

**Status of
Children
in
India Inc.**

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This volume is dedicated to Adi Patel, founder member of HAQ: Centre for Child Rights, who was a constant source of hope and encouragement to us.

We Thank...

...the children of India who never let us give up hope by their sheer resilience against all odds, their ability to laugh and bring laughter to us.

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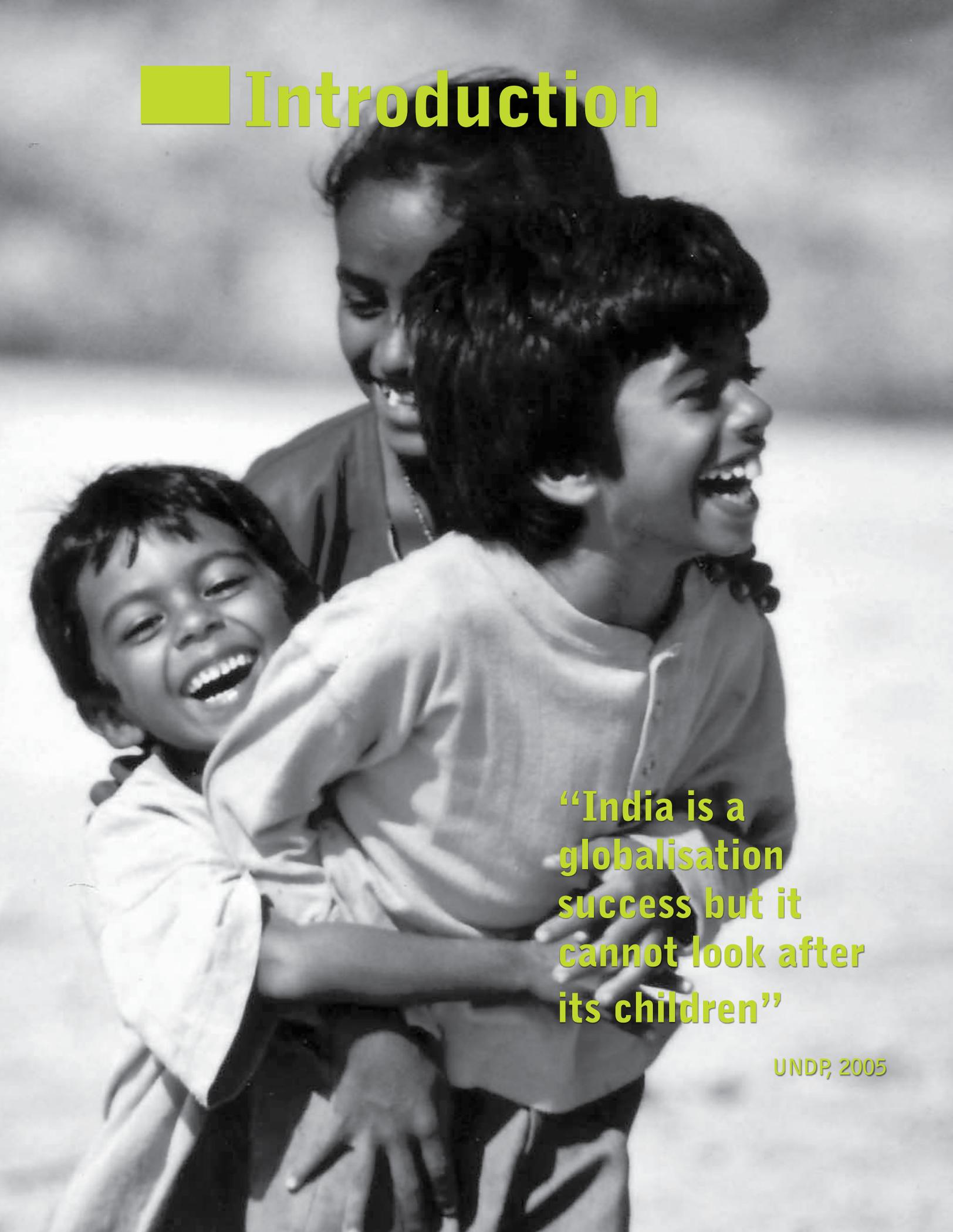
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Last but not the very least, we have to thank our families – the ones at home, especially our own children whose rights invariably take back seat in the course of our frenzied attempts to complete projects that HAQ finds important. Without their silent but constant support an forbearance, HAQ would not be able to function.

Enakshi Ganguly Thukral
Bharti Ali

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■ Introduction

**“India is a
globalisation
success but it
cannot look after
its children”**

UNDP, 2005



Rabia is seven years old, and one of three children. A film made by children documenting her life is as compelling as it is shocking. She leaves her home, a shack of cardboard and plastic, every morning to go to the garbage dump near her house, where she collects recyclable materials. She brings back a bag full of these materials which she sells to the local kabadi (dealer in recyclable garbage). With the money she gets, she buys provisions, goes home and cooks. Food is cooked only once a day. She collects water in large heavy can from the tanker that comes to the basti (settlement) once a day or when the tanker does not come, from a hand-pump marked-“not for drinking”. Her father and mother are both chronically ill and bed-ridden. Her father has acute asthma and needs medication worth Rs. 10 every day, while her mother is paralysed and needs Rabia to help her with all her needs. Her older brother, who is nine, remains ill most of the time, and her baby sister has a horrible skin infection all over her body. All four need treatment, which Rabia as the family’s only earning member, cannot always afford. After all, health care is expensive. In fact, if Rabia does not go to the garbage dump, there would be no food in the house that day. Where is then the time for her to exercise her fundamental right to free and compulsory education – indeed her very right to childhood? This is a true story and Rabia is not the only child who leads this life.

Rabia does not live in Niger or Somalia, or any other acutely underdeveloped nation that has been in the news for its abject poverty. Rabia lives in Bhalaswa Dairy, a settlement on the outskirts of India’s Capital city where the rest of Delhi’s garbage is dumped. She is the citizen of the country described as one of the fastest growing economies in the world-the Next Big Thing (after China).

How does one even begin to reconcile these different realities? Most of ‘modern middle class India’ prefers not to notice. Why should they really care? After all India is considered among the largest markets in the world. Clearly, there are enough that can afford to buy. With global markets opening up, there are just so many opportunities to be tapped. The next big car, the next big house, branded clothes, travel abroad... So why should they care what happens to the “rest”? But what of those who are responsible for governance? Can they too pretend this reality does not exist?

Two years ago our children like Rabia lived in ‘Shining India’. Today they live in what some describe as ‘Brand India’. Indeed Brand India has replaced the idea of Country India, and in doing so, its complex reality has been flattened into a single digit number – the rate of GDP growth. The dominant symbols of “growth and progress” are glitzy malls, freeways and flyovers, internationally branded clothes and consumer products and the stock market rate. Clearly, drinking water, sanitation, accessible and free quality education, healthcare and social security are no longer indicators, except when the country is reporting on its achievements, especially in international forums. So Rabia lives in the country with the tenth highest GDP in the world but stands 127 in terms of human development index.

Status of Children in Brand India

- With more than one third of its population below 18 years, they constitute 19 percent of the world’s children.
- Only 35% births are registered, impacting name and nationality
- One out of 16 children die before they attain one year of age, and one out of 11 die before they attain five years of age
- 35% of the developing world’s low birth weight babies are born in India
- One in every three malnourished children in the world lives in India
- The reducing number of girls in the 0-6 age group causes alarm. For every 1000 boys there are only 927 females – even lesser in some places
- Out of every 100 children, 19 continue to be out of school. Of those who enroll, almost 53 drop out before completing Class VIII
- 46% children from scheduled tribes and 38% from scheduled castes continue to be out of school
- Of every 100 children who drop out of school, 66 are girls
- 65% of girls in India are married by the age of 18 and become mothers soon after
- India is home to the highest number of child labourers in the world
- India has the world’s largest number of sexually abused children with a child below 16 years raped every 155th minute, a child below 10 every 13th hour, and one in every 10 children sexually abused at any point in time

1 Plan India. Victim of Garbage Dump.

2 Santosh Desai, Last Word, Blinded by Shanghai, The Week, 28 August 2005.

Not much has changed in the lives of our young citizens since HAQ brought out its last status report in 2003.

Over the last decade, countries across the world have embarked on a course of changing their existing economic models in favour of one driven by the free-market, incorporating processes of liberalisation, privatisation and globalisation. The direct impact of free trade on children may not leap to the eye. But experiences of processes of globalisation and liberalisation in other countries on their children, and the situation of children in globalised India today, definitely indicates that there is a strong case for making a closer examination of this linkage. This is borne out by worsening levels of basic health, nutrition and shelter as they fall to the knife of social sector cutbacks and policies, programmes and development initiatives that continue to deprive communities and families of resources that they have traditionally depended upon through loss of control over and access to land, forest resources and water. Privatisation of social sector benefits such as education, health and provision of water, are clearly taking their toll on millions of children. While potable water in every village remains to be achieved, bottled drinking water in plastic bottles, aerated drinks and other consumer brands are available.

The symptoms of negative fallout are visible: children deprived of even the sparse social benefits once available, as forced and economic migration displaces them, increasing number of children subsisting on streets, the growing number of street girls, more and more children being trafficked within and across borders, and rising numbers of children engaged in part or full-time labour.³ Rabiã's is just one such grim story.

Not much has changed in the lives of our young citizens since HAQ brought out its last status report in 2003. We had titled it "Children in Globalising India: Challenging our Conscience," because that is what we thought it would do. The situation of children as reflected in the volume would make us sit up with concern and force us to act. If newspaper reports and those by NGOs are any indication, it is only becoming worse.



Two years have gone by. Although not a very long time, it is definitely adequate to undertake another review of our commitment to children. What became evident while putting together this volume is that while the reasons for concern raised in the last volume remain, new ones are emerging. Indian society has always been divided by caste and class, urban and rural, rich and poor. Despite affirmative laws and policies of the government many of these divides have remained, but the divides between the rich and the poor have never been more stark than today. Visible spending and consumerism together with this

economic divide is greatly responsible for increasing unrest and violence within society. Children are taking to crimes and drugs at a much younger age. They are now experimenting with drugs even before they reach their teens. They are smoking coke, cannabis and heroin. Those not smoking are sniffing an array of inhalants such as nail-polish remover, erasex, paint and even petrol.⁴ To fund their addictions they need money, which pushes many into crimes. And yet, the most basic act of providing name and nationality through birth registration remains a challenge.

Survival

The very survival of the Indian child is a matter of concern. 2.5 million children die in India every year; accounting for one in five deaths in the world, with girls being fifty percent more likely to die.⁵ Eighty seven children of every 100 born still have the probability of dying between birth and exactly five years of age. According to report on the state of India's

³ Child Rights in the Global Week of Action, Concept Paper prepared by HAQ: Centre for Child Rights, 14 April 2005.

⁴ Hindustan Times, 4 September 2005.

⁵ Human Development Report, 2005, UNDP, Oxford University Press, New Delhi.

newborns, the health challenge faced by the new born child in India is bigger than that experienced by any other country.⁶ Although India's neo-natal mortality rate (NMR) witnessed a significant decline in the 1980s (from 69 per 1,000 live births in 1980 to 53 per 1,000 live births in 1990), it has remained static since then (only dropping four points from 48 to 44 per 1000 live births between 1995 and 2000).⁷

Food Insecurity – Malnutrition and Starvation

One in every three malnourished children in the world lives in India.⁸ Child malnutrition is generally caused by a combination of inadequate or inappropriate food intake, gastrointestinal parasites and other childhood diseases, and improper care during illness. Is it not incongruous that in a nation with soaring GDP rates and Sensex indices marking India's entry into the global market, children continue to die of malnutrition and starvation? The major cause for such a tragedy is the lack of availability of Public Health Services in remote and interior regions of the State, poor access to subsidized health care facilities, the declining state expenditure on public health and the lack of awareness on preventive child health care.



According to the Planning Commission 50 percent below-poverty-line families are out of the purview of the targeted public distribution system. The identification of below poverty line is in no way an indicator of purchasing power to provide for a minimum decent standard of living. The very method of identifying the poor in using the official poverty line defined at an absolutely low level of income, corresponding to the expenditure required to purchase a minimum of calories, is in itself contentious. Therefore in reality many more people are living in food-insecurity.

It is almost ironic that the Supreme Court of India has had to intervene to ensure that children in this country get adequate and nutritious food – the most basic of rights for all citizens to stay alive and healthy.

HIV/ AIDS

India, with the official figure of 5.1 million HIV infected people, has the second highest national total of persons living with HIV/AIDS after the Republic of South Africa.

While the National Aids Control Organisation has estimated 0.55 lakh HIV infected children (0-14 years) in the country in 2003,⁹ according to UNAIDS, it is 0.16 million children. Clearly there is a confusion regarding actual number of HIV/AIDS infected people in India with the UN agencies putting it much high than the official figure, which is bound to have an impact on the implementation of any programme. A report on children and HIV/AIDS released last year by Human Rights Watch has once again drawn attention to the expediency of the situation.¹¹

To be Born a Girl: Plummeting Sex Ratio

The very existence of the girl child is under threat. Defying the normal male-female balance, and the higher survival capacity of girl babies and greater life expectancy of women to men prevalent in human populations, the female to male

6 State of India's Newborn, 2004 prepared by the National Neonatology Forum in partnership with the Ministry of Health and Family Welfare Govt. of India, World Health Organisation (South East Asia Region), UNICEF India, the World Bank, and Saving Newborn Lives, Save the Children -US.

7 *ibid*.

8 <http://www.unicef.org/india/nutrition.html>

9 This estimation is based on the fact that only 5696 pregnant women who are HIV positive have availed PPTCT services during the year 2003 in identified institutions. Considering the GFR (General Fertility Rate) among women as 103.2 per thousand, there will be 1.84 lakh pregnant women in HIV infected pool. If the transmission rate of HIV infection from infected mothers to children is taken as 30% in worst case scenario, there will be 55,145 HIV infected children in the country. See www.nacoonline.org/facts_hivestimates.htm for details.

10 UNAIDS, Report on the Global AIDS Epidemic, 2004, Geneva.

11 Human Rights Watch, Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India, New York.

Every year, 12 million girls are born – three million of whom do not survive to see their 15th birthday. About one-third of these deaths occur in the first year of life and it is estimated that every sixth female death is directly due to gender discrimination

Human Development Report, UNDP, 2005.

balance in India has been adverse to females for at least the past 100 years. The 1901 National Census recorded a female to male ratio of 972 to 1000, for all ages. Virtually every subsequent census showed a worsening decline.¹²

While the overall female-male ratio for all ages rose slightly from the 1991 figures of 927 females per 1000 males to 933 females per 1000 males in 2001, the juvenile sex ratio in the 0-6 years age group had fallen from 945 girls per 1000 boys to 927 girls per 1000 boys.¹³ This was a decline of 18 points in just a decade! The Government of India in its report to the UN Committee on the rights of the Child said, “Every year, 12 million girls are born – three million of whom do not survive to see their 15th birthday. About one-third of these deaths occur in the first year of life and it is estimated that every sixth female death is directly due to gender discrimination.”¹⁴

Sex selective abortion, more commonly known as foeticide, and what appears to be a re-emergence of infanticide, are taking a rising toll, while neglect of the ‘survivors’ of this weeding out also persists.

Unlike all other social evils that are attributed to poverty, killing of female foetuses through sex-selective abortion cannot be attributed to poverty and ignorance. It is the economically affluent states such as Punjab, Haryana, districts of Gujarat and Delhi that have the dubious distinction of paying for expensive tests to help choose male children over females. Census figures based on the 2001 data of 640 cities and towns across 26 states and Union Territories reveals that posh metropolitan India with 904 girls per thousand boys, has lower sex ratio for children below 6 years than the overcrowded slums where



there are 919 girls per thousand boys. The capital city – Delhi has 919 and 859 for slum and non-slum respectively. Clearly it is those who can “afford to choose”, use technology to do so. One of the worst cities (Delhi) for increasing violence against women, it is rapidly leading the way for a more masculine society.”¹⁵

Almost all government’s health policies seem to have an underlying family planning agenda. Health activists have analysed that with its emphasis on population control, the Rural Health Mission is no different. Over the years it has become quite clear that if people are forced to limit the size of the families, they shall do so at the cost of the girl baby, even it means that they have to “import” brides from outside their states or their communities

Commenting on the serious decline in the 0-6 sex ratio in India, leading demographer Ashish Bose states that the government’s policies are all wrong. The two-child policy has got mixed up with female foeticide. Government slogans like ‘Beti ya beta, dono ek hain’ make little sense. And financial sops for couples having a girl-child can make no dent in the traditional preference for sons in India¹⁶. If India closes the gender gap between girls and boys aged 1-5 years, 1.3 lakh lives will be saved and overall the child mortality rate will go down by 5 per cent.

Infanticide was mistakenly believed to have died out. But clearly it has not. Crime records of several states contain reports of infanticide, with figures from Madhya Pradesh state accounting for 23.3 per cent of all reported cases of infanticide

12 India Alliance for Child Rights (IACR), Review Note submitted to the 17th Sept 2004 Day of Discussion of the UN Committee on the Rights of the Child on the issue of: Implementing Child Rights in Early Childhood CRC Review Note #1: India’s Girl Child: Crisis of ‘Early Disposal’ (Declining Juvenile Sex Ratio – 0 to 6 years).

13 Census of India 2001, <http://www.censusindia.net/results/resultsmain.html>

14 Convention on the Rights of the Child, India, First Periodic Report, 2001, Department of Women and Child Development, Government of India.

15 Slums Show the Way, Hindu, Sunday, 4 September 2005.

16 Madhu Gurung, “The two-child norm only leads to female foeticide”, InfoChange News & Features, November 2004.

deaths, followed by Uttar Pradesh, which accounts for 18.4 per cent and Maharashtra, 10.7 per cent.

There is no guarantee that the girl child who escapes foeticide, infanticide and is in the 0-6 age group, will escape the cycle of deliberate neglect that may even result in death because she is less fed, less encouraged to explore the world, more likely to be handed jobs to do, given less health care and medical attention. Out-patient data from hospitals in northern cities shows lower admissions of girl children, and girls in more serious condition than boys when brought for treatment. An August 2004 spot-check at one hospital showed 25,538 boy children and 12,645 girl children on OPD records, 3,822 boy babies as against 3160 girl babies born in hospital deliveries, and 1954 boy children admitted to a paediatric ward as compared to 1,091 girls.¹⁷

The adverse sex ratio in Haryana has made it difficult for men to find brides locally and has led to buying, selling and sexual exploitation of young girls/women from other states. Touts play a major role in arranging brides from the states of West Bengal, Bihar, Assam, and now even Kerala!¹⁸

Although the implementation of the PNMT Act to address sex selective abortion falls within the mandate of the Ministry of Health and Family Welfare, it is not a simply a health issue. Nor is it only about the survival of the girl child. It is a crime against the girl child and must necessarily be treated as an issue of violence and the need for protecting her.

Elementary Education

While enrolment levels propelled by the flagship Sarva Shiksha Abhiyan show an increase, the levels of retention in schools remain a matter of concern. Albeit marginally, there has been a decline in the percentage of students who stay in school till Class 5 from 61.2 per cent from 62 per cent, which is way below the global average of 83.3 per cent.¹⁹ There is a sharp decline in the enrolment ratio at the upper primary level. Also, the dropout rate increases cumulatively as it proceeds towards higher levels. Although showing improvements, the enrolment of girls is still below that of boys. The drop-out rates for girls too is higher. Children belonging to Scheduled Castes and Scheduled Tribes continue to face discrimination in schools and have lower enrolment and higher drop out rates. Despite the promise of education for all, 46 per cent children from scheduled tribes and 38 per cent from scheduled castes continue to be out of school as against 34 per cent in the case of others.²⁰ This is not surprising considering the discrimination that these children face in the schools. The same can be said of the discrimination faced by disabled children.

NEW DELHI, FEB. 21. Four years after the Government of India adopted the "mission mode" to universalise elementary education through the Sarva Shiksha Abhiyan (SSA), only 47 of the 100 children enrolled in Class I reach Class VIII. This puts the dropout rate at 52.79 per cent which, according to the Prime Minister, Manmohan Singh, "is unacceptably high."

Chairing the first meeting of the Governing Council of the National Mission for SSA, Dr. Singh attributed the high dropout rate to a "lack of adequate facilities, large-scale absenteeism of teachers and inadequate supervision by local authorities." Reaffirming the Government's commitment to universalising elementary education and referring to various deadlines set for achieving this, he said: "We give dates that have lost meaning. We need education for all, today."

Source: The Hindu, New Delhi, 22 February 2005

Indeed as we have argued in the chapter on education, the system is designed to push children out of education. In other words, the system of education is such – gender unfriendly, disabled unfriendly, caste discriminatory, violent because of high degree of corporal punishment – that children are forced to drop out of the system.

The Government has drafted the new Right to Education Bill, 2005 which is an Act to put into effect right to free and compulsory education for all children in the age group of six to fourteen years. Despite the comments and petitions sent to the Government on the earlier drafts, this one too confines itself to children in the 6-14 age group and does not include common school system. Following the insertion of Article 51A (k) a fundamental duty of '... parents or guardians to

17 India Alliance for Child Rights (IACR), India's Girl Child: Early Childhood – or Early Disposal? (Declining Juvenile Sex Ratio – 0 to 6 years), Review Note submitted to the 17th Sept 2004 Day of Discussion of the UN Committee on the Rights of the Child on the issue of: Implementing Child Rights in Early Childhood.

18 Girls from Kunjimangalam in Kannur district of Kerala are being married to boys in Hissar, Haryana. See Maid in Kerala, The Week, September 18, 2005.

19 2005 Education For All Global Monitoring Report (UNESCO's Education For All Development Index (EDI) for 2004).

20 Census of India 2001.

provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years', the Bill reiterates the responsibility of parent/guardian and gives the School Management Committee the power to direct the defaulting parents/ guardians to provide assistance by way of child care in the school (Section 36).

It places penalty for parents unable to send their children to school, while there is no penalty for the erring officials who fail to provide basic infrastructure conducive to good quality education for the children.



Child Labour and Right to Education – A Contradiction

India continues to have the highest child labour in the world. The existing law on child labour that allows children to work in occupations that are not part of the schedule of occupations that it considers harmful to children, contradicts the right of every child to the fundamental right to free and compulsory education. And yet there seems to be no attempt being made to resolve this contradiction. How can children be at work and at school at the same time? Which only means any attempt to give them access to education will be second rate, parallel non-formal education. The draft bill does nothing to address this anomaly, merely stating, “Provided that notwithstanding anything contained in the Child Labour (Prohibition and Regulation)

Act, 1986 (no.61 of 1986), no person shall employ or otherwise engage a child in a manner that renders her a working child”.

The child labour chapter concentrates on some areas where children are feeding into the global market or are being increasingly pushed into the labour market, even as their families are getting pushed into the margins where their very existence is under threat.

Victims of Violence and Abuse

There is an increase in reported crimes against and by children. Both are indicative of the growing rot that has set in into our society. India has the dubious distinction of having the world’s largest number of sexually abused children with a child below 16 years raped every 155th minute, a child below 10 every 13th hour, and one in every 10 children sexually abused at any point in time.²¹ An estimated 600,000 -700,000 children are sexually abused in India.²² While there is a fall in the reported cases of rapes, there is an increase in child rape and also in incest rapes. Clearly, home and family are not always the safe haven they are regarded to be. Government of India, in its report to the UN Committee on the Rights of the Child, presented in January 2003, identified child sexual abuse as a priority issue and one that required urgent attention. Child marriage, trafficking and corporal punishment continues. Indeed, while child marriage earlier was merely a social evil, today children are trafficked for marriage; especially into states that have either not allowed their girl children to be born or prevented them from surviving.

Buying and selling of children within and across borders for all kinds of purposes-labour, marriage, entertainment and of course prostitution, continues unabated, even as there is no comprehensive legal framework to address this problem in a holistic manner.

21 Asha Krishnakumar, Silent Victims Front Line, Volume 20 - Issue 21, October 11 - 24, 2003.

22 <http://www.chennaionline.com/society/06june12th.asp>

Religious Traditions vs. Child Rights

On March 11, 2004, Priyal, an eight-year-old Jain girl, whose family is based in Khandwa, Madhya Pradesh, underwent 'Bal Diksha', a ritual where children are ordained into monastic orders, in Malad, Mumbai. Priyal was initiated into the order at a ceremony held by Chandravadan Jeevanlal Kothari Sangh, an organisation of the Shwetambar Murtipujak sect. The Child Welfare Committee in Mumbai took note of this and debated if the child could be treated as a child in need of care and protection under the juvenile justice system and provided necessary care and rehabilitation. A case was filed in the Mumbai High Court charging the girl's parents of treating her cruelly and the practice as detriment to the well-being of the child. The family court's authority to what seemed as "interfering with what is essentially a religious matter" came into question.

Such practices are not uncommon in India. Bal Diksha is common since the time of Mahavir, the founder of Jainism. Jains believe that children who take Bal Diksha receive enlightenment at a young age. Buddhism too allows such dedication of children. The age old Devadasi and Jogin/Basavi traditions whereby girls are dedicated to gods and goddesses have received great attention from social reformists and revivalists followed by legal reform to curb this practice. Reformist or Abolitionists conceived Devadasi practice as a social evil and considered every devadasi to be a prostitute. The first anti-naught and anti-dedication movement was launched during the 1880s. Around 1899 the anti-naught and purity movement turned its attention to stopping dedications.

The first legal initiative taken for stopping the Devadasi system dates back to 1934 when the Bombay Devadasi Protection Act was passed by the British government. This Act covered the Bombay state, as it existed then. The Bombay Devadasi Protection Act declared dedication of a woman as an illegal act, irrespective of the fact whether the dedication was made with her consent or not. Concurrently with the Bombay Devadasi Protection Act, the Madras Devadasi (Prevention of Dedication) Act, 1947 was also in operation. In 1982, Karnataka banned the Devadasi tradition of dedication of girls to gods and goddesses. Andhra Pradesh followed this in 1989.

While the Devadasi system has come under attack and measures have been put in place to check dedication of girls for it, other forms of dedicating and ordaining children are coming to light and throwing up questions that once again take us back to 1930s when our social reformists launched a movement against the Devadasi tradition. For some it may be interfering with the religious sentiments of a community, but should that be a reason to justify such practices?

Sources: Ahimsa Times, Volume 47, May 2004, Ahimsa Foundation, <http://jainsamaj.org/magazines/may2004.htm>; Jaina Voice, Vol. 3, Issue 10, February 2005, A publication of www.jainheritagecentres.com, Editor-in-Chief: Dr. H.A.Parshwanath, <http://www.jainheritagecentres.com/jainavoic/jainavoic34.htm>; Devadasi, From Wikipedia, the free encyclopedia, <http://en.wikipedia.org/wiki/Devadasi>

Child Budget

Allocation and spending on children are indicators of government's commitment to ensuring the implementation of child rights. An analysis of child budgets over the last three years shows that there has been some increase in the allocation for children. This is largely due to the increased allocation for ICDS following interim orders by the Supreme Court on malnutrition and starvation of children,²³ and an increased allocation for elementary education.

Although a positive sign, the increase in allocation for elementary education is still not sufficient to ensure education for all children in the 6-14 year age group. Besides, whether

there has really been an increase as was promised by the Union Finance Minister needs to be analysed and understood. In his Budget speech the Union Finance Minister announced a 2 per cent cess on all central taxes and promised to invest the collection into 'quality basic education'. If the Government were to keep to this promise, the revised estimates for elementary education for 2005-06 should have seen an increase of Rs. 5010 crore (amount collected from the 2 per cent cess) over and above Rs. 7227.88 crore allocated for elementary education in the previous year. In effect, what we see is a shortfall of Rs. 1025.39 crore. Either the entire amount collected from the 2 per cent cess has not been added to the elementary education budget for 2005-06 or there has been a cut in the investment that was otherwise being made prior to

'Make every effort to increase the proportion of the budget allocated to the realisation of children's rights to the "maximum extent ... of available resources" and, in this context, to ensure the provision, including through international cooperation, of appropriate human resources and to guarantee that the implementation of policies relating to social services provided to children remain a priority';

'Develop ways to assess the impact of budgetary allocations on the implementation of children's rights, and to collect and disseminate information in this regard.'

Thirty-fifth session vide letter no. CRC/C/15/Add.228, dated 30 January 2004

²³ PUCL vs. Union of India and Others.

Table 1: Share of Children in the Union Budgets (2002-03 & 2005-06)

(In percentage)

Year	Child Development*	Health**	Education***	Children in Difficult Circumstances****	Total
2003-04	0.49	0.34	1.47	0.025	2.33
2004-05	0.42	0.42	1.57	0.03	2.45
2005-06	0.65	0.52	2.56	0.03	3.77

Source: * Min. of HRD, Min. of Youth Affairs and Sports. ** Ministry of Health and Family Welfare. *** Min. of HRD, Min. of SJE, and Min. of Tribal Affairs. ****Min. of Social Justice and Empowerment, Min. of Labour.

the 2 per cent cess. Whatever may be the situation, there is a need to ensure greater transparency and accountability from the government when it comes to child budget

Child health has over the years received very low priority. But the lowest budgetary allocations has consistently been for child protection, even though there are an increasing number of children who are falling into the category of those in difficult circumstances. As per the government's list this includes homeless children (pavement dwellers, displaced/evicted, refugees etc.), migrant children, street children, working children, children of prostitutes, trafficked children, those affected by conflict, and natural disasters, HIV/AIDS, children suffering from terminal diseases, physical and mental disabilities and SC & ST children. Little wonder that more and more children are falling into this category. This is corroborated by the Government's own findings in the child budget analysis it has undertaken.²⁴

An analysis of allocation and spending over the years shows that the actual expenditure is almost always less than the allocations (Budget Estimates). There are other areas of concern as well. Dependence on external aid for programmes for children in a scenario when international aid is dependent on global politics and sudden withdrawal of allocations as we have seen this year in the case of the only programme for Juvenile Justice are some such instances.

How Interested are our Parliamentarians?

Since 2003, HAQ has been undertaking an analysis of issues being raised on child issues in Parliament through our series entitled 'Says a Child...Who Speaks for My Rights?'. Questions and debates in Parliament are meant to seek information as well as fix accountability. What are the issues being discussed? Which are the parties raising the questions? Will these questions impact policies and programmes? Is there a consistent lobby for child rights? How are the issues identified?

On an average, only three per cent questions in Parliament are child related.



On what sources of information do parliamentarians base their questions? How pertinent are the questions?

In 2003-2004, 28,227 questions were raised in the three sessions in the two houses of Parliament. Of these, 843 questions a mere three per cent were child focused (Lok Sabha, 424 and Rajya Sabha 419).

Our analysis shows that there appears to be a link between the kind of questions raised and the ongoing debates in the country, especially those highlighted by the media. However, the analysis also shows that these lack passion and force that such issues deserve.

Given the controversies surrounding education, it was not surprising to find our parliamentarians too interested in this area, which is why the largest number of questions

24 Department of Women and Child Development, Ministry of Human Resource Development, Government of India, Annual Report 2004-05, pg 113.

was on education that is 479 questions (57 per cent). Twenty per cent questions were on protection issues and child labour elicited the most attention. It is a matter of concern that health of children receives such little attention from our parliamentarians (11 per cent questions). This is a cause for worry since both morbidity and mortality levels of the children in the country still remain high – especially since most of these deaths are easily preventable. This trend is visible in the 2005 Parliament session also.

Government Actions

These two years have been witness to a number of actions taken by the Government. Among the policy and law initiatives that were undertaken was the formulation of the National Charter for Children, 2003. However, the National Policy for Children, 1974 has not been repealed, nor does the Charter over-ride it. Thus the status of the Charter is not very clear. The Government announced the much discussed and long delayed National Plan of Action for Children, only in August 2005. The Bill on the National Commission for Children that has been under discussion since 2000, is now renamed the National Commission for Protection of Child Rights Bill and has been placed before the Parliament. The Government, led by the Department of Women and Child Development, has initiated a study on child abuse in India and is in the process of drafting a law on Offences Against Children, and has also initiated a process for amending the present law on child marriage. The amendments to the Juvenile Justice (Care and Protection) Act 2000, which have been under discussion for the past two years is reported to have been placed before the Parliament, while the Right to Education Bill 2005 has been posted on the Ministry's website for comments. A lot more seems to be forthcoming in the form of new programmes and schemes, policy and legal reform. However, what is required is a complete re-examination of the legal framework for children as whole, identification of gaps and reconciliation of existing anomalies within the laws. Equally important is ensuring proper implementation of all existing and newly established mechanisms.

The government has set up a National Co-ordination Group on the Rights of the Child for implementation of child rights in the country and instituted chair on the theme of Protection of Child Rights as part of the ten Rajiv Gandhi Chairs in Contemporary studies in Central and State Universities.

India has been engaging with the UN system on child rights. The government also presented its First periodic Report (second country report) on implementation of the Convention on the Rights of the Child to the UN Committee on the Rights of the Child, who have made their concluding recommendations based on the Government of India's report and those presented by NGOs. It has signed the Optional Protocols to the Convention on the Rights of the Child, although it has still to ratify them and has made its contribution to the UN Study on Violence against children.

Recognising the importance of child budget analysis, the Department of Women and Child Development has decided to institutionalise child budgeting and has included it in the new National Plan of Action for Children, 2005.

About this Report

The present status report includes issues of rights to survival and development, these being health, early childhood development and education. A major section is devoted to child protection since the issues to be addressed are far too many. While there is a chapter dedicated to violence against children, separate chapters deal with child sexual abuse, juvenile justice, child labour and trafficking. The last two years have seen large scale de-housing of children and their families. As an addition this time we have included a section on right to adequate housing as it is a right that cuts across survival, development and protection issues. Given that a large number of children are growing in situations of emergency – human made or natural, it was critical to address their situation separately. Even as we write this report a new disaster has struck the country. Thousands have died or been rendered homeless in Jammu & Kashmir due to the earthquake. The rights of the disabled child have always been marginalised. But since little has changed since our last report, we have addressed issues of disability in the chapters on health and education.



■ General Measures of Implementation

**Laws, policies and
programmes –
general measures
that fail in
implementation.**



A commonly accepted definition of good governance is the way the State exercises its political, economic and administrative power. Key attributes of good governance are that institutions and processes should build on the rule of law, be accountable, open, effective and responsive and give space for equal and meaningful participation to all sections of society irrespective of caste, creed, religion, class, culture and age group. This kind of governance would, thus, necessarily be based on a rights-based approach towards its citizenry.

A rights-based approach has the notion of individual citizens, including children, as rights holders and States as primary duty bearers. India has by ratifying the Convention on the Rights of the Child (CRC), agreed to ensure implementation of children's rights. The State does this by making legislation, policies and programmes. These are known as the general measures of implementation.

Children are the rights holders and the State is the primary duty bearer. It is obligated to ensure implementation of child rights through legislation, policies and programmes. These are known as the general measures of implementation.

The Indian Constitution, various national policies and assorted laws concerning children provide a legal framework for CRC implementation. The Constitution, promulgated in 1950, encompasses most rights included in the CRC as Fundamental Rights and Directive Principles of State Policy. Over the years, many individuals and public interest groups have approached the apex court for restitution of fundamental rights, including child rights. The Directive Principles of State Policy articulate social and economic rights that have been declared to be “fundamental in the governance of the country and ... the duty of the state to apply ... in making laws” (Article 37). The government has the flexibility to undertake appropriate legislative and administrative measures to ensure children's rights; no court can make the government ensure them, as these are essentially directives. However, these directives have enabled the judiciary to give some landmark judgements promoting children's rights.¹ The judiciary's concern with child rights and the principles governing them is reflected in pronounced judicial activism in the areas of children in custodial institutions, children given in adoption, child labour and educational rights.

