

A Study of The Rights of Child Monk in Monasteries of Gangtok

*Prerna Lepcha**

I. Introduction

The protection and welfare of the children are of paramount importance. It is a issue which has reached its height globally because the rights of child is equally important as that of rights of other human beings if not more. If the rights of the child are not considered important then it would not only leads to a violation of their human rights but also adversely affects the society at large. The United Nations Convention on the Rights of the Child or CRC states that – all children are born with fundamental rights. Such as:

- Right to Survival – to life, health, nutrition, name and nationality
- Right to Development – to education, care, leisure, recreation and cultural activities
- Right to Protection – from exploitation, abuse and neglect
- Right to Participation – to expression, information, thought and religion.

The survival of the child while in the womb of its mother, in tune with the Convention is taken care of in India and several Schemes have been devised such as Integrated Child Development Scheme, the child health programme under the reproductive, maternal, newborn child and adolescent strategy of the National Health Mission comprehensively integrates interventions to improve child health and nutrition status and addresses factors contributing to neonatal, infant, under-five mortality and malnutrition. The National Population Policy 2000, Sustainable Development Goals (2016-2030) and the National Health Policy, 2017 have laid down the goals for child health.¹ Such schemes and policies are devised for the survival and growth of children. A healthy child is a forerunner of a healthy nation.

Right development, according to the Convention includes education, leisure, recreation etc and they are put almost at the same pedestal as health. A healthy and illiterate person is a burden on the nation. Right to Education being an important component of a life with dignity, the Constitution of India has incorporated it in Part III under Article 21A as a fundamental right. Children being our future, their rights should be protected and safeguarded whether they be children from slums, or from rehabilitation centre or from any religion. Thus, ideally there should not be

*Assistant Professor, Department of Law, University of North Bengal.

¹ Available at <http://www.nhm.gov.in/nrhm-components/rmnc-h-a/child-health-immunization/child-health/background.html>. last visited on March 13, 2019

any discrimination based on caste, class, sex, religion or place of birth. There is no such differentiation under Article 21A of the constitution and Article 15 and 16 provide for reservation in the field of education and job opportunities for the Scheduled Castes, Scheduled Tribes and other backward classes. The major impediment to achieving both health and education is poverty. Poverty is directly linked to population. Though poverty alleviation and population control are national priorities, its achievement is extremely difficult if not impossible. In many cultures and religion birth control is a sin, given the fundamental right to religion and religious beliefs the states hesitate to make its population policy obligatory. The result is abject poverty in certain pockets of the country. Nurtured mostly in the remote hills and valleys, Buddhist families too are affected by poverty. Only the urban Buddhist have become aware of the drawbacks of poverty and illiteracy and the connection between the two.

The tradition in the Buddhist religion of accepting a child as monk into a monastery is not a new concept. Such tradition is seen in Buddhist countries namely Bhutan, Thailand, Myanmar, Japan, etc, and in India also it is found specifically in states such as Bihar, Himachal Pradesh, Mysore, Sikkim, etc. This practice of sending their children to the monastery is due to poverty on one hand and a blind belief in reincarnation on the other hand. In order to understand the interlink and the role played by the Buddhist monasteries to mitigate the situation and to explore whether any violation of the rights of the child occurs within the secluded precincts of the monasteries a survey was undertaken in March-April, 2019. The present article is an outcome of such field investigation.

II. Legal Framework on the Rights of Child

The protection and welfare of the child's right is the duty of every individual. The rights of the child is of paramount importance because they are the future of a nation and should be nurtured with care and caution. Whether the children be living with their parents or in any of the institutions as inmates. The importance of the rights of the child is issue of concern. A national asset, children are subject to sexual abuse, corporal punishment, trafficking and beggary. They are victims of abject poverty that causes disability and exploitation. The framers of the Constitution of India not being oblivious of this fact devoted attention to the protection of the children. At the International level, the primary instrument for the protection of the child is enshrined in the Convention on the Rights of the Child.

