the recommendations made in this presentation. The discussion details of the presentation are as under:
- Institutional care is compensation by State to its children for its failure to provide basic rights of children guaranteed in our constitution.
- Loving and caring family, the best place for the child: Children are best cared for in their own families and have a right to family care and parenting by both parents.
- Institutionalization of children, the last resort: There is a need to shift the focus of interventions from an over reliance on institutionalization of children and move towards more family and community–based alternatives for care. Institutionalization should be used as a measure of last resort after all other options have been explored.(UNCRC Article 9)
- Some of the key recommendations have been captured in the recommendation section of this report.
- Followed by the themes for the group discussion in three Groups namely A, B and C.

Group A:-

- Executive Summary
- Objective, Methodology, Research tools
- Existing Legal Framework
- Detailed findings of the study

Group B:-

- Constraints and Opportunities
- Recommendations
- Observations and suggestions

Group C:-

- Recommendations and findings
- Child Rights Inclusive Policy:
- Volunteering & Recruitment
- Behavioural Protocols:
- Procedures for Reporting Abuse of Children in Orphanages
- Code of Conduct:
- Safe Arrangements & Structures:
- Social Policy
- Recreational facility and physical safety:
- Advocacy:
- Strategies:
- Strengthen the legal framework:
- Orphanage Care:
- Better Approaches on Child Protection Mechanism:

The exhaustive deliberations on the policy framework in this conference was attended by cross section of the society which includes representatives from NGOs working in the field of Child Protection, Media persons, Lawyers, academicians and government officials.

Some of the key Snapshots highlighted in the conference was that there are 201 orphanages in which 12716 children are already enrolled. While government supports only 14 orphanages however 187 orphanages are mostly run through charities with uncertain income. The origin of these charities is local community members in several areas. The significant source of support is either by cash or by kind.

Out of 201 orphanages, 95 orphanages are not even registered. A large percentage of respondents (96%) have no information about section 35(3) of the JJ Act of Jammu and Kashmir that mandates registration of all homes. The respondents did not even know anything about the JJ Act. It is more ironical that the government has not done much to enforce Section 35 although a detailed guideline for registration has been issued and the Registrars were designated.

Recommendations from the working groups constituted in the consultation meeting

- All the recommendations should be adopted by the Social Welfare Department J&K through notification and ensure that it should be implemented within certain framework of time.
- Immediately the Social welfare department should notify and register all the orphanages under JJ Act 2013 without further delay.
- The entire report should be adopted and implemented by J&K government through a task force that needs to be notified by the Social Welfare Department.
- The newly formed social welfare councils should be made aware about this report, JJ Act 2013 and the recommendations of the policy framework through IEC and awareness raising of these community structures.
- Infrastructure aid shall be provided to those orphanages which are registered and follow the procedure of JJ Act 2013.
- Institutional care is compensated by the State to its children for its failure to provide basic rights of children guaranteed in our constitution.
- Loving and caring family, the best place for the child: Children are best cared for in their own families and have a right to family care and parenting by both parents.
- Institutionalization of children, the last resort: There is a need to shift the focus of interventions from an over reliance on institutionalization of children and move towards more family and community-based alternatives for care. Institutionalization should be used as a measure of last resort after all other options have been explored.
- Providing adequate and appropriate infrastructure and ensure safety and security of children in all residential care facilities including CCIs, Hostels and Ashram Shalas, established under domestic laws that house children.
- Total Homes Identified by DSWOs – 394 (J-132, K-230, L-31, Highest in Kupwara – 58---Total Children in Homes – 24889, JMU- 7401, KMR-14962, Ladakh - 2526
- Section 35(3)- All institutions, whether run by Govt VO's for CNCP shall register under the Act in the prescribed manner.
- Registration under the Act.(u/r 66) — (1)All institutions and organizations housing children in need of care and protection, whether run by the government or voluntary organizations, shall get themselves registered under Jammu & Kashmir Juvenile Justice (Care and Protection of Children) Act 2013. Darsagah, Ashrams, residential homes, monasteries, nunneries???
- Rule 66 - Registration " all institutions and organizations housing children in need and care of protection whether run by Government or or VOs. Register themselves under JJA (C&P of children) 2013.

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- Rule 68 (sub section -2) penalty of Rs 1000 per day.
 - STANDARDS OF INSTITUTIONS FOR CARE AND PROTECTION
 - Physical infrastructure.—(1) The homes for juveniles in conflict with law and children in need of care and protection shall function from separate premises which should be accessible to persons with special needs. The accommodation in each institution shall be as per the following criteria:-
 - Clothing and Bedding.
 - Sanitation and Hygiene.
 - Daily Routine.
 - Nutrition and Diet Scale
 - Medical Care.
 - Mental Health.
 - Education.
 - Vocational Training.
 - District Inspection Committee (DCPO, representative from VO's and representative from Health Department)
 - The case is recommended for registration to the Registrar under section 35 (SMD ICPS)
 - State Vs. Community run orphanages
 - A cadre of Remunerated Volunteers
 - Statutory registrations. 96% unaware about section 35
 - Infrastructure- None of them fenced
 - Playground and recreational facilities
 - Inadequate Caretaker
 - 14% say only orphanages can take care of orphans
 - Non familiarity with child rights 86%
 - Should we call the residential institutions as orphanages. Most of the children not orphans
 - What about applying JJ definitions?
 - Should there be a policy on charities using 'orphan' in written and other forms for Fund collection.
 - Registration of Homes. Where to draw the line?
 - Can we think about standards of care at Community level?
 - We should extend similar research studies to look into various components of OH's.
 - There should be some focus on Budgeting and governance, costing of CP services, budget planning, Accountability mechanism especially in the area of Juvenile Justice
 - Transaction of benefits to the children.
 - Aftercare, Non-institutional alternative care
 - IEC activity through village councils may be generated for awareness and sensitization for institutional and community care of orphan children

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- Community care should be preferred over institutional care through newly formed village councils from social welfare to department.’
 - Awareness building on JJ Act 2013 and other laws pertinent to children in need of care and protection needs to be sensitized.
 - Abuse in the homes is yet to be reported in this study therefore this study may be extended with the references of abuse neglect and corporal punishment.
 - Child right policy for state needs to be drafted in the way this policy framework has been drafted.
 - IEC material for code of conduct for institutional care needs to be generated.
 - Recreation and other supports elated activities needs to be liked with the concerned departments for linkage and robust psycho social intervention.

It was finally agreed upon that the final printed draft of the “POLICY FRAMEWORK TO SECURE RIGHTS OF ORPHAN CHILDREN AND GOVERN ORPHANAGES IN JAMMU & KASHMIR” with recommendations will be handed over to the Social welfare department; the department will constitute a committee that will ensure the implementations of this Policy framework particularly the recommendations of this draft within the time frame.