The absence of a comprehensive and common definition of the “child” continues to create confusion and dilemma as each law defines the child as a person under different ages. The Amended Juvenile Justice Act, 2000 defines a child as a person upto the age of 18 years in consonance with the Convention and the age of majority giving a citizen the right to vote is also 18 years. All other laws define the child differently. The lack of comprehensive definitions continues to plague other situations as well. Child labour and continued distinction between hazardous and non-hazardous child labour, trafficking addressing all its forms and purposes or even sexual abuse are only some examples. This not only hampers the collection of data but also impedes the addressing of problems in all their complexity, legally as well as programmatically. The differences in the personal laws also result in differential treatment of children. All these have serious legal and policy implications.

What is urgently required is legal changes. However, the process of bringing about legal change calls for much greater transparency and serious consultation and inclusion of those civil society groups who are engaged in working with children and using the law. It must result in their recommendations being included in the law. Experience with amendments to the law in the last couple of years has shown that although some attempts to engage with the NGOs and activists have been made and they in their turn have provided inputs to the government, both sought or unsought, have not always been included in the final documents. An example of this is the National Charter for Children, 2003.

Since the last status report by HAQ in 2002, some new steps have been taken. While some of them have been mere tokens, others have been crucial and significant.

1. The judiciary's support is seen in judgements such as those given in Lakshmikant Pandey vs. Union of India (AIR 1984 SC 469) and M. C Mehta vs. Government of Tamil Nadu (AIR 1997 SC 699), among others.

Legal Framework for Implementation of CRC

The Indian Constitution, various national policies and assorted laws concerning children provide a legal framework for CRC implementation. The Constitution and several laws, including the National Policy for Children 1974 preceded the ratification of the CRC.

There are certain policy and other measures that directly concern children such as the National Charter for Children, National Plan of Action and the National Commission for Protection of the Rights of the Children. There are others that do not directly deal with children such as the National Tribal Policy, the National Population Policy or the National Rural Health Mission, but as citizens of this country, do have an impact on children also.

Among the other specific legal interventions which are also under discussion such as the Compulsory Education Bill, Amendments to the Juvenile Justice (Care and Protection) Act, 2000, the Child Abuse Bill, and Amendment to the Child Marriage Act, 1956 are also under discussion.

Child Specific Interventions

National Charter for Children 2003

This Charter was published in the Extraordinary Gazette of India, by the Ministry of Human Resource Development through its Department of Women and Child Development dated 9th February 2004.

“The Committee is nevertheless concerned that the National Charter for Children does not adopt a child rights based approach and does not explicitly include all rights and principles of the Convention”

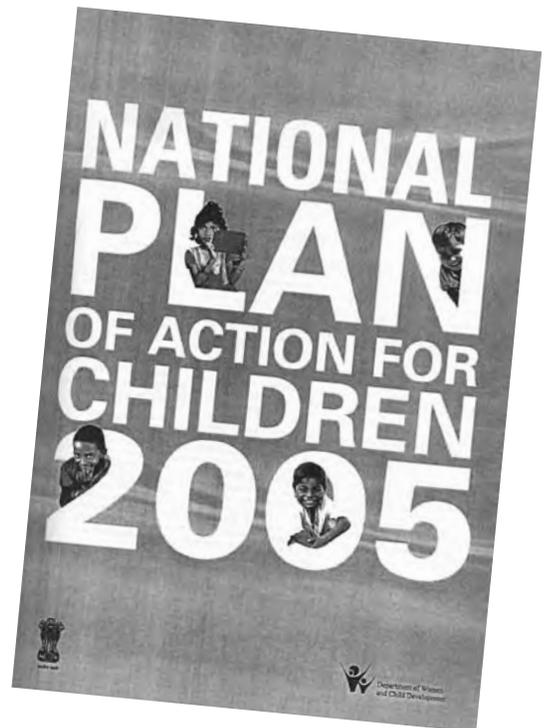
CRC/C/15/Add.228, 30 January, 2004

The Charter reiterates the commitment of the Government of India to the cause of children in order to see that no child remains hungry, illiterate or sick. Underlying this Charter is the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation.

However, the Charter has come under criticism from child rights activists for a number of reasons. Primary among them is the fact that its legal status is not clear. It does not over-ride or ‘is in place of’ the National Policy for Children, 1974 that had been brought in before the Convention on the Rights of the Child. That it does not at all mention or draw upon the Convention is also being commented upon. When questioned on this at the presentation of India’s report at the UN Committee the head of the Indian delegation said that it had the ‘basic essence’ of the Convention.

National Plan of Action

Following the UN General Assembly Special Session (UNGASS) for Children in 2002 many countries of the world have decided to work on National Plan of Action based on the Outcome Document². The last National Plan of Action for Children (NPAC) dates back to 1992. The Government of India has released the National Plan of Action for Children 2005 on 20 August, 2005. This is based on inputs received from NGOs across the country and the various departments and ministries of the Government.



2. World Fit for Children.

The Plan has cited the UN Convention as the guiding instrument for implementing all rights for all children upto the age of 18 years. It also states, “The rights of the child as articulated in the Constitution of India and the CRC should work in synchrony to ensure all rights to all children.”

National Commission for the Protection of Child Rights

The Government has been considering the setting up of a National Commission for Children since 2000. In fact the draft of the Bill for the National Commission for Children and the Charter had been posted on the website of the Department of Women and Child Development, inviting comments and suggestions (The comments were included in our last report).³ NGOs and activists strongly opposed both the drafts. In the earlier stages of the discussion on the Bill, while the Ministry of Human Resources Development wanted the National Commission for Children to be established, the Ministry of Finance objected to the proposal on the grounds that there were many other statutory bodies (eg National Human Rights Commission and National Commission for Women) which performed similar functions.

While the Charter was formally notified on 9 February 2004, the National Commission for Children was delayed. On 24th March 2005 the new Bill was approved by the Cabinet Committee as the National Commission for Protection of Child Rights.

The National Commission for Protection of Child Rights, on coming into force, shall have the powers to uphold child rights and to take suo moto cognizance of child rights violations. Similar powers will also vest in State Commissions. The proposed Commission will have a Chairperson and six Members, a Member Secretary and other support staff.⁴ The functions of the Commission will include examining and reviewing safeguards provided in the Constitution for the protection of child rights, and recommend measures for their effective implementation. It will examine the factors that inhibit the enjoyment of rights of the most vulnerable children – those affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution. It will recommend appropriate remedial measures.



The Commission is expected to be able to consider the issue of special courts for children and also to order punitive action in case of any violation. State-level bodies may also be established. The actual powers and authority of the proposed body has caused some apprehension since many commissions set up by the government, through acts of parliament or by executive orders, can only seek information, render advice and pass strictures, lacking authority to insist that they be complied with. While the central and state governments have generally avoided confrontation, in some instances they have ignored certain directives and recommendations.

The National Commission Bill to be presented in the Parliament is being seen as yet another case of unilateral decisions taken by the government. While some NGOs agree with the Finance Ministry's objections, and say that there is no need for a separate Commission for children, others feel that while they welcome the Commission they would like greater discussion and consultation. For those who have been consulted, there is a little frustration about their concern regarding independent status of the Commission not being taken into consideration by the Parliamentary Committee looking into it.

3. See Children in Globalising India- Challenging Our Conscience, HAQ: Centre for Child Rights, 2003, New Delhi.
4. www.pib.nic.in, December 8, 2004.

Non-child Specific Interventions Affecting Children

Planning Commission of India Mid-term Appraisal (MTA) of the Tenth Plan (2002-07)

As part of its mid term appraisal of the Tenth Plan, the Planning Commission reviewed interventions for children. It sought feedback from NGOs and also organised an interactive session wherein representatives from NGOs, various Government departments, institutions and ministries that focus on child related issues were invited.

In its approach to the mid term appraisal, the Commission, admits the following areas of concern⁵ that relate to children:

■ Food security

Recognising the growing food insecurity the Centre provides food assistance through various schemes. This includes the Mid-day Meal Scheme and the Integrated Child Development Scheme (ICDS), in addition to which, some states, have their own schemes for similar purposes. These schemes have increased in recent years as a result of a perceived worsening of the nutritional problem. However, the Planning Commission admits that there has been no stocktaking of the overlap between these various schemes in terms of the target groups and that MTA needs to reflect on this and to rationalise the over-all food and nutritional interventions being made by the government. The issue of adequacy of nutrition needs to incorporate the fact that certain vulnerable groups require interventions that go beyond the calorie-protein norms currently sought to be met through food grains alone.

■ Right to Elementary and Primary Education

The MTA admits that because of the slow pace of roll-out of Sarva Shiksha Abhiyan (SSA) 100% enrolment target is unlikely to be achieved even by 2005. It highlights a number of issues that need to be addressed in this context:

- The fiscal implications of SSA, especially for state finances, do not seem to have been factored in adequately. Unless this is done, and either the Twelfth Finance Commission or the Planning Commission provides adequate support, the programme is likely to rapidly run into financial constraints.
- Since elementary education has been declared a fundamental right, there is always the possibility of the courts intervening, which could prove disruptive. In order to forestall such a possibility, it is necessary to clearly lay down the roll-out plan and to adhere to it strictly. This will require close co-ordination between the Centre and the states.
- An important instrument for improving retention in schools is the Mid-day Meal (MDM) scheme. This scheme has worked well in some states but its operation has not been satisfactory in a number of states. At the moment, however, the MDM is operating under Supreme Court direction as a component of the right to food, and the Centre has been charged with providing adequate financial support.
- The Tenth Plan had pointed out that if the SSA succeeded, it would place heavy demands on the secondary school system, which may become difficult to meet unless steps are initiated right away. This concern remains valid even though the progress of SSA has been slower than planned.

■ Health and Family Welfare

Inadequate progress on the health and family welfare front is a matter of grave concern. Unless prompt and decisive steps are taken, the Plan targets on IMR and MMR will not be met and the MDG targets too will almost certainly be missed. Unlike the case of primary education, where a well-designed intervention in the form of SSA exists, there is no real blueprint for the development of the primary health sector. The MTA stresses that there is an urgent need for a fresh approach in this area that can be initiated within the Tenth Plan period even if it can be fully operationalised only in the Eleventh Plan period.

5. http://planningcommission.nic.in/plans/planrel/mta_10th.doc

Common Minimum Programme of UPA*

The UPA government, comprising of RJD, DMK, NCP, PMK, TRS, JMM, LJP, MDMK, AIMIM, PDP, IUML, RPI (A), RPI (G) and KC (J), and supported by the Left Parties, agreed upon a Common Minimum Programme (CMP) that will to a large extent determine the future programmes and policies of the coalition government.

Although children (0-18 years) constitute more than one third of the total population, there is no specific focus on children and they do not constitute a 'principle' in the CMP. As usual the CMP clubs women and children together. While there needs to be a focus on mother and child programmes based on their relationship, we do injustice to both by always clubbing them together. Children have their own child specific needs, which have to be based on sex and age segregated needs and it is high time children were treated as citizens in their own right and not seen as extension of adults.

Although both education and health are independently important and need to be addressed specifically, they have been clubbed together resulting in a dilution of commitment and concern for both.

Several legislations for children need review – the Child Labour Act, 1986, is inadequate, the Juvenile Justice Act, 2000, is under review, there is no law that deals with all forms of trafficking of children, and laws for protecting child sexual abuse of boys and girls (according to The Times of India, June 7, 2004, 65 per cent of those raped are children, and rape is not the only sexual abuse children face) are inadequate. And yet there is no mention of legislative reform for children, although women do find mention.

One of every 10 children is born with or acquires some form of disability. Yet disability is not included in the CMP principles.

Although the UPA government promises to protect the rights of children, there is no mention of children in especially difficult circumstances. Lakhs of children are homeless, and live on the streets. Thousands are trafficked everyday for myriad purposes including labour, entertainment, marriage, drug smuggling and commercial sexual exploitation. The CMP does not mention any of these vulnerable children.

National Nutrition Mission

The National Nutrition Mission which has been launched to ensure a holistic and coordinated intervention to combat malnutrition will be headed by the Prime Minister. Its Executive Committee is headed by the Minister of State for Women and Child Development. The National Nutrition Mission will be responsible for the review and implementation of the National Nutrition Policy and National Plan of Action on Nutrition.

The basic objective of the Mission will be to address the widespread problem of malnutrition in a holistic manner and accelerate its reduction particularly in vulnerable groups comprising of infants, pre-school children, adolescent girls, pregnant and lactating women. It will therefore address undernutrition, anaemia, vitamin A deficiency, iodine deficiency disorders and chronic energy deficiency in adults so as to reduce prevalence of low birth weight, infant mortality rate, child mortality rate and maternal mortality rate. It plans to address the problem of widespread malnutrition on a war-footing and will serve as an inter-agency coordination mechanism at the highest level to enable policy direction, review and monitoring of the nutrition situation.

Draft National Tribal Policy

The Ministry of Tribal Affairs has prepared a Draft National Policy⁶ for the tribal communities that seeks to accelerate the socio-economic development of Scheduled Tribes while at the same time maintaining their distinct culture. The policy lays stress on their socio-economic empowerment and documentation of rich traditional practices and the wisdom contained

* United Progressive Alliance

6. http://www.nepsindia.com/draft_national_tribal_policy_dis.htm

"The Committee is deeply concerned at persistent and large social discrimination of children belonging to scheduled castes and tribes and other tribal groups reflected, inter alia, by the many violations of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the low number of these violations dealt with by the courts, and the fact that a majority of the States have failed to set up the special courts under this Act."

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in tribal cultures. The draft policy addresses the problems of poverty, health, sanitation, environmental hygiene, nutrition and displacement in tribal communities by appropriate measures and provides a strong and effective relief and rehabilitation system to ameliorate the miseries of the tribal people. This policy is important for programmes addressing the needs of tribal children in the country and to ensure reduction in disparities faced by them, compared to other children.

Also, the draft policy considers formal education as the key to all-round human development and attempts to address the problem of education among the ST populations with a view to suggest a number of remedial measures to ensure better education among tribals.

National Policy on the Resettlement and Rehabilitation of Project Affected Families, February 19, 2004.

In the wake of the growing number of persons displaced in the country in the name of development, and the impact it has on children, the National Policy on Resettlement and Rehabilitation gains tremendous relevance for the monitoring of the implementation of child rights – especially that of children's rights to adequate housing. Forced evictions not only violate children's rights to housing and shelter, but also violate their right to protection making them more vulnerable to violence, sexual abuse, trafficking etc.

"In accordance with article 27 of the Convention, the Committee recommends that the State reinforce its efforts to provide support and material assistance to economically disadvantaged families and to guarantee the right of children to an adequate standard of living. In light of its previous recommendations (ibid., para. 53), the Committee further recommends that the State party prevent any occurrence of forced relocation, displacement and other types of involuntary population movements."

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The National Policy on the Resettlement and Rehabilitation of Project Affected Families, 2004 (NPRR-2004) lays down basic norms and packages to provide succour to the assetless rural poor, support the rehabilitation efforts of the resource poor sections, namely, small and marginal farmers, SCs/STs and women who have been displaced. Indeed children are conspicuous by their very absence.

Disaster Management Bill

In response to the need to address the needs of persons affected by disasters, which is a fairly common occurrence in our country, the Government has drafted a comprehensive Disaster Management Authority Bill. This Bill proposes to change the way disaster management is handled in the country by giving the exercise a legal framework. It proposes to create a separate corpus in two parts – one will disburse funds for relief without waiting for sanction, the second will be used for long term disaster mitigation projects. Another dimension of the Bill will be the creation of the National Disaster Management Agency.⁷ This Bill is scheduled to be tabled in Parliament in the Winter Session of 2005.

What this Bill will contain for children is very important because they are among the most vulnerable in any disaster or emergency situation. At present no state government, save those of Orissa, Gujarat and Bihar, has instituted a state level disaster management authority. The Draft Bill provides for the creation of disaster management authorities at the level of every state, district and gram panchayat.



7. Hindustan Times, 21 February 2005.

Survival and Development

Education

Over the last two years there has been a great deal of controversy and discussions around the Free and Compulsory Education Bill, 2004 to implement the 86th Amendment to the Constitution that makes education free and compulsory for all children in the 6-14 age group. The draft Bill has been discussed in detail in the chapter on education.

A CABE Sub-Committee to review the Draft Free and Compulsory Education Bill has been constituted under the chairmanship of Mr. Kapil Sibal. Although in a meeting with a delegation of members from the National Alliance for Fundamental Right to Education (NAFRE) on 15 March, 2005, Mr. Sibal had shared that the proposed “Bill was being re-drafted and the punitive measures against parents are not being incorporated in the new draft, and are being done away with”, this has not been the case. Further, despite his agreement with the need for amendment of the Child Labour Act, and his promise that the draft will be recommending this, this too has not happened. The new draft Bill has been posted on the Department of Education website.

Basic Health and Welfare

Article 39 of the Indian Constitution upholds that children are to be provided opportunities and facilities to develop in a healthy manner. The National Policy for Children, 1974, emphasises the provision of equal opportunities for the development of all children. However, the **National Health Policy** (NHP), 2002 does not include a separate section addressing children’s health needs specifically, although, there is one for women, despite the fact that children (0-18 years) constitute 40 per cent of India’s population. Moreover, the NHP 2002 is biased towards an urban centric specialist based health care by ignoring the pressing needs of primary health care services.

As a step towards fulfilling its commitment in the Common Minimum Programme the UPA government on January 4, 2004 approved the formation of a Rural Health Mission. The mission is to be implemented in the 18 states, which have weak public health indicators. It aims at integrating different vertical programmes, decentralising health care service delivery at the village and improving intersectoral action.

There is a significant increase of Rs. 1,860 crore for the health sector in the budget proposals for the year 2005-06. The increase will finance the **National Rural Health Mission** (NRHM) to be launched in the next fiscal year.

It would focus on strengthening primary health care through grassroots level public health interventions based on community ownership. Training of health volunteers, providing more medicines and strengthening the primary and community health care system are some important components of the mission. The total allocation for the Departments of Health and Family Welfare has been hiked from Rs. 8,420 crore to Rs. 10,820 crore.⁸

The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PNDT Act) that came into force on January 1, 1996, was enacted primarily to check sex-selective foeticide. Initially, the Central government and most State governments hardly took any steps to implement the provisions of the Act. Following a petition filed in the Supreme Court, the State governments and Union Territories were directed by the court to supply quarterly reports to a central supervisory board regarding action taken towards the implementation of the Act. Once again, several states either dragged their feet in furnishing the reports or failed to initiate prompt action as per the guidelines.

The Committee notes the 2003 amendment of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 but remains deeply concerned that the child sex ratio in the age group 0-6 years has worsened over the past decade.

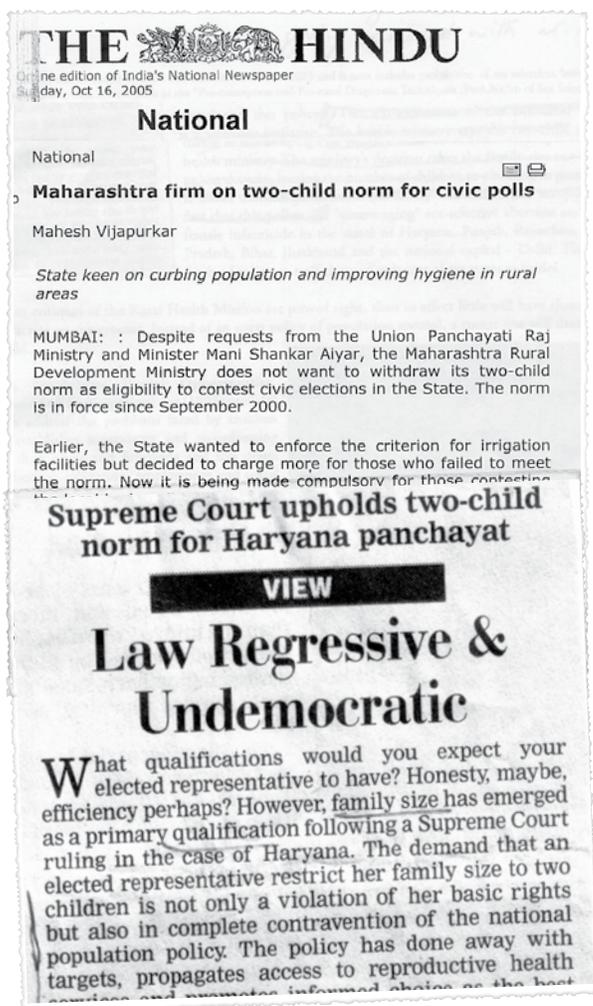
In addition to its recommendations regarding gender discrimination (para. 30), the Committee strongly recommends that the State party:

- (a) take all necessary steps to ensure the implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003.

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8. http://pib.nic.in/release/rel_print_page1

The Act was amended in 2002 and came in force from 2003 and it now includes prohibition of sex selection, before or after conception. It now reads as the “Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003”



The **National Population Policy** with its emphasis on the two-child norm has been a major factor contributing to the sex selective abortions leading to falling female sex ratios. In fact the relationship between this policy of the government and the status of implementation of the PNDDT Act cannot be ignored.

While, according to some news reports, the new Government abandoned this policy, there are state governments who are going ahead with it.⁹ It has been found that this policy was “encouraging” sex-selective abortion and even female infanticide in the states of Haryana, Punjab, Rajasthan, Uttar Pradesh, Bihar, Jharkhand and the national capital – Delhi. This is further leading to trafficking of girls into these states as brides.

However, if the fears of critiques of the Rural Health Mission are proved right, then in effect little will have changed in terms of the actual practice on the ground. Instead of an overt policy of population control, a covert one will determine the fate of the girl child.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995) provides a legal framework to address the problems faced by children with disabilities. It establishes supervisory and co-ordinating mechanisms, details their scope and functions and lays down guidelines for rehabilitation, education, employment and social security for people with disabilities. Appropriate government authorities have to ensure that children with disabilities receive free education up to the age of 18 years, make efforts to promote the integration of students with disabilities in the normal schools, train teachers and provide appropriate facilities, materials and equipment for special schools.

However, much remains to be achieved as far as its implementation is concerned. Children with disabilities continue to find it hard to access education and other facilities, as institutions are almost never disability sensitive or friendly.

The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act (1992) was enacted about the same time as India was considering ratification of the CRC.

In the beginning of 2005, the Government of India came up with a new “Food Safety and Standards Bill 2005” which aimed at bringing about a “single statute relating to food and to lay down science based standards for articles of food and regulate their manufacture, import, export, storage, distribution and sale”

“The Committee notes the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and that the 2001 census took into account disability, but remains concerned at the lack of statistical data and of a comprehensive policy for disabled children, the existence of discrimination, which is still widespread. Concern is also expressed at the limited facilities and services for children with disabilities and at the limited number of trained teachers to work with children with disabilities, as well as the insufficient efforts made to facilitate their inclusion into the educational system and generally within society. The Committee also notes with concern that inadequate resources have been allocated to special education programmes for children with disabilities.”

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9. http://www.the-week.com/25mar13/lastword_home.htm

One proviso of the proposed new law was to repeal (cancel) the existing IMS Act. This proposal has since been abandoned following a meeting of a group of ministers headed by Mr. Sharad Pawar on April 5, 2005. The 1992 Act, amended in 2003, was adopted to regulate production, supply and distribution of infant milk substitutes, infant foods, and feeding bottles in order to promote and protect breastfeeding for infants up to the age of two years. It focuses on curbing unethical marketing of breast milk substitutes, and also ensures that the nutritional needs of the child are not overlooked in favour of commercial interests. Indeed, this Act never contradicted the provisions of the food safety and standards bill.

Special Protection Measures

Juvenile Justice

Following the two years of its promulgation, the Ministry of Social Justice and Empowerment has drafted amendments to the Juvenile Justice (Care and Protection) Act, 2000. In 2003, NGOs, lawyers and child rights activists drafted alternative clauses and sent them to the Ministry. On July 24, 2003, a Bill seeking amendment to the JJ Act 2000 was introduced in the Lok Sabha. A Parliamentary Standing Committee was constituted which called for depositions on the suggested Bill. Following this depositions were made before the Standing Committee on Juvenile Justice under the aegis of the Ministry of Social Justice and Empowerment. Currently the final proposals to the amendment have been sent for amending the Juvenile Justice (Care and Protection of Children) Act 2000.

A Bill was presented in Rajya Sabha on 3 December 2004 to provide for the welfare measures to be undertaken by the State for the neglected, exploited and underprivileged children such as street and vagabond children, children born of pavement dwellers, sex workers, mentally challenged mothers, jail inmates, etc. by taking up the matters of their custody, maintenance, upbringing, education and rehabilitation and other incidental matters.¹⁰ This Bill proposes a National Policy for street children and children of pavement dwellers, which would aim at withdrawal of children from professions of rag picking or begging or petty crimes and rehabilitate them with proper board and lodging and other necessary facilities including free education, vocational training and employment opportunities. This Bill also lays down penalties for those who exploit and abuse children for commercial and sexual purposes.

Eighteen states and UTs have notified the Juvenile Justice rules and nineteen have formed Child Welfare Committees for children in need of care and protection and Juvenile Justice Boards for children in conflict with law. Other states and UTs are in the process of formulating their respective rules while the Union Territory of Lakshadweep states that there is no problem relating to juveniles in the Territory. The Status of Implementation of the Juvenile Justice (Care and Protection of Children) Act 2000 in the States/UTs can be seen in detail in the Chapter on Juvenile Justice.

Child Labour

India's children continue to be unprotected by a fallacious child labour law, the Child Labour (Prohibition and Regulation) Act, 1986, which distinguishes between hazardous and non-hazardous occupations allowing children below the age of 14 to continue to be employed in the most extraneous of circumstances. India has also voiced its inability to deal with the problem by making a declaration on Article 32 of the UNCRC while ratifying the Convention. This declaration continues.¹¹

Declaration on Article 32 of the UNCRC

1. In light of the State party's numerous measures to implement progressively Article 32 of the Convention, the Committee has serious doubt at the necessity of this declaration.
2. In line with its previous recommendations [Ibid., para. 66], and in light of the 1993 Vienna Declaration and Programme of Action, the Committee urges the State party to withdraw the declaration made to article 32 of the Convention.

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10. Bill No. VII of 2004, Server 1 Bill 2004/Rajya Sabha/799RS.

11. While fully subscribing to the objectives and purposes of the Convention, realising that certain rights of the child, namely, those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India, the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and other relevant international instruments to which it is a State Party.

The fallacious distinction made in the law between hazardous and non-hazardous labour is nowhere more evident than in the case of children in domestic work where they are not only subjected to long hours of arduous labour, but also physical and sexual abuse. But since it is not listed as hazardous labour in the law, organised rackets have sprung up that 'place' children in employment. Many of such 'placed' children are in fact trafficked children.

Bill to prohibit child labour soon: Minister

EXPRESS NEWS SERVICE

Thiruvananthapuram, Feb 28: Labour Minister Babu Divakaran today informed the Assembly that a Bill prohibiting child labour, including non-hazardous jobs, would be introduced in the current session.

Prosecution procedures would be taken against those, especially hotel owners, who engage children below the age of 14, he said. The existing laws did not have provisions to take action against the employers engaging children in non-hazardous jobs. The

habilitation Bill would contain a provision to slap fines up to Rs 20,000 on the employers engaging children in work places, in restaurants and workshops.

The money acquired way of fine would be used for rehabilitation programmes, he said.

He said that discussions would be held with unions and workshop associations to end the practice of employing children below 14 years.

PSU RESTRUCTURING Industry Minister

Ban on child labour: Bill soon

THIRUVANANTHAPURAM, FEB. 28. The Government is bringing forward a legislation seeking a total ban on child labour in the State. The Kerala Child Labour Bill, will be moved in the current session of the Assembly, according to Babu Divakaran, the Minister for Labour.

him Kunju told the Assembly. Rs 450 crore was under the

The continuance of child labour in the country stands in direct contradiction to the fundamental right to free and compulsory education for all children in the 6-14 age group. However as mentioned earlier, in a meeting with the NAFRE delegation, Mr. Kapil Sibal, Hon'ble Minister and Chairperson of CABE sub-committee on education, had said that the Draft Bill will be recommending amendment to the Child Labour Act as it only prevents children from working in hazardous conditions. But this has not been included in the new Bill available on the Government's website.

In a progressive move, the Kerala Government is bringing forward a legislation seeking a total ban on child labour. This was announced by the Minister of Labour, Babu Divakaran.¹²

Child Abuse

Corporal punishments in schools and homes continues unabated. There is no national legislation to deal with corporal punishment, although some states have framed rules or laws dealing with corporal punishments in schools and institutions (Details in the Chapter on Education).

The Central Board of Secondary Education has drafted a Policy Paper for Help-Line for Women and Girl Students for Prevention of Sexual Harassment Related Incidents in Schools. What is however interesting is that although the title of the policy paper suggests it deals only with girls, the contents are directed at both boys and girls. Some of the court judgements relating to the case of rape and sexual abuse have been extremely controversial, especially those in which the rapists have been acquitted following their offer to marry the victim.

The Department of Women and Child Development (DWCD) has initiated the process of drafting the Offences Against Children Bill, 2005. To facilitate the process of drafting it has set up a Drafting Committee with NGO representatives and a government lawyer. The process of drafting is still in process.

Child Marriage

That the Child Marriage Restraint Act, 1956 has proved inadequate in containing child marriage in the country is beyond doubt. The Government has recently announced its intention of drafting the Prevention of Child Marriage Bill 2004.



Smt. Loveleen Kacker, Joint Secretary, DWCD, chaired a meeting on 14 September 2004 to discuss issues related to child abuse. The meeting was attended by representatives of concerned ministries and departments, UNICEF, UNDP, UNIFEM, US Embassy, ICCW and NGOs, and other experts. It was decided to constitute a small committee, which will formulate a definition of child abuse within a period of one month.

<http://wcd.nic.in/samparknov2004e.pdf>

12. Express news Service. March 1. 2005. and The Hindu. March 1. 2005.

As per this Bill, child marriage will be a cognisable offence and also provides for declaring the marriage void, paying maintenance to the minor girl until a remarriage and taking into custody and provide for maintenance of children born of child marriages. It will empower courts to issue injunctions prohibiting solemnisation of child marriages. It also provides appointment of Child Marriage Prevention Officers by the State Governments and empowers them to make rules for effective administration of the legislation. This Bill seeks to empower the district court to add, modify or revoke any order relating to maintenance of the female petitioner and her residence and custody or maintenance of children.¹³



The Supreme Court of India in response to the Writ Petition No.212 of 2003 filed by Forum, Fact Finding Documentation and Advocacy ruled that it was the responsibility of the District Collectors and Superintendents of Police to prevent child marriages and see to the implementation of the Child Marriage Restraint Act¹⁴.

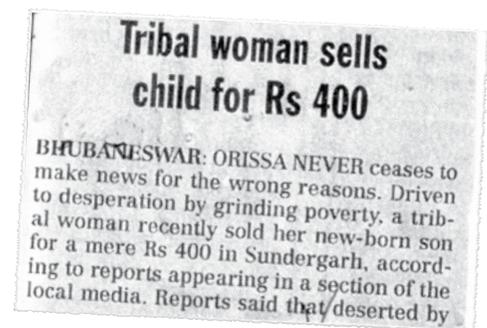
Trafficking

The lack of comprehensive definition in law continues to impede intervention in protection or rescue of trafficked children. For a long time the Suppression of Immoral Traffic in Women and Girls Act (1956) was the main law dealing with trafficking and sexual abuse of girls. It was enacted primarily to prohibit trafficking in women and girls for the purpose of prostitution and was later amended and renamed as the Immoral Traffic (Prevention) Act (1986). This law as well as the Indian Penal Code (1860) makes the offences of child trafficking, prostitution of children and their sexual abuse carry higher punishments than those against adults. It provides for the presumption of guilt under certain circumstances when the victim is a child who has been sexually abused. A major shortcoming of the law however, is that prostitution is not punishable, while soliciting is! Since all girls found soliciting are forced into prostitution, this raises questions about penalising them while the customers face no punishment.

The amendments to the Immoral Traffic Prevention Act are sought by the DWCD.¹⁵ This has been an ongoing process but no decision since the last four years. In a consultation with the National Law School of India University, Bangalore, a consensus was reached at to delete section 8 of the ITPA, which criminalised and penalised soliciting for prostitution in public places. However, the amendment does not attempt to either define trafficking or address various forms and purposes of trafficking other than the one for sexual exploitation.

The Girl Child Victim Of Prostitution (Rescue, Rehabilitation And Miscellaneous Provisions) Bill, 2004 was introduced in Parliament on 3 December, 2004 to provide for the prevention of coercion of the girl child into prostitution by providing deterrent punishment including capital punishment for those who force the girl child into prostitution or procure the girl child for that purpose. It also provides for the rescue and rehabilitation through education, employment, marriage, etc. of the girl child victim of prostitution and for matters connected therewith and incidental to this problem.

No special law in India considers the problem of illicit transfer of children abroad. When a child disappears from home, the police can register a case of kidnapping under Section 361 of Indian Penal Code (1860). Section 17 of the Hindu Adoption and Maintenance Act (1956) prohibits any payment in consideration for adoption. However, cases have occurred of wealthy Arabs marrying Muslim girls below 18 years and taking them out of the country, raising fears that this route may also be used for child trafficking abroad for the purpose of hiring domestic servants, sexual exploitation, and so on.



13. Bill to prevent child marriages introduced in RS, Monday, December 20 2004 20:30 Hrs (IST) - World Time PTI. <http://news.indiainfo.com/2004/12/20/2012childbill.html>.

14. The Indian Express, March 23, 2005, Wednesday.

15. <http://wcd.nic.in/proamendment.htm>

Civil Rights and Freedom

One of the biggest impediments to any programme or intervention for children is the lack of adequate data. Although India has a comprehensive statute governing birth registration, it continues to remain a challenge. This may be due to official apathy as well as public ignorance. The Government and the Registrar General of India are reported to be looking at ways and means of improving birth registration. For example, two out of every three toddlers in Andhra Pradesh do not have an official identity simply because birth registration of children below five years is an abysmal 32 per cent in the state, 3 per cent less than the national average. That means almost 70 per cent of the children in Andhra Pradesh do not exist in government records.

According to a Multiple Indicator Survey conducted recently by UNICEF all over the country, birth registration in Andhra Pradesh is the lowest among all southern states. It is 51 per cent in Karnataka, 69 per cent in Tamil Nadu and 89 per cent in Kerala.

Discrimination faced by children based on their caste, ethnicity and gender remains a challenge violating their fundamental right to equality.

BEYOND THE HEADLINES

No justice in sight for this Musahar boy

Navratan is blind today. For the lower-caste boy, this was the price of disobedience. He did not pluck mangoes as ordered by an upper caste man from a neighbouring village. **MOHD IMRAN KHAN reports**

Navratan 12, has learnt very early, the cost of disobeying someone of a higher caste. The Musahar boy is blind today because he refused to pluck mangoes as ordered by a Kallar from a neighbouring village. His mother Begni Musahar, a thin, weak woman in her late 30s, dare not take her son to a court for justice because she knows what is in store for them. "Who will listen to me?" she asks resignedly. "We are poor and from a lower caste."



NOT GIVING UP: Navratan's grandfather Shankar fought hard to get the BIR registered

It is almost impossible to reach this village. The 27-km-long road that connects the Musahar block to the national highway can, at best, be described as a death trap. Vehicles move along the road at the pace of a snail. Fatal accidents are common here. The road is terrible. There is no road actually. It's all pot holes. It's worse than a dirt track. In the village, a number of malnourished children stand

elections in Bihar. On his return from the police station, Shankar was most disappointed. He had to fight for justice. He took Begni and Navratan to the District Collector's office to file an FIR in the special police station for Subehala Cantonment. This is one police station for Subehala Cantonment shared by two districts. Here, he managed to lodge an FIR on May 12, nearly a month after the incident took place. Incidentally, Musahar police station falls under the Saurabh Lok Sabha constituency (in Subehala Cantonment) represented by Muzam Khan of Congress, leader Babu Jagdish Prasad, who represented Musahar for over three decades in the Lok Sabha. In response to the FIR, two police officers, in charge of the Subehala Cantonment police station of Dehri-on-Sone, visited both Pratnagar and Kallar villages. They met the villagers and collected details on the incident. The officer said they would send their report to the concerned officials. "We have done our job by visiting the village and submitting the report to the superintendent of police of Kallar," the police officer said. However, now Shankar and his family are still in a state of confusion. "Vandana Yadav and his son have been killed for naming him in the FIR," said Shankar Musahar. "Yadav's family would seek death in the small village because they own 10 hectares of agricultural land and a tractor. Only five of the 100 households in the village possess a tractor."