II.I. International Convention on the Rights of Child: A Brief Profile

Under the International law, the Preamble to the United Nations Convention on the Rights of the Child, 1989 states that the United Nations has in the Universal Declaration of Human Rights and International Covenants on Human Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status. Recalling this, the United Nations has proclaimed that Childhood is entitled to special care, assistance and should grow up in a family environment, in an atmosphere of happiness, love and understanding for the full and harmonious development of his or her personality. It also recognises that in all countries in the world, in particular the developing nations there are children living in exceptionally difficult conditions for which such children need special consideration.² Therefore, it provides numerous rights pertaining to childcare and welfare for which 196 countries are signatory to it, to which India ratified in 1992. It is based on four basic principles:³

1. Non-discrimination- Article 2 of the Convention provides that States parties to the CRC shall ensure and respect the rights set forth in the Convention and shall take all such measures to avoid any form of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.
2. Best Interest of the Child - Article 3 of the CRC provides that the best interests of the child should be of primary consideration whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.
3. Right to Life Survival and Development - Article 6 of the CRC provides that the States Parties should recognise that every child has the inherent right to life and also ensure to the maximum extent possible the survival and development of the child.
4. Right to be Heard - Article 12 of the CRC provides that States Parties shall assure to the child, right to express their views freely in all matters affecting them and such views be given due weight in accordance with the age and maturity of the child. An opportunity to be heard in any judicial and administrative proceedings either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law be given to the child.

The provisions of the CRC sets out the rights of children and obligations of State Parties. Part I of CRC provides numerous rights of child that there shall not be

² Available at <https://www.ohchr.org/documents/professionalinterest/crc.pdf> last visited on 3rd May 2019

³ Available at <https://www.aequitas-humanrights.org/human-rights-education/human-rights-and-children/brief-introduction-to-the-rights-of-the-child/> last visited on 3rd May 2019

any form of discrimination against child,⁴ at the most interest of the child shall be a primary consideration,⁵ right to life of child and access to basic necessities to existence such as adequate food, shelter, standard of living and medical requirements. The right to education,⁶ to practice the religion of own choice and cultural activities, freedom of thought and conscience,⁷ to play and leisure⁸ and to

⁴ Article 2(1) -States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

⁵ U.N. Convention on Child Rights, Article 3(1) - In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

⁶ U.N. Convention on Child Rights, Article 28(1)- States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and 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.

⁷ U.N. Convention on Child Rights Article 14(1) - States Parties shall respect the right of the child to freedom of thought, conscience and religion.

⁸ U.N. Convention on Child Rights, Article 31(1)- States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

access to information.⁹ The rights that protect children from abuses which may be consequential to several kinds of circumstances, such as children subject to procedures of criminal justice system, children in employment, children who are refugees, children who have undergone abuse or exploitation.¹⁰ The rights of children to participate in activities of the society, especially matters that may affect their lives, to assemble peacefully and to join associations.¹¹ Part II Article 42-45 contains provisions regarding implementation of the provisions of the CRC. Part III Article 46-54 includes provisions for signing the convention by parties and rules and procedures thereafter for the purpose of ratification, enforceability, amendment, denouncement, etc. of the convention.

Three Optional Protocols to the CRC have been introduced which are:

- Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography.
- Optional Protocol to CRC on the involvement of Children in Armed Conflict.
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

II.II. Constitutional Provisions on the Rights of Child in India

In India, there are various legislations for the protection and welfare of the rights of child. The Constitution of India being one that provides such safeguard in the form of Fundamental Rights and Directive Principles of State Policy. The Constitution in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) guarantees under the articles mentioned below, rights to the children of India:

⁹ U.N. Convention on Child Rights Article 13(1) - The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

¹⁰ U.N. Convention on Child Rights, Article 32(1)- States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

¹¹ U.N. Convention on Child Rights, Article 15(1)- States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

II.II.I. Fundamental Rights

Part III of the Constitution of India guarantees the Fundamental Rights to its citizens subject to reasonable restrictions. Citizens of India, including children, are to be treated equally before law and must be given equal protection by the law without any discrimination or arbitrariness.¹² Discrimination is prohibited by the constitution. However, it shall not hold a ground to prevent the state from making special provisions for women and children for their benefit.¹³ The Constitution of India also provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.¹⁴ A person has the right to adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.¹⁵ The State shall provide free and compulsory education to all the children falling in the age group of six to fourteen years in such manner as the State may, by law, determine.¹⁶ In *Unni Krishnan, J.P. v. State of A.P.*,¹⁷ the court had clearly recognised the fundamental right of every child for free and compulsory elementary education up to the age of 14 years as provided in the then Article 45. However to ensure sufficient and effective realisation of this right as well and to reassert national will and commitment in this regard Article 21-A was inserted by the 86th Constitutional Amendment Act in 2002. Prohibition in trafficking in human beings and begar or any other form of forced labour;¹⁸ prohibition in employment of children under the age of fourteen years in a factory, mine or in any other hazardous employment.¹⁹ The court in *M.C. Mehta v. State of Tamil Nadu*,²⁰ noted that menace of child labour was wide spread. Therefore, it issued wide ranging directions in the context of employment and exploitation of children in Sivakasi, prohibiting employment of children below the age of 14 and making arrangements for their education by creating a fund and providing employment to the parents or able bodied adults in the family.

¹² The Constitution of India, Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹³ The Constitution of India, Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

¹⁴ The Constitution of India, Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law

¹⁵ *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, 1301, 1305.

¹⁶ The Constitution of India, Article 21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

¹⁷ (1993) 1 SCC 645

¹⁸ The Constitution of India, Article 23(1): 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.

¹⁹ The Constitution of India, Article 24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

²⁰ (1996) 6 SCC 756: AIR 1997 SC 699.

II.II.II. Directive Principles of State Policy

Part IV of the Constitution of India provides for the Directive Principles of States Policy i.e., the state shall strive to ensure that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.²¹ The state shall ensure children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. It must also be ensured that childhood and youth are protected against exploitation and against moral and material abandonment.²² The state shall within its economic capacity and development, secure provisions for educational opportunities and facilities.²³ The state shall endeavour to provide free and compulsory education to children until they attain they age of fourteen years.²⁴ It is the duty of the state to promote the educational and economic interests of weaker sections of the society with special care and therefore, the children therein.²⁵ The state is duty-bound to raise the level of nutrition and the standard of living and to improve public health, including that of children.²⁶ International laws and treaties shall be respected by the state to every possible extent, including the CRC and its Optional Protocols, Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and Optional Protocol to CRC on the Involvement of Children in Armed Conflict.²⁷ It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.²⁸ The Constitution of India provides for the institutionalisation of child care by seeking to entrust programs of Women and Child Development to Panchayat (Item 25 of Schedule 11).²⁹

In addition to the aforementioned laws for Children's welfare and protection there are several institutions both religious and non-religious, where children are taken in as residential inmates. The non-religious institutions such as orphanage, Child Welfare Department are those where children who are either abandoned or are victims of slavery, sexual abuse, etc are brought for the rehabilitation. There are specific laws to protect the children from such sexual abuse and also a law to safeguard the children in need of care and protection such as Protection of Children against Sexual Offences Act, 2012 and Juvenile Justice (Care and Protection of Children) Act 2015. This Juvenile Justice Act 2015 which has come into effect repealing the earlier Juvenile Justice Act of 2000, provides several new offences committed against children and address the sale and procurement of children for illegal purposes. POCSO is in tune with Article 15(3) of the Constitution of India, which permits the State to make special provisions for children. With its enactment, India now has one of the most comprehensive law that not only allows justice for children who are victims of sexual offences but also takes into account the best interests and well-being of the child. It is a landmark legislation in the area of child protection.

Religious institutions such as Monasteries, Ashrams, Seminaries, etc where often children of young age are taken as residential inmates. An age when they should still be under the tender care of their parents, indulging in play and recreation, they are admitted to the monasteries either due to poor financial condition, or sometimes parents give away their child to become a monk in the belief that they would turn out to be a good person or sometimes when the child is orphan then to avoid unnecessary burden they are often given away to the monastery authority. Therefore, this present work intends to evaluate as to how much of the rights of the children have been protected within the four walls of the institution and/or whether there is any breach of those rights.

III. A Study of the Status of Children in Monasteries of Sikkim

The study has been limited to four monasteries of gangtok, one of the district of Sikkim alone. An extensive study has been made by visiting and interviewing the child monk and the monasteries authority concerned. The case study has been made on four monasteries of gangtok in which twenty child monks has been interviewed with the following questionnaire.