"The Committee recommends that the State party make greater efforts to ensure the timely registration of all births by the year 2010 as planned [State party report, para. 284], and take training and awareness-raising measures as regards registration in rural areas. The Committee encourages steps such as the establishment of mobile registration offices, and registration units in schools and health facilities and recommends that the State party seek technical assistance from, among others, UNICEF and UNFPA."

CR/C/15/Add.228 30 January 2004

Family Environment and Alternative Care

Different personal laws on maintenance, custody, adoption and other matters regarding the family environment apply for different religions. The government has been wary of amending personal laws lest some religious communities take offence, and many provisions remain that do not serve best interests of the child. Inflation and increased cost of living have rendered inadequate the amount set aside for child maintenance, but the relevant laws have not been amended. Similarly, no universal adoption law exists since this is an area where personal laws are enforced. Several attempts to introduce a Uniform Adoption Bill have failed as minority groups claim that their religion does not permit adoption.

ICCW finds fault with adoption laws

Despite stringent regulations formulated by the SC and the government, unscrupulous agencies can get away with it by keeping their papers "clean".

Her agency could only scrutinise documents to determine whether it would be in the best of the child. She said as per the Supreme Court judgment, the responsibility for ensuring that the child is legally free for adoption is that of social or child care agency processing applications of foreigners. The ICCW detected a suspected case of child trafficking by Malaysian Social Service. It called for a police probe. The police gave the agency a clean chit in 2000. One year later, the agency stopped inter-country adoption. She said: "Roles of scrutiny agencies has to be redefined and the credibility of adoption agencies should be put to intensive scrutiny. Licenses to adoption agencies should be given on a more stricter basis."

Ministry for speeding up child adoption process

VIBHA SHARMA
TRIBUNE NEWS SERVICE

NEW DELHI, FEBRUARY 24
The Ministry of Social Justice and Empowerment will soon make a suggestion to the Ministry of Law and Justice to speed up the legal process for child adoption in the country. Talking to The Tribune.

Complex adoption laws

caused while lengthy legal she said. Besides, H soon have an adoption age which was cr guarding the r ed children. ago, the minist to all states, have a pro.

Indo-Asian News Service
New Delhi, March 17

A US-based couple's struggle to take their Indian baby home may have finally come to an end but the couple's whom they got from one of the capital's several orphanages in August last year. The couple were given a no objection certificate but not the final papers that would let them take deal is symptomatic of the complexities involved in giving a decent home to an Indian orphan. Their case is one of the more than 250 cases in the Delhi High Court, over 160

16. Father is the natural guardian of the child under the Hindu Minority and Guardianship Act (1956); the mother has priority as a guardian only if the child is less than five years old. However, the mother is considered the natural guardian for a child born out of wedlock. Under Muslim Law the father is the sole guardian of the child though the mother has custodial rights. Shia Muslims give the mother custody over the male child up to the age of two years and the Hanafi school extends the upper age limit to seven years. However, all Muslim sects and schools of thought maintain that the custody of the girl child should be with the mother till puberty.
17. Children in Globalising India-Challenging Our Conscience, HAQ: Centre for Child Rights, 2002.

The personal laws tend to be gender insensitive. The custody laws for instance favour the father and grant the mother the status of a caretaker. Mothers can only be custodians if for any reason fathers are unable to be guardians.¹⁶ However, Supreme Court judgements discussed in detail in the last report¹⁷ have declared that the mother is as much a child's natural guardian as the father, boosting the principle that the parent who can provide better care for the child should have custody.

Inter-country adoptions are still governed by the Guardianship and Wards Act (1890) despite changes in their nature and scope due to far-reaching socio-economic and political changes. CARA had already laid down "Revised Guidelines for Inter-Country Adoption of Indian Children" in 1995.

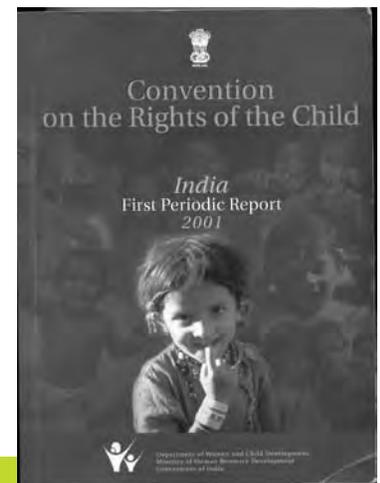
In the last couple of years serious malpractices in adoption had been uncovered. Recognising the problems that arise, the Central Adoption Resource Authority (CARA) has evolved Guidelines for In-Country Adoption, 2004. However, trafficking of children for adoption, using the gaps in the adoption process has been a cause of concern for several years. The recent reports of malpractices in Tamil Nadu which came to light with the arrest of the Director of the Malaysian Social Service Society on 4 May, 2005 has once again shown that the adoption process needs serious re-examination.

Implementation of the UN Convention on the Rights of the Child

While India continues to have a declaration on Article 32 of the UNCRC, it has become signatory to both the optional protocols¹⁸ of the Convention on the Rights of the Child from 15th Nov 2004. Although the CRC has been translated in all major Indian languages and disseminated through NGOs, workshops, meetings, training programs, press briefings and events, the CRC State Party Reports (SPR) have not been sufficiently publicised.

Reporting to the Committee on the Rights of the Child

The last report to the committee had been submitted in 1997. India had submitted its Second Report (First Periodic Report) to the UN Committee on the Rights of the Child in



IACR Bulletin from Geneva: 21/22 January 2004:

India Faces Tough Questions at CRC Review Session –

UN Committee Queries Whether Government Acknowledges Children's Rights as Real Rights.

The UN Committee on the Rights of the Child held a full day review of India's CRC performance on 21st January. Up for scrutiny was India's second report on national action – and the GOI delegation was challenged with tough questions from start to finish. One key set of questions went un-answered: what is India's official declaration of commitment to the CRC? Does the new National Charter for Children cite and uphold the CRC? Is the new National Plan of Action for Children a plan to achieve all the rights listed in the CRC?

GOI spokesperson Veena Rao (Jt Secy WCD) fielded a host of other queries but nowhere admitted that the new charter has dropped the word 'rights' from its text. India's new policy, plans and programmes address "the basic essence" of the Convention, she told the Committee. Reportedly unsatisfied with India's responses, the Committee will prepare its formal observations on Friday, and push for enhanced and more honest national action. It is expected that many of the observations and recommendations the Committee had made on India in 2000 (at its first review) will be reiterated, because the country has not acted upon them so far. The status of dalits, minorities, girls, refugees, and disabled children came in for special attention.

The GOI delegates were challenged on the lack of clarity on assurance of resources. Serious concern was expressed about child labour. The Government was queried on its stand that it wanted to change its own laws and practices before ratifying the ILO conventions, and withdrawing its reservation on CRC Article 32. It was heartening to hear many of the Committee members quoting points, and even excerpts, from the Citizens' Alternate Report that we had all prepared. Points were also used from some short notes IACR sent in to the Committee a day before the session. India's Ambassador and Permanent Representative HS Puri, lent some stature to the quartet of joint secretaries from the following four departments and ministries – WCD, MSJE, Education, Labour constituting the Government of India delegation.

18. The Optional Protocol on the involvement of children in armed conflict and Optional Protocol on the sale of children, child prostitution and child pornography.

2003. The NGOs had sent in their shadow report, which was presented on 9 October 2003 at Pre-Sessional meeting. The Government presented its report in the Ordinary Session on 22 January 2004.

National Co-ordination Group on the Rights of the Child

Following the ratification of the United Nations Convention on the Rights of the Child and presentation of Country Report and Periodic Reports to the Committee for the Rights of the child, a National Co-ordination group on the Rights of the child was established to monitor the implementation of the Convention. The members to this co-ordination group are the Joint Secretaries to the Ministries of Education, Drinking Water Supply, Family Welfare, Social Justice and Empowerment, Labour, Youth Affairs and Sports and Information and Broadcasting, some NGOs and Statutory Commissions such as the National Commission for Women and National Human Rights Commission of India. The stated broad terms of reference of this Group are to monitor the implementation of CRC and related national and international commitments; coordination of child rights implementation both within government and with NGOs; and child budgeting.

Conclusion

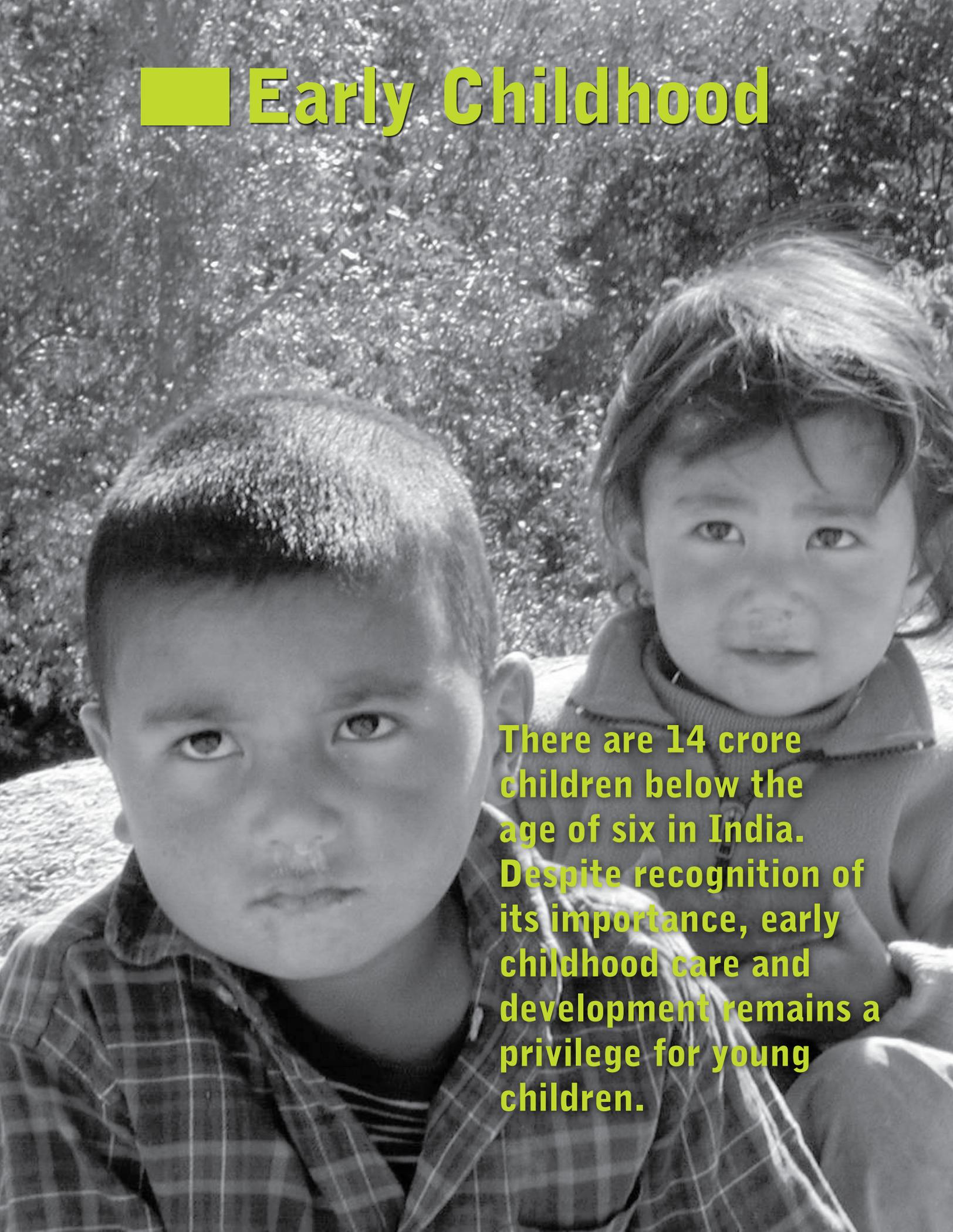
The period since the last report has seen several important steps taken by the government. New policy documents such as the National Charter for Children, 2003, the National Plan of Action 2005 (NPA) have been framed. While the Charter shied away from using the UN Convention on the Rights of the Child as its point of reference, the NPA has rectified this. However, the National Policy for Children dates back to 1974. Although, the NPA mentions all these documents, it is not clear what legal status the Charter and Policy hold vis- a-vis the NPA.

New laws and amendments to old ones are also on the anvil. The latest draft of the Free and Compulsory Education Bill 2005 has been posted on the Government's website. The Department of Women and Child Development is speedily drafting the Offences Against Children Bill, 2005. The National Commission for Protection of Children too is before Parliament and is supposed to have powers to uphold child rights and take suo moto cognizance of violations. It is reported that the Amendments to the Juvenile Justice (Care and Protection) Act 2000 have been placed before Parliament.

The government has submitted a report to the UN Commission on the Rights of the Child as well one on Violence against Children as part of the UN study on Violence against Children.

These are indeed very positive signs and show Government's commitment to children. But, several gaps remain. The present child labour law, allowing children to work in certain occupations continues to stand in contradiction to the promise of compulsory elementary education, which is a fundamental right. Discrimination faced by children based on caste and ethnicity violates their right against discrimination. Birth registration continues to be way below targets, thereby affecting children's rights to name and nationality. The poor implementation of the PNMT Act, 2003 is reflected in the skewed juvenile sex ratio. Rights of children of refugees and illegal immigrants on Indian soil too remain a matter of concern.

The most important factor for continued marginalisation of children today is the process of globalisation and further marginalisation of the poor. In this environment implementation of child rights has to be undertaken in keeping with the overall environment, where the forces of violations sometimes lie within the overall social and economic scenario. An example of this is the agricultural policies leading to the farmer suicides affecting the lives of children, pushing many of them into labour. Similarly, rising health costs are affecting families and children within them, forcing parents to make some difficult choices. Unless child rights become an important indicator for measuring any developmental initiative, these problems shall remain and we will be filling the tank with the tap left open.



■ Early Childhood

There are 14 crore children below the age of six in India. Despite recognition of its importance, early childhood care and development remains a privilege for young children.



The need for Early Childhood Care and Education commonly referred to as ECCE or Early Childhood Care and Development (ECCD) is well established in the country.*¹ This is so because it is well recognised that early development of the brain occurs primarily in the first few years of life, when the foundation for a person's learning path is laid. Children who participate in quality early childhood programmes are more likely to start primary education and perform better in school and are less likely to drop out or to repeat a class. In the long run, they are more likely to obtain a higher level of education and get a better-paying job, and are less likely to be involved in crimes. According to studies, children from disadvantaged circumstances benefit more from ECCD than those from favourable family backgrounds.

While addressing ECCD, it needs to be remembered that the status of the young child is inextricably linked with that of the mother, and therefore the multiple roles played by women as workers, as home-makers and as mothers, wherein she may have little support, often leads to a widespread neglect of the young child during these critical years. Because of this symbiotic connection, the rights of the young child are closely connected to the rights of women to maternity benefits and child care provisions.² Mothers of children in ECCD also benefit because they are more likely to seek employment and keep their jobs. Although the need to encourage the female workforce and supply new workers in support of a country's expanding economy were among the many rationales that have also been used to justify investments in ECCE, today's view has, quite rightly, become more child-centered, with ECCE increasingly seen as first and foremost benefiting the child, placing priority on the child's overall development and well-being.³ The expansion of Early Childhood Care & Development (ECCD) activities has attracted the attention of the World since 1990. By the turn of the century what was once considered as Early Childhood Development (ECD) or Early Childhood Care and Education (ECCE) or referred to by any other similar nomenclature, was considered to be inadequate in the context of the Rights of the Child. It was felt that effective initiatives can be better ensured, if it was recognised as Early Childhood Care and Development (ECCD).⁴

Table 1: Government of India's Goals and Targets

GOAL SET BY	TARGET/ GOAL
Constitution of India, Article 39(f)	<ul style="list-style-type: none"> ...the state shall, in particular, direct its policy towards ensuring that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and moral and material abandonment
National Policy for Children, 1974	<ul style="list-style-type: none"> Policy of the state to provide adequate services to children both before and after birth, to ensure full physical, mental and social development
National Policy on Education, 1986	<ul style="list-style-type: none"> Focus on Early Childhood Care and Education: recognises and reiterates the need for interventions for the crucial 0-6 age group
National Plan of Action for Children, 1992	<ul style="list-style-type: none"> Reduction in severe and moderate malnutrition among under-5 children by half between 1990 and the year 2000 A.D. Reduction in incidence of low birth weight (2.5 kg or less) babies Control of Vitamin A deficiency and its consequence Expansion of early childhood development activities including appropriate low-cost family and community-based interventions
10th Five Year Plan (2002-07)	<ul style="list-style-type: none"> Universalisation of ICDS will be achieved during the Tenth Plan in all the 5652 blocks of the country

1 India has ratified the Convention on the Rights of the Child. Articles 3, 6 and 18 of the UN Convention on the Rights of the Child requires the State Parties to ensure to the maximum extent possible the survival and development of the child, render appropriate assistance to parents and legal guardians in performance of their child-rearing responsibilities and ensure the development of institutions, facilities and services for the care of children. It also requires State Parties to take all appropriate measures to ensure that children of working parents have the right to benefit from child-rearing services and facilities for which they are eligible.

* India is committed to the 'World Fit for Children' which is the outcome document of the UN General Assembly Special Session on Children (May 2002), which seeks to globally further the cause of child development.

2 Forum for Crèche & Child Care Services (FORCES), Early childhood in the CRC, Reflections on the Status & Participation of the young child in India. Submission by FORCES, India, to the CRC Day of Discussion on "Implementing Child Rights in Early Childhood".

3 Early Childhood Care And Education In E-9 Countries: Status And Outlook. Prepared For The Fifth E-9 Ministerial Meeting, Cairo, Egypt, December 19-21, 2003 By The Section for Early Childhood and Inclusive Education Division of Basic Education, Education Sector UNESCO, Paris.

4 Exploring Rights of the Child in Early Childhood, A Report of Interface for Perspective Building on Legal Aspect of Early Childhood Care and Development, A Clap Publication.

It was, perhaps, in recognition of the needs of children in the early years of their lives that the Constitution had, till the promulgation of the 86th Amendment changed it, talked about education for all children UPTO the age of 14 years. By amending the Constitution and guaranteeing the right to education to all children in the age group of 6-14 years, the government has now left the needs and rights of ECCE to the realm of “endeavour” (to provide early childhood care and education for all children until they complete the age of six years).

At independence, pre-school education was primarily in the hands of a few voluntary organisations. Continuing this trend, the major responsibility of developing child-care/development services had primarily rested with the voluntary sector, with a welfare-oriented approach throughout the 1960s. The 1970s marked a shift from welfare to development and accordingly child welfare services were expanded to the health, education, nutrition, etc., sectors. The Integrated Child Development Services (ICDS) scheme was launched in 1975 as a sequel to the National Policy for Children, adopted in 1974. Children in the 0-6 years age group are covered under early childhood care and education services, within which the 0-3 year old children are targeted under child development programmes. Children above 3 years upto the age of 6 years form the target group for pre-school education. In several states of India, the cut-off age for entry into primary school has now been fixed at 5+ years while it continues to be 6+ in others.⁵

In the period since HAQ’s last report, the Government of India had an opportunity to report twice to the UN Committee on the Rights of the Child (a body of independent experts responsible for reviewing progress made by the State parties in implementing the Convention on the Rights of the Child). The first time was when India’s report (Second Report and First Periodic Review) came up for hearing in 2004. Both the Government as well as NGOs presented their statements to the Committee.

The second opportunity arose when recognising the importance of initiatives for children in the early phase of the 33rd session of the UN Committee on the Rights of the Child (17 September 2004) was designated as a day of general discussion on “Implementing Child Rights in Early Childhood” in order to broaden understanding and raise awareness about the rights of young children. The discussion was aimed at fostering a deeper understanding of the contents and implications of the Convention on the Rights of the Child as they relate to early childhood. Indian NGOs made submissions at this session.⁶

- Although the need for early intervention in early childhood care and education (ECCE) is well established, they have been left out of the 86th amendment of the Constitution making education free and compulsory
- Intervention in ECCE is closely linked to the health and empowerment of the mother
- Even by conservative estimates, of all the children in the 0-6 age group, 5 crore are below the poverty line
- Their mortality rate, low weight at birth and health status remains cause for concern
- The falling sex ratio in the 0-6 age group has raised serious concerns about their right to survival
- According to Forum for Crèche and Child Care Services (FORCES) crèches for providing day care services are suffering drastic cuts. While 10 years ago 9788 crèches had been sanctioned, the number under the existing scheme is about 23000 whereas the need is for 800000 crèches.

Present Status of Our Young Children

The population of pre-school children (0-6 years) as per 2001 census is 16.4 crore (163,819,614), which is 15.93 per cent of the total population. Of the total child population, 20.71 million (6 per cent) are infants who are below 1 year; 41.75 million (12 per cent) are toddlers in the age-group 1-2 years; 77.32 million (22.2 per cent) are pre-schoolers in the age group 3-5 years (another 207.76 million (59.8 per cent) are in the age-group of 6-14 years). Even though the Government has recognised that while all children require special attention, the three age groups viz. the infants, toddlers, and pre-school children require individual attention because of their age-specific needs,⁷ and even though this recognition is not of recent origin, the efforts to address their needs seems to have been inadequate so far. This is reflected in the situation of the young child – the high under-nutrition and mortality rates, low pre-school enrolment, and falling sex ratio

5 Deepa Das, Case study of the status of India’s Early childhood care and education services for UNESCO New Delhi April 2003.

6 Submission by FORCES, India, to the CRC Day of Discussion on “Implementing Child Rights in Early Childhood”; Exploring Rights Of The Child In Early Childhood. A Report Of Interface For Perspective Building On Legal Aspect Of Early Childhood Care And Development. A Clap Publication; India Alliance for Child Rights (IACR) Review Note submitted to the 17th Sept 2004 Day of Discussion of the UN Committee on the Rights of the Child on the issue of: Implementing Child Rights in Early Childhood.

7 10th Five Year Plan, Vol.II, Chapter 2.11, Women and Children, Planning Commission.

Around half of the pre-school children suffer from under-nutrition. Micronutrient deficiencies are widespread – more than half the women and children are anaemic; reduction in vitamin-A deficiency and iodine deficiency disorders (IDD) is sub-optimal.⁸

India has the highest level of child under-nutrition⁹ in the world, along with Bangladesh and Nepal. Although Bangladesh and India have similar levels of child under-nutrition, in terms of the general situation of children, Bangladesh now seems to be doing better than India (see Table 2), although it is a poorer country. It has lower infant and maternal mortality rates, higher immunisation levels and higher school participation rates. According to UNICEF,¹⁰ of the three countries, Bangladesh, Pakistan and India, only Bangladesh, with a lower rate of child mortality than either India or Pakistan, is on track to meet Millennium Development Goal 4 (cutting the mortality rate of children under-five by two-thirds by the year 2015). Bangladesh has been able to reduce under-five deaths to almost half of its 1990 level by 2002, at an average annual rate of reduction of 5.2 per cent. Under-nutrition associated with HIV/AIDS has already emerged as a public health problem in India.

Table 2: The Health Status of Children in E-9 Countries

Country Name	Under-5 mortality rate (per thousand)		Progress 8 towards MDG 4: reducing under-5 and infant mortality rates by two-thirds	% of under-5s with stunting (1995-2001)	GDP per capita (PPP US\$, 2001)
	1960	2001			
Bangladesh	248	77	On track	45	1,610
Brazil	177	36	On Track	11	7,360
China	225	9	Far Behind	17	4,020
Egypt	282	41	On Track	19	3,520
India	242	93	Lagging	46	2,840
Indonesia	216	45	On Track	–	2,940
Mexico	134	29	On Track	18	8,430
Nigeria	207	183	Far behind	46	850
Pakistan	227	109	Far behind	-	
E9 Average	218	72		29	3717

Source: The State of the World's Children (2003), UNICEF; Human Development Report (2003), UNDP in Early Childhood Care And Education In E-9 Countries: Status And Outlook. Prepared For The Fifth E-9 Ministerial Meeting, Cairo, Egypt, December 19-21, 2003 By The Section for Early Childhood and Inclusive Education Division of Basic Education, Education Sector UNESCO, Paris pg 16.

At the same time, despite recognition of the importance of ECCD, and also despite the enormous demand, early childhood care and education remains a privilege for young children in most of the world's nine high population countries known as the E-9 group, including India (others being Bangladesh, Brazil, China, Egypt, Indonesia, Mexico, Nigeria, Pakistan). An average of only 32 per cent of pre-primary age children are enrolled in education structures at this level in these countries.

According to a UNESCO report,¹¹ 29 per cent of pre-primary age children are enrolled in education structures in India. The report notes that although there is a clear awareness of the importance of the issue, this has not yet translated into concrete action. "Inequitable access and provision," concludes the report, "are likely to continue posing challenges." Studies have shown, participation in pre-primary education boosts children's performance in primary education, and keeping this mind, countries like Bangladesh, Brazil, India and Nigeria may need to consider investing in pre-primary education to enhance primary education.¹² The Indian



8 Forum for Crèche & Child Care Services (FORCES). Early childhood in the CRC. Reflections on the Status & Participation of the young child in India. Submission by FORCES, India, to the CRC Day of Discussion on "Implementing Child Rights in Early Childhood".

9 UNDP, Human Development Report, 2004, pg 160-63.

10 Progress For Children: A Child Survival Report Card, VOL 1, 2004.

11 "Early Childhood Care and Education in E-9 Countries: Status and Outlook" Prepared for The Fifth E-9 Ministerial Meeting, Cairo, Egypt, December 19-21, 2003 by the Section for Early Childhood and Inclusive Education Division of Basic Education, Education Sector UNESCO, Paris.

12 ibid.

Government considers ICDS as the only remedy for all the needs of the young child in the 0-6 years and has often claimed that ECCD needs are being met by it. That was also the justification given for not including 0-6 years in the 86th Amendment to the Constitution. But it seems to be only a rhetoric as the programme has a poor component of pre-school education and its outreach to the under-three years is limited.

Early childhood care and education rights – and all the underlying protections and entitlements needed for the first five years of life – begin with the assurance of three simple essentials: the right to be born, the right to survive birth, and the right to stay alive through infancy and to the fifth birthday. “For half of India’s children, this assurance is at grave risk, simply because they are girls and daughters are not wanted. The first early childhood right for them is to live – and both negative social attitudes and new technologies are conspiring to deny them this.”¹³ The overall female-male ratio for all ages rose slightly from the 1991 from 927 for every 1000 males to 933/1000 in 2001 (in itself no measure of better status, but certainly better survival). But the juvenile sex ratio in the 0-6 year range fell from 945 for every 1000 girls in 1991 to 927 for 1000 boys in 2001. In many states it is even lower.

Interventions for ECCD

ECCD is a multi-sectoral discipline thereby requiring the involvement of many sectors in the government, notably those concerned with education, health and social assistance. There are three ways in which countries coordinate these sectors. First, a single sector or ministry can be made responsible for the entire early childhood age group. This integrated model is a growing trend in developed countries. If a single leadership is difficult, then different ministries can be designated for different age groups. Although this second model can avoid this duplication among different ministries, it risks segmenting child development by age. In the case of the third scenario a parallel model is set up and different ministries overlap with one another in terms of age groups.

India’s major sectoral coordination is centred on the Integrated Child Development Services (ICDS). In fact, practically all coordination efforts have concentrated on removing services that might overlap with ICDS. Implemented by the Department of Women and Child Development in the Ministry of Human Resource Development, the ICDS coordination scheme is connected with other departments. For instance, the Department of Elementary Education and Literacy, which also belongs to the Ministry of Human Resource Development, set up early childhood education centres within the framework of the District Primary Education Programme (DPEP). To choose sites for these centres, it coordinated with the Department of Women and Child Development to be sure to avoid places that already had ICDS centres. When the programme drew to an end, the Department of Women and Child Development took over the centres, ensuring their continuity.¹⁴ But there has been some duplication between the two departments over ICDS’s early childhood component which is under the education department. For example, the early childhood education component of ICDS is coordinated

Table 3: Early Childhood Coordination Mechanism in India

Name	Location	Membership	Functions
National Standing Committee for Early Childhood Education	Department of Elementary Education and Literacy, Ministry of Human Resources	Members of the Departments of Health, Women and Child Development, National Institute of Public Cooperation and Child Development, National Council for Educational Research and Training, National Institute of Educational Planning and Administration, and representatives of civil society	To address the coordination issue in early childhood education on a permanent basis

Source: Early Childhood Care And Education In E-9 Countries: Status And Outlook. Prepared For The Fifth E-9 Ministerial Meeting, Cairo, Egypt, December 19-21, 2003 By The Section for Early Childhood and Inclusive Education Division of Basic Education, Education Sector UNESCO, Paris pg.41.

¹³ India Alliance for Child Rights (IACR). Review Note submitted to the 17th Sept 2004 Day of Discussion of the UN Committee on the Rights of the Child on the issue of: Implementing Child Rights in Early Childhood CRC Review Note #1: India’s Girl Child: Crisis of ‘Early Disposal’(Declining Juvenile Sex Ratio – 0 to 6 years).

¹⁴ *ibid.*

within the scheme, that of the education department is coordinated by the national standing committee for ECCE. A lot of the health initiatives, such as immunisation also take the support of the ICDS centre.

Integrated Child Development Services (ICDS)

Established in 1975, the Integrated Child Development Services (ICDS) is the world's largest early child development programme. It is aimed as a holistic intervention, consisting of health, nutrition and education components, that reaches children under six years of age through a network of community-level anganwadi centers. Over the years, the programme has grown from a pure food supplementation programme to a more multi-dimensional approach to the child's well-being, incorporating health, nutrition and pre-school education components. It has been designed to target a range of interventions at young children and their mothers, including growth monitoring, immunisation, health check-ups and supplementary feeding, as well as nutrition and health education to improve the childcare and feeding practices that mothers adopt. An additional component focusing on adolescent girls' nutrition, health, awareness, and skills development was added in some blocks in 2000. It also aims to provide pre-school education to children between three and six years of age.

Table 4: Range of Services Offered by ICDS to Children Under-six

Health Services	Children under 6	Pregnant women	Lactating women
Health checkups, and treatment	Health check-ups by AWW, ANM, LHV Treatment of diarrhoea Deworming Basic treatment of minor ailments Referral of more severe illnesses	Ante-natal check-ups	Post-natal check-ups
Growth monitoring	Monthly weighing of under-threes Quarterly weighing of 3-6 year olds Weight recorded on growth cards		
Immunisation	Immunisation against poliomyelitis, diphtheria, pertussis, tetanus, tuberculosis and measles	Tetanus toxoid immunisation	
Micronutrient supplementation	IFA supplementation for malnourished children		
Health and nutrition education		Advice includes infant feeding practices, child care and development, utilisation of health services, family planning and sanitation	Advice includes infant feeding practices, child care and development, utilisation of health services, family planning and sanitation
Preschool education	Early Childhood Care and Preschool Education (ECCE) consisting of "early stimulation" of under-threes and education "through the medium of play" for children aged 3-6 years		

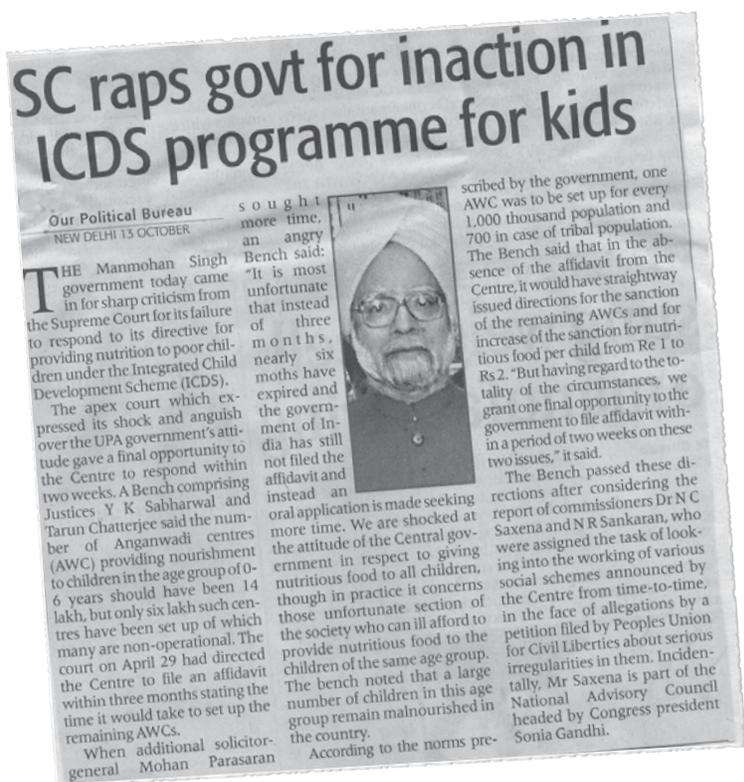
Source: DWCD Annual Report 2004

The year 2005 marks the thirtieth anniversary of the ICDS scheme. From an initial 33 blocks in 1975, the programme had expanded to 6,500 blocks by 2004. There are almost 600,000 anganwadi workers and an almost equal number of anganwadi helpers providing services to beneficiaries throughout the country. The ICDS involves the setting up of anganwadi centres, each of which is intended to cater to a population of around 1,000 in rural and urban areas and to around 700 in tribal areas. An anganwadi worker and a helper run the centre and implement the scheme in coordination with the functionaries of the related department.

Even after 30 years of its existence, ICDS still fails to reach every poor young child. The problem lies in its inability to reach all children especially the most deserving in the remote areas.

It is clear that there are several problems that plague ICDS, both in its implementation, reach and its design. According to the Forum for Crèche and Child Care Services (FORCES), although it is designed to cater to the needs of the young child in an integrated manner, covering health, nutrition, early childhood care and pre-school education and convergence of other supportive services such as safe drinking water, environmental sanitation, women's empowerment, non-formal education and adult literacy, it excludes a large population living in urban slums, villages and settlements in border areas, non-revenue paying hamlets as well as the increasing number of migrant workers. The programme is supposed to ensure convergence of supportive services such as safe drinking water, environmental sanitation, women's empowerment programmes, non-formal education and adult literacy. However, the reality at ground level is quite different and there is hardly any evidence of such convergence as of March, 2002, the number of children who went through pre-school education was 16,655,533.¹⁷

Anganwadis are usually located within the homes of the Anganwadi worker. The caste of the anganwadi worker affects attendance. If the worker is of the upper caste, lower caste children are left out and vice versa.



A field survey of ICDS conducted by the Centre for Equity Studies (New Delhi), in association with the Commissioners of the Supreme Court, Dr. N.C. Saxena and Mr. S.R. Sankaran in six states: Chhattisgarh, Himachal Pradesh, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh; brought out startling contrasts between different states, in terms of the effectiveness of ICDS. "At one end of the spectrum, Tamil Nadu and to some extent Maharashtra have achieved high standards of child care through ICDS. Anganwadis are open throughout the year, nutritious food is available there every day, most children are fully vaccinated, and even pre-school education programmes are doing quite well. At the other end, Anganwadis in Uttar Pradesh are closed most of the time, when they exist at all. Even when they are open, children rarely get any food, not to speak of other essential services".¹⁸ These contrasts are all the more interesting as ICDS is a centrally sponsored scheme based on similar guidelines. "There is an important message here about the overwhelming influence of the social and political context in shaping the outcome of particular policies", says Jean Dreze (The Hindu, August 22, 2004). Rampant corruption from top to bottom continues to be an impediment ensuring that there is little or no significant impact of ICDS on the well-being of children.