1. At what age did you come to monastery?
 2. Did you go to school before coming to monastery?
 3. Do you have brothers and sisters? If yes how many?
 4. Since when are you living in the monastery?
 5. With whom did you live before coming to monastery?
 6. What is the reason behind coming to monastery?
 7. How do you find your stay in monastery as compared to your home?
 8. What are various types of punishments for violation of any rule? If yes, can you describe them?
 9. What type of food do you get here?
 10. Who cares for you when you are sick?
 11. Have you experienced bad touch from anyone?
- What is your daily routine?

Data Analysis of the Survey:

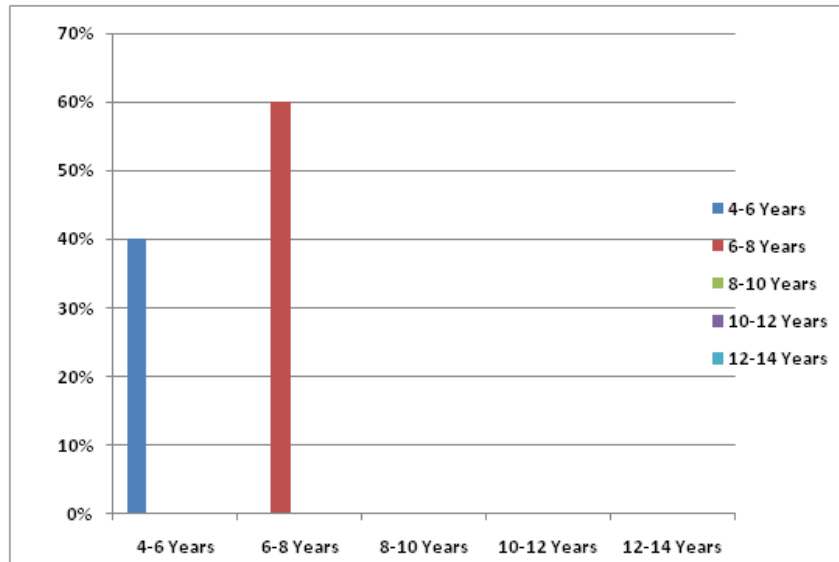


Figure 1- It is found that 60% of the child from age group 6-8 years and remaining 40% of the child from age group 4-6 years go to the monastery as residential inmates.

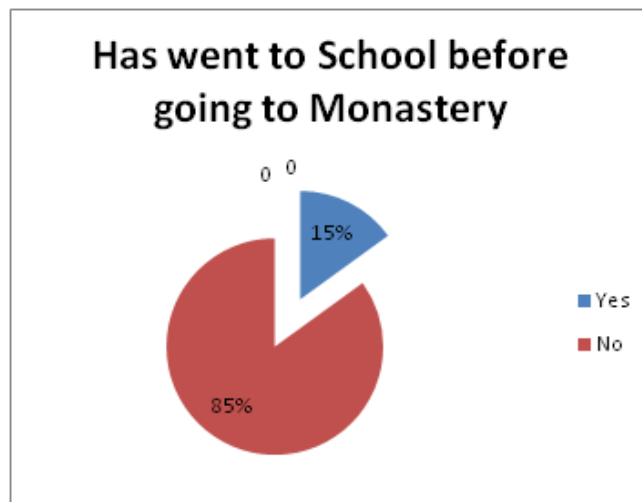


Figure 2- It is found that 15% of the child has went to Govt. Primary school before they have been sent to monastery and 85% of the child has been directly sent to the monastery.

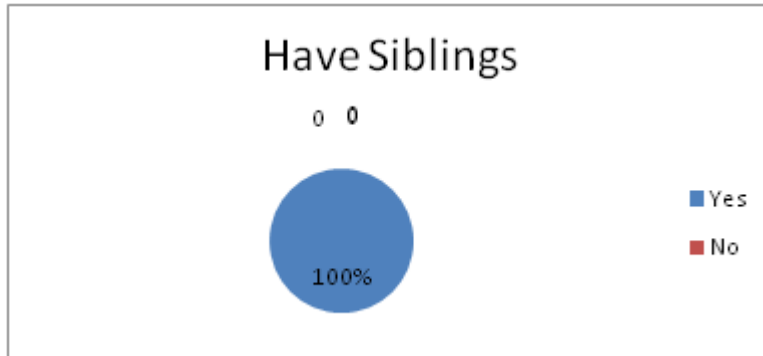


Figure 3- It is 100% that the child having siblings are sent to monastery.