15 Department of Women and Child Development, Ministry of Human Resource Development, Government of India. Annual Report 2004-05, and, UNICEF, Childhood Under Threat: The State of World's Children, 2005.

16 Recommendations On ICDS (based on deliberations of the National Advisory Council on 28 August 2004) and the Annual Report 2003-04, Department of Women and Child Development, Ministry of Human Resource Development, Government of India.

17 Exploring Rights Of The Child In Early Childhood. A Report Of Interface For Perspective Building On Legal Aspect Of Early Childhood Care And Development. A Clap Publication.

18 Universalisation With Quality: An Agenda For ICDS. Report prepared by Jean Drèze and Shonali Sen for the National Advisory Council, with inputs from Anaka, Kiran Bhatti, Zarina Bhatti, Tara Gopaldas, Venita Kaul, Sudha Narayanan, Vandana Prasad, Anuradha Rajivan, Vimala Ramachandran, Usha Rane, N.C. Saxena, A.K. Shiva Kumar, Asha Singh, Devika Singh, C.P. Sujaya, and S. Vivek, among others. 7 September 2004.

If ICDS is seen as the government's vehicle to address the young child, its success must be measured against the fact that even today, around one third of Indian children – and more than half in rural areas – are born with low birth weight. More than 30 per cent of children under 5 years are severely stunted, and around 20 per cent are severely underweight. The under- six years sex ratio clearly indicates that the right of survival of the girl child has not been effectively addressed. These indicators are particularly bad in some ostensibly more “developed” and relatively high-income states, such as Gujarat, Maharashtra and Karnataka.¹⁹ Indeed, although Maharashtra ranks among the top five states on overall performance basis of the ICDS schemes,²⁰ the malnutrition deaths of children in Maharashtra contradicts this.

The children or families to be covered by the programme varies from state to state, the general idea being that disadvantaged families and vulnerable children should receive priority.²¹ Being below the poverty line (BPL) and possessing a “BPL card” is often used as an eligibility criterion for enrolment of children in the anganwadi. This according to experts is an inappropriate restriction, partly because the BPL list is very unreliable, and partly because child under-nutrition extends well beyond households below the poverty line.²² Clearly, the problem with ICDS is not just that it is not covering all poor children in the 0-6 age group, but that it is not reaching the most deserving, especially those living in remote areas.

“We have not reduced malnutrition even after 30 years of ICDS. Is malnutrition only due to lack of food and poverty? Or is it because the young child is not given food several times a day? This is because we do not want to do things differently. We need to look at the nitty-gritty of the programme.”

Dr. Shanti Ghosh at a meeting organised by the India Alliance on Child Rights to discuss the progress made in the Millennium Development Goals, 8 May 2005.

Even more important is the problem that lies in the very design of the programme. It has been designed essentially as a centre based programme, serving all the children who are able to reach the anganwadi. As has been pointed out repeatedly by Dr. Shanti Ghosh, a senior pediatrician,²³ ICDS needs to reach the homes of the children. Her contention is that it is not simply an issue of non-availability of food, but a matter of training mothers to change the feeding patterns for the young

child. The highest rate of malnutrition is among the 0-2 year age group. Children need to be fed at this age. If only the anganwadi workers would visit homes and train mothers to feed their children the same available food repeatedly, three to four times a day, the children would have better nutrition.

It is a well documented fact that 80% of a child's mental and physical growth takes place in the first two years after birth, and at this time the child requires high nutrition and ample care, the absence of these critical inputs results in malnourishment and poor health and development. As a result the child's resistance capacity is minimal, paving the way for a number of ailments and diseases like fever, vomiting, measles, diarrhoea, etc. While under normal circumstances, these diseases are not very dangerous and easily contained, in a malnourished child they may become the cause of death.

Malnutrition is more common in India than in sub-Saharan Africa. One in every three malnourished children lives in India.

Adequate and appropriate infrastructure remains a challenge in implementation of the programme. The Supreme Court in its order dated 29 April 2004 had directed the states to operationalise all the sanctioned Anganwadi Centres (AWCs) by 30 June 2004 to cover 14 lakh habitations. However, according to the Parliamentary Standing Committee on Human Resources Development²⁴ who examined this programme, even though 5418 projects had become operational upto 31 December 2004, there was a wide variation in the number of sanctioned and operational ICDS projects. Out of the 234 projects yet to be sanctioned, 145 were in Bihar and 52 in Jharkhand. Major shortfalls were observed in the setting up of AWC's under the ICDS projects (Comment 3.5).

19 Jayati Ghosh, 'The Unfulfilled Potential of the ICDS', Weekly Organ for the Communist Party of India (M), Vol. XXIX No.13 27 March 2005.

20 LSSQ 226, 17 Dec. 2003, Winter Session.

21 To illustrate, in Rajasthan each Anganwadi centre is supposed to enrol 40 children in the 3-6 age group for supplementary nutrition, with priority being given to BPL and SC/ST families.

22 Universalisation With Quality: An Agenda For ICDS. Report prepared by Jean Drèze and Shonali Sen for the National Advisory Council, with inputs from Anaka, Kiran Bhatti, Zarina Bhatti, Tara Gopaldas, Venita Kaul, Sudha Narayanan, Vandana Prasad, Anuradha Rajivan, Vimala Ramachandran, Usha Rane, N.C. Saxena, A.K. Shiva Kumar, Asha Singh, Devika Singh, C.P. Sujaya, and S. Vivek, among others. 7 September 2004.

23 Dr. Ghosh has made this suggestion at almost every meeting on children that HAQ has attended and she has said at these meetings that she has made this suggestion to the Government too.

24 Parliament of India, Rajya Sabha (160). Department Related Parliamentary Standing Committee on Human Resources Development. Hundred Sixtieth Report on Demand for Grants 2005-06 of the Department of Women and Child Development (Comment 3.5). Presented to Rajya Sabha on 21st April 2005, Laid on the Table of Lok Sabha on 21st April 2005.

Table 5: AWC's under the ICDS Projects

State	Sanctioned AWCs	Non-Operational AWCs
Bihar	60813	28766
J&K	11821	1694
Jharkhand	23078	7076
UP	106059	11379

Source: One Hundred Sixtieth Report of the Parliamentary Standing Committee on Demand for Grants of the Department of Women and Child Development Comment 3.5

The Standing Committee was disturbed by the acute shortage of anganwadi workers. Out of 23,265 sanctioned posts of supervisor, as many as 10,965 are vacant, with maximum number of vacancies being in Bihar and UP.

More than 40 per cent AWCs were neither housed in a ICDS building nor in a rented building and more than 45 per cent do not have toilet facilities, while 27 per cent do not have the basic drinking water facilities.

National Council of Applied Economic Research (NCAER) "Rapid Facility Survey" of infrastructure at anganwadi centres.

nor in a rented building and more than 45 per cent did not have toilet facilities, while 27 per cent did not have the basic drinking water facilities.²⁶

The basic infrastructure provided to run an anganwadi varies widely across states ranging from an independent all-weather building with adequate space for play-way learning and separate spaces for storage and cooking to a one-room dingy and cramped structure. In Chhattisgarh and Uttar Pradesh, most of the centres were located in the home of the anganwadi worker or helper, sometimes in a dingy room. "This is a highly unsatisfactory arrangement, which entails frequent disruptions in ICDS activity and restricted access for some communities of the village. In sharp contrast to the north Indian states, most AWCs in Maharashtra and Tamil Nadu had independent buildings located near the primary school, with a source of clean drinking water and other essential facilities of their own. They were also well supplied with basic furniture, cooking utensils, storage containers, toys, charts and related equipment".²⁵ According to a 'Rapid Facility Survey' of infrastructure at nearly three lakh anganwadi centres conducted by the National Council of Applied Economic Research (NCAER) in 2004, more than 40 per cent AWCs were neither housed in a ICDS building

The capacity and education levels of the anganwadi workers too were disparate. While in some cases they were women who had never been to a school, in some others were those who were trained and motivated. For example, anganwadi workers in Barmer district of Rajasthan had never been to school and relied on their husband, brother or son to fill the ICDS registers (an anganwadi worker is expected to maintain up to 20 different registers). They were unable to maintain the children's "growth charts", not to speak of imparting pre-school education to them.²⁷

Is the anganwadi worker and the Helper overburdened and underpaid?

Role of anganwadi worker and her helper-

- Provide a foundation for development (health, nutritional and psychosocial needs) of the child. Catering to the diverse needs of the 40 children in the centre.
- Facilitate girl's participation in school by providing alternative care for the younger siblings.
- Non-formal pre school education to children in the age group of 3-6 years
- Make home visits, conduct meetings with the parents, address the health and nutrition needs of pregnant and lactating mothers.
- Referral of serious cases of malnutrition or illness to hospitals

An anganwadi worker is paid an honorarium of Rs 1000 and the helper, Rs 500.

25 Universalisation With Quality: An Agenda For ICDS. Report prepared by Jean Drèze and Shonali Sen for the National Advisory Council, with inputs from Anaka, Kiran Bhatti, Zarina Bhatti, Tara Gopaldas, Venita Kaul, Sudha Narayanan, Vandana Prasad, Anuradha Rajivan, Vimala Ramachandran, Usha Rane, N.C. Saxena, A.K. Shiva Kumar, Asha Singh, Devika Singh, C.P. Sujaya, and S. Vivek, among others. 7 September 2004.

26 Parliament of India, Rajya Sabha, 21 April 2005. Hundred Sixtieth Report of Department Related Parliamentary Standing Committee on Human Resource Development on Demand for Grants 2005-06, Demand No. 59 of the Department of Women and Child Development (Comment No. 3.18).

27 *ibid.*

Crèche And Day Care Centres

The Central Social Welfare Board (CSWB) implements the scheme of Crèche and Day Care Centres for the Children of Working and Ailing Mothers. The CSWB runs the programme with the help of two national level voluntary organisations – Indian Council for Child Welfare, New Delhi and Bharatiya Adimjati Sevak Sangh, New Delhi.²⁸ The scheme for Crèches and Day Care Centres is being modified so as to merge the National Crèche Fund with the Scheme for Assistance to Voluntary Organisations for running crèches.²⁹ The revised scheme envisages increase in financial norms from Rs. 18,480 per crèche per annum to Rs. 45,780 per crèche per annum, increase in honorarium for crèche workers and enhancement in the provision for supplementary nutrition. The revised scheme aims at covering more number of children by increasing ceiling for eligibility from Rs 1,800 per month to Rs 12,000 per month per family. By the end of Tenth Five Year Plan, it has been proposed to increase the number of crèches from the present 15,000 crèches (app.) to 30,000 crèches, by increasing 5000 crèches in a year.

Some of the programmes for the young child are derived from labour legislations pertaining to factories, mines and plantations, construction workers. These are The Plantation Labour Act, The Factories Act, and The Mines Act etc. While these provide for crèches and child-care services, in reality these facilities hardly exist. The number of crèches under existing crèche schemes is about 23000 whereas the need is for 800,000 crèches to cater to the needs of about 22 crore women working in the informal sector who are in dire need of child care services.³⁰

The impact of the lack of day care services is borne both by mothers of the young child, the child and often their older siblings. Either women are forced to forgo employment and financial independence so that they can look after the young child, or they take them to work leaving them in unsafe conditions on the work site – vulnerable to physical and mental harm. Often the young child is left in the care of an older sibling who is forced to drop out of school to be able to take on this responsibility. In most cases this young care-giver is barely out of the age when she/he too needs care and protection. Children left at home tied to doors and beds are not unknown. This fact became glaringly obvious in cases of fires in bastis where young children died because they were tied to beds and unable to run out of these shacks.

Janani Suraksha Yojana

Janani Suraksha Yojana (JSY) under the overall umbrella of National Rural Health Mission (NRHM) is being planned by modifying the existing National Maternity Benefit Scheme (NMBS). While NMBS is linked to provision of better diet for pregnant women from BPL families, JSY will integrate the cash assistance with ante-natal care during the pregnancy period, institutional care during delivery and immediate post-partum period in a health centre by establishing a system of coordinated care by a field level health worker. Accordingly, cash assistance is to be provided to women from Below Poverty Line (BPL) families, for enabling them to deliver in health institutions. The assistance will be available as per the rates in Table 6.³¹



28 Department of Women and Child Development, Annual Report 2004-05, Ministry of Human Resource and Development, Government of India, pg 147.

29 <http://indiabudget.nic.in/es2004-05/chapt2005/chap112.pdf>

30 Exploring Rights Of The Child In Early Childhood. A Report Of Interface For Perspective Building On Legal Aspect Of Early Childhood Care And Development. A Clap Publication.

31 Ministry of Health and Family Welfare, Janani Suraksha Yojana Guidelines for implementation, Government of India, pg 1.

Table 6: Cash Assistance to Mother and Accredited Worker Under JSY

Category of States	Rural area Assistance package to mother	Package for the accredited worker	Total	Urban area Assistance package to mother	Package for the accredited worker	Total
LPS	700	600	1300	600	200	800
HPS	700	NIL	700			

Source: Janani Suraksha Yojana Guidelines for implementation, Ministry of Health and Family Welfare

The Janani Suraksha Yojana has been created by the Ministry of Health to lower MMR and IMR by providing financial incentives and assistance to institutional deliveries. While the objectives are laudable in themselves and there is certainly a huge gap in services for institutional deliveries and specialised neo-natal care. The strategies proposed in the scheme contradict its own objectives.

Our concerns and recommendations are the following:

1. That the Two Child Norm be removed from the JSY. If the scheme aims to cut down the mortality of women in the situation of maternity and that of their infants, surely the birth order or pregnancy order cannot be relevant to her need for assistance and access to health care. This has also been acknowledged by the esteemed Health Minister, Sri Anbumani Ramadoss, who issued a press statement to say that the Two Child Norm would not apply to any Central Health Scheme, and reinforced by Prime Minister Singh following the recent meeting of the Population Commission.
2. That the JSY has a clause that further states that women in their third pregnancy may claim financial assistance provided she go in for sterilisation! This is clearly not linked to the Scheme's stated objectives and is also not consistent with all policy declarations on population control. It is also discriminatory to women since it assumes that she holds sole responsibility for family planning measures. Further, it denies the role of measures for spacing rather than sterilisation. Therefore, there should not be any link between the JSY and sterilisation of women.
3. That the JSY has a complicated system of varied disbursements to women based on which state they belong to, as well as whether they are rural or urban. This is also illogical and discriminatory since poor women and children have the same rights, needs and vulnerabilities regardless of where they reside. Therefore, uniform assistance should be given.
4. That the BPL criteria exclude a vast number of very poor women and is in need of redefinition. The JSY should therefore not be restricted by the current BPL identification.
5. That the JSY promises to improve the poor situation of public health services for institutional deliveries and care of the neonate. However, the same scheme also speaks in terms of public – private partnerships to provide services. We sincerely hope that public – private partnerships will not become the escape route by which the State diminishes its role in providing quality health services so urgently needed. In the absence of any regulation of the costs and quality of the private sector, this move may well be counterproductive to the stated objectives of the scheme.

This section is an excerpt from a letter sent to Smt. Sonia Gandhi, Chairperson National Advisory Committee, on 28 July 2005, by Mridula Bajaj, Executive Director, Mobile Creches, on behalf of a group of non-voluntary organisations, women's groups and the medical fraternity, who gathered together to express their concern on the revised programme.

Budgetary Commitments towards Child Development

Devoting resources to ECCE or Early Childhood Care and Development (ECCD) is a highly profitable investment option, bringing multiple benefits to society, the community, as well as to the child and his or her family. It has been found that every dollar spent on ECCE generates four dollars in benefits.³²

The allocation for ICDS has increased from Rs. 1490.40 crore (Revised Estimates 2004-05) to Rs. 3142.25 crore (Budget Estimates 2005-06). Though this appears to be a huge increment; it is still not sufficient to cover the required cost of universal coverage of all 17 lakh habitations in the country. To implement the Supreme Court's order in true spirit, the allocation should have been increased six fold. As far as the central government is concerned, this would mean raising the annual budget allocation for ICDS from Rs 1,600 crores to Rs 9,600 crores (at 2004-5 prices).³⁵

Child Development Budget for the young child as percentage of total Union Budget is a mere 0.658 %.

Source: DWCD, Min of HRD, GOI Expenditure Budget 2005-06 (Vols 1&2)

³² Early Childhood Care and Education in E-9 Countries: Status and Outlook Prepared for The Fifth E-9 Ministerial Meeting. Cairo, Egypt, December 19-21, 2003 by the Section for Early Childhood and Inclusive Education Division of Basic Education, Education Sector UNESCO, Paris. Page 11. <http://portal.unesco.org/en/ev.php>

³³ Annual Report 2003-04, Department of Women and Child Development, Ministry of Human Resource Development, Government of India.

³⁴ *ibid*.

³⁵ Recommendations On ICDS, (Based On Deliberations Of The National Advisory Council On 28 August 2004).

Financial Implications

- The financial implications of “universalisation with quality” are as follows:
 - (a) Current allocations for ICDS are extremely low, e.g. barely Rs 1,600 crores in the Union Budget 2004-5. The provision of essential health and nutrition services to 16 crore children deserves much higher budgetary allocations.
 - (b) “Universalisation” roughly involves tripling the coverage of ICDS.
 - (c) If expenditure per child is doubled across the board, as an essential first step towards improved quality, the overall resource requirements also double.
 - (d) Tripling the coverage and doubling expenditure per child would imply a six-fold increase in total ICDS expenditure.
- As far as the central government is concerned, this would mean raising the annual budget allocation for ICDS from Rs.1,600 crores to Rs. 9,600 crores (at 2004-5 prices).

Recommendations On ICDS (based on deliberations of the National Advisory Council on 28 August 2004).

Allocation however is not enough. For the programme to be effective it also means proper utilisation of the funds ensuring that the benefits reach the intended. This is often not the case in any scheme or programme. In October 2004, the UPA government was criticised for its failure to respond to the court’s directive for providing nutrition to poor children under the ICDS scheme. Survey on ICDS shows Bihar and West Bengal had the lowest utilisation of the fund.³⁶

The Parliamentary Standing Committee of the Department of Women and Child Development in its 160th report on Demand for Grants (Demand No. 59)³⁷ presented to the Rajya Sabha on 21 April 2005, while referring to misutilisation/underutilisation of funds for Day Care Centres has said that during the financial year 2002-03, there has been a ‘saving’ of Rs. 33.26 lakhs under Non-Plan expenditure and during the year 2003-04 there has been a ‘saving’ of Rs. 96.60 lakhs under Plan expenditure and Rs. 20.75 under Non-Plan due to the fact that the implementing organisations have already unspent balance available with them out of the grants released during the previous financial years. The Committee has expressed its dissatisfaction with the monitoring mechanism of Department and said that the very fact that unspent balances are available with the implementing agencies indicates that crèches are not providing the services for which they are meant. The Committee has therefore desired that steps should be taken for removal of constraints being faced in the implementation of this scheme by regular monitoring and interaction between the State Boards and the CSWB. It has also recommended that a special drive for settlement of accounts should be initiated to stop misutilisation/underutilisation of funds.

“There are about 14 crore children below the age of six in India. Suppose the government were to spend Rs. 5 per child per day on ICDS throughout the year. This is not a magic figure, but five rupees per day could make a dramatic difference to the health and well-being of the average Indian child. The total cost would be Rs. 25,000 crores, approximately one per cent of GDP. This may sound like a large amount, but it’s a trivial price to pay to liberate Indian children from the present morass of hunger and ill health. One does not need a PhD in economics to see that this is not only feasible but also imperative.”

Source: Jean Dreze, The Hindu, 22 August 2004.

Conclusion

The need for interventions for the young child was clearly felt two decades ago. Whatever be the nomenclature used, what is clear is that the young child needs a multi-pronged initiative that ensures survival and development. What has also been long established and accepted is that any initiatives for this age group is closely linked to those for the mothers. That it needed a Supreme Court order to alert the nation on the state of the ICDS interventions and its failure to deliver and reach the young child, is a matter of no small concern. The high malnutrition rates, the still high infant mortality rates and the falling sex ratio in the target age group of ECCD initiatives should send the alarm bells ringing. This is particularly true in the wake of globalisation, whereby nations are witnessing cutback in social sectors, rise in unorganised wage labour under very precarious working conditions. It is a wake-up call for the nation.

³⁶ The Indian Express, 29 September 2004.

³⁷ Comments 6.8 and 6.9.

ANNEXURE 1

Number of AWCs Required to Universalise ICDS

Table 1: Number of Anganwadi Centres (AWCs) Required in Rural Areas to Universalise ICDS*

	Number of AWCs Required in 'Scheduled Tribe Dominated' Habitations	Number of AWCs Required in Other Habitations	Total
Andhra Pradesh	11,244	79,619	90,862
Arunachal Pradesh	2,204	273	2,477
Assam	9,662	42,007	51,669
Bihara	25,053	142,628	167,680
Goa	-	1,178	1,178
Gujarat	14,136	37,854	51,990
Haryana	-	21,734	21,734
Himachal Pradesh	867	16,516	17,383
Jammu & Kashmir	2,178	14,381	16,559
Karnataka	3,570	59,971	63,541
Kerala	282	31,450	31,732
Madhya Pradesh	47,373	84,078	131,451
Maharashtra	13,855	84,101	97,956
Manipur	2,130	1,576	3,705
Meghalaya	5,818	113	5,932
Mizoram	902	27	929
Nagaland	2,470	-	2,470
Orissa	26,213	48,154	74,367
Punjab	-	23,846	23,846
Rajasthan	14,086	69,661	83,746
Sikkim	257	1,084	1,342
Tamil Nadu	1,572	64,720	66,291
Tripura	3,431	3,351	6,782
Uttar Pradesh ^a	2,685	278,668	281,353
West Bengal	11,591	109,497	121,088
Delhi	23	1,355	1,378
Other Union Territories ^b	674	1,290	1,964
India (Rural)	202,276	1,219,130	1,421,405

a "Undivided".

b Andaman & Nicobar, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, Pondicherry.

* For details of the calculations, see explanatory note below.

Source: <http://nac.nic.in/communication/icds.pdf>

Explanatory Note

- (1) Estimates for Rural Areas : For rural areas, AWC requirements for "Tribal" and "Other" habitations have been estimated using the central norm of one AWC per 700 and 1000 population, respectively. For instance, in other habitations, it is assumed that one AWC is required in habitations with population below 1000, two are required in habitations with population between 1000 and 2000, and so on. Habitations with a population below 150 have been ignored (Supreme Court proceedings envisage that tiny habitations will be served by "extension counters").

Data on the size distribution of "habitations" on 30th September 1993 were obtained from the Sixth All India Educational Survey (Statistical Tables V6 and V8). After calculating AWC requirements in 1993 based on the above norms, the estimates were updated to 2004 by assuming that requirements are proportional to population. State-specific population growth rates (three-year average centred at 2001) were taken from the Sample Registration Bulletin, October 2003.

Table 2: Number of Anganwadi Centres (AWCs) Required in Urban Areas to Universalise ICDS *

	Urban Population as per 2001 Census	Estimated Urban Population, September 2004	No of AWCs Required
Andhra Pradesh	20,503,597	21,311,034	21,311
Arunachal Pradesh	222,688	228,380	228
Assam	3,389,413	3,515,291	3,515
Bihar	8,679,200	9,093,692	9,094
Chhattisgarh	4,175,329	4,365,333	4,365
Goa	668,869	687,457	687
Gujarat	18,899,377	19,705,345	19,705
Haryana	6,114,139	6,394,871	6,395
Himachal Pradesh	594,881	615,037	615
Jammu & Kashmir	2,505,309	2,587,139	2,587
Jharkhand	5,986,697	6,218,793	6,219
Karnataka	17,919,858	18,603,630	18,604
Kerala	8,267,135	8,543,882	8,544
Madhya Pradesh	16,102,590	16,848,533	16,849
Maharashtra	41,019,734	42,676,931	42,677
Manipur	570,410	588,461	588
Meghalaya	452,612	466,108	466
Mizoram	441,040	452,135	452
Nagaland	352,821	361,411	361
Orissa	5,496,318	5,713,885	5,714
Punjab	8,245,566	8,551,794	8,552
Rajasthan	13,205,444	13,860,437	13,860
Sikkim	60,005	61,819	62
Tamil Nadu	27,241,553	28,214,438	28,214
Tripura	543,094	557,746	558
Uttar Pradesh	34,512,629	36,394,382	36,394
Uttaranchal	2,170,245	2,242,013	2,242
West Bengal	22,486,481	23,115,950	23,116
Delhi	12,819,761	13,282,816	13,283
Other Union Territories ^a	1,708,159	1,764,587	1,765
India (Urban)	285,354,954	297,023,332	297,023

* Andaman & Nicobar, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, Pondicherry.

* For details of the calculations, see explanatory note below.

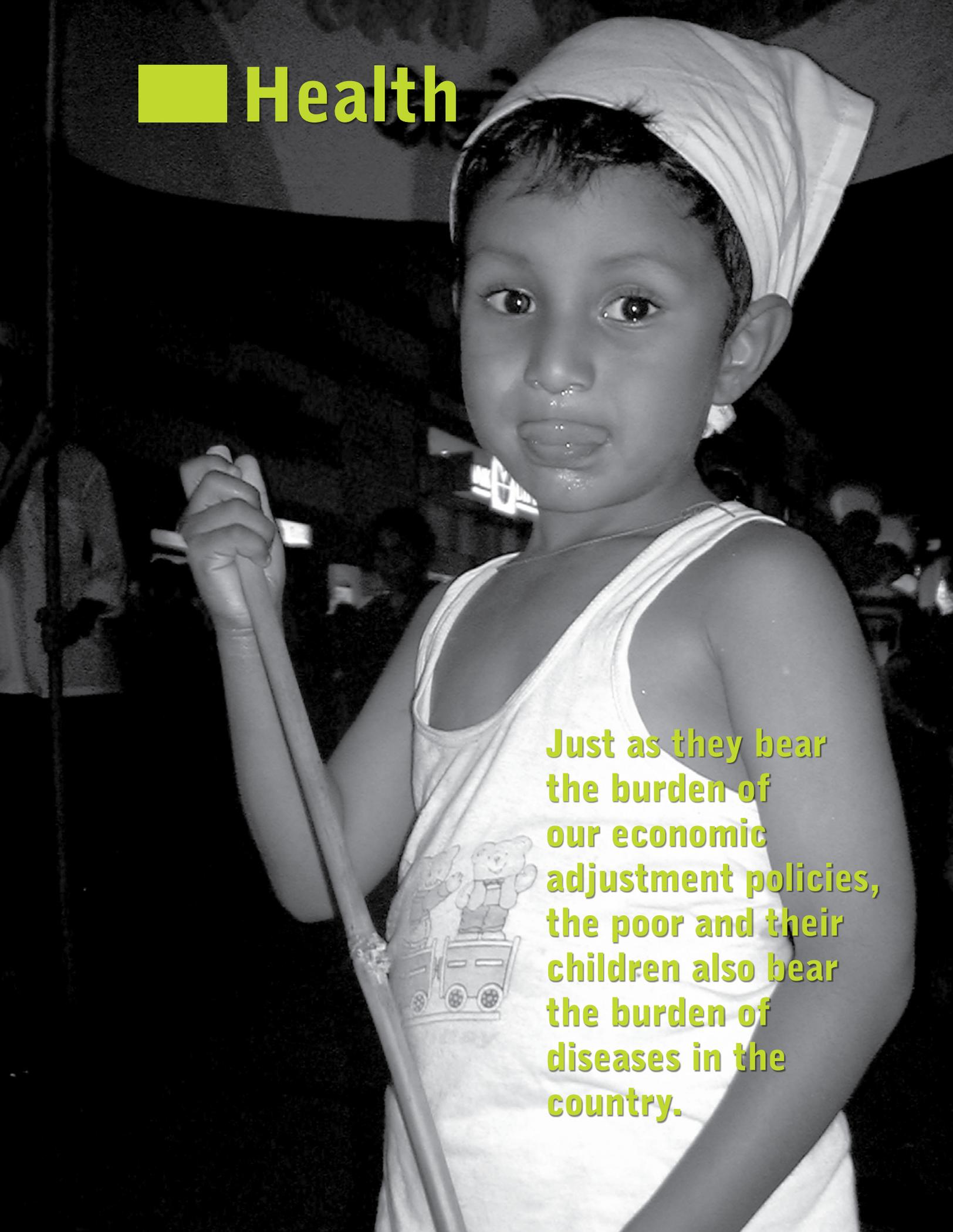
Source: <http://nac.nic.in/communication/icds1.pdf>

Explanatory Note

(2) Estimates for Urban Areas

For each state, urban population in 2004 has been estimated by combining 2001 Census figures with SRS estimates of population growth (Sample Registration Bulletin, October 2003). AWC requirements were then calculated by applying the central norm of one AWC per 1,000 population.

Health



Just as they bear the burden of our economic adjustment policies, the poor and their children also bear the burden of diseases in the country.



Access to good quality health care is a basic human right. The right to health care clearly establishes the fact that health is one of the most basic necessities for the realisation of socio-economic and cultural human rights. It obligates the State to undertake measures aimed at promoting individual and community health and at preventing diseases, removing other external causes of morbidity and mortality, eliminating health inequalities and improving conditions that may hamper the achievement of highest attainable level of health. Ensuring the right to health care for all children is fundamental to their rights to survival and development, and all their other rights.

India is a signatory to the Health For All (HFA) Declaration and the Millennium Development Goals (MDG). However, India's performance to ensure the provisions of HFA and MDG are yet to be realised. The complacency of the government in implementation of MDG and HFA commitments is evident from the fact that public health expenditure is hovering around 0.9 per cent of GDP in India, which is lower than the average of low-income countries and even Sub-Saharan Africa. This is well below the average of 2.8 per cent for low and middle-income countries, and the global average of 5.5 per cent.¹

There is very little that has changed since the last status report in 2002. Lack of information, poor data collection, inadequate infrastructure and lack of political will to change things continue to plague our health care system. The impact of economic reforms in the wake of globalisation continues to be evident in the health sector. It is pushing the government to cut down on the already low allocations to health, education and basic social services while simultaneously pressurising the government to withdraw price control on essential drugs. With the incomes of the poor falling, and with more and more health services getting privatised, the poor and their children are today caught in a vicious cycle of poverty, deprivation, infection and disease. Just as they bear the burden of our economic adjustment policies, the poor and their children also bear the burden of diseases in the country. High malnutrition rate leading to deaths, including neo-natal deaths, and the plight of children affected by HIV/AIDS is a matter of even greater concern. The health of India's children needs serious attention.

With the incomes of the poor falling, and with more and more health services getting privatised, the poor and their children are today caught in a vicious cycle of poverty, deprivation, infection and disease.

While examining the overall health status of children, this chapter will focus on the following issues in greater detail:

- Neo-natal mortality
- Rising incidences of malnutrition deaths among children
- Revival of polio cases in India
- HIV/AIDS

The Health Care System

Children's health has never really found a space in the government's efforts at improving health care in India. Usually subsumed in the government's population control and family planning efforts, child health continues to be an extension of reproductive health care programmes. In the 60s when the Family Planning Programme was at its peak, child health primarily implied immunisation. This continued till the mid-70s as sterilisation was the main focus of the National Family Planning Programme. In 1979, when the Family Planning Programme was renamed the 'Family Welfare Programme', a number of initiatives were taken to improve the health and nutritional status of women and children. However, the child continued to be part of efforts directed towards ensuring safe birth and population control. The 80s brought various health schemes for women and children such as vitamin A programme to combat nutritional blindness, programmes to reduce anaemia deficiency and related health problems, food supplementation for pregnant and lactating women and children below 5 years through Integrated Child Development Services (ICDS). The National Health Policy of 1983 set several goals for child survival and

¹ Mishra Rajiv, Rachel Chatterjee, and Sujatha Rao, India Health Report, 2003, New Delhi: Oxford University Press, pg 144.

safe motherhood under the broad framework of mother and child health programmes. Although International Conference on Population and Development (ICPD) in 1994 led to the ongoing Reproductive and Child Health Programme focussing on several child health aspects such as immunisation, essential care for the new-born, vitamin A deficiency and prevention of nutritional blindness, prophylactic schemes against nutritional anaemia, diarrhoea control, ARI prevention and management, prevention of diseases such as malaria and tuberculosis among children, safe delivery, promotion of exclusive breastfeeding, spacing between children etc., improvement in the health status of children and women has not been as expected and activists continue to blame the population control and family planning approach for it.

Infrastructure

In India, health services for children are provided through a network of Sub Centres, Public Health Centres (PHCs) and Community Health Centres (CHCs). In addition, facilities for children are provided through Post-partum Centres, District Hospitals and rural and urban Family Welfare Centres. Given India's burgeoning population, the existing infrastructure is inadequate in many states, even as per 1991 population figures.

Table 1: Health Infrastructure Against Population (1991)

Centres	Required	In Position	Shortfall*
SC	134108	138368	8127
PHC	22349	22936	1666
CHC	5587	3076	2541

* Shortfalls are ignoring excess in many states.

Source: Ministry of Health and Family Welfare, Annual Report 2003-04, Government of India

Poor maintenance and consequent deterioration of building and equipment, staff vacancies as well as poor supply and logistics have been mentioned as reasons for the poor functioning of primary health care institutions. The National Health Policy 2002 acknowledges that India's public health care system is grossly short of defined requirements, its functioning is far from satisfactory, morbidity and mortality due to diseases that are curable continues to be unacceptably high, and resource allocations is generally insufficient.

National Health Policy

A National Health Policy was first formulated in 1983, and since then there have been marked changes in the determinant factors relating to the health sector. Yet several outcomes and goals remain unmet. The second and next National Health Policy (NHP) was formulated in 2002. Although formulated after the ratification of the UN Convention of the Rights of the Child (UNCRC), it is interesting to note that there is no separate section addressing children's health. Also, while the 2002 Health Policy found its basis in the need for adequately investing in health infrastructure, it is biased towards an urban centric specialist based health care system and ignores the pressing need of primary health care services.

National Rural Health Mission

As a step towards fulfilling its commitment in the Common Minimum Programme, the UPA government on January 4, 2004, approved the formation of a National Rural Health Mission (NRHM). The mission is to be implemented in 18 states that have weak public health indicators, and aims at integrating different vertical programmes, while decentralising health care service delivery at the village and improving inter-sectoral action.

The NRHM acknowledges that 75 per cent of health services are being currently provided by the private sector. Curative services favour the non-poor.

The NRHM acknowledges that 75 per cent of health services are being currently provided by the private sector, curative services favour the non-poor, for every Rs.1 spent on the poorest 20 per cent population, Rs.3 is spent on the richest quintile and that only about 10 per cent Indians have some form of health insurance, that too mostly inadequate.² The NRHM aims at strengthening existing PHCs in order to improve outreach and delivery of services, intensify ongoing communicable disease control programmes, add new programmes for control

² National Rural Health Mission, Draft Document 2005-2012, 2005: <http://mohfw.nic.in/nrhm.html>

of non-communicable diseases and strengthen the 30-50 bedded Community Health Centres per lakh population for improved curative care.

While the National Rural Health Mission appears to make promising claims, women's organisations and health workers are concerned that it may be a disguised attempt at population control. It is not clear from the draft document whether the 18 states (The Empowered Action Group States: Bihar, Jharkhand, Uttar Pradesh, Uttaranchal, Madhya Pradesh, Chhattisgarh, Orissa and Rajasthan and the eight North Eastern states, besides Jammu and Kashmir) have been identified for implementation of the mission primarily due to their weak social indices and not just their fertility patterns.³ This apprehension seems to find credence in the response of the state minister of health to a question on population stabilisation policy, wherein she mentioned the Rural Health Mission as one of the initiatives of the Government of India. Clearly the gravity of the situation arising from the connection between the population policy, and rising sex selective abortion is still evading our government.

Rural Health Mission or Population Control Mission?