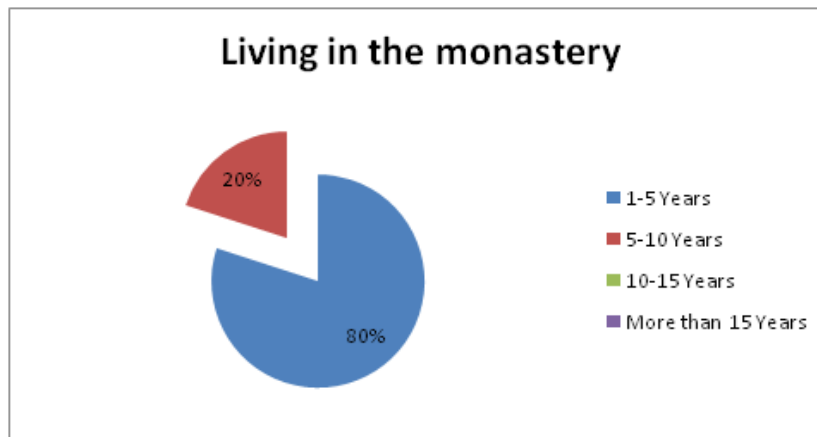


Figure 4- It is found that 80% of the child from 1-5 years and 20% of the child from 5-10 years has been staying in the monastery.

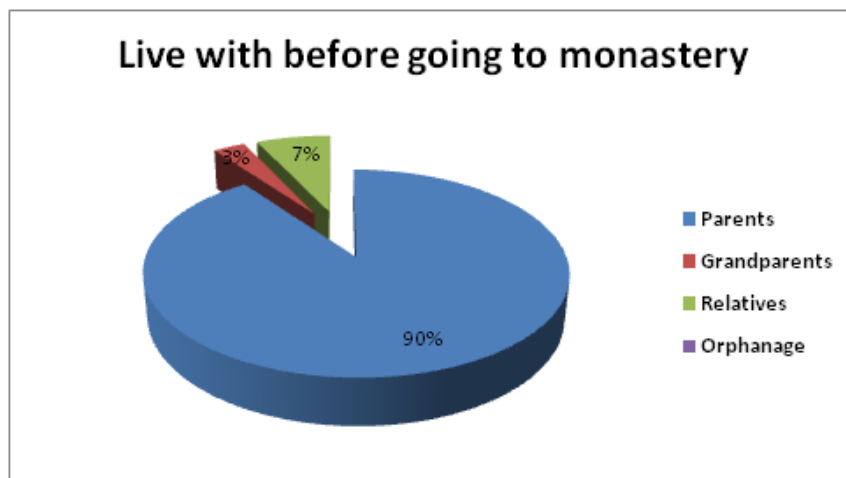


Figure 5- it is found that 90% of the child has lived with parents before going to monastery and remaining 7% with relatives and 3% with grandparents.