While answering a question on measures taken towards population stabilisation in the country, Smt Panabaka Lakshmi, the Ministry of Health and Family Welfare, said:

"National Common Minimum Programme aims at promoting population stabilisation programme by focusing on high fertility states through strengthening comprehensive primary health care. Accordingly, it has conceptualised the strategy for the 'National Rural Health Mission' to cover the entire country, with special focus on 17 states, including the high fertility states, for comprehensive integrated primary health care services. Such a proposal is under the consideration of the Government. The Government is already implementing the Reproductive and Child Health Programme for achieving Population Stabilization, by simultaneously addressing the issues of Contraception, Maternal and Child Health Programme. The stress is on sustained behavioral change communication and improved access to quality family planning services, especially in the high fertility states."

Source: Rajya Sabha Unstarred Question no.1673, 17 December, Winter Session 2004

Two-child Norm Encourages Female Foeticide

The gender insensitive Population Policy, which promotes a two-child norm, is also responsible for the growing gender imbalance among the child population and increasing practice of female foeticide. Unfortunate though, but the desire for a son is deep-rooted in Indian society, both rural and urban. In the situation of two-child norm it is always the girl child who is killed in the womb itself. Presently, six states including Haryana, Rajasthan, Madhya Pradesh, Andhra Pradesh and Himachal Pradesh have made the two-child norm mandatory for all panchayat members.

States such as Punjab, Haryana, Himachal Pradesh, Chandigarh and Delhi now have less than 900 girls per 1,000 boys. Leading demographer, Professor Ashish Bose conducted a study on female foeticide in Punjab, Haryana and Himachal Pradesh, which showed that "demographic fundamentalism" or preference for a boy-child is on the rise in the country, resulting in a declining sex ratio. Prof essor Bose says that the two-child policy has got mixed up with female foeticide. Government slogans like 'Beti ya beta, dono ek hain' make little sense

Source: Madhu Gurung, 'The two-child norm only leads to female foeticide', 2004, www.infochangeindia.org

In addition to creating a negative situation for the girl child, the two child norm is also anti-women. It takes away from women the Constitutional Right to participate in the decision making process as elected representatives completely neglecting the fact that women have little choice in the number of children they have. The Mahila Chetana Manch in Bhopal has done a survey of the consequences of the two-child norm in Andhra Pradesh, Haryana, Madhya Pradesh, Orissa and Rajasthan. The survey finds that disqualification affects socio-economically vulnerable sections the most. Women, who can't exercise choice in matters concerning family size, are hurt and there is little impact on fertility behaviour. As with the one-child norm in China, we will probably also end up encouraging female infanticide and foeticide. Outcomes not intended, but inevitable.

Source: Bibek Debroy, 'Unintended results of the two-child norm', The Financial Express, 19 October 2004.

National Nutrition Policy, National Nutrition Mission and Plan of Action

Maternal and foetal under-nutrition results in the incidence of low-birth weight babies, with serious long term consequences to the mental and physical development of the child. The National Nutrition Policy adopted by the Government of India in 1993 under the aegis of the Department of Women and Child Development, advocated a multi-sectoral strategy for eradicating malnutrition and achieving optimum nutrition for all. A National Plan of Action on Nutrition, formulated

³ Rajalakshmi K, 'Birth control in disguise', Frontline, January 29 - February 11, Volume 22 - Issue 03, 2005: The Hindu

and approved by the Inter-ministerial Coordination Committee and printed and released in 1995, serves as a framework for operationalising this multi-sectoral strategy for nutrition promotion. While the States too were supposed to formulate State Plans of Action on Nutrition, these Plans of Action are yet to see the light of day. The Food and Nutrition Board under the Department of Women and Child Development reports that efforts are in progress to facilitate preparation of State Plans of Action on Nutrition. "In order to address the widespread problem of malnutrition particularly among women and children, the Department has set up a National Nutrition Mission under the chairpersonship of the Prime Minister in July 2003 involving a two-tier supervisory structure. In the first phase of the mission a pilot project was launched in 2002 in 51 backward districts in the country where under-nourished adolescent girls, pregnant and lactating women are provided 6 kg of wheat/rice per month per beneficiary free of cost. The basic objective of the mission is to address the problem of malnutrition in a holistic manner and accelerate reduction in various forms of malnutrition especially in women and children such as under-nutrition, anaemia, vitamin A deficiency, iodine deficiency disorders and chronic energy deficiency. The mission would also be responsible for policy direction and effective coordination of nutrition programmes being implemented by the Government".⁴

The budget allocation for the National Nutrition Mission for the year 2004-05 is Rs.0.03 crore. Whether this can really help achieve the objectives of the Mission remains a question worth considering, especially in light of the current situation of malnutrition and under-nutrition on the country.

Privatisation of Health Care

The National Health Policy 2002 proposed privatisation of secondary and tertiary level care, ignoring the fact that 45 per cent of the poorest of the country continue to depend on the public sector hospitals for critical indoor care.⁵ It also proposed strengthening the provision of user fee in public hospitals with the qualification that it will target only those who can pay. The imposition of user fees based on the identification of those 'who can pay' is an exceedingly difficult task. Once the system is based on the premise that health care provided by government is to be paid for by the user, the fear is that the inability to pay may exclude a large part of the vulnerable sections from the health care system. Needless to say there is also an increase in out-of-pocket costs for all those who find themselves unable to access government health care. A World Bank study in 2001 on India found that out of pocket medical costs (estimated to be more than 80 per cent of the total medical expenditure) alone may push 2.2 per cent of the population below the poverty line each year.⁶ When costs are so high and availability is scarce, discriminatory practices set in. The already marginalised find themselves pushed back even further.

The problems of gender disparity manifest in various forms – declining female to male population ratio, social stereotyping, violence at the domestic and social levels and, continuing open discrimination against the girl child, adolescent girls and women in access to health care and nutrition.

The National Health Surveys provide clear evidence of the declining use of public health services from 60 per cent for hospitalisations in 1986-87 to 45 per cent in 1995-96 and for outpatient care from 26 per cent to 19 per

Indians spend most on medicines, healthcare
 India. The out-of-pocket expenses of an average Indian on medicines and health care is 82.2%.

for revamp of health system
 New Delhi: The government is for the first time taking serious note of the collapse...

'Can't spend so much to save a daughter'
 Hospital Stats Show Girls Denied Treatment

FEMME FATALITY?
 There is a common perception that discrimination against the girl child is limited to uneducated or rural populations. A look at some of the statistics in some prominent hospitals in the capital reveals the dismal ground reality for the female baby.

Liver Failure Treatment at Apollo Hospital
 Of 142 babies assessed for liver transplant, 44 were girls. Families of 40 of these girls refused to go ahead with treatment.

Kidney transplant at AIIMS
 20% girls, 80% boys

Babies operated at Escorts Heart Inst. in 2003
 34% girls, 66% boys

Male-female ratio of organ donors at AIIMS: 40:100
Male-female ratio of recipients at AIIMS: 560:100

4 Government of India, Report on the United Nations Questionnaire on Implementation of the Beijing Platform for Action, January 2005.
 5 Sagar Alpana, Imarana Qadeer, 'Health', Alternative Economic Survey 2000-2001- Second Generation Reforms: Delusion of Development, 2001, Delhi: Rainbow Publishers Ltd.
 6 Misra Rajiv, 'Pro-Poor Health Reforms-Why, What and How', Paper presented in Second Consultation on Macroeconomics and Health- Increasing Investments in Health Outcomes for the Poor, 28-30 October 2003, WHO Geneva.

cent during the same period.⁷ The situation seems to have further deteriorated over the years. As Ravi Duggal of CEHAT points out in one of his recent articles, 'In India, only 15 per cent of the Rs 1,500 billion health care sector is publicly financed. Investment and expenditure in the public health sector is shrinking. As a result, the public health system is on the brink of collapse, and there's been a 30 per cent decline in the use of public healthcare facilities'.⁸ The allocations towards programmes and schemes from the Ministry of Health and Family Welfare have been less than 2 per cent (1.77 per cent, 1.74 per cent and 1.85 per cent of the total budget allocations of the Union Budget in the years 2004-05, 2003-04 and 2002-03 respectively⁹). Not even one-third of the already inadequate health expenditure goes towards child health. The allocation for child health in 2005-06 is only 25.35 per cent of the total Allocation of the Union Ministry of Health and Family Welfare.¹⁰

Not even one-third of the already inadequate health expenditure goes towards child health.

The impact of persistent neglect of the health sector in India is evident in the poor infrastructure and health indicators such as widespread under-nutrition, and high mortality rates and disease burden borne by children.

Table 2: Allocation of Funds for Health and Family Welfare
(Rs in crore)

Allocation	Ninth Five Year Plan (1997-2002)	Tenth Five Year Plan (2002-2007)
Health	5,118.00	9,253.00
Family Welfare	15,120.00	27,125.00

Source: Lok Sabha Unstarred Question No. 1413, 27 November, Winter Session 2002

Deregulation of pricing goes hand in hand with privatisation of services. As a result of systematic deregulation, the price of drugs is going beyond the reach of the poor. At the time of introduction of the Drug Price Control Order, in 1970, prices of all drugs were kept under strict control. Now the Pharmaceutical Policy of 2002 has reduced the number of drugs that fall under this Policy to 35 drugs. Although today India is the fourth largest drug producer (by volume) in the world, exporting 45 per cent of its total production, less than 50 per cent people within the country have access to essential drugs. In fact, as per international surveys undertaken by the World Health Organisation to assess people's access to essential drugs, India fell in the last (0-49 per cent) category. Bhutan, with a lower human development ranking, has succeeded in providing essential medicines to 80-94 per cent of its population while Pakistan, Myanmar and Bangladesh were in the 50-79 per cent category.¹¹

WONDER DRUGS, KILLER PRICES

Come January, manufacturers can't produce cheaper versions of most chronic illness drugs. The tidal wave of high prices will affect most families in India. Including you

AMAN KHANNA
New Delhi

KAMRISHU LAL is dying. He has been suffering a mania of cancer for the last eight years. The symptoms kept in showing. He would lose weight, he could barely keep up with his daily dialysis. Then, his spleen started bloating. When Lal approached a doctor, he was told it was chronic myeloid leukaemia or CML.

He stopped going to his kerosene shop in Mehrauli in south Delhi. His son, Sumit, was forced to take over some of the family, along with the responsibility of a partially deaf sister. He opened a general store in their small house.

Monsieur Lal spent his days travelling between home and hospital. He was surviving on a make-do drug that left his nails and tongue black. He still felt lethargic, still had occasional pains. Then, three months ago, he was advised a wonder drug called Gleevec. It has made him feel much better; he can spend more time remaining the shop.

But now all of a sudden, the son says he can't support the father anymore — the wonder drug is too expensive: the dosage costs Rs 5,000 per month. "I will run dry."

Illnesses like cancer, heart disease, diabetes and respiratory dysfunction were developed after 1995. Many of the commonplace cures that regulate cholesterol in the blood have been recent discoveries. Almost all heart patients walking up to a cardiologist are administered this drug.

Likewise, there are blood thinners, new medical drugs, biotech-

Prices for a whole range of wonder drugs for treating fatal or chronic illnesses like cancer, heart disease, diabetes and respiratory dysfunction will skyrocket

Although today India is the fourth largest drug producer (by volume) in the world, exporting 45 per cent of its total production, less than 50 per cent people within the country have access to essential drugs.

Lack of Information

Mapping of health status requires relevant data on health and demographic indicators. While data on mortality and other demographic characteristics are by and large free of conceptual ambiguities and are relatively easy to access and quantify, data on other indicators related to morbidity, burden of diseases, as well as nutritional status are inadequate in coverage and comparability over time. Even when data is available it is not easy to quantify them. "One has to reckon with the issue of nutrition adaptation and inter-individual variability, which brings out the complexities involved in measurement of under-nutrition".¹² According to the Planning Commission (2002), the primary source of data on morbidity has to be medical

7 Ravi Duggal, 'Tracing Privatisation of Healthcare in India', 2004: www.expresshealthcaremgmt.com

8 Ravi Duggal, 'The out-of-pocket burden of healthcare', June 2005: www.infochangeindia.org

9 Government of India, Expenditure Budget, 2002-2005.

10 HAQ: Centre for Child Rights, What Does the Union Budget 2005-06 Have for Children? 2005, New Delhi.

11 United Nation's Development Programme, Human Development Report 2003, New Delhi: Oxford University Press. (Based on the statistical estimates received from WHO's country and regional offices and through the World Drug Situation Survey carried out in 1998-1999, the Department of Essential Drugs and Medicines Policy of the WHO divided countries into four categories on the basis of people's access to essential drugs. Countries like USA, UK, Australia and even Sri Lanka have shown best access (95-100%); China, Indonesia, etc. fell under 80-94% category).

12 Planning Commission of India, 'Health attainments and Demographic concerns', National Human Development Report 2001, March 2002, New Delhi: Government of India, pp 66.

records maintained by medical institutions and public health agencies, which is practically non-existent in India. The limited data that is available relates to small urban pockets or to some specific health initiatives. Most of the data collection on morbidity relies on recall of sample households, which are not the most reliable source of data in poor, backward, rural and illiterate households. The absence of reliable morbidity data affects policy planning, programme designing and allocation of resources for the health sector.

In the absence of adequate data, it is difficult to give a comprehensive picture of the status of health of the country's children. But an analysis of the existing information does enable us to see where the gaps lie. It also indicates that there is an urgent need to undertake a comprehensive study on the health status of children.

Table 3: Government of India's Goals and Targets

GOAL SET BY	TARGET/ GOAL
Constitution of India, Article 47	<ul style="list-style-type: none"> Directive Principles of State Policy lay down that it is the duty of the State to raise the level of nutrition and the standard of living and to improve public health
National Health Policy, 1983	<ul style="list-style-type: none"> 'Health for All by the Year 2000 AD,' through the universal provision of comprehensive primary health care services
National Plan of Action for Children, 1992	<ul style="list-style-type: none"> Reduction of infant mortality rate to less than 60 per 1,000 live births and reduction of child mortality rate to less than 10 by 2000 AD Eradication of poliomyelitis by the year 2000 and elimination of neo-natal tetanus by 1995 Reduction by 95 per cent in measles deaths and reduction by 90 per cent of measles cases compared to pre-immunisation levels by 1995 Achievement of 100 per cent immunisation coverage for infants and against tetanus for women of child-bearing age Reduction by 50 per cent in deaths due to diarrhoea in children under the age of 5 years Mortality rates due to ARI among children under 5 by 40 per cent by 2000 AD from the present level
National Health Policy, 2002	<ul style="list-style-type: none"> To achieve an acceptable standard of good health among the population by increasing access to decentralised public health system and by establishing or upgrading the infrastructure in the existing institutions Reduce IMR to 30/1000 and MMR to 100/lakh by 2010 Eradicate polio and yaws and eliminate leprosy by 2005 Improve nutrition and reduce proportion of LBW babies from 30 per cent to 10 per cent by 2010 Reduce mortality by 50 per cent on account of TB, malaria and other vector and water borne diseases by 2010 Reduce prevalence of blindness to 0.5 per cent by 2010 Achieve zero level growth of HIV/AIDS by 2007
10th Five Year Plan 2002-07	<ul style="list-style-type: none"> Reduction of infant mortality rates to 45 per thousand live births by 2007 and to 28 by 2012
National Nutrition Mission 2003	<ul style="list-style-type: none"> to address the problem of malnutrition in a holistic manner to accelerate reduction in various forms of malnutrition to break the inter-generational cycle of malnutrition
International Conference on Population and Development (ICPD), Cairo 1994	<ul style="list-style-type: none"> Efforts should be made by all the states to reduce the infant mortality rate by one-third by the year 2000
Millennium Development Goals (MDG)	<ul style="list-style-type: none"> Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate (Goal 4) Reduce by three-quarters, between 1990 and 2015, the maternal mortality rate Combat HIV/AIDS, malaria and other diseases
Common Minimum Programme	<ul style="list-style-type: none"> To raise public spending on health to at least 2-3 per cent of GDP over the next five years of the UPA government 2004 and focus on primary health care...special attention will be paid to the poorer sections in the matter of health care.

Neo-natal Mortality

Each year, 26 million children are born in India. They constitute 20 per cent of the world's infants. Of them 1.2 million die within four weeks of being born. This figure comprises a huge 30 per cent of the 3.9 million global neo-natal deaths. According to the report State of India's Newborns,¹³ India has the highest number of births as well as neo-natal deaths of any country of the world.

Although India's neo-natal mortality rate (NMR) witnessed a significant decline in the 1980s (from 69 per 1,000 live births in 1980 to 53 per 1,000 live births in 1990), it has remained static since then (only dropping four points from 48 to 44 per 1,000 live births between 1995 and 2000). The rate of neo-natal mortality varies widely among the different states, ranging from 10 per 1,000 live births in Kerala to around 60 in Orissa and Madhya Pradesh. The undivided states of Madhya Pradesh and Bihar together contributed over half of all new-born deaths in India in 2000, or roughly 15 per cent of the entire global burden.¹⁴

A strong gender bias in care seeking against female newborns is conspicuous at all levels of the health system. For example, for every two sick male newborns admitted to a facility, only one female infant is admitted.

The most complete study on the causes of neo-natal death was conducted by the Society for Education, Action and Research in Community Health (SEARCH) in Gadchiroli, Maharashtra. The specially trained village health workers meticulously recorded history and examination findings at birth and on subsequent visits. Neo-Natal Sepsis (NNS), including septicemia and pneumonia, emerged as the most common cause, figuring in 52 per cent of the deaths, followed by birth asphyxia (20 per cent), and prematurity (15 per cent).¹⁵

Low birth Weight (LBW) is the single most important determinant of neo-natal mortality and morbidities. Nearly three-fourths of neo-natal deaths and half of infant deaths occur among LBW babies. According to UNICEF, there is 30 per cent incidence of LBW neonates in India.¹⁶ Unfortunately, there is still no nationally representative study or surveillance system incorporating weight at birth.

Child Mortality and Morbidity

According to experts, more than six million children under the age of five die all across the world each year due to preventable diseases like AIDS, diarrhoea, malaria, measles and pneumonia which can be prevented and treated by vaccines and antibiotics. Overall, 10 million children die every year before they are five years old. Most deaths occur in just six countries – China, Democratic Republic of Congo, Ethiopia, India, Nigeria and Pakistan.¹⁷



13 National Neo-natology Forum, Ministry of Health and Family Welfare Govt. of India, World Health Organisation (South East Asia Region), UNICEF India, the World Bank, Saving Newborn Lives, Save the Children – U.S. State of India's Newborns 2004, New Delhi/Washington, DC.

14 ibid.

15 ibid.

16 UNICEF, The State of the World's Children 2005, New York: UNICEF NY, pg 111 (Data refers to most recent year, between 1998-2003, available during the survey).

17 www.bbcnews.com, 26 June 2003.

What Ails our Children?

Table 4: Major Indicators of Health

Indicator	1990	2000	2002-2003
Infant Mortality Rate Probability of dying between birth and exactly one year of age, per 1000 live births.	80	70	63*
Under Five Mortality Rate Probability of dying between birth and exactly five years of age, per 1000 live births.	109	94.9	87*
Maternal Mortality Ratio Annual number of deaths of women from pregnancy related causes, when pregnant or within 42 days of termination of pregnancy, per 100,000 live births.	437	540	540*
Use of Safe Drinking Water Proportion of population who use any of the following types of water supply for drinking: (1) piped water; (2) public tap; (3) borehole/pump; (4) well (protected/covered); (5) protected spring	68.2%	77.9%	86%**
Use of Sanitary Means of Excreta Disposal Proportion of population who have, within their dwelling or compound: (1) toilet connected to sewage system; (2) any other flush toilet (private or public); (3) improved pit latrine (4) traditional pit latrine.	30%	36%	...
Ante-natal Care Proportion of women aged 15-49 attended at least once during pregnancy by skilled health personnel.	62.3%	65.1%	60%***
Child Birth Care Proportion of births attended by skilled health personnel.	34.2%	41.7%	43%***
Birth Weight Below 2.5 Kg Proportion of live births that weigh below 2,500 grams.	30.0%	22.7%	30%***
Children Receiving Vitamin A Supplements Proportion of children 6-59 months of age who have received a high dose of vitamin A supplement in the last 6 months.	Data not collected	32%	27% **
Exclusive Breastfeeding Rate Proportion of infants less than 4 months (120 days) of age who are exclusively breastfed.	51.0%	55.2%	37%
Polio Cases Annual number of cases of Polio.	10,408	265	225•
Neo-natal Tetanus Cases Annual number of cases of neo-natal tetanus.	9,357	2,197	...
Measles Cases Annual number of cases of measles in children under five years of age.	89,612	25,259	...
DPT Immunisation Coverage Proportion of one-year-old children immunised against diphtheria, pertussis and tetanus (DPT).	52%	55.1%	96.6 •
Measles Immunisation Coverage Proportion of one-year-old children immunised against measles.	42%	50.7%	91.8 •
Tuberculosis Immunisation Coverage Proportion of one-year-old children immunised against tuberculosis.	62.2%	67.5%	81%*

Children Protected Against Neo-natal Tetanus Proportion of one-year-old children protected against neo-natal tetanus through immunisation of their mother.	61.9%	67.0%	82.9 % •
ORT Use Proportion of children 0-59 months of age who had diarrhoea in the last two weeks who were treated with oral re-hydration salts or an appropriate household solution (ORT)	38.8%	47.7%	22% ***
Home Management Of Diarrhoea The proportion of children 0-59 months of age who had diarrhoea in the last two weeks and received increased fluids and continued feeding during the episode.	Data not collected	35.5%	...
Care Seeking For Acute Respirator Infections Proportion of children 0-59 months of age, who had ARI in the last two weeks and were taken to an appropriate health provider.	66%	64.0%	64% ***
Dracunculiasis Cases Annual number of cases of dracunculiasis (guinea worm) in the total population.	47.98%	0%	...
Underweight Prevalence Proportion of under-fives who fall below minus 2 and below minus 3 standard deviations from median weight for age of NCHS/WHO reference population.	53.4%	47.0%	47% ***
Stunting Prevalence Proportion of under-fives who fall below minus 2 and below minus 3 standard deviations from median height for age of NCHS/WHO reference population.	52.0%	45.5%	46% ***
Wasting Prevalence Proportion of under-fives who fall below minus 2 and below minus 3 standard deviations from median weight for height of NCHS/WHO reference population.	17.5%	15.5%	16%***
Total Child Disability Rate Proportion of children aged less than 15 years with some reported physical or mental disability	5%	Information will be collected in the forthcoming Census	1.67% (Percentage of disabled population in the age group 0-19 years to total population in the age group 0-19 years)
Under-Five Mortality Rate; Female/Male Probability of dying between birth and exactly five years of age, per 1000 live births – disaggregated by gender.	122.4	105.2	87*
Iodised salt consumption Proportion of households consuming adequately iodised salt.	Data not collected	49.3%	50%
Goitre in school children Proportion of children aged 6-11 years with any size of goitre (palpable and visible combined).	28.4%	21.1%	...
Timely complementary feeding rate Proportion of infants 6-9 months (180 to 299 days) of age who are receiving breast milk & complementary food.	31.4%	33.5%	
Polio immunisation coverage Proportion of one-year-old children immunised against poliomyelitis.	53%	62.8%	97.0 • •

Note: *the figure refers to the year 2003 ** the figure refers to the year 2002 *** the figure refers to the period 1995-2003

Source: The State of the World's Children 2005, UNICEF 2004.

• Census 2001.

•• Ministry of Health & Family Welfare, Annual Report 2003-04, New Delhi: Government of India Press.

Tuberculosis (TB)

The scourge of tuberculosis (TB) continues to be an important cause of mortality and morbidity in India. It is estimated that every year about 1.8 million new cases occur in the country.¹⁸ A nationwide survey, conducted by National Tuberculosis Institute, Bangalore and the Tuberculosis Research Centre, Chennai from 2000 to 2003¹⁹ has found that 1-2 per cent of children in the 1-9 age group are at risk of developing tuberculosis in the country annually. It has also found that children in the North zone are at a higher risk of contracting the disease.

The study was conducted in rural and urban clusters in Haryana, Delhi, Himachal Pradesh, Uttaranchal, Arunachal Pradesh, Sikkim, Nagaland, Manipur, Mizoram, Tripura, Meghalaya and Kerala. According to the study, children in the North are at a higher risk than in the rest of the country, with infection prevalence at 10.3 per cent and about 1.9 per cent children at a risk of contracting the disease annually. Kerala has the lowest prevalence of infection at 6.1 to 5.9 per cent and about one per cent children at risk. About 1.8 per cent children in the West zone and 1.3 per cent children in the East zone are at a risk annually.

The study reveals that the continued prevalence is due to non-immunisation. With the BCG scar as the parameter, researchers found that only 45 per cent of children in North zone were vaccinated. South zone was again leading with 64 per cent children being vaccinated. The proportion of children with BCG scar in the West and East zones was 52 per cent each.

Malaria

Malaria is a major public health problem in India. According to the Human Development Report 2003 (UNDP), in India the number of child deaths in the age group 0-4 years due to malaria is 6 per 100, 000.

The major endemic areas of malaria in the country are in the eight North-Eastern States, Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Rajasthan and Orissa besides a few local areas in other parts of the country. About 80 per cent of the population of India lives in low endemic zones with malaria prevalence of less than 2 cases per thousand population per year.²⁰

A CHILD DIES EVERY HOUR
UP encephalitis epidemic rages unchecked

History of killer virus

LONG STORY
JE has been claiming lives in Gorakhpur region for 28 years

STATEWIDE
UP saw 1,072 JE deaths in 1978, 1,413 in 1988, 195 in 1998

WHOSE FAULT? Experts blame govt — JE preventable through vaccine

ONE CHILD dies every hour of Japanese encephalitis at the BRD Medical College in Gorakhpur. Since July 29, 372 deaths have been confirmed due to the viral infection in Gorakhpur alone. In all, there have been 1,200 cases of JE. (Of the children who survive the disease, most are left crippled for life.) Experts predict the deaths will continue through September. JE is caused by a virus that circulates in pigs and wading birds, and gets transferred to humans by mosquitoes.

"The death toll will come under 10 in October and we'll stop counting once it falls under five a week, which happens in November once the mosquito season is over," says Dr K.P. Kushwaha, professor in the department of paediatrics at BRD Medical College, where five of the 13 wards are full of JE patients.

Kushwaha should know, he has been tracking the disease in the region since it first broke out in 1978. The killer viral fever — which is completely preventable through an indigenous-made vaccine — has been killing children (mostly) every year in the Gorakhpur region for the past 28 years.

Even 372 deaths in roughly five weeks has not prompted the Gorakhpur administration to declare an epidemic. All it has done this year is count the number of pigs in the district — 1,208, for anyone who cares to know — and do some sporadic spraying to kill mosquitoes, which is clearly not enough.

"The administration discovered two days ago

JE cases were reported in Gorakhpur city. It's not hard to see why: just half a kilometre away from the medical college, broilers (chickens) and Sikkahs are among the half dozen people who keep pigs in the water-logged Mughlaa area. It's there about 10,000 — and they don't care if their neighbours' children are at risk.

"It's a vicious cycle of vaccination and prevention that we've broken, and we've lost sight

all about it since it's over," says Dr Radhameshwar Das Aggarwal, another paediatrician (and politician). The Gorakhpur MLA now, he lives in the hope of getting mass vaccination done in that region in preparation for next year. "Andhra had an outbreak in 2002 but mass vaccination made the area disease-free," says Aggarwal. "Meanwhile, the children need vaccines far more desperately than UP's state and parents. Is anybody listening?"

More on page

Death of Children due to Mysterious Disease

Fever and deaths due to encephalitis in the districts of Saharanpur and Baghat have been reported to the Ministry of Health & Family Welfare, Government of India by the health authorities of Government of Uttar Pradesh (UP). In Saharanpur districts of UP, 159 cases of encephalitis amongst children including 114 deaths were reported during 25th September to 14th December 2004. In district Baghat (block Khekra), 13 deaths were reported from 28th September to 23rd October 2004.

Source: Rajya Sabha Unstarred Question No. 1669, 17 December, Winter Session 2004

18 Central TB Division, Directorate General of Health Services, Ministry of Health and Family Welfare, TB India 2005, RNTCP (Revised National Tuberculosis Control Programme): Status Report.

19 Chadha V.K., S.P. Agarwal, P. Kumar, L.S. Chauhan, C. Kollapan, P.S. Jaganath, P.S. Vaidyanathan, P.G. Gopi, K.P. Unnikrishnan, I.S.J. Savanur, Annual risk of tuberculous infection in four defined zones of India: a comparative picture, *Int J Tuberc Lung Dis.* May, 2005, 9(5): 569-75; and, Toufiq Rashid, Kids in North India more susceptible to TB: Study, *The Indian Express*, 27 February 2004, New Delhi.

20 Ministry of Health and Family Welfare, Annual Report 2003-04, New Delhi: Government of India Press, pg 23.

Table 5: Statement Showing Number of Malaria Cases And Deaths From 1999 to 2002

State/UTs	Malaria cases in 1999	Deaths due to malaria in 1999	Malaria cases in 2000	Deaths due to malaria in 2000	Malaria cases in 2001	Deaths due to malaria in 2001	Malaria cases in 2002	Deaths due to malaria 2002
Andhra Pradesh	129020	11	80557	6	57735	1	35498	0
Arunachal Pradesh	58243	1	46165	0	56030	14	38795	0
Assam	131048	111	84915	43	95142	122	72009	71
Bihar	131898	13	9509	2	4108	0	2032	2
Chhatisgarh			359155	63	290666	32	235434	3
Goa	15380	17	9164	11	12331	12	16818	15
Gujarat	64130	7	36712	2	81347	19	80983	9
Haryana	2604	0	1050	0	1202	0	934	0
Himachal Pradesh	700	0	491	0	349	0	176	0
Jammu & Kashmir	3574	0	3045	0	912	0	477	0
Jharkhand			133453	16	130784	21	71621	36
Karnataka	97274	11	109118	14	197625	21	129306	33
Kerala	5141	7	2940	9	2289	9	2985	8
Madhya Pradesh	527510	50	194689	93	183118	81	105651	24
Maharashtra	137712	46	81406	40	56043	50	45613	42
Manipur	2662	8	1064	0	943	5	1268	9
Meghalaya	14798	5	13699	11	20630	17	17005	36
Mizoram	14437	73	9059	33	10929	43	3703	16
Nagaland	4396	12	3443	0	4318	1	3504	0
Orissa	483095	399	509497	467	454541	305	428128	362
Punjab	1113	0	483	1	604	0	263	0
Rajasthan	53154	0	35973	10	129233	36	68081	6
Sikkim	14	0	16	0	31	0	53	2
Tamil Nadu	56366	2	43053	1	31551	0	27337	0
Tripura	14408	11	12245	6	18502	9	13322	5
Uttaranchal			2008	0	1196	0	1675	0
Uttar Pradesh	99632	0	96971	0	94524	15	81018	0
West Bengal	227480	144	145322	103	145053	191	181272	139
A&N Islands	937	2	1002	1	925	1	865	0
Chandigarh	456	0	256	0	298	0	157	0
D&N Haveli	3303	0	2415	0	848	0	493	0
D & Diu	352	0	132	0	87	0	173	0
Delhi	3996	0	2631	0	1484	0	694	0
Lakshwadweep	1	0	5	0	0	0	8	0
Pondicherry	149	0	137	0	106	0	103	0
Total	2284713	1048	2031790	932	2085484	1005	1667454	818

Source: Lok Sabha Unstarred Question No.3151, 12 March, Budget Session 2003

Juvenile Diabetes

Diabetes, commonly known to attack people over the age of 25, is now being detected in very small children. According to hospital statistics of 2002, Delhi alone accounts for about 4,000 to 5,000 diabetic children though it is estimated that there might be an equal number of undiagnosed cases.²¹ India has the largest number of diabetics in the world – close to 40 million people. That number is expected to double in the next 25 years.²² There are two main types of diabetes – Type 1 or Insulin Dependent Diabetes and Type 2 or Non-Insulin Dependent Diabetes. In Type 1 or Insulin Dependent Diabetes, also called ‘juvenile diabetes’, the body stops producing Insulin. This type accounts for 5-10 per cent of all diagnosed

21 Deccan Herald, Bangalore, ‘Move for Health, now!’, April 6, 2002 (The article can be viewed at the following url: <http://w3.whosea.org/en/section260/section506/section518-2333.htm>)

22 CNBC, July 7 2005 (The article can be viewed at the following url: http://www.goodlifeshow.com/goodlifeshow/insidepages/inside_template.asp?autono=46&category=Expert+Talk).



diabetes cases. Type 1 diabetes is the one, which is largely found in children.²³ The chances of a child getting juvenile diabetes is about six per cent if the father was diabetic and two per cent if his/her mother was one. Children as young as three years of age have been diagnosed to be suffering from juvenile diabetes, even when the parents are not suffering from the disease.

Micronutrient Deficiency

The body needs micronutrients for growth. The most important being Iron, Iodine, vitamin A besides Folic acid, vitamin B, Ascorbic Acid, and minerals like Zinc, Manganese and Calcium, small amounts of which are also needed. Micronutrient malnutrition (silent hunger) is most devastating in pre-school children and pregnant women. Deficiency of micronutrients results in learning disability, impairs work capacity, and causes illness due to vulnerability to infection and even death.

Vitamin A Deficiency

“India has the largest percentage as well as the largest absolute number of vitamin A deficient children. So far, the country has struggled to reach even a third of its under-fives with supplementary vitamin A (in syrup form).”²⁴ India has 57 per cent of the children under 6 with sub-clinical vitamin A deficiency.²⁵ The objectives of the current vitamin A programme of the Health Ministry is to decrease prevalence of vitamin A deficiency from the present 0.7 per cent to 0.3 per cent.²⁶

Vitamin A deficiency often leads to blindness. 6 to 7 per cent of children aged 10-14 years are reported to have problems with their eyesight, which affects their learning in school.²⁷

It is equally important to know that even before blindness occurs, a child with vitamin A deficiency faces a 25 per cent greater risk of dying from a range of childhood ailments such as measles, malaria or diarrhoea.²⁸ A high-level committee, constituted under the chairmanship of Dr. N K Ganguly, Director General of Indian Council of Medical Research, concludes that sure access to required foods, correct breast feeding practices, control of infectious diseases are the ultimate solution to the prevention and control of nutritional and vitamin A deficiencies.²⁹

A number of strategies have been developed time and again by the Government of India, WHO, UNICEF and other development partners to address various child health issues, including vitamin A deficiency. However, lack of a visionary approach and far-sightedness often render these efforts worthless, for example UNICEF’s vitamin A campaign in Assam in 2001 caused the death of 30 children and sent over 1,000 to hospital with vitamin A toxicity. This tragic incidence has triggered the long-standing controversy on whether such mass campaigns to combat malnutrition-related deficiencies are still required in India or not. It further throws light on the ongoing debate for food security instead of vitamin supplementation. Scientists in India argue that vitamin A deficiency in children is no longer a concern, except in some geographical ‘pockets’ of the country. But according to UNICEF, such campaigns are necessary as they help reduce child mortality significantly in India.³⁰ The government envisages that vitamin A supplementation would continue along with other routine immunisation until children are able to derive optimal nutrition through natural foods.³¹

Table 6: Children (10-14 years) Detected with Refractive Errors

Year	Teachers trained	School children screened	Children detected with refractive errors	Poor children provided free glasses
2002-03	35267	84,38,261	4,56,791	77,745
2003-04	84922	1,83,41,353	5,11,285	1,81,979
2004-05*	14531	18,72,582	51,957	13,315

*Provisional up to 31 October 2004

Source: Annual Report 2004-05, Ministry of Health and Family Welfare, Government of India.

23 *ibid.*

24 Adamson Peter; Vitamin & Mineral Deficiency, A Global Progress Report 2004: UNICEF.

25 *ibid.*

26 Dr Sangeeta Saxena, Assistant Commissioner, Child Health, Ministry of Health and Family Welfare, Report presented in the meeting of the National Coordination Group on CRC, 22 June 2005, New Delhi.