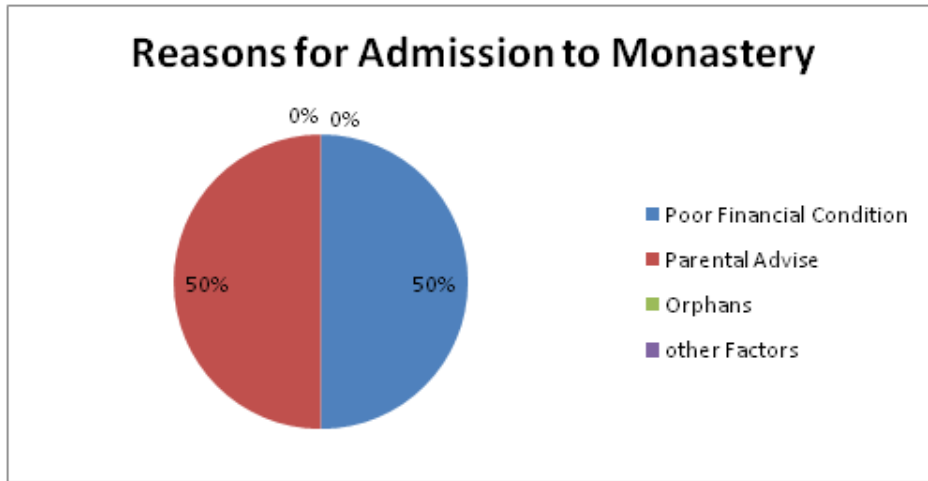


Figure 6-It is found that 50% of the child has been sent to monastery due to parents advise and remaining 50% due to poor financial condition.



Figure 7- It is 100% that child monk in the monastery feels good that they find their stay in the monastery good.

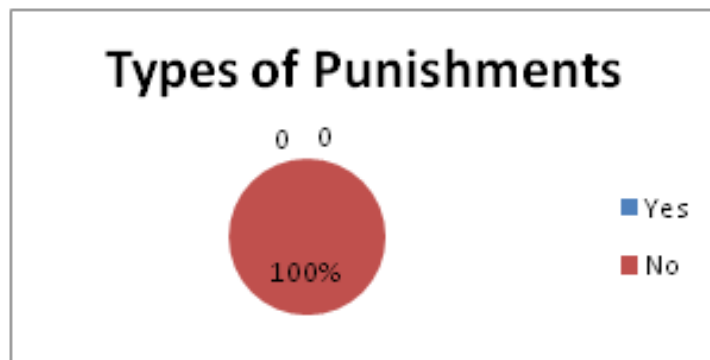


Figure 8- 100% of the child monk told the surveyor that there are no such punishments.

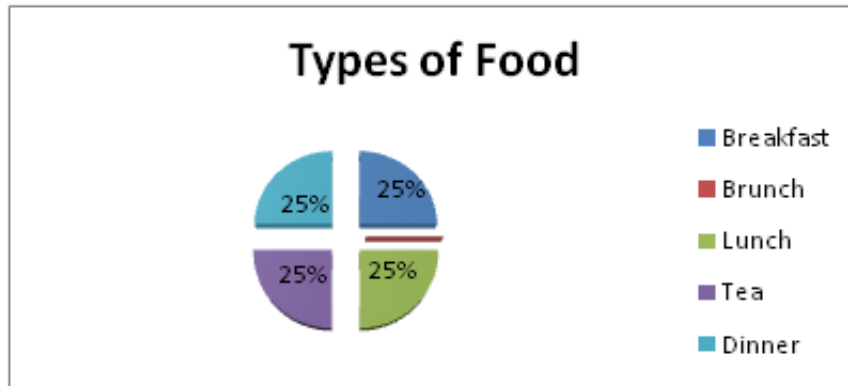


Figure 9- It is found that in all four Monasteries child monks are provided three times meal (veg) and two times tea in a day.

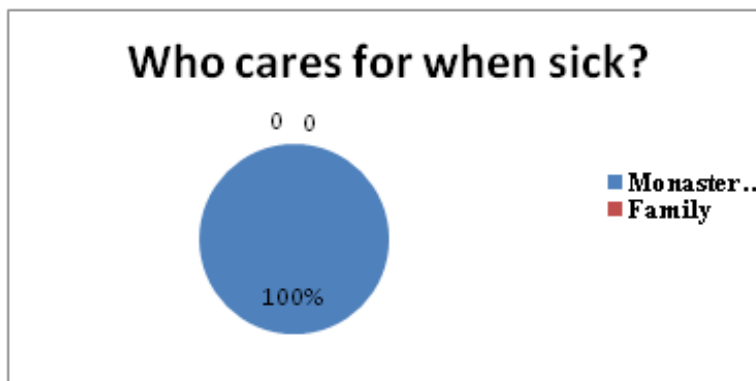


Figure 10- It is 100% that the monastery authorities care for when the child monks gets sick.