27 Ministry of Health and Family Welfare, Annual Report 2003-04, New Delhi: Government of India Press, pg 36.

28 UNICEF 2001 (The article can be viewed at the following url: http://www.childinfo.org/eddb/vita_a/).

29 Ministry of Health and Family Welfare, Annual Report 2003-04, New Delhi: Government of India Press, pg 164.

30 Desai Sena; ‘Food security, not vitamin supplements, is vital for public health’, 2002, www.indiasocial.org

31 *ibid.*

Nutritional Anaemia among Children

Iron deficiency, anaemia, is widely prevalent among young children. Quoting the National Health and Family Survey-II (1998-99) the ministry says that 74.3 per cent of children under 3 years were anaemic.³² While 75.3 per cent of the rural children were anaemic, it was marginally lower at 70.8 per cent among urban children. The prevalence ranges from 43 per cent in Kerala to 85.7 per cent in Arunachal Pradesh.³³ A study conducted by the All India Institute of Medical Sciences (AIIMS) found that as many as 66.4 per cent children in the capital city of Delhi are anaemic.³⁴ Since the children surveyed belonged to municipal schools that fall under the government's Mid-day Meal programme, which is supposed to meet their nutritional requirement, it raises questions about the efficacy of Mid-day Meal schemes in addressing malnutrition.

According to the National Health and Family Survey-II, 74.3 per cent of children under 3 years were anaemic. The government however claims only 5.4 per cent children in this age group suffer from anaemia.

However, what is even more disturbing is that, in an answer to a question raised in the Parliament, the Government replied that a total of 5.4 per cent of children under the age of 3 years suffer from severe anaemia of which 5.9 per cent are male and 4.8 per cent female.³⁵ It is this kind of under-reporting that derails programme implementation.

Malnutrition

Child malnutrition has long been recognised as a serious problem in India. One in every three malnourished children in the world lives in India.³⁶ Malnutrition is estimated to be a major contributory factor responsible for over 50 per cent of child mortality.³⁷

There has always been a scarcity on national-level data on levels and causes of malnutrition. Recognising this gap, India's 1992-93 National Family Health Survey (NFHS) collected anthropometric data on the height and weight of children below four years of age. The NFHS, based on a large nationally representative sample, offers a unique opportunity to study the levels and determinants of child malnutrition in the country. The results of the study indicate high levels of both chronic and acute malnutrition among Indian children. Fifty-two per cent of all children below age four are stunted (as measured by height-for-age), 54 per cent are underweight (as measured by weight-for-age), and 17 per cent are wasted (as

Table 7: Malnutrition among India's Children

Indicators	Year	Level
Percentage of infants with low birth weight (less than 2.5 kg)	1998-2003	30
Percentage of under fives suffering from a) underweight b) wasting c) stunting	1995-2003	a) 47 (moderate & severe) 18 (severe) b) 16 (moderate & severe) c) 46 (moderate & severe)
Under -5 mortality rate	2003	87
IMR (under 1)	2003	63

Source: UNICEF, The State of The World's Children 2005: Childhood Under Threat, 2004.

measured by weight-for-height). The extent of severe malnutrition is also substantial. There has been a minimal change in the status of malnutrition among children in India as compared to then, when the NFHS-I was undertaken (see table 7). Malnutrition during childhood is most likely to affect the growth of the child and increase the risk of morbidity and mortality in the later years of life also. It is well established that 80 per cent of a child's mental and physical growth

32 Ministry of Health and Family Welfare, Annual Report 2003-04, New Delhi: Government of India, pg 164.

33 Dr Sangeeta Saxena, Assistant Commissioner, Child Health, Ministry of Health and Family Welfare. Report presented in the meeting of the National Coordination Group on CRC on 22 June 2005.

34 Hindustan Times 19 July 2003.

35 Lok Sabha Starred Question No. 105, 8 December, Winter Session, 2004.

36 <http://www.unicef.org/india/nutrition.html>

37 Mishra Rajiv, Rachel Chatterjee, and Sujatha Rao, India Health Report, 2003, New Delhi: Oxford University Press, pg 78.

takes place in the first two years after birth. During this time, the child requires high nutrition and ample care. In a malnourished child, these are absent, and hence the child's overall development is hampered. The child's resistance capacity is minimal, paving the way for a number of ailments and diseases like fever, vomiting, measles, diarrhoea, etc. Under normal circumstances these diseases are not very dangerous and easily curable. But in a malnourished child, they often become a death trap.³⁸ Inadequate or unbalanced diets and chronic illness are associated with poor nutrition among children (NFHS-2, 1998-99). Dietary intake is critical, but not the sole determinant of the nutritional status of children.

Some of the other major factors responsible for under-nutrition are:

- Low birth weight,
- Poor infant feeding practices,
- Infections due to poor sanitation,
- Lack of safe drinking water and,
- Poor access to health care.

The five-year plans have always identified nutrition as one of the major issues to be addressed and strategised to reduce the high incidence of child mortality, morbidity and malnutrition in the country. According to the Government of India, "given the high prevalence rates of malnutrition in children, emphasis is being accorded to promotion of exclusive breast feeding up to the age of six months and appropriate practices related to introduction of complementary feeding (weaning)."³⁹

Clearly, high malnutrition figures among children and death due to starvation and malnutrition is causing alarm in national and international fora, including while seeking judicial interventions. The Supreme Court of India has, through several judgements,⁴⁰ taken a revolutionary step in upholding right to food as integral part of the right to life guaranteed in Article 21 of the Constitution of India. In a recent landmark case of People's Union for Civil Liberties, PUCL vs. Union of India and others, Writ Petition (Civil) No. 196 of 2001, while the final judgement is still pending, through its various interim

orders, the Supreme Court has once again clearly acknowledged the close nexus between the right to life and the right to food.

On the malnutrition deaths in 15 tribal districts of Maharashtra in 2004, the state government clarified, – "the causes of death of children in these 15 districts in the months of April and May 2004 have been analysed. Reports indicate that though 11.41 per cent of the deaths had been due to premature births and 16.15 per cent due to low birth weight, which can be correlated to under-nutrition of the mothers, there are many other causes like pneumonia, birth asphyxia, convulsions etc., which are not related to malnutrition at all."⁴¹

Defending the state government, Director General of Maharashtra State Government Health Services, Dr Subhas Salunkhe said, "malnutrition was one factor in these deaths,

but not the only cause. There are a variety of other reasons, such as communicable diseases, low birth weight and premature delivery". But of course, these worthy people often forget many of the other key reasons such as lack of proper health care facilities; faulty running of PDS system, lack of accessibility to and implementation of different government schemes



38 Rasika Dhavse, 'Custodial malnutrition in M.P.', 2004, <http://www.indiatogether.org/2004/nov/pov-mpmalnutr.htm>

39 Ministry of Health and Family Welfare, Annual Report 2003-04, New Delhi: Government of India Press, pg 163.

40 Chameli Singh vs State of UP 1996 (2) SCC 549, Paschim Banga Khet Mazdoor Samity and Ors., vs. State of West Bengal., 1996(4) SCC 37, Francis Coralie Mullin.

41 Rajya Sabha, Calling Attention Motion, Budget Session, 9 July 2004.

meant to prevent such situations. Owing to the situation in Maharashtra, the Bombay High Court took suo moto notice of the deaths reported in the national daily, *The Times of India* and passed strictures on the State Government for its neglect of Adivasis. The Court directed the State to double the budget for them and to implement all the schemes meant for their benefit. The underlying cause for continuing loss of innocent lives is abject poverty and exploitation of tribals, whose main source of sustenance, their forests, are under increasing pressure of development. Tribal people, who have been living in harmony with nature for ages, are now restricted from forested areas, while the logging contractors in connivance with the Forest Department, indulge in large-scale deforestation. Nandurbar has now become well known for malnourished and starving children. Yet, a peek into the underlying causes of the tragedy reveals a trail of poverty and exploitation coupled with distorted government policies that fail to address the fundamental needs of people.

Child malnutrition is generally caused by a combination of inadequate or inappropriate food intake, gastrointestinal parasites and other childhood diseases, and improper care during illness.

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While Nandurbar has become synonymous with malnutrition and starvation this is not the only place in India where the problem exists. According to social activist Sheela Barse, in Maharashtra itself, in Pune district alone, 1,561 children died due to starvation and under nourishment in the year 2003.⁴² It is time we realised that Nandurbar and other such districts are only symptoms of a deeper malaise.

Malnutrition among children, which is widely prevalent in some of the districts of Orissa, is the underlying cause of the high rate of infant mortality rate in the state: 97 per 1, 000 live births.⁴³ The Madhya Pradesh Support Group of the Right to Food (RTF) Campaign recently reported 85 deaths due to malnutrition and related diseases in the state in the last seven months – a matter that requires urgent intervention. An alert prepared by the group states that 55 per cent of children in Madhya Pradesh are malnourished; and hence require special attention.⁴⁴

The two important child specific schemes designed to address malnourishment in children include the Integrated Child Development Service Services (ICDS) and the Mid-day Meal scheme. ICDS was initiated to improve the nutritional status of pre-school children, pregnant women and nursing mothers by providing a package of services. While ICDS was able to reach 80 per cent of the development blocks in the country, it had no mechanisms to ensure that its services and supplemental food actually reached those most in need. In addition, workers were inadequately trained and were overextended, and the programme's outreach – health, and educational components were often neglected.⁴⁵ And it is only recently that efforts have begun to target children below three years in ICDS. Most supplementation has primarily benefited the older children, among whom mortality is lower and stunting is already established.⁴⁶ The ICDS has been able to cover 3.41 crore children in the age group 0-6 years as on March 31, 2004, which is 22 per cent of the total population of the children in this age group. Of the 3.41 crore children receiving supplementary nutrition, 53 per cent are reported to be under-nourished.⁴⁷

The Mid-day Meal scheme on the other hand, was launched as a two-pronged strategy – to lower the widespread incidence of malnutrition primarily among the children of poor families and to increase their access to education. The scheme focuses both on food as well as its nutritional value, thus addressing both hunger and under nourishment problems, which are prevalent amongst children. According to the Mid-term Appraisal of the Ninth Plan, this scheme has over time, fallen prey to the ills of misdistribution, corruption and politicking. Nevertheless, the coverage of the mid-day meal scheme has steadily expanded during last two years, and cooked meals are rapidly becoming part of the daily school routine across the country.⁴⁸ (Details about the implementation and flaws in the Mid-Day Meal scheme are discussed in the Education chapter of this book.)

42 Tavleen Singh, 'Grannaries full but children are starving to death', *Deccan Herald*, September 26, 2004: Sunday Spotlight.

43 Prafulla Das, 'Hunger and Death', *Front Line*, August 14-27, Vol. 21, 2004: The Hindu.

44 Rasika Dhavse; 'Custodial malnutrition in M.P', 2004, <http://www.indiatogether.org/2004/nov/pov-mpmalnutr.htm>

45 Commissioner to the Supreme Court of India, Third report submitted to the Court in "PUCL vs. Union of India and Others" on 1 April 2003.

46 Gonsalves Colin, Vinay Naidoo, Aparna Bhat, (Eds.), *Right to Food*, New Delhi: Socio-Legal Information Centre, 2004, pg 148.

47 Rajya Sabha Starred Question 13, Budget Session, 5 July 2004.

48 Under this programme more than 1 million children are being targeted for coverage. The Plan allocation for 2002-03 is Rs.105.7 million as against Rs.93 million in 2001-02. See Indian Budget 2002-03, "Social Sectors," *Economic Survey 2003-4, 2002-2003*, at: www.indiabudget.nic.in/es2002-03/chapt2003/chap107.pdf.

The synergistic relationship between malnutrition and mortality is clearly revealed by the fact that those states that have high mortality rates are also generally those with high levels of malnutrition .

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While the problem of malnutrition is being discussed within the context of food security, child development and child health, it is also important to ensure that all the necessary infrastructure required to deal with it is in place and that financial constraints do not hamper any ongoing or planned efforts. In fact, lack of access to quality health care aggravates the situation of malnutrition and hunger deaths in the country. In tribal

and rural areas, health centres are far from the remote hamlets. Where they do exist, most primary health centres (PHCs) are not properly equipped with either medicines or trained personnel. Similarly, transportation is the biggest hurdle in reaching the mid-day meal to the children in schools in several States.

The issue calls for a much more concerted effort and convergence of various Ministries/Departments to meet the goals set for reducing malnutrition and related deaths amongst children, particularly the poor and the most vulnerable.

Polio

India initiated the Pulse Polio Programme in 1995-96. Under this hugely publicised programme, all children under five years are to be administered two doses of Oral Polio Vaccine in low transmission seasons every year, until polio is eliminated. Pulse Polio Immunisation has been a massive programme covering 166 million children in each round. The government claims that as a result of all these there was a substantial reduction in polio cases till 2001. However, in 2002 there was a setback because of a sudden increase in cases by 7 times the previous year. The eradication goal was then postponed to 2005. The total number of cases in 2003 was 225 cases affecting 88 districts and in 2004 till 26 March there were already 7 cases detected.⁴⁹

Down 'n out? 15 polio cases in UP

TOUFIQ RASHID
NEW DELHI, AUGUST 2

JUST when the Government thought the polio virus is under control, Uttar Pradesh is posing a problem. Out of the 28 cases reported so far, 15 are from the state. The reason, officials

doses of vaccine, some had even got around 10-12 doses. "The problem is that only three of these children had received the routine immunisation, at birth and as a follow up. So, despite the fact that they got immunisation during the rounds, their immunity levels are very low," said an official.

The World Health Organisation (WHO) has warned that the North-Eastern states of India, especially Assam and Meghalaya, could witness a polio epidemic unless urgent immunisation measures are implemented. Health officials say the WHO issued a flash to Assam and Meghalaya in 2003, cautioning them of a likely outbreak of "widespread wild poliovirus infection later this year or by early 2004". The warning follows the detection of a wild poliovirus case in Goalpara in Assam in June 2003⁵⁰. Arun Thapa, WHO's adviser for polio in the South-East Asia Region, says that the virus probably reached Assam – where there had been no cases for two years – from neighbouring Bihar, where there were 121 cases last year.⁵¹

Table 8: Polio by Month of Onset, 1998-2004

Month	1998	1999	2000	2001	2002	2003	2004
January	112	36	36	7	18	51	4
February	32	22	10	1	8	16	3
March	42	11	10	3	7	9	1
April	26	8	20	3	16	7	1
May	49	39	6	4	42	5	9
June	118	69	8	13	117	7	14
July	324	142	25	30	251	25	13
August	418	187	39	62	280	29	18
September	283	193	32	33	234	30	18
October	170	195	31	38	247	20	29
November	226	155	31	43	180	16	6
December	134	69	17	31	100	10	
Total	1934	1126	265	268	1600	225	116

Source: National Polio Surveillance Project

49 Ministry of Health & Family Welfare, Annual Report 2003-04, New Delhi: Government of India Press, pg 166.

50 Bulletin of the World Health Organisation, 2003, 81 (9).

51 Bishakha De Sarkar, 'India remobilises against polio', Bull World Health Organ. [online]. Sept. 2003, vol.81, no.9 [cited 10 August 2005], p.697-697. Available from World Wide Web <http://www.scielosp.org/scielo.php?script=sci_arttext&pid=S0042-96862003000900021&lng=en&nrm=iso>. ISSN 0042-9686.

Health authorities in Karnataka are concerned about the comeback of polio in the state, which has been reporting zero polio prevalence for the last few years. According to experts, the rise is due to the government's inability to reach the people. Karnataka is third in the list of the highest number of polio cases reported in the country. According to latest figures, the number of cases in India, till August 2003 was 126, with Uttar Pradesh reporting 40 cases and West Bengal 26. Karnataka is a close third with 20 cases so far.⁵²

Agreeing with the fact that there is a 25 per cent gap in the immunity programme in the North Karnataka region, the state's Additional Director for Communicable Diseases R. K. Kumaraswamy claimed that parents were reluctant to get their children immunised. "Parents here feel that immunisation will harm their children," he says.

This failure in routine immunisation has given India the distinction of being a world leader in the number of reported polio cases. In 2000, India contributed 37 per cent of the world's cases. By 2002, the figure had reached 83 per cent, with Uttar Pradesh alone contributing 64 per cent of the total number of reported polio cases in the world.

Table 9: Last Polio Case in the States of India

State	Latest case of Polio	Sero-Types
Bihar	Nov-04	P1
Maharashtra	Nov-04	P1
Uttar Pradesh	Nov-04	P1
Haryana	Oct-04	P1
West Bengal	Oct-04	P1
Uttaranchal	Aug-04	P1
Delhi	Jul-04	P1
Andhra Pradesh	May-04	P1
Tamil Nadu	Feb-04	P1
Karnataka	Feb-04	P1
Jharkhand	Dec-03	P3
Madhya Pradesh	Nov-03	P1
Punjab	Sep-03	P1
Assam	Mar-03	P1
Rajasthan	Feb-03	P1
Orissa	Feb-03	P1
Gujarat	Jan-03	P1
Chandigarh	Oct-02	P1
Jammu & Kashmir	Sep-02	P1
Chhattisgarh	Jul-02	P1
Kerala	Sep-00	P1
Pondicherry	Nov-98	P1
Goa	Oct-98	P1
Daman & Diu	Oct-98	P1
Dadra & Nagar Haveli	Jan-98	P1
Nagaland	Dec-97	P1
Meghalaya	Oct-97	P1
Tripura	Oct-97	P1
Andaman & Nicobar	*	
Arunachal Pradesh	*	
Lakshadweep	*	
Manipur	*	
Mizoram	*	
Sikkim	*	

* No polio cases since 1997

Source: National Polio Surveillance Project

52 Toufiq Rashid, 'Polio makes a comeback in Karnataka', The Indian Express, 15 September 2003, New Delhi

Considering the importance given to polio vaccination, the claims made, the publicity and the hype surrounding it, prevalence of the disease is indeed a matter of concern. Of all programmes for immunisation, it is polio immunisation that receives the maximum financial backing. This has come under criticism because this allocation is made by neglecting other vaccine preventable diseases such as childhood tuberculosis, diphtheria, pertussis, measles and neo-natal tetanus. A huge 46.4 per cent children in the country have not been immunised against vaccine preventable diseases.⁵³ HAQ's own budget analysis shows 0.52 per cent of the Union Budget for the year 2005-06 has been allocated for child health-specific programmes and interventions, most of which is spent on polio, leaving very little money for the other five vaccine preventable diseases. All ANMs are directed to visit homes to administer polio vaccines, which is not the case in other immunisation programmes. As a result, only polio drops become synonymous with immunisation for children.

Polio Eradication Programme Overshadows Other Immunisation Drive

There is a major increase of Rs. 484.4 crore (68%) in the strengthening of Immunisation Programme and Eradication of Polio Programme. But out of the allocation of Rs. 1186.40 crore the share of Eradication of Polio Programme is Rs. 1123 crore, leaving only Rs 63.40 crore for other 5 vaccine preventable diseases viz. childhood tuberculosis, diphtheria, pertussis, measles and neo-natal tetanus. This has to be looked into keeping in mind the fact that 46.4% children in the country have not been immunised against vaccine preventable diseases.

Source: Rajya Sabha Unstarred Question 2286, 11 August, Monsoon Session 2003.

HIV / AIDS

Recognised as a disease only in the early 80's, AIDS has become a global pandemic with more than tens of millions infected. Millions of children are infected with this deadly disease across the world. According to the World Health Organisation (WHO), 4 million children have been infected since the virus first appeared.⁵⁴ Of the 5 million people who were infected with the virus in 2003, 700,000 were children.⁵⁵

India, with the official figures of 5.1 million HIV infected people, has the second highest national total of persons with AIDS after the Republic of South Africa.⁵⁶ National AIDS Control Organisation (NACO) estimated 0.55 lakh HIV infected children (0-14 years) in the country in 2003.⁵⁷ There has been a confusion regarding the actual number of HIV/AIDS infected people in India with the UN agencies putting it much higher than the official figure. According to UNAIDS, in India, 0.16 million children in 0-14 age group are infected with HIV.⁵⁸

The most common cause of infection among children is the Mother-to-Child transmission (MTCT) and, with 1.36 million women infected, the infection among children can go higher, unless effective programmes are put in place. Other than MTCT, sexual contact, including sexual abuse; blood transfusion; and unsterilised syringes, including injectionable drug use are also sources of infection among children.⁵⁹

Mother-to-Child transmission of HIV infection is becoming a huge problem in Manipur, where 1.5 - 2 per cent of AIDS victims are children. Hundreds of children across the North-Eastern states of India are contracting the virus from infected mothers at birth. "Drug-users are passing the infection on to the general population in the region through their sex partners, which then is transmitted from mother to child," says C. H. Anand, a health worker in Manipur.⁶⁰

Full Blown AIDS Cases in India

Total no. of AIDS cases in India:	110856
Total no. of AIDS cases in Male:	78485
Total no. of AIDS cases in Female:	32371
Total no. of AIDS cases in Children (0-14 Years):	4812
Total no. of AIDS cases in Boys (0-14 Years):	2830
Total no. of AIDS cases in Girls (0-14 Years):	1982
Total no. of AIDS cases in 15-29 Years :	35998

Source. NACO, Monthly Updates on AIDS, 30 June 2005 (www.nacoonline.org).

53 Rajya Sabha Unstarred Question 2286, 11 August, Monsoon Session, 2003.

54 World Health Organisation, World Health Report 2004: Changing History, France, 2004.

55 ibid.

56 NACO 2004.

58 UNAIDS, Report on the Global AIDS Epidemic, 2004, Geneva.

59 ibid.

60 Syed Zarir Hussain, 'Children Victims as AIDS Ravages Northeast India', 1 July 2004, oneworldsouthasia.net.

Besides, millions of children are becoming orphans deprived of parental care and protection due to untimely death of their parents. There are no authenticated statistics on these orphaned children. The AIDS control programme and policy of the government is not touching this crucial point. According to an unofficial and unpublished estimate of UNAIDS and the Asian Development Bank, India has around 1-1.2 million AIDS orphans.⁶¹ In such a situation, when HIV is infecting and killing most of the middle-aged generation, the very young are ending up looking after the ailing parents and family. So, the children become more vulnerable and there are greater chances of them being pushed into hazardous forms of labour or sex work.⁶²

Discrimination of HIV/AIDS Infected Children

The Health Ministry and NACO acknowledge that people living with HIV/AIDS are discriminated against and socially stigmatised. A few states have included a policy paper to redress discrimination in education or health but most have failed to take action. Fear of discrimination is preventing people from seeking treatment for AIDS.⁶³ Some 70 per cent of people living with HIV/AIDS in India said they faced discrimination, mostly within their families and in healthcare settings, according to findings from International Labour Organisation (ILO) research.⁶⁴ As a result, HIV/AIDS infected and affected children are widely denied education or health care. Discrimination against people living with HIV/AIDS hits children even in orphanages, in their neighbourhood and in their homes. In a situation like this when there is no separate care home for the children orphaned by AIDS it becomes more difficult to provide them access to medical and institutional care. Street children, children of sex workers and other marginalised groups face additional forms of discrimination. Public hospitals refuse to treat them and public hotels refuse to keep the children of sex workers. It is not just the death of parents, but also lack of education and skills that further increases the vulnerability of girls to commercial sexual exploitation.

India is a signatory to several international treaties and conventions, which categorically prohibit discrimination and provide protection to children living with HIV/AIDS. Article 2 of the Convention on the Rights of the Child enjoined states to ensure that children are protected from discrimination on any ground.

Anti Retro-Viral Treatment

The announcement of free Anti Retro-Viral (ARV) medicine in 8 states is a welcome step but still many children who are at risk or infected (street children, children of sex workers) cannot benefit without proper information and awareness. While NACO says, "It is not possible to provide Anti Retroviral Therapy to all due to lack of funds", it forgets that it has only utilised 46 per cent of funds allocated for the period 1999-2004).⁶⁵

Although children are considered a priority category for distribution of free ARV, till recently there was no paediatric ARV formulation for young children under the Government rollout plan, making their access to ARV a distant dream.

There is need to control HIV/AIDS infection, stigma, discrimination and denial of services to children infected and affected with HIV/AIDS as soon as possible. NACO needs to review its programme from a children's perspective and utilise the fund in a better manner instead of going for 'low cost care and support programme'. "Africa has learned this lesson the hard way: denial and ignorance do not reverse this epidemic. It is a lesson that the countries of Asia and the Pacific must immediately take to heart."⁶⁶

Children Denied Right to Education

All know the story of two HIV-positive orphan children, Bency and Benson in Kerala. The siblings were banished from their school and then refused admission to other schools. The President of India, the Indian health minister and AIDS activists have all been appealing to, and working with, the community to dispel the fears and misconceptions surrounding HIV/AIDS. Yet, by the end of 2003, almost six months after the debacle began, the children were still forced to take their lessons and write their examinations at home. By early 2004, Bency and Benson were back in a regular classroom.

Source: UNAIDS & WHO, AIDS Epidemic Update, 2003
Human Rights Watch, Future Forsaken – Abuses Against Children Affected by HIV/AIDS in India, 2004

61 'More than a lakh AIDS patients in India: NACO', 30 March 2005, Deccan Herald.

62 Human Rights Watch, Future Forsaken- Abuses Against Children Affected by HIV/AIDS in India, USA, 2004.

Randeep Ramesh, Linda MacDonald, 'India ignores plight of generation of Aids orphans', 23 March 2005, The Guardian.

63 Human Rights Watch, Future Forsaken- Abuses Against Children Affected by HIV/AIDS in India, USA, 2004.

64 Injection drug use responsible for rapid spread of HIV/AIDS: UNAIDS report, December 2003, www.infochangeindia.org

65 CAG Performance Appraisal Report No.3, 2004, www.infochangeindia.org

66 Peter Piot, (Executive Director, UNAIDS) Development Outreach, 2004, World Bank.

Tracking HIV in Children

Tested for HIV due to repeated illnesses, many HIV positive children are found to have HIV negative mothers. Given the nature of our surveillance systems, the extent of this reality is as yet unknown. In fact, there are many cases of HIV positive children whose mothers have never been tested and where it is assumed that the latter is HIV positive. It is highly probable in situations of HIV positive children with HIV negative mothers that the child has got infected due to unsafe health care practices either soon after birth, through immunisations, blood transfusions or during childhood illnesses. There are several instances where the history of the children reveals that the probability of iatrogenic transmission is extremely high. What is very disturbing is that these cases are not investigated or followed up for a variety of reasons – ranging from sheer lassitude at best, to deliberate attempts at concealment for fear of implicating the concerned hospital.

Tracking of these cases would go a long way in identifying the routes of transmission to children. Recognition of unsafe medical care as a route of transmission led to iatrogenic outbreaks among children being discovered in countries like Romania⁶⁷, the former Soviet Union⁶⁸ and Libya⁶⁹. Investigation of unexplained cases of HIV in children would help to track other children and possibly adults, who have also got infected through the same health care setting.

Iatrogenic outbreaks in India unfortunately have not been explored or researched, leave alone action taken to control the outbreak. One pertinent example of an outbreak that was discovered is an informal report to the WHO by Christensen. C. where seven children in a Mumbai hospital awaiting adoption seroconverted over a three month period in 1996-97 harbouring similar HIV strains. This report is referred to in a well-known article in the Bulletin of the WHO.⁷⁰

It is unclear what has happened to the report, what was done for the children or where they are today!

Tracking unexplained cases of HIV would involve strengthening the formats for data collection on routes of transmission, documenting the cases, taking detailed case histories, and investigating through identifying and tracing the possible routes of the infection. It may also involve testing others who visited the health facility on the same day as when the probable infection occurred and sequencing the virus of others who were infected on that day. In cases where blood transfusion is a possible cause of the infection, not only the blood sample, but the person who donated that blood should be tested. This is now feasible with the latest NACO policy on HIV testing of donors with their consent. This will give an idea of the risks of blood transfused during the window period leading to more stringent blood safety measures.

Community studies involving testing of children and then the mothers of those found positive would also give an idea of the extent of infections that are through routes other than mother-to-child. Understanding and assessing the extent of iatrogenesis as contributing to the spread of HIV would go a long way not only to reduce the stigma associated with AIDS but to clean up the health system.

Mariette Correa, Independent Researcher based in Goa.

Drug and Substance Abuse

A survey reveals that of the children who came for treatment to various NGOs, 63.6 per cent were introduced to drugs at a young age below 15 years. Overall 0.4 per cent and 4.6 per cent of total treatment seekers in various states were children.⁷¹ According to recent data, among those involved in drug and substance abuse in India, 13.1 per cent are below 20 years.⁷²

Heroin, Opium, Alcohol, Cannabis and Propoxyphene are the five most common drugs being abused by children in India. Recent available data points out that among the alcohol, cannabis and opium users about 21 per cent, 3 per cent and 0.1 per cent respectively were below 18 years.⁷³ A new trend has emerged in drug and substance abuse with children now taking a cocktail of drugs through injection, and often sharing the same needle, which increases their vulnerability to HIV infection.

The Committee on the Rights of the Child has underlined 'the necessity of providing legal economic and social protection to affected children to ensure their access to education, inheritance, shelter and health and social services, as well to make them feel secure in disclosing their HIV status and that of their family members when the children deem it appropriate'

Committee on the Rights of the Child, General Comment 3: HIV/AIDS and the Rights of the Child.

67 Hersh BS, Popovici F, Jezek Z, et al. 1993. 'Risk factors for HIV infection among abandoned Romanian children' AIDS. Dec; 7(12): 1617-24.

68 Dehne KL, Podrovshiy V, Kobyschcha Y, Schwartzlander B. 2000 'Update on the epidemics of HIV and other sexually transmitted infections in the newly independent states of the former Soviet Union.' AIDS;14 (suppl 3):S75.

69 Yerly S, Quadri R, Negro F, et al. 2001. "Nosocomial outbreak of multiple bloodborne viral infections." J Infect Dis; 184:369. 72.

70 Simonsen L. et al., 1999. 'Unsafe Injections in the Developing World and Transmission of Bloodborne Pathogens: A Review.' Bulletin of the World Health Organization 77(10): 789-800. Available at: <http://www.who.int/bulletin/pdf/issue10/simonsen.pdf>

71 UNODC, Monitoring System (DAMS), The Extent, Pattern & Trends of Drug Abuse in India, A National Survey Drug Abuse 2004 Monitoring System (DAMS).

72 UNODC, Rapid Assessment Survey (RAS), The Extent, Pattern & Trends of Drug Abuse in India, A National Survey.

73 UNODC, National Household Survey (NHS), The Extent, Pattern & Trends of Drug Abuse in India, A National Survey.

There are no sensitisation programmes for school children or children out of school. The government has initiated curative programmes for stopping drug and substance abuse. There is no substance abuse policy in India. A national master plan for substance abuse was evolved in 1994 which focuses on the establishment of treatment and rehabilitation centres, training in substance abuse for primary care doctors and other personnel, collaborating with non-governmental organisations and carrying out education and awareness building programmes. These programmes are guided by the Ministry of Health and Family Welfare and the Ministry of Social Justice and Empowerment. However, the almost 589 per cent increase between 1999 and 2003 in the number of cases registered against children under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 raises an alarm. The National Crime Records Bureau recorded 9 cases of juvenile delinquency under NDPS Act in 1999, which has gone up to 62 cases in 2003. Some volatile substances, which are present in many easily available products like cough syrups, pain relief ointments, glue, paint, gasoline and cleaning fluids, are directly toxic and are often abused by children. Many chemist shops that sell drugs without prescription also contribute to the growing instances of drug and substance abuse. Besides being a crime, the issue has serious health dimensions that call for timely mental health inputs. Inadequate number of mental health professionals across the country and inadequacy of mental health services makes the problem even more complex. The number of specialised inpatient and outpatient facilities for children are very few and are mostly attached to Psychiatric and Paediatric departments of various medical colleges and other special institutions (see section on Mental Health). These also differ in their structure, functioning, and in the available therapeutic facilities and are mainly situated in urban areas. There are practically no facilities available in the rural areas.⁷⁴ According to WHO, the District Mental Health Programme, which is being operated in twenty-two districts in the country, attempts to take mental health care to the rural and underprivileged sections of the society.⁷⁵

Besides drugs and other toxic substances, the consumption of tobacco by children too is a cause for concern. India accounts for one-sixth of tobacco illnesses worldwide.⁷⁶ In India 20 million children are getting addicted to smoking every year, and nearly 55,000 children are becoming smokers every day in comparison to 3,000 in the US.⁷⁷ In its report 'Tobacco and the Rights of the Child', WHO notes that most people start using tobacco during adolescence and, sustained by an addiction to nicotine, continue into adulthood. Tobacco use among young people continues to rise as the tobacco industry aggressively promotes its products to a new generation of potential smokers.⁷⁸



Table 10: Commonly Abused Drugs by Children (below 15 years) in India

	Heroin	Opium	Alcohol	Cannabis	Propoxyphene
	Rajasthan (1.3)	U.P. (1.7)	Chandigarh (1.3)	Chandigarh (4.4)	Haryana (4.2)
	Delhi (1.1)	Punjab (0.1)	Gujarat (1.2)	Haryana (1.3)	Mizoram (3.4)
	West Bengal (0.6)	-	Manipur (0.7)	Bihar (0.9)	-
	M.P. (0.5)	-	West Bengal (0.6)	M.P. (0.8)	-
	U.P. (0.5)	-	Goa (0.5)	Maharashtra (0.6)	-
Total	0.5	0.1	0.3	0.5	0.8

Source: Drug Abuse Monitoring System and Rapid Assessment Survey (UNODC sites), 2004.

74 LP Shah and B. Renu Sheth, Development of Child and Adolescent Mental Health in India: The Last 40 Years, April 1998, IACAPAP Bulletin (<http://info.med.yale.edu/childstdy/IACAPAP/498/498index.htm>).

75 WHO, 'Atlas: Country Profiles on Mental Health Resources', 2001, pg 413.

76 'India May Ban Smoking Scenes In Films and Television', Antara News, June 1 2005: Antara, The Indonesian News Agency. See url: www.antara.co.id/en/seenws/index.php?id=4068

77 YP Gupta, 'Tobacco the killer unkilld', 2 June 2005, Deccan Herald.

78 Press Release WHO/24 May, 4, 2001, (www.who.int/inf-pr-2001/en/pr_2001-24.html).

The Government of India in May 2004 banned smoking in public places as well as tobacco advertising and sponsorship of sporting events by tobacco firms.⁷⁹ In tough new regulations, the Union Health Ministry has also imposed a ban on smoking in films and serials. The Health Ministry had in fact also said that distributors and directors of films and TV shows would have to show health warnings on screens in old movies and TV shows, whether Indian or foreign, that showed actors smoking.⁸⁰ However, the Ministries of Health and Family Welfare and Information and Broadcasting (I&B) had delayed it by two months from August 1 this year to Gandhi Jayanti (October 2), which has been further extended since. WHO's repeated warnings on impact of tobacco on children's rights should not be ignored any longer, or else, as its report indicates, "if current trends continue, 250 million children alive today will be killed by tobacco."⁸¹

Environmental Threats to Children's Health

Rapid industrialisation and urbanisation have adversely affected the environment, which in turn has serious impact on the health of people. India is one such country where unhindered industrialisation and pollution has caused several health hazards. According to a WHO report, 'Inheriting the World: The Atlas of Children's Health and the Environment', India has the third highest child mortality rate only better than Pakistan and Bhutan in terms of environmental threats to children's health.⁸² Children are exposed to excessive amounts of fluoride through drinking water contaminated from natural geological sources.

In another estimation by WHO, unhealthy environment is killing three million children under five all over the world, every year. It is estimated that nearly four hundred and thirty thousand of those children are from India alone.⁸³

India has the third highest child mortality rate only better than Pakistan and Bhutan in terms of environmental threats to children's health. Unhealthy environment is killing three million children under five all over the world, every year. Nearly four hundred and thirty thousand of those children are from India alone.

Unsafe Drinking Water

Unsafe drinking water, laced with fluoride, iron, nitrates and arsenic, poses a health threat to millions of rural Indians living in around 2 lakh villages across the country, according to new information released by the country's rural development ministry. Worst affected are the citizens of West Bengal, Tamil Nadu, Rajasthan, Nagaland, Uttar Pradesh and Madhya Pradesh where, in addition to the presence of trace minerals in drinking water, high salinity is also a problem. According to the ministry, the drinking water in 36,988 villages is contaminated with fluoride beyond the permissible limits.