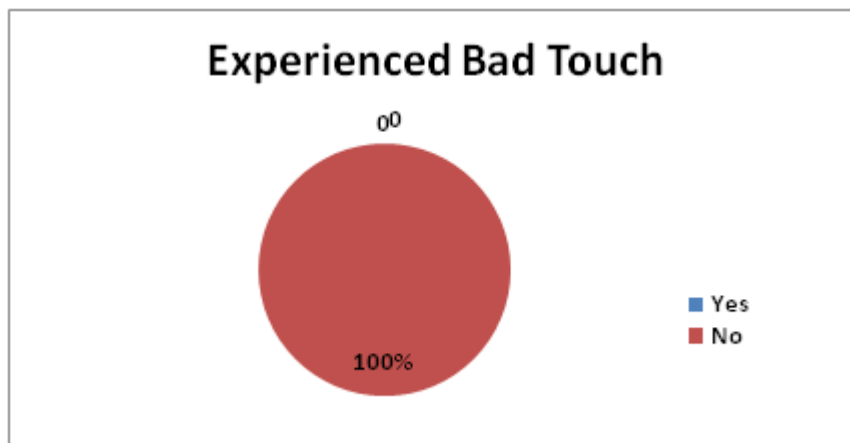


Figure 11- It is 100% that no child monk has experienced bad touch as such yet in the monastery.

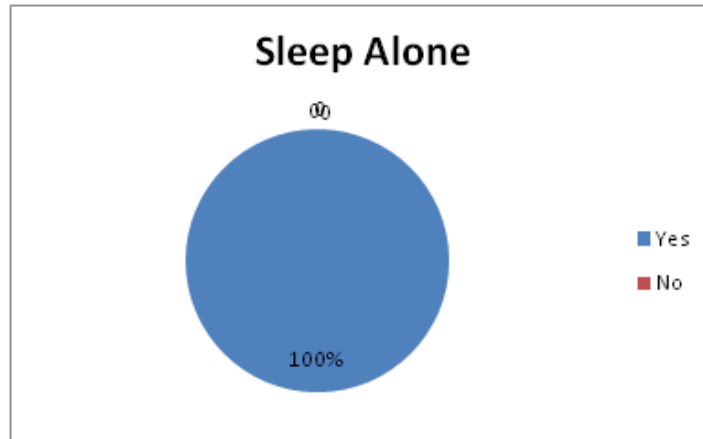


Figure 12- There are separate beds for them in a dormitory and it is 100% that they sleep alone.

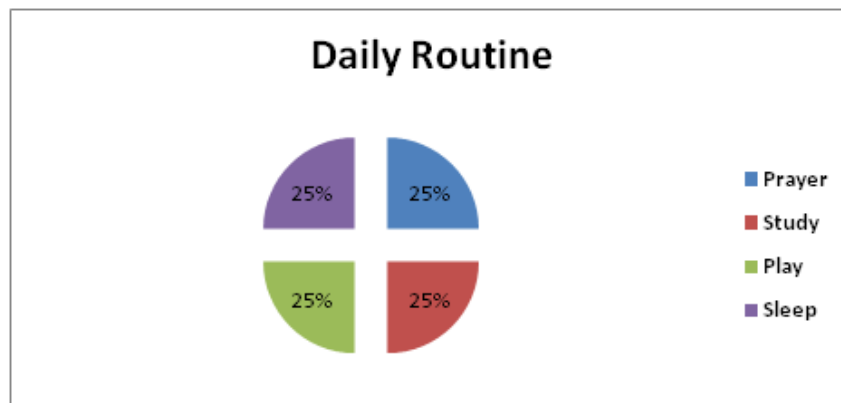
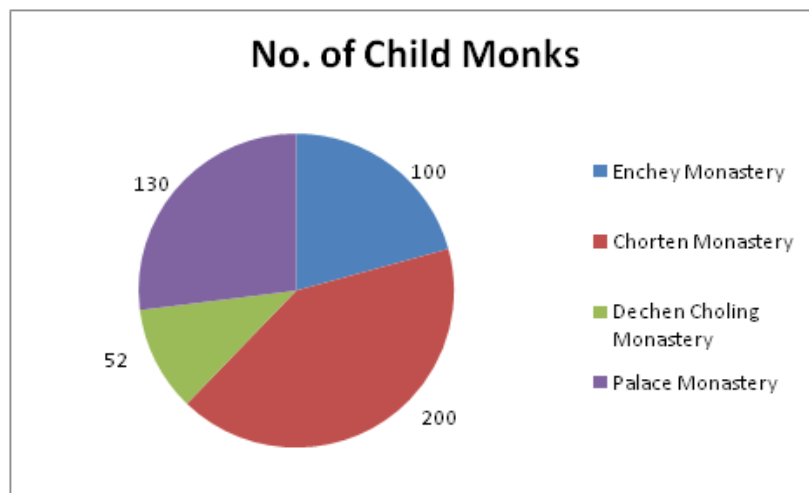