Source: The Statesman, September 30, 2004.

Severe air pollution problems in major cities – Mumbai, Calcutta, Delhi, Ahmedabad, Kanpur and Nagpur, have become unhealthy for the children to reside in. Twenty-three Indian cities with a population of over one million have dangerously high levels of pollution. New Delhi has the highest number of children suffering from asthma.⁸⁴

More than 80 per cent of children within the age-group 6-14 years in Karnataka's Kolar district suffer from skeletal and severe dental fluorosis as a result of drinking water that contains too much fluoride.⁸⁵ As per WHO standards, the fluoride level in water should be less than 1.5 mg/litre. In Kolar, fluoride concentrations in the groundwater sometimes rise to 5.5 mg/litre.⁸⁶

Many environmental threats to children's health are aggravated by persistent poverty, conflicts, natural and man-made disorders and

social inequity. But there are six groups of environmental health hazards that must be tackled as priority issues; house hold water security, lack of hygiene and poor sanitation, air pollution, vector borne diseases, chemical hazards and unintentional injuries (accidents)⁸⁷.

79 The ban is being implemented as part of the Cigarettes and other Tobacco Products (Prohibition of advertisements and regulation of trade and commerce, production, supply and distribution) Act 2003 which was passed by Parliament in April 2003 and notified in May that year.

80 'Bollywood Reacts Furiously Over Smoking Ban In Movies', 8 June 2005, <http://news.webindia123.com>

81 Press Release WHO/24 May 4 2001 (http://whqlibdoc.who.int/hq/2001/WHO_NMH_TFI_01.3_Rev.1.pdf)

82 Bindu Shajan Perappadan, 18 July 2005, The Hindu, New Delhi.

83 Ramesh Menon, November 2004, www.indiatogether.org

84 *ibid*

85 www.fluoridealert.org, September 2004.

86 *ibid*.

87 Brundtland, Dr. Gro Harlem, Director-General of the World Health Organization, World Health Day Theme: 2003, Shape the future of Life; Healthy Environments for Children, Nursing Journal of India April 2003.

The area of environmental threats to children's health in India needs to be researched more. While, environment education has become part of the education curriculum in many states in India and children have often joined several environment protection drives, their voices against environmental threats, unchecked industrialisation as well as unclean water seldom receive the same level of attention.

Disability and Children

As with all other social sector issues, in case of disability too, lack of data regarding different types of disabilities and number of people living with such disabilities has been an obstacle in planning and making adequate interventions. Moreover, data on children with disabilities has been the most difficult to find. In 2004, the CAG report noted, "the Ministry did not possess any reliable data on the numbers and categories of disabled in the country, which was essential to estimate the resource requirements and facilitate the preparation of a well-considered action plan".⁸⁸ It also said that adequate measures had not been taken for prevention of disabilities through early detection, awareness campaigns and training of staff of Primary Health Centres.⁸⁹

Only recently the Registrar General and Census Commissioner of India made available the long awaited detailed figures on disability. According to the 2001 Census Report 2.19 crore (2.13 per cent) of the total population are persons with disability. And 1.67 per cent of the total population in the age group 0-19 years (463826702) are disabled (see Table 11).

Table 11: Disabled Population in the Age-group 0-19 by Type of Disability, Age and Sex -2001

Total Disabled Population	21906769	Type of Disability				
		In seeing 10634881	In speech 1640868	In hearing 1261722	In movement 6105477	Mental 2263821
Disabled Population in 0-19 years	7732196	3605553	775561	90452	2263941	96689
Disabled children as per cent of the total population in 0-19 years	1.67%	0.78%	0.17%	0.01%	0.48%	0.17%
Disabled children as per cent of the total disabled population	35.29%	33.9%	47.26%	23.02%	37.08%	35.19%

Source: Census of India 2001: Table C20 India

The National Sample Survey Organisation had also conducted a survey on disability in its 58th round (January – December 2002) but it reports a much low number of (1.85 crore) people with disabilities.

It is said that hardly fifty per cent of disabled children reach adulthood, and no more than twenty per cent survive to cross the fourth decade of life.⁹⁰ Although there is very little information regarding the nutritional status of children with disabilities, it is recognised that disabled children living in poverty are among the most deprived in the world. Feeding difficulties contributing to poor nutrition have been reported among disabled children living in more affluent



88 Himanshu Upadhyaya, 'Crippling delivery to the disabled', September 2004, www.indiatogether.org
89 ibid.

90 Dr (Brig) M L Kataria, 'War against disability-Fighting for the right of the child', 29 May 2002, www.tribuneindia.com

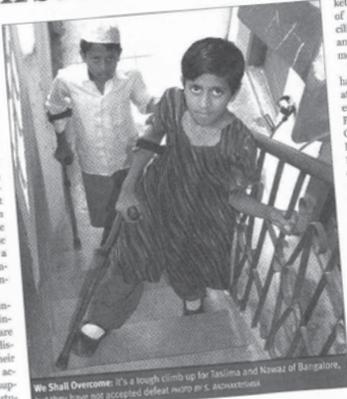
The first and final frontier

ARCHANA JAIN
New Delhi

DECEMBER 3, International Day of People with Disabilities. It comes and goes. Like a ritual. Nothing changes apparently. But for the disabled in India, the day marks a moment of solidarity and struggle.

In India, approximately seven crore people celebrated this day this year too. The remaining 93 crore were oblivious and indifferent to this celebration. This has been the state of affairs concerning the disabled in relation to the rest of the country as a whole. They remain a people apart from the rest, a community on the fringes, a marginalised sector.

When one talks about marginalised people, the word 'barrier' inadvertently crops up. There are several barriers that force the disabled to remain cloistered in their immediate environs. Lack of access, education, jobs, social support systems; or a lack of opportunities in general are the oft-cited reasons for the disabled. But why do these barriers exist? They exist because the people have built them in their minds. First, the barriers are built in the minds of the non-disabled people and then manifested in the physical environment. It is to be the inside that



We Shall Overcome: It's a tough climb up for Tarcima and Nawaz of Bangalore, but they have not accepted defeat now at 5, 20cm/min

Society's attitude towards people with disabilities ranges from cruel and hostile to insensitive and condescending, even patronising. But most often, it is indifference

let for their various 'special' needs of aids, appliances, healthcare facilities, besides specialised services and institutions which the government is just not realising.

Unfortunately, the government has a disinterested and insensitive attitude towards disability. It has enacted a few legislations like the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 etc. However, the provisions of these Acts are not being implemented seriously. This is seen in the poor access at public places, reserved seats at government institutions, segregation of education; for instance students with disabilities are placed under the Ministry of Social Justice for Empowerment and not the Ministry of Human Resource Development. Why?

There are some of the very basic issues that have been ignored by the government for long. By finding answers to these questions, the government will be creating a favourable atmosphere for the disabled so that they reach their full capabilities. The fact is, there is growing dissatisfaction and frustration among the disabled. They are now coming together, cutting across their individual disabilities, to put up a united front.

If the disability sector wants

environments.⁹¹ Under-nutrition is a common problem in children with severe cerebral palsy (spastic quadriplegia), which often causes significant impairment in their eating and swallowing mechanisms. Because of their difficulty in eating and drinking, many such children can achieve an adequate nutritional status only with tube feeding.

Even amongst the disabled children, there are some more vulnerable than others on account of their circumstances and living conditions. For instance, for the working child population, occupational hazards pose a serious threat. Sometimes environmental factors too render children vulnerable to diseases that result in long term disability.⁹² The situation of those suffering from mental disorders is even worse as there is still very little recognition of the problem.

Dyslexia, a learning disorder, found among children, is not widely understood and accepted as a problem, which obstructs the learning abilities of a child. A study conducted by the paediatric and psychiatry departments of All India Institute of Medical Sciences (AIIMS), concludes that 'anything between 3-7 per cent school children in Delhi could be suffering from dyslexia.'⁹³

In India, the earliest document to record child development was Ayurveda. Yet, in the case of child and adolescent mental health, the study of child psychopathology was considered as a downward extrapolation of psychopathology of adults. Thus, the growth of child psychiatry in India has occurred following the growth of adult psychiatric services. There are hardly any studies in the country in the field of child and adolescent psychiatry. Those that have been done concentrate mainly on the epidemiology and the use of assessment schedules. Very little research has been done in the areas of phenomenology, etiopathogenesis, treatment and adverse effects.⁹⁴

Mental health disorders account for nearly a sixth of all health-related disorders.⁹⁵ Despite this, most countries devote one per cent or less of their health budgets to mental health services. India spends just 0.83 per cent of its total health budget on mental health (WHO 2001a).⁹⁶



“Most mental disorders can be treated and prevented by the timely intervention of mental health professionals, but sadly that is not the case in India,” says Dr Meera Shiva, President, Voluntary Health Association of India.

91 <http://www.disabilityindia.org/dinJour/article3.html#nutrition>, April, 2003.

92 Brundtland, Dr. Gro Harlem, Director-General of the World Health Organization, World Health Day Theme: 2003, Shape the future of Life; Healthy Environments for Children, Nursing Journal of India, April 2003.

93 Sutirtho Patranobis, 'Around 7 percent school kids are dyslexic, says study', 1 March 2004: Hindustan Times.

94 Shah L.P, and B.Renu Sheth, 'Development of Child and Adolescent Mental Health in India: The Last 40 Years', April 1998, IACAPAP Bulletin (<http://info.med.yale.edu/childstdy/IACAPAP/498/498index.htm>).

95 Pathare Soumitra, 'Less than 1% of our health budget is spent on mental health', June 2005, www.infochangeindia.org

96 ibid.

Lack of facilities, trained medical professionals, and social stigma has always been major hindrances towards the treatment of a mentally ill child or person. “Currently, 50 per cent of the medical colleges have a psychiatry department. It is estimated that there is one psychiatry bed per 30,000 population. There are 20,000 beds in mental hospitals and 2,000 to 3,000 psychiatric beds in general and teaching hospitals. Fifty per cent of the psychiatric beds are occupied by patients undergoing long term treatment. However, in spite of all these facilities, even now less than 10 per cent of the mentally ill persons have access to appropriate care; prevention of mental illness and promotion of mental health remain distant dreams.”⁹⁷

India formulated a national mental health programme in 1982 with the objective of “improving mental health services at all levels of health care through early recognition, adequate treatment and rehabilitation of patients. The programme also envisaged improvement in the conditions in existing mental hospitals, effective implementation of the Mental Health Act, 1987 and adequate manpower development to meet the growing needs for mental health care”.⁹⁸

Magnitude of Mental Health Problems

It is estimated that :

- Ten million people are affected by serious mental disorders.
- 20-30 million people have neurosis or psychosomatic disorders.
- 0.5 and 1 per cent of all children have mental retardation.

Source: Planning Commission of India, 10th Five Year Plan 2002-2007.

During the Eighth Plan, the National Institute of Mental Health and Neuro Sciences (NIMHANS) developed and implemented a district mental health care model in the Bellary district of Karnataka with the objective of providing sustainable basic mental health services to the community and to integrate these services with health services. Early detection and prompt treatment of patients with mental illness was the corner stone of the model. Following encouraging results, the programme was expanded during the Ninth Plan to 22 districts in 20 states.⁹⁹

The Tenth Plan envisages that states will progressively improve access to mental health care services at the primary and secondary care levels to cover all the districts in a phased manner. Psychiatry departments in medical colleges will play a pivotal role in the operationalisation and monitoring of the programme in the district in which they are located and synergistic links will be formed with other ongoing related programmes.¹⁰⁰

Despite the introduction of legislations like the Persons with Disabilities Act and the Mental Health Act, the disabled and the mentally challenged persons are amongst the most disempowered groups in India. There is no doubt that the existing services used by the disabled populations are not disabled friendly. They are constantly faced with discrimination and are subjected to neglect, prejudice, revulsion, rejection and pity. Social stigma attached to disability keep a major chunk of population unable to access treatment. The 2004 CAG (Comptroller & Auditor General) report clearly points out that the government has failed to ensure three per cent reservation of people living with disability (PWD) in poverty alleviation schemes, thus depriving them of the opportunity of economic rehabilitation. Unfortunately, there is nothing in the CAG report on the situation of disabled and mentally challenged children as such.

Conclusion

Perennial hunger and poverty are the major causes of deterioration of health conditions in India. According to the Food and Agricultural Organisation (FAO), the number of hungry people in India increased by 19 million between 1997 and 2001.¹⁰¹ The Human Development Report 2003 states that India is home to 233 million hungry populations.¹⁰² Nearly half of our children remain chronically malnourished. India has the highest percentage of anaemic pregnant women in the world.¹⁰³ Diseases like HIV/AIDS, tuberculosis and malaria continue to plague the country. India accounts for one-

97 Planning Commission of India, Health, 10th Five Year Plan 2002-2007, Volume II: Sectoral Policies and Programmes, Chapter 2.8: government of India, pg 127.

98 *ibid.*

99 *ibid.*

100 *ibid.*

101 Food and Agricultural Organisation, The State of Food Insecurity in the World, 2003, Italy.

102 UNDP, Human Development Report, 2003, Oxford University Press, pg 88.

103 Mihir Shah, 'National Rural Employment Guarantee Act – A Historic Opportunity', Economic And Political Weekly, December 11-17, Vol. XXXIX No.50, 2004, Mumbai: pg 5287.

third of the global annual incidence of TB and the largest number of persons suffering from active TB.¹⁰⁴ In spite of all immunisation drives, more than 90 per cent of the world's polio cases are in India.

The major constraints facing the health sector are lack of resources, lack of an integrated multi-sectoral approach, insufficient information, education and communication (IEC) support, poor involvement of NGOs, inadequate laboratory services, a manually operated health management information system (HMIS), poor disease surveillance and response systems, and the heavy investments needed in dealing with non-communicable diseases. In this situation it is children, and the already marginalised among them who become more vulnerable.

In our country, health is not a fundamental right, though education has been made a fundamental right after years of consistent advocacy by the civil society groups. The age-old dictum, sound body has a sound mind, holds very much true even in today's world. It is only when a child is healthy he/she would be able to enjoy childhood in its full spirit. Research reviewed across the globe confirms the lateral 'inter dependence' of health, nutrition and education outcomes. Malnutrition in children affects their ability to attend to and comprehend instruction, their activity level, concentration and overall ability to learn. Field experience in India, substantiated by research, also indicates impact of short term illness like malaria and diarrhoea on regularity of children's attendance in schools, which in turn influences the learning outcomes.¹⁰⁵ Right to health is a pre requisite for all round development of a child. Right to education would be a misnomer until there is right to health.

104 Mishra Rajiv, Rachel Chatterjee and Sujatha Rao, India Health Report, 2003, New Delhi: Oxford University Press, pg 60.

105 World Bank, Reaching out to the Child: An Integrated Approach to Child Development, 2004, pg xvii.



■ Education

Despite improvements in enrolment rates, the number of children out of school still remains alarmingly high and UNESCO says India may not achieve its goal of education for all by 2015



The history of education in India is one of unfulfilled commitment. In 1944, the Sergeant Committee appointed to forecast how long it would take India to achieve universal primary education, estimated 40 years at a time when the population of the country was about 350 million. However, when India gained independence, the framers of the constitution were more optimistic. In 1950, the Constitution of India committed itself to achieving the goal of “free and compulsory education for all children until they complete the age of fourteen” by 1960. Since then, India’s successive governments have pushed this deadline further.

Several expert committees and commissions have been constituted, but the dream of appropriate, accessible and free education remains a chimera. This, in spite of the fact that elementary education having become a fundamental right with the enactment of the 86th Constitutional amendment promising education for all children in the 6-14 age group.

Shifting Goal Posts	
Constitution	<ul style="list-style-type: none"> • Free compulsory education for all children upto 14 years by 1960
National Policy for Education (NPE) (1986)	<ul style="list-style-type: none"> • All children having attained 11 years age by 1990 will complete 5 years of schooling • By 1995 all children upto 14 years will be provided free and compulsory education
National Policy for Education (modified in 1992) and the Programme of Action	<ul style="list-style-type: none"> • Universal Primary Education by 1995, which was subsequently shifted to 2000
National Plan of Action for children, 1992	<ul style="list-style-type: none"> • by the end of the current century
Sarva Shiksha Abhiyan 2001-02	<ul style="list-style-type: none"> • All children in school, Education Guarantee Centre, Alternate School, Back to School Camp by 2003 • 5 years of primary schooling for all children by 2007 • 8 years of schooling and universal retention by 2010
10th Five Year Plan	<ul style="list-style-type: none"> • All children in school by 2003 • All children to complete 5 years of schooling by 2007

Education For All – Will it Ever be a Reality?

The ‘Education For All’ (EFA) Monitoring Report, released by UNESCO on November 6, 2003, cautioned that India is “at risk of not achieving the millennium development goal of “universalisation of education by 2015.” In 2005, UNESCO ranked India, with 35 other countries, in the lowest category. Once again, the UN body said that it’s doubtful that India will achieve the Education For All (EFA) goal of 100 per cent enrolment in primary schools by 2015.¹ As per the government’s own estimates, India still has 3.5 crore out-of-school children in the 6-14 age group.²

UNESCO ranks India at 105 out of 127 countries. Its sub-continental neighbours also fare abysmally – Bangladesh comes in 107, Nepal 110 and Pakistan 123. China, with a larger population than India, ranks a respectable 54.

The Sarva Shiksha Abhiyan has been designed as the government’s flagship programme to achieve universalisation of elementary education. But what does one do when the flagship itself is flawed? Although promoting education for all, the programme is not designed to provide ‘equal’ education for all. Much advertised programmes, such as the Education Guarantee Scheme, promote parallel systems of education in which less qualified, under paid, local para teachers are replacing trained professional teachers. Also the concept of multi-grade teaching, in which one

1. UNESCO. Education For All Global Monitoring Report. November 8, 2005 (released in the Brazilian capital Brasilia).
 2. Rajya Sabha. Unstarred Question No. 1908, 10 March, Budget Session, 2003.

Common Minimum Programme – The Promise...

- Universal access to Quality Basic Education
- Raise Public Spending to at least 6 per cent of GDP with at least half this amount being spent for 'primary' and 'secondary' sector (note no use of 'elementary')
- Cess on all Central Taxes
- National Commission on Education to allocate resources and monitor programmes
- Immediate steps to reverse trend of communalisation of education
- Nobody will be denied professional education because of poverty
- Nation wide cooked nutritious mid-day meal scheme in primary and secondary schools – funded mainly by Central Government
- Universalisation of ICDS to provide functional anganwadi in every settlement and ensure full coverage

teacher is responsible for teaching many classes, each of them overcrowded, continues. Clearly these programmes aim at providing literacy skills to children, who are school drop-outs and not able to access schools.

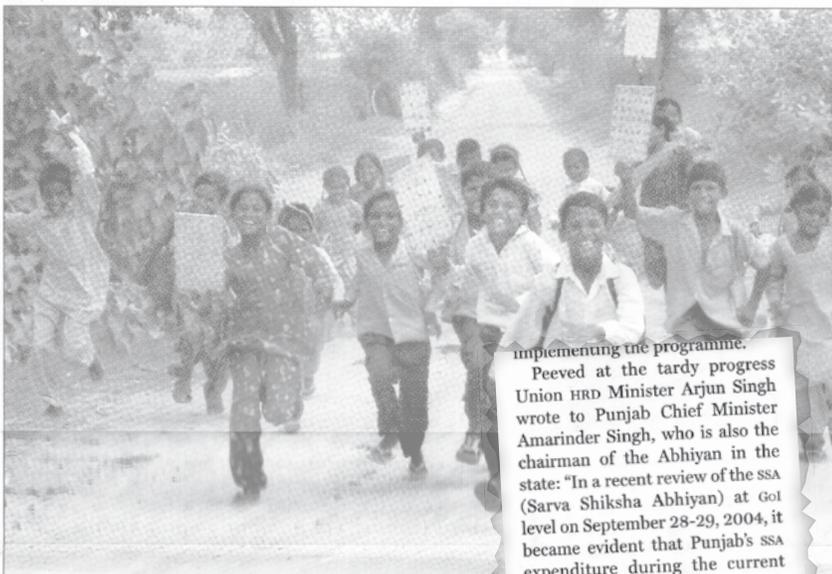
The Abhiyan launched in 2001, is a joint effort on the part of Government of India, involving Central and the State governments. While the Central government's contribution is 75 per cent, it is subject to the condition that 25 per cent contribution will come from the states, failing which the Central Government will not put in its share. Given the precarious financial condition of many of state exchequers the states are unable to put in their share. Often, there is also the issue of poor implementation of the programmes in the states.

The World Bank team reviewing the progress of the Abhiyan found that the biggest achievement so far seems

to have been the construction of a swanky office – after diverting crores of rupees sanctioned for the education of children. The office construction was under the pretext of capacity building.³

The Union HRD minister pulls up the Punjab government for its failure to implement a project to universalise elementary education

Topping from below



The Great Escape: children, enrolled for the programme in Punjab, are not

AJMER SINGH
Chandigarh

dren have still not been enrolled in schools. Those who did enrol to go without benches, benches

implementing the programme.

Peeved at the tardy progress Union HRD Minister Arjun Singh wrote to Punjab Chief Minister Amarinder Singh, who is also the chairman of the Abhiyan in the state: "In a recent review of the SSA (Sarva Shiksha Abhiyan) at GoI level on September 28-29, 2004, it became evident that Punjab's SSA expenditure during the current year up to August 2004, was only 5.99 percent of the approved outlay. Furthermore, the latest estimate of school children is one lakh in your state. These are serious concerns and...kindly personally review the programme..."

The Abhiyan, launched in 2001,

18/12/04 Tehelka The People's Paper

vigilance authorities for their unwarranted interference in the Sarva Shiksha Abhiyan."

Agarwal blamed the slow progress in the Abhiyan on the non-release of funds by the state government. He also defended the construction of the swanky Abhiyan office, "Capacity-building was required as Punjab had no infrastructure as it is a non-DPEP state (District Primary Education Programme)."

With HRD Minister Arjun Singh pulling up the state for the slow implementation of the pro-

not to go ahead with a formal inquiry.

Due to its shoddy implementation, the Abhiyan received approximately Rs 225 crore, instead of the sanctioned Rs 672 crore during 2001-04. In the current financial year, the expenditure, as on September 30, 2004, was approximately Rs 12 crore against an approved outlay of Rs 200 crore for the financial year 2004-05. Documents suggest that funds were not released by the Centre, as the state government failed to clear the backlog of the state's share.

After receiving complaints of approximately Rs 31 crore but lost out on more than Rs 600 crore.

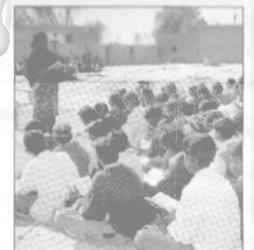
Even Education Minister Harnam Das Johar blames the poor performance on not receiving the installment on time.

Due to shoddy

Education for all?

The Sarva Shiksha Abhiyan aimed at universalising elementary education in a specific time-frame

- ▼ The programme was launched in response to the demand for providing quality basic education in the country.
- ▼ An opportunity for promoting social justice through basic education.
- ▼ An expression of political will for universal elementary education in the country.
- ▼ A partnership between the Central government and the state governments.
- ▼ An opportunity for the states to develop their own vision of elementary education.
- ▼ Aims to provide useful and relevant elementary education for all children in the age group of 6 to 14 age by 2010.



3. Ajmer Singh, 'Topping From Below', Tehelka, Chandigarh 18/12/04.

Enrolment, Retention and Drop-out

The success of any education system depends on both enrolment and retention. Unfortunately, the government only provides a Gross Enrolment Ratio (GER)⁴ that does not reflect the retention of children in schools. Hence, we do not get Net Enrolment Ratios. Needless to say, this is not done inadvertently because a comparison between the gross enrolment ratios and the drop-out rates, and field level experiences reveal that not all children who enrol complete 5 years of primary school. Similarly, all those who finish primary school do not finish elementary school or go on to complete secondary school.

Year	Primary (I - V)			Upper Primary (VI - VIII)			Elementary (I - VIII)		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
1950 - 51	60.6	24.8	42.6	20.6	4.6	12.7	46.4	17.7	32.1
2001 - 02	105.3	86.9	96.3	67.8	52.1	60.2	90.7	73.6	82.4

Source: www.education.nic.in

The enrolment statistics found in government records are in terms of actual number of children (boys and girls) enrolled at the different stages of education and the Gross Enrolment Ratio. GER has increased progressively from 32.1 to 82.4 in 2001-02. It is interesting to note that the rate of increase in GER of girls has been higher than that of boys. Gross enrolment among both boys and girls is high at the primary level (see Table 1). But there is a sharp decline in the enrolment ratio at the upper primary level, especially in the case of girls, except in Andaman & Nicobar Islands and Chandigarh, where enrolment of girls at the upper primary level is higher than that of boys (see Table 2). This trend in the falling enrolment ratio at the upper primary level becomes more visible when we compare the enrolment ratio with the drop-out rates (see Table 3 and Table 4). The drop-out rate is much higher as compared to enrolment ratio at any level, be it primary or upper primary. According to Table 3, while Rajasthan has the maximum enrolment ratio of 134.60 at the primary level (boys: 143.59, girls: 124.94), it also has the highest drop-out rate of 56.93 at the primary level (boys: 54.81, girls: 59.86). Also, the drop-out rate increases cumulatively as it proceeds towards higher levels – this being more or less the same with all the states.

Year	Primary			Middle/Upper Primary			Sec/ Hr. Sec		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2000-01*	64.0	49.8	113.8	25.3	17.5	42.8	16.9	10.7	27.6
2001-02*	63.6	50.3	113.9	26.1	18.7	44.8	18.4	12.1	30.5

* Provisional

Source: www.education.nic.in

4. Gross Enrolment Ratio (GER) is defined as the percentage of enrolment in classes I - V and VI - VIII and/or I - VIII to the estimated child population in the age groups 6 - 11 years and 11 - 14 and/or 6 - 14 years respectively. The Government admits that in computing GERs both under-age (<6 years) and over-age (>11 years or 14 years) children get included and therefore the total per centage is more than 100 per cent in some cases. It must be pointed out here that the under-aged and over-aged children account for almost 20 per cent of the GERs. Also, the GER's do not take into account the low school attendance rates, which range between 50-70 per cent. In such a situation, the Net Enrolment Ratios would certainly be a better measure and would also reveal a more accurate picture.



Table 3: State-wise Gross Enrolment Ratio in Primary and Upper Primary Schools for General Education (All Students) 2002 - 03 (Provisional) as on 30 September 2002

Sl. No	State/UTs	Classes I-V (6-11 yrs)			Classes VI-VIII (11-14 yrs)		
		Boys	Girls	Total	Boys	Girls	Total
1	Andhra Pradesh	107.63	107.13	107.38	62.96	55.83	59.45
2	Arunachal Pradesh	129.10	105.10	117.05	74.87	66.22	70.66
3	Assam*	127.18	107.42	117.43	78.73	62.27	70.63
4	Bihar*	95.45	61.19	78.70	38.22	21.07	30.07
5	Chhattisgarh	110.71	105.70	108.24	81.76	65.59	73.88
6	Goa	87.19	82.32	84.79	72.91	67.66	70.33
7	Gujarat*	132.82	111.16	122.29	73.18	67.96	70.67
8	Haryana*	76.33	76.54	76.43	68.04	63.32	65.84
9	Himachal Pradesh	93.19	87.82	90.55	102.12	96.34	99.30
10	Jammu & Kashmir*	102.43	78.07	89.85	84.32	64.40	74.39
11	Jharkhand*	100.51	76.34	88.56	43.86	30.76	37.56
12	Karnataka	113.94	109.99	111.99	80.22	72.07	76.18
13	Kerala	87.79	87.66	87.73	97.05	92.22	94.68
14	Madhya Pradesh	121.64	104.76	113.41	73.39	49.57	61.79
15	Maharashtra	112.18	109..39	110.82	98.23	90.95	94.67
16	Manipur	105.25	98.83	102.08	82.28	73.72	78.05
17	Meghalaya*	117.79	107.50	112.42	60.16	61.49	60.83
18	Mizoram*	132.14	106.67	119.07	81.45	78.45	79.95
19	Nagaland*	110.70	100.75	105.70	59.15	61.43	60.26
20	Orissa*	133.52	97.25	115.64	67.03	44.33	55.89
21	Punjab	71.72	72.36	72.02	64.39	65.33	64.83
22	Rajasthan	143.59	124.94	134.60	73.73	44.06	59.62
23	Sikkim*	119.13	110.31	114.59	61.35	69.05	65.14
24	Tamil Nadu	117.59	114.15	115.91	96.19	92.55	94.41
25	Tripura	113.09	91.58	101.72	68.70	64.11	66.46
26	Uttar Pradesh	88.94	61.54	75.76	54.08	29.93	42.66
27	Uttaranchal	98.66	100.48	99.56	77.21	72.88	75.09
28	West Bengal*	112.72	106.82	109.80	60.51	46.96	53.88
29	Andaman & Nicobar Island	89.58	82.70	86.14	82.46	92.98	82.71
30	Chandigarh	57.86	55.06	56.54	62.69	64.76	63.65
31	Dadra & Nagar Haveli	142.26	130.98	136.87	95.26	64.84	80.97
32	Daman & Diu	94.54	94.61	94.58	86.08	72.88	79.65
33	Delhi	88.92	78.74	83.81	89.45	85.07	87.35
34	Lakshadweep	100.93	83.45	91.98	133.50	96.64	114.19
35	Pondicherry	77.25	74.08	75.69	94.04	86.60	90.32

*School data pertains to 2001 - 2002

Source: Annual Reports 2003 - 04, Department of Elementary Education and Literacy Department of Secondary and Higher Education, Ministry of Human Resource Development, Government of India

Is it drop-out, push out or walk out of the education system?

The government calls it drop-out. Professor Anil Sadgopal often argues (As he did in a T.V. Interview on 22 May, 2005 on Doordarshan News Channel), that children “walk out” of the education system because they find it inappropriate and meaningless. We would like to argue that the education system is designed to ‘push out’ the children.

Education is a fundamental right and the government’s programme, in its name and stated intent, is a campaign for education for all (Sarva Shiksha Abhiyan), but does the design of the curriculum and even more relevantly, the way it is implemented, actually keep the children in school? Children of manual scavengers are expected to clean toilets and sweep and swab the school premises, Dalit children are made to sit separately, drink water from separate containers and are fed

Table 4: State-wise Drop-out Rates in India: 2002-2003

Sl. No.	States	Drop-out Rates								
		Classes I-V			Classes I-VIII			Classes I - X		
		Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
1	Andhra Pradesh	41.66	41.76	41.71	58.10	62.00	59.94	67.36	70.78	68.95
2	Arunachal Pradesh	38.42	37.37	37.94	59.50	56.13	58.01	70.17	73.59	71.66
3	Assam	62.51	59.63	61.17	67.07	70.85	68.76	74.28	75.65	74.91
4	Bihar	62.74	61.66	62.31	77.91	80.78	79.01	82.27	85.83	83.60
5	Chhattishgarh*									
6	Goa	0.08	5.45	2.69	2.28	9.01	5.54	40.18	39.14	39.68
7	Gujarat	26.02	23.14	24.77	43.09	48.76	45.48	59.21	67.13	62.82
8	Haryana	3.45	10.74	6.89	5.70	14.82	9.90	22.31	37.05	29.14
9	Himachal Pradesh	10.82	14.08	12.42	7.90	11.32	9.56	28.75	31.23	29.95
10	Jammu & Kashmir	33.06	11.50	24.82	27.53	25.57	26.71	50.29	52.08	51.07
11	Jharkhand *									
12	Karnataka	19.77	17.59	18.74	47.46	49.61	48.46	60.67	63.72	62.14
13	Kerala	0.00	0.00	0.00	0.00	0.00	0.00	16.78	8.88	12.90
14	Madhya Pradesh	32.66	29.87	31.43	43.29	51.78	46.94	58.36	70.78	63.79
15	Maharashtra	14.40	16.80	15.55	29.51	35.98	32.59	48.98	55.42	52.05
16	Manipur	25.92	25.24	25.60	35.43	30.08	32.93	61.92	59.01	60.54
17	Meghalaya	58.19	54.81	56.51	73.13	70.21	71.67	81.40	80.45	80.93
18	Mizoram	56.25	56.52	56.38	60.05	56.39	58.31	77.11	74.11	75.68
19	Nagaland	49.16	54.49	51.80	53.79	52.93	53.38	77.08	77.90	77.47
20	Orissa	50.40	40.05	46.13	63.97	58.39	61.73	71.04	72.56	71.74
21	Punjab	26.37	24.07	25.29	33.71	31.67	32.75	48.81	47.10	48.01
22	Rajasthan	54.81	59.86	56.93	62.74	72.44	66.60	72.66	81.16	75.77
23	Sikkim	54.74	49.29	52.06	72.68	66.32	69.66	76.85	73.07	75.12
24	Tamil Nadu	14.56	16.22	15.37	46.06	39.00	42.85	47.31	46.26	46.80
25	Tripura	43.28	42.62	42.97	65.17	65.22	65.19	74.24	74.29	74.27
26	Uttar Pradesh	24.19	22.75	23.55	47.53	42.46	45.57	43.05	51.47	46.31
27	Uttaranchal *									
28	West Bengal	37.39	35.32	36.41	67.26	69.30	68.23	77.08	80.61	78.74

Note: * Drop-out rates are shown combined with the respective parent state.
Source: Rajya Sabha Unstarred Question No 355, 6 December 2004.

separately. Girl children cannot attend school because they do not have toilets, and because parents do not encourage them to go to school with male teachers (the presence of female teachers has a remarkable impact on increasing girl enrolment and learning outcomes, yet only 35 per cent of teachers are female⁵). Besides, in the absence of guaranteed day care services or early childhood care and education, who will look after the younger siblings when the parents go to work? As a result, older children, especially girls, keep away from school and stay at home.

Disabled children do not get included because, although policy talks of integration, practice does not provide either the physical infrastructure required or the special education skills that teachers may need. Only 4.5 per cent primary schools and 8.15 per cent integrated higher secondary schools in Madhya Pradesh are reported to have ramps – highest being 14 per cent.⁶



5. UNICEF, Girls Education in India, 2003.

6. Arun C. Mehta, Elementary Education in India, Analytical Report 2003, National Institute of Educational Planning and Administration, New Delhi.

Children with HIV / AIDS are thrown out, as are others with communicable diseases such as leprosy. So, while in theory all children are welcome, practice makes it impossible for them to continue schooling. Children continue to be subjected to corporal punishment, forcing them to leave school. Is it then that children “drop-out” or that they are “pushed-out” of school?

It is India's gender-parity index that is causing the most concern. The average years spent in school for boys, at 10 years, is close to the global norm (10.7 years) and the average for developing countries (10.1 years). But for girls the figure drops to 7.9 years, way below the global average of 9.8 years.

UNESCO Education For All, 2004

In absolute terms, the number of teachers registered at the elementary level was 3.4 million in 2001-02. Despite the increase in the number of teachers over the decades the Pupil Teacher Ratio (PTR) at the primary level has remained more or less constant at 43:1 during 2001-02, while there is an improvement in PTR at the upper primary level to 34:1 in 2001-02.⁷

As mentioned above, the problem in India today is not so much enrolment as it is retention of children in schools through the different stages. Not to mention, that the drop-out rate for girls is much higher than for boys. Though the drop-out rate at the elementary education stage has declined over the years, it is still relatively high, specially in the case of girl students for whom the rates in 2001-02 were 39.9 per cent and 56.9 per cent at the primary and upper primary levels respectively.

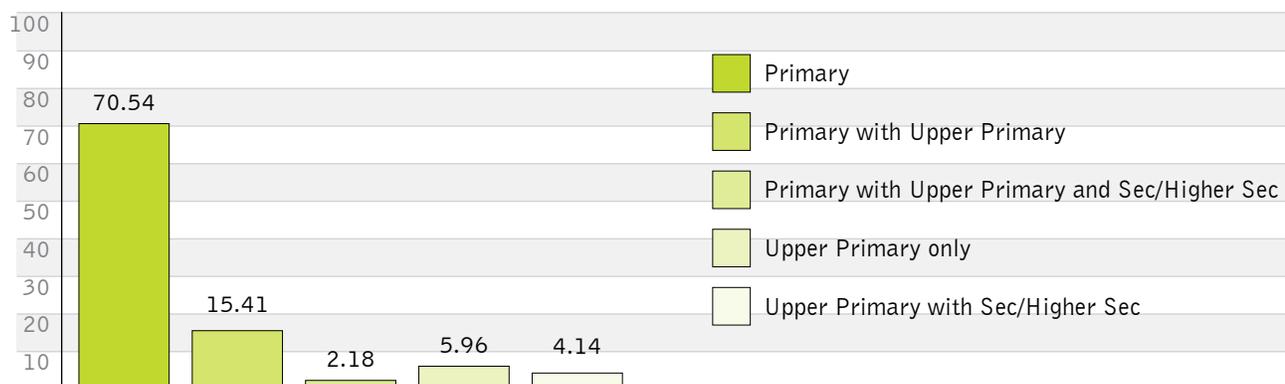
The maximum number of drop-out takes place at the transition period from primary level to upper primary level. From the figures in Table 4, we can also say that once a child reaches upper primary level, it is more likely that the boy/girl will complete high school education. More effort must be made to ensure retention at the primary level.

Attendance of children and their retention in schools is closely related to several factors such as distance from their homes, the safety of the schools and the facilities they offer. It is well established by now that among the major reasons why girls drop-out of school is the need to look after younger siblings and the lack of toilet facilities in schools (only 13.7 per cent schools have separate toilets for girls). NIEPA, in its data collected from 853,601 schools from 461 districts across 18 states found that 87 per cent of schools are in the rural areas.⁸

- Only 26.58 per cent primary schools are located within one km from the CRC compared to 32.85 per cent schools located more than 5km from the CRC*
- About 62,996 (7.38 per cent) of the schools in the country do not have school buildings. The status of such schools is as high as 13.27 per cent in the case of independent primary schools. The per centage of building less upper primary schools in Madhya Pradesh is 39.03 per cent as compared to 22.46 per cent in Chhattisgarh and 15.77 per cent in Himachal Pradesh*
- About 29.81 per cent primary schools and 6.02 per cent elementary schools are yet to have a pucca school building. Only 62 per cent upper primary schools and 72 per cent integrated higher secondary schools have pucca buildings*.
- About 40 per cent of the total schools in the country do not have any boundary wall in 2003*
- Only 13.7 per cent schools have separate toilets for girls**.
- 30 per cent of all of all schools lack blackboards and 65.4 per cent lack materials or furniture for students**.
- A large number of schools still have a pupil teacher ratio of 1:100*

*Analytical Report 2003, Elementary Education in India: Arun C. Mehta. **UNICEF Girls Education in India, 2003

Figure 1: Percentage of Schools by Category 2002 - 03 (All Districts)



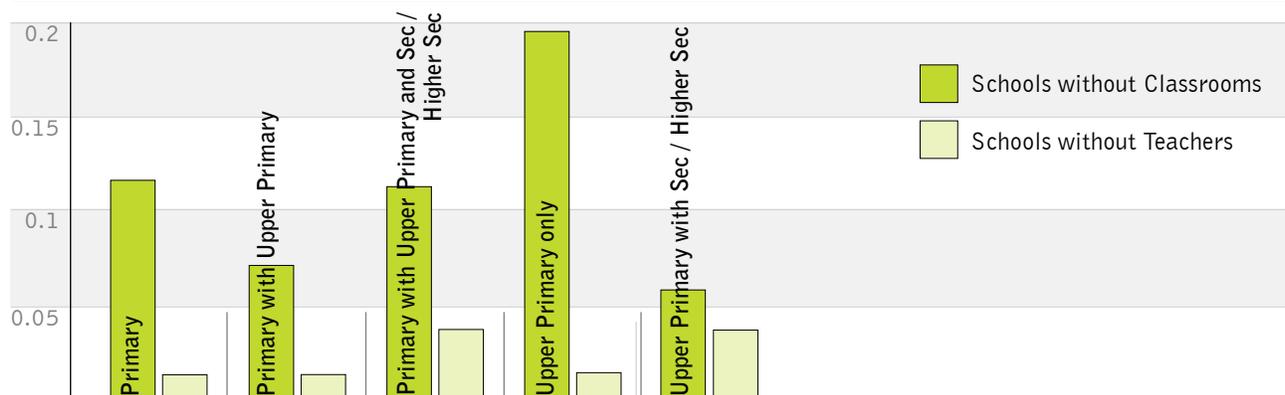
7. Economic Survey 2003-04, Government of India, Ministry of Finance Economic Division, pg.214.

8. Arun C. Mehta, Elementary Education in India, Analytical Report 2003, National Institute of Educational Planning and Administration, New Delhi.

The Programme of Action 1992 had envisaged an upper primary school / section for every two primary schools. However, the ratio calculated for 2003 reveals that there is only one upper primary school/ section for every 3.18 primary schools. As is to be expected, the ratio varies between states. Karnataka has the recommended one upper primary school / section for every two primary schools, Kerala has one for every 2.01, Madhya Pradesh 2.64 and Tamil Nadu 2.92. On the other hand, in Bihar the ratio is 5.00, Uttar Pradesh 5.24 and West Bengal 5.27. As per the Analytical Report 2003, the number of schools distributed by category reveals that 70.71 per cent of the total schools are independent primary schools, followed by primary integrated with upper primary (15.41 per cent), upper primary only (5.96 per cent), upper primary integrated with secondary and higher secondary (4.14 per cent) and primary integrated with upper primary, secondary and higher secondary (2.18 per cent) schools.⁹

The All India Educational Surveys (AIES) revealed that the number of single teacher primary schools have declined over a period of time, mainly because of the provision of at least 2 classrooms under the Operation Blackboard programme. About 15.7 per cent primary schools still continue to be single classroom schools. As far as the other category of schools are concerned, there are still some (4.6 independent upper primary, 2.1 elementary and 1.7 integrated higher secondary), which are single classroom schools, but their numbers are lower than that of primary. Only 34.44 per cent schools had common toilets and only 2.22 per cent had separate toilets for girls and as many as 84,848 schools did not have a blackboard. The Kumbakonam fire tragedy in the school once again brought to public attention the issue of inadequate and unsafe infrastructure.

Figure 2: Percentage of Schools without Classrooms and Teachers: 2002 - 03 (All Districts)



COVER STORY

TRAGEDY AT SCHOOL

The fire in a school in Kumbakonam, Tamil Nadu, in which 93 children died, raises serious questions about the state of basic education, including safety in schools.

G. SRINIVASAN
in Kumbakonam

JULY 16, 10 a.m. Classes are on as usual at the Sri Krishna High School in Kumbakonam in Thanjavur district in Tamil Nadu. In the school kitchen preparations are on to cook the mass noon meal – rice, *sambar*, a side dish and a boiled egg per child. A small fire in one corner of the kitchen did not seem to worry those present as they got down to the task of dousing the flames. Surya, a Class VII student who inquired about the smoke and smell, was told that the fire was being put out. But a strong wind, normal in the month of *Aadi* (July-August) in the State, seemed to

uation was going out of control.

Surya was asked to run away by her teacher, but no one seemed to spare a thought for the 193 primary schoolchildren who were locked inside the long room, partitioned for the five classrooms, on the first floor even as the flames leapt to its thatched roof. Soon smoke filled the rooms and the children ran to the door screaming for help. There was no other escape route as the flames spread. And then the burning thatch fell. Seventy-five children were burnt alive. Of the 30 who suffered severe burns, 18 died in hospital.

Sandwiched between two residential buildings, the school, which is just 40 feet (12 metres) wide and 120 feet (36

working hours, even when a fire burned in the kitchen on the ground floor. It is said that a fire broke out in the same kitchen some years ago but it was put out before it caused much damage. "They thought they would be able to put out this fire too, but the story turned out to be different," said a senior resident of Kumbakonam.

No lessons were learnt from the first accident. It is said that once when Education Department officials refused permission to run the school, the management went to court and got the permission.

The school, as it turns out now, had violated several rules and regulations governing the building and safety. The



9 ibid

Schooling for disabled 'specially neglected'

By Chirdeep Bagga
TIMES INSIGHT GROUP

which lasted for more than a year. The first year was spent in repeated meetings from the authorities were could not be met. They never disclosed the exact reason or what criteria they used to judge her ability.

New Delhi: The leashed by Natio for Promotion ment for Disg (NCPEDP) has stark realities of education children to t haps, certain be captured

Action plan tabled to make education disabled-friendly

PNS/ New Delhi

Child Development Services (ICDS) programme for children in the age group 0-6 years. He said the Department be crucial in strengthening this aspect of the ICDS programme. In addition, under the

In a PIL by Social Jurist, a lawyers group in Delhi, it was submitted that children with disabilities are denied admission in Kendriya Vidyalaya all over the country, and particularly in Delhi due to non-availability of date of birth certificates of such children. The case was filed when seven blind children with 100 per cent disability were denied admission in Kendriya Vidyalaya JNU Campus, New Delhi in the academic session 2003-2004, due to non-availability of date birth of certificates. All these children were residing at the National Association for the Blind, R.K. Puram New Delhi.

PIL - C.W. No. 1984 of 2003, Social Jurist vs. Kendriya Vidyalaya Sangathan and others

Education and Disabled Children

About 1.13 million disabled children are enrolled in elementary classes across the country. Of these 0.89 million are enrolled in primary classes and 0.24 million in upper primary classes. The percentage of children with disability, both in primary (0.88 per cent) and upper primary classes (0.87 per cent) is below one per cent of the total enrolment in classes.

According to NSS 58th Round, Report No. 485, (July-December 2002), the current enrolment ratio per 1000 disabled persons of age 5-18 years in the ordinary schools was higher in the rural than in the urban sector (475 and 444 respectively for the two sectors). This ratio changes in the 5-18 year age group. However, about 11 per cent of disabled persons of age 5-18 years were enrolled in the special schools in the urban, as compared to even less than one per cent in the rural areas.

Also, only about 13 per cent of the disabled persons of age 5-18 years had attended the pre-school intervention programme. The proportion was 20 per cent in the urban and was almost half of urban, at 11 per cent, in the rural

areas. Surprisingly, proportion of disabled persons of age 5-18 years attending the pre-school intervention programme was highest among urban girls although the proportion was more for boys in the rural.

Table 5: Number of Persons per 1000 Disabled Persons of age 5 - 18 years by Enrolment Status and Type of Disability for each sex and sector in India (July - December 2002)

Type of Disability	Number per 1000 of Disabled Children					
	Currently Enrolled in Ordinary School			Currently Enrolled in Special School		
	Male	Female	Persons	Male	Female	Persons
Rural						
Mental Retardation	155	95	134	45	9	32
Mental Illness	163	74	128	24	12	19
Blindness	239	154	203	19	17	18
Low Vision	472	437	456	11	0	6
Hearing	540	454	503	0	11	5
Speech	412	341	383	12	7	10
Locomotor	601	501	562	4	1	2
Any Disability	511	420	475	8	4	6
Urban						
Mental Retardation	128	100	117	141	137	139
Mental Illness	145	128	138	102	81	94
Blindness	254	110	143	74	716	569
Low Vision	628	629	629	0	42	19
Hearing	490	469	480	47	46	47
Speech	338	270	311	240	266	250
Locomotor	564	577	569	21	18	19
Any Disability	461	421	444	79	143	106

Source: Disabled Persons in India, NSS 58th Round, Report No. 485 (July - December 2002)

Only a few schools in the country had the provision of a ramp. The percentage of such schools is as low as 4.50 in primary schools, as compared to 8.15 per cent in the case of the integrated higher secondary schools. About 14 per cent primary schools in Madhya Pradesh had a ramp, which is also the highest in the country; the lowest per centage of such schools is in the state of Uttaranchal (0.65 per cent).¹⁰

CABE Committee

The Central Advisory Board of Education (CABE), is the highest advisory body to advise the Central and State Governments in the field of education. It was first established in 1920 and dissolved in 1923 as a measure of economy, only to be revived in 1935 and continued till 1994. Despite the fact that in the past, important decisions had been taken on the advice of CABE and it had provided a forum for widespread consultation and examination of issues relating to educational and cultural development, it was unfortunately not reconstituted after the expiry of its extended tenure in March, 1994.

The functions of CABE would be:

- a. to review the progress of education from time to time;
- b. to appraise the extent and manner in which the education policy has been implemented by the Central and State Governments, and other concerned agencies, and to give appropriate advice in the matter;
- c. to advise regarding coordination between the Central and State Governments/ UT Administrations, State Governments and Non-Governmental agencies for educational development in accordance with the education policy;
- d. and to advise, suo moto, or on a reference made to it by the Central Government or any State Government or a Union Territory Administration on any educational question.

Composition of the Committee of CABE on the subject of “Free and Compulsory Education Bill”

S.No.	Name & Address	
1.	Shri Kapil Sibal, Minister of State for Science & Technology	Chairman
2.	Minister (In-charge of Elementary Education), Government of Madhya Pradesh	Member
3.	Minister (In-charge of Elementary Education), Government of Meghalaya	Member
4.	Minister (In-charge of Elementary Education), Government of Bihar	Member
5.	Minister (In-charge of Elementary Education), Government of Andhra Pradesh	Member
6.	Minister (In-charge of Elementary Education), Government of Orissa	Member
7.	Prof. Anil Sadgopal	Member
8.	Shri Vinod Raina	Member
9.	Ms. Shanta Sinha	Member
10.	Smt. Kumud Bansal, Secy, EE&L	Member
11.	Sh. A.K. Sharma, Former Director, NCERT	Member
12-16.	Representatives of the Ministries of Tribal Affairs, Social Justice and Empowerment, Finance, Law and Planning Commission.	Members
17.	Prof. Krishna Kumar, Director, NCERT	Member
18.	Prof. Govinda, Director, NIEPA	Member Secretary

Recognising that CABE has a particularly important role to play at the present juncture in the country, particularly in view of the significant socio-economic and socio-cultural developments taking place and for the review of the National Policy on Education, which is also due, the Government has decided to reconstitute it.

The period since the last status report was published in 2002 has seen some important landmarks in the field of education. This chapter will look at these in some detail:

1. The Free and Compulsory Education Bill. Since June 2003, the Government of India (Ministry of Human Resource Development) had been circulating a draft of the ‘Free and Compulsory Education Bill, 2003’ which follows the 86th Amendment to the Constitution making right to education for all children in the 6-14 age group a fundamental right.

2. Mid-day Meals in primary schools. In a landmark order dated November 28, 2001, the Supreme Court of India directed all state governments to introduce cooked mid-day meals in primary schools within six months. This judgement becomes even more important in the light of the increasing reports of malnutrition and hunger among children.

10. Arun C. Mehta, Elementary Education in India, Analytical Report 2003, National Institute of Educational Planning and Administration, New Delhi.

3. Corporal Punishment in schools. This is particularly important today in light of the recommendations made by the Tamil Nadu State Human Rights Commission, which has upheld the use of corporal punishment as a disciplining measure.

4. Education Budget. The United Progressive Alliance (UPA) government promised in its Common Minimum Programme (CMP)¹¹ that the education budget will be increased to 6 per cent of the GDP and a 2 per cent cess has been levied to raise funds for education in 2004-05 Union Budget.

Free and Compulsory Education Bill

The 86th Amendment to the Constitution¹² making education free and compulsory for all children in the 6-14 year age group was passed amidst protest and disappointment in 2001. This led to the drafting of the 'Free and Compulsory Education Bill, 2003, which the Ministry claimed fulfils the Government's promise given on the floor of the Lok Sabha on 28 November 2001. According to Anil Sadgopal (also a member of the CAGE Committee) this was a promise made by the Minister of Human Resource Development himself in order to pacify the MPs who criticised the Bill for its various lacunae and bias against poor parents and their children.¹³

As in the case of the Amendment to the Constitution, people's organisations, child rights groups and educationists articulated their criticism in the media, submitted a Memorandum to the Union Minister as well as to the leadership of the leading political parties in the Opposition, petitioned the concerned Parliamentary Standing Committees and organised public rallies, seminars and meetings, seeking redrafting of the Bill. Academicians, researchers and activists wrote articles and papers critiquing the bill. Anil Sadgopal contended that the lacunae in the Bill were deliberate, rather than the result of an oversight.

The Bill carried forward the gaps that had troubled those who had critiqued and protested against the Constitutional Amendment. Several problems were identified. The date of enforcement was left to the discretion of the government. This meant that even after the Bill became an Act, it allowed for the government to delay its enforcement. Following the 86th Amendment, children below 6 years, and above 14 years had been excluded from the definitions of a 'child' and 'school age'. Thus a girl of 15 years, who had never been to a school, was not entitled to education under the proposed Bill, neither did it address the needs of the young child. Children with disabilities, who were entitled to free education up to 18 years under the provisions of the People With Disabilities Act 1995, were not entitled to it under the Bill if they were less than 6 or above 14 years. Thus in practice, the proposed Bill would deny education to crores of children out of the 6-14 age group. The Bill provided for two types of schools – one formal and another non-formal, against the norms of the Common School system that had been a continued recommendation and demand.¹⁴ Indeed the Bill will have serious and adverse implications for the education of India's children, particularly those belonging to the Scheduled Castes, Scheduled Tribes and several communities of the OBCs (including all the children engaged in various forms of child labour) and the cultural and linguistic minorities, as well as those living in the socio-economically backward regions of the country.

Accordingly it has been decided, with the approval of the Minister of Human Resource Development, to set up a Committee of CAGE on the subject of 'Free and Compulsory Education Bill and other issues related to Elementary Education' under the Chairmanship of Shri Kapil Sibal, MOS Science and Technology with the following composition:

A Sub-Committee within this Committee has drafted a bill (Chairperson: Prof. A.K. Sharma) that was discussed at a meeting held on 16 April 2005. This draft too, by concentrating only on the 6-14 age group, is seen to be violative

11. Announced on May 27, 2004

12. The Eighty-Sixth Constitutional Amendment Act introduced a new Article in Part III of the constitution of India (Article 21A) as a Fundamental Right.

Article 21A – 'The State shall provide free and compulsory education to all children in the age of six to fourteen years in such a manner as the State may by law determine.'

It replaces Article 45 of the Constitution of India which said, 'The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.'

It inserted Fundamental Duty, 51A, (k) '... parents or guardians to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.'

13. Anil Sadgopal, De-Constructing 'Free and Compulsory Education Bill, 2003', a concept paper for an alternative framework, Resource Material for workshop "In Towards inclusive Democracy: Civil Society Response to the Common Minimum", Jointly Organised by Civil Society Organisations, June 11, 2004

14. Ashok Agarwal, Compulsory Education Bill 2003, What We Need Is Good Quality Common School System. People's Democracy- Weekly Organ of the Communist Party of India (Marxist) Vol. XXVII, No. 47, November 23, 2003.

of the UNCRC and other commitments (since child is defined as persons upto 18 years) and has gone back on the Common School Commitment.¹⁵ The CABE Committee has finalised its recommendation on the Free & Compulsory Education Bill and Other Issues related to Elementary Education. (A copy of the new bill is available on the Department of Education website – www.education.nic.in).

Mid-Day Meals in School

The national programme of nutritional support to primary education (popularly known as the Mid-Day Meal programme) was launched on 15th August, 1995 with the following objectives:

- Boost to universalisation of primary education
- Enhance attendance and enrolment and retention
- Addressing the nutritional needs of children

However, because of the lackadaisical manner in which the programme was being implemented, in a landmark order dated November 28, 2001, the Supreme Court of India directed all state governments to introduce cooked mid-day meals in primary schools within six months.¹⁶

A survey undertaken by Samya, Centre for Equity Studies (CES), New Delhi, between January and April 2003 in three states, Chhattisgarh, Rajasthan and Karnataka, suggests that the Mid-Day Meal programme can have a major impact on child nutrition, school attendance and social equity.¹⁷ Most State governments missed the deadline, and some states (notably Bihar, Jharkhand and Uttar Pradesh) had not complied with this order even as late as February 2003. Although there has been some expansion in the coverage of mid-day meal programmes, everyday one reads of problems of both coverage and more importantly quality of the food served.

In the Second Report that Dr. N.C. Saxena presented to the Supreme Court in February 2003 as the Commissioner,¹⁸ he advised the Court to reaffirm the calling for mid-day meals programmes to be introduced in all primary schools. He asked the Court to clarify that its earlier direction, permitting resource-poor states to introduce mid-day meals initially in just one-fourth of the districts, was to be treated as only a temporary measure. States have to be categorically directed to implement mid-day meals in the entire state within six months. The Commissioner also stressed on the need to make qualitative improvements in the meal served and on the need to tackle the issue of caste discrimination in the selection of cooks for the programme. According to the Commissioner's Report, mid-day meals are very effective in protecting children against hunger. Many states have shown a

15. For details see Anil Sadgopal's, "Some Selected Questions Posed to the CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education".

16. The order was made in response to a public interest litigation on the right to food initiated by a writ petition submitted to the Supreme Court by the People's Union for Civil Liberties, Rajasthan. (Writ Petition (Civil) No.196 of 2001.

17. Jean Dreze and Aparajita Goyal, The Future of Mid-day Meals, Samya: Centre for Equity Studies.

18. Summary of the Second Report of the Commissioner submitted by Dr. N.C. Saxena, Following the Petition the PIL by PUCL, Supreme court appointed Dr. N.C. Saxena and S.R. Sankaran as Commissioners of the Honourable court for the purpose of looking into the grievances.

19. P.P.S.Gill, The Tribune, 21.04.03.

Mid-day meal best course for schools yet states don't bite

■ Study finds it boosts enrolment, breaks caste barriers

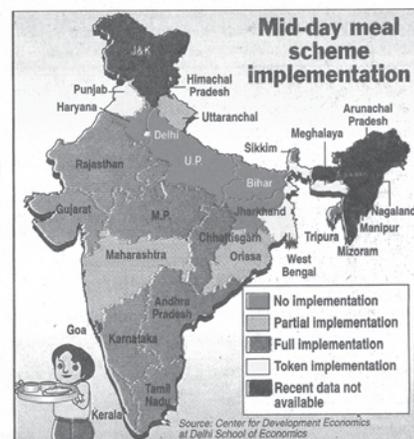
SONU JAIN
NEW DELHI, AUGUST 1

THERE is some good news on the Mid Day Meal (MDM) scheme. Findings of a survey released today show that because of this scheme, school enrolment between July 2001 and July 2002 went up by 14%, with a particularly impressive jump (19%) for girls. The figure in the '90s was just 2%.

But the good news is limited to those states that have implemented the scheme eight years after it was introduced—and three years after the stick was wielded by the Supreme Court.

Most states are yet to implement it effectively, the worst news coming from the Hindi heartland, including Uttar Pradesh and Bihar. These states are big contributors to India's 50 million under-nourished children, the highest in the world—a higher percentage than even Sub-Saharan Africa.

The survey, by noted economist Jean Dreze and involving Nobel Laureate Amartya Sen by the New Delhi-based Centre of Equity Studies,



Source: Center for Development Economics at Delhi School of Economics
IE Map/B.K. SHARMA

states, Chhattisgarh, Karnataka and Rajasthan.

"Even if it does not lure people to get better education, every iota spent on it is worth it," said Sen, pointing out the wonders it does in eliminating nutritional deficiency, attention deficiency and social inequality.

For those policy-makers pleading lack of funds for non-implementation, here

■ The recurring cost of a national mid-day meal programme covering all children adds up to Rs 2,900 crore per year — less than 0.2% of India's GDP, and barely 10% of India food subsidy.

■ Even the total food-grain required is 1 million tonnes, a small proportion of 70 million tonnes rotting in FCI godowns.

"Interestingly there is no single nodal central agency to monitor the Mid-Day Meal scheme. New Delhi accepts what the states and UTs submit when it comes to the action taken report or implementation. There is also no system to solve functional and financial problems. So much so that the FICCI had recently refused further releases of wheat and rice because the Union Ministry of Human Resource and Development had failed to clear the pending dues of more than Rs 500 crores."¹⁹

Source: PPS Gill, The Tribune, 21 April 2003.

In one such reported incident, at least three Dalit teachers were transferred from Surendranagar district, Gujarat, for objecting to the segregation of upper and lower caste students during the lunch meal.²³ The three Dalit teachers, including Girishbhai Wadher, protested, the other Dalit teachers were scared to speak out, as on September 29 some Dalits in Bhojpara village were beaten. An FIR (first information report) was lodged on October 2 at the Chotila Police Station. Inspector N. Ninama said 41 people were arrested for the attack, including sarpanch Karansinh Uttedhiya. They were released the next day on bail, whereupon they held a protest outside the District Primary Education Officer's (DPEO) office, demanding that the teachers be transferred, or they would not send their children to the school. Girishbhai Wadher, Laljibhai Anjaria and Chaturbhai Chauhan were transferred on December 3. Four other Dalit teachers had been transferred in September.

Corporal Punishment compelled child to end his life!

Master Ram Abhinav, aged 16 years, was studying in X standard at Velammal Matriculation Higher Secondary School in Tamil Nadu. He used to complain about severe beating from his teachers even for small and minor mistakes. His parents reported the matter to the school authorities and requested them to desist from brutal activities. On his birthday he requested his Tamil teacher for leave from the evening coaching classes. The very next day the mathematics teacher beat him so brutally for scoring low marks in mathematics, that he sustained injuries on his right cheek. The Tamil teacher who had supposedly given him leave the previous day reported that he did not give any permission. The teacher dragged him to the principal and he was again beaten black and blue. The head master and the teacher threatened him to put him in a cell. The traumatised child, fearing further harassment and humiliation, wanting to keep his self-respect in front of other students, returned from school and locked himself up in home. He tied his mother's nylon saree to the ceiling fan and hanged himself, leaving a death note on a handkerchief mentioning,

"...I don't like this school, so I don't like this life.... You have done so much for me, but I haven't done anything in return... I am very sorry... In the next birth I want to be born in this family only".

Source: The above case study is based on the complaints submitted to the State Human Rights Commission, Tamil Nadu (SHRC Case no. 3865/2003). Thiru Sarangapani and his wife are the complainants.

Violence in Schools²⁴

Corporal punishment is defined as the use of physical force with the intention of causing a child pain not for the purpose of injury, but for correction. However the Oxford Dictionary defines corporal punishment as punishment inflicted on the body, especially by beating. According to Jayant Jain, president of the Forum for Fairness in Education, "60 per cent of teachers still use corporal or verbal punishments." According to a nation wide survey conducted by the Educational Research Centre, between 1990 and 2003, the number of cases of corporal punishment stand at an alarmingly high, 700 to 1,000 cases per annum. "Parents do not approve of striking, punching or kicking by teachers," says research coordinator Amitabh Bhatt.²⁵

Corporal punishment is widespread in India but there is no legal provision which completely bans it. It often takes bizarre forms ranging from physical to mental torture, even death. Children are known to have had their bones and teeth broken, their hair pulled out and forced into acts of humiliation including eating excreta or dung. Sexual abuse of children too is not uncommon.

The Indian EXPRESS PUNE ■ WEDNESDAY ■ OCTOBER 13, 2004 NATIONAL NETWORK 3

College officials beat 16-year-old Rinku to death

■ They say he was a thief trying to scale gates, and armed; parents seek justice for the mentally disabled boy

EXPRESS NEWS SERVICE LUCKNOW, OCTOBER 12

A 16-YEAR-OLD mentally disabled boy was beaten to death here on Sunday after he was mistaken for a thief. Rinku's parents, Chandardev Singh and Rajika are now trying to seek justice for him as mystery surrounds the circumstances in which the boy was beaten up and where he died. Along with other residents of the area, Rinku's parents blocked the Lucknow-Siliguri highway today for almost four hours demanding that police take some action.

Even a case of culpable homicide not amounting to murder was registered against officials of Town Hall Inter College—where the boy was beaten up—only yesterday, after Rinku's relatives confronted SSP Kamal Saxena at his residence. However, no arrests have been made so far.

"A case of murder should be registered against the guilty. They braked my innocent son without any reason," says Chandardev, who works in a printing press. He has two other sons.

However, college officials claim that Rinku wasn't innocent. They say they caught three persons trying to scale their gate on Sunday night, armed with weapons. While two got away, they caught Rinku and gave him a thrashing before taking him to the police station. While police say Rinku was taken to hospital as he was in a serious condition, the boy's parents say cops interrogated him and that he died at the police station.

Rinku had been mentally disabled since birth and was undergoing treatment at King George Medical University. On Sunday night, he slipped to have slipped out of his house in Gaudamba unseen and landed up at Town Hall Inter College. He was trying to scale the gates of the college when the nightwatchman, Dharmendra, spotted him.

Dharmendra raised an alarm, college officials gathered at the spot and thinking Rinku was a thief, beat him up. A badly injured Rinku was then taken to Mandvion police station, where police registered a case of theft against him on the complaint of Kanishk Rastogi, the son of the owner of Town Hall Inter College. I D Rastogi, interestingly, just an hour ago, Rinku's parents had been to the same police station to lodge a missing person's report, but had been turned away.

Sources say despite the fact that Rinku was badly hurt, police subjected him to interrogation and only rushed him to Balmampur Hospital when his condition worsened. While police now say Rinku died in hospital, his parents insist he breathed his last in the police station itself, and was later shifted to hospital.

College management too questions the version of Rinku's parents. "Our officials spotted three men armed with weapons trying to enter the college premises. When we tried to catch them, two of them fled, while one got beaten up," says I D Rastogi.

Rinku's father can't believe his son met such fate. "This is a cruel joke being played on us," he pleads, breaking down. "Please get us justice."

SSP Saxena says a case has been registered against guilty college officials while SP (Trans-Govt) Raj Babu Yadav has been asked to conduct an inquiry into the police role.

23. The Indian Express.16 December, 2003.

24. This section is based on contribution made by Pallavi Gupta, law student from ILS Law College, Pune, who was interning with HAQ in June 2004.

25. The Times of India, Calcutta Ed., December 22, 2003

BANISH CORPORAL PUNISHMENT

THE STATE HUMAN Rights Commission's recommendation to the Tamil Nadu Government to retain corporal punishment in the statute book is a retrograde move that contravenes its own mandate under the 1993 Act. Corporal punishment — prevalent in families, schools and juvenile homes — is a violation of the principle of respect for the dignity and integrity of children set forth in the 1989 United Nations Convention on the Rights of the Child. The Convention, which India has ratified, advocates the abandonment of force as a means of disciplining children in favour of non-violent methods of coercion. Paying scant regard to these norms, the State Human Rights Commission recently upheld corporal punishment and disposed of

of word or act or flagrant insubordination." These offences attract punishment entailing six 'cuts' on the hand to be administered in the presence of the headmaster. The rules also require school authorities to maintain records on the nature of the offence and the extent of punishment inflicted. The reality on the ground is far worse than what these indefensible rules permit. It is ironic that a premier rights body should accord implied endorsement to claims about the usefulness of corporal punishment in disciplining children. The most common response to spanking is resentment, fear, humiliation, and an impulse to retaliation. Research also suggests a high proneness among those who experience physical violence during childhood to commit

The Delhi High Court in Parents' Forum for Meaningful Education and Others vs. Union of India held that, "It defeats the very purpose for which the punishment is applied. Infliction of body pain as penalty for indiscipline on a child may make him submissive, while others may learn that the punishment is an accepted mode of ensuring compliance of one's wisdom by others. 'Brutal treatment of children can never inculcate discipline in them. Obedience exacted by striking fear of punishment can make the child adopt the same tactics when he grows up for getting what he wants... the child has to be prepared for a responsible life."

It is to be noted that after the ratification of United Nations Convention on the Rights of Children (CRC) in 1992, the Indian Policy on Education (1986) has also been modified and it firmly excludes corporal punishment.

Table 6: States in India that have banned or upheld corporal punishment

States	Corporal punishment (banned or upheld)	Acts /legislation /policies
Tamil Nadu	Banned	Corporal punishment was prohibited in Tamil Nadu in June 2003 through an amendment of Rule 51 of the Tamil Nadu Education Rules prohibiting the infliction of mental and physical pain during "corrective" measures.
Goa	Banned	The Goa Children's Bill 2003
West Bengal	Banned	In February 2004, the Calcutta High Court ruled that caning in state schools in West Bengal was unlawful. A PIL has also been filed by Tapas Bhanja (advocate) in the Calcutta High Court.
Andhra Pradesh	Banned	School Education Secretary I V Subba Rao issued a (Hyderabad) Government order (GO Ms No 16) on February 18, 2002, replacing the provisions on corporal punishments issued by an earlier GO Ms No 1188 in 1966. Through the new order of 2002, the Andhra Pradesh government imposed a ban on corporal punishment in all educational institutions by amending Rule 122 of the Education Rules (1966), violation of which is to be dealt with under the Penal Code.
Delhi	Banned	Petition filed by Parents Forum For Meaningful Education. The Delhi School Education Act (1973) had provision for corporal punishment that has been struck down by the Delhi High Court. In December 2000, the Delhi High Court ruled that provisions for corporal punishment in the Delhi School Education Act (1973) were inhumane and detrimental to the dignity of children.
Chandigarh	Banned	Corporal punishment was prohibited in Chandigarh in the 1990s.
Himachal Pradesh	Decided to Ban	After the State Human Rights Commission ordered an inquiry into the case of a child who became disabled due to Corporal Punishment, the State Government decided to ban corporal punishment in educational institutions.

Source: Global Initiative Against Corporal Punishment of Children, www.endcorporalpunishment.org/pages/frame.html
Himanchal Pradesh Government Bans School Corporal Punishment, Indian Express News Service, May 5, 1998

However, the Tamil Nadu State Human Rights Commission has reversed the clock by upholding corporal punishment in its order of May 2004. According to the Commission, their recommendation is based on the inputs received from various interested parties such as educationists, parents, students, teachers and people from other walks of life who they felt “would be helpful to resolve this issue at least to some extent”. In this meeting, the Commission found that most of the parents felt that corporal punishment should not be abolished. It should be regularised and administered without hurting the self-respect of students. The heads of aided schools said that if corporal punishment is abolished, discipline of students will go down and it would be difficult for the teaching community to enforce discipline and character. The students said that if there were no apprehension of punishment they would never care to do their homework properly. They felt that punishment shouldn't be awarded in assemblies in the presence of all students. Boys didn't want to be beaten up in front of girls and vice versa.²⁶

Financing of Education

Over the years, several financial recommendations have been made to provide education for all. However, both the allocations, as well as the spending have continued to be inadequate. This is apparent from the number of children who are still to be reached and also from the need for investment in educational infrastructure (discussed earlier).

However, while the need for finances is growing, there are some disturbing trends that can be witnessed. Table 6 shows us how the expenditure on education since the first five-year plan has not just been inconsistent, but

Financial Recommendations

- Kothari Commission, 1966: 6 per cent of GNP for education.
- Acharya Ramamurthy Committee, 1990: Should exceed 6 per cent of GNP
- CABE, 1991: The practice of treating education as a residual sector in the matter of allocating resources.
- National Policy on Education 1986: From VIII Plan onwards outlay on education will uniformly exceed 6 per cent
- Saikia Committee, 1997: An additional investment of Rs.40,000 crore in the next five years (i.e. an additional Rs.8,000 crores per annum).
- Tapas Majumdar Committee, 1999: An additional Rs.1,36,000 crores over 10 years ending 2007-08 (i.e. 13,600 crore per year).
- Sarva Shiksha Abhiyan: 98,000 crores for 10 years.
- 93rd Constitution Amendment Bill financial memorandum: Rs.9,800 crore per year.
- Tenth Five Year Plan: Rs.55-60 thousand over 5 years
- CMP of UPA Government, 2004: 6 per cent of GNP