Figure 13- It is found 100% that child in the monastery has a disciplined life and as per their daily routine their day starts with prayer and ends with prayer and also in between they are facilitated to play and study.



IV. Key Findings of the Survey

- Surveyor found that comparatively the child monk is greater in number in Chorten Monastery than other three monasteries of Gangtok.
- There are about 200 child monks in Chorten Monastery, 100 child monks in Enchey Monastery, 130 in Palace Monastery and 52 in Dechen Choling Monastery.
- It is found that their day begins by morning prayer at 5am and night ends at 9pm.
- There are separate beds for them in a dormitory.
- They are provided education facility and along with the Buddhism philosophy, they are taught various other subjects such as English, math, etc.
- They have a summer and winter vacation same as that of other non-religious schools in Sikkim.
- Surveyor also found that they are not restricted to meet their parents.
- It is found that when they are sick, at first they are taken care of within the monasteries and if it becomes severe than they are taken to hospitals and all the expenses are incurred by the monasteries authority.
- It is also found that there is government intervention from time to time for the welfare of the children residing in monasteries in terms of education. They also have a committee in monasteries itself to look after the welfare of the children and it is also look after by dharma vibhag for overall development.
- Surveyor found that the majority of the child monks are sent to monastery as inmates is mostly due to poor financial condition.
- It is found that parents also send their child to the monastery with a belief that becoming monk is a best thing if they happen to be a spoiled one or undisciplined.
- Survey also found that when they are left with no parents their relatives admits them to the monastery to avoid financial burden.
- The other factors which leads to reason for a child to be admitted as residential inmates is when the child is abandoned one or when they have a large family such as more than one siblings then they are sent to monastery to avoid unnecessary expenses for their education and bringing them up.
- It is also found that some consider it to be a blessing, a proud moment and a good thing to be admitted as child monk in a monastery as they believe that it is a good path to be followed.

V. Conclusion

This work is effected to have a closer look into the rights of the child and their protection in the monasteries as to whether their rights which has been entitled to them by the international and national laws has been well implemented or not within the four walls of such institution. From the survey it is found that the accepting of child in the monastery as a residential inmate is a privilege to many who are underprivileged or for the families who are not even in a position to give the child basic necessities of life such as right to food, shelter and education. The right to education being important component of life today which was not earlier when the Constitution of India has been framed now it has been provided specifically in Article 21-A of the Constitution of India by the 86th amendment in 2002 as a fundamental right. So to tune in with the national law and CRC even the religious institution provides this right to education under Schemes such as Sarva Sikhsha Abhiyan(SSA) for the primary sections and by Rashtriya Uchchatar Siksha Abhiyan(RUSA) for the higher secondary education. In this field work it is found that not only the right to education has been well implemented in the monasteries but for their proper health and development all necessary assistance are well given and provided to the child. They have a disciplined life from waking up at 5 am to going bed at 9 pm, in between they are provided with class teaching, three times meal a day, play time etc. This field work was intended to find out as to whether there has been violation of any rights of the child or if there is any instances of child abuse in institutions like such and with this survey it is found that no such instances of child abuse has been found in monasteries of Sikkim so far. In this institution there is no such kind of discrimination in any form and it is in well tune with the Article 15 of the Constitution which prohibits the discrimination in any form. Article 14 of the Constitution of India which provides right to equality is also well implemented as it gives equal importance to all the child inmates. Therefore, more of this kind of institution should be established for the welfare of the child so that it can aid the country to become cent percent literate nation and also it may help in elimination of poverty by looking after the downtrodden children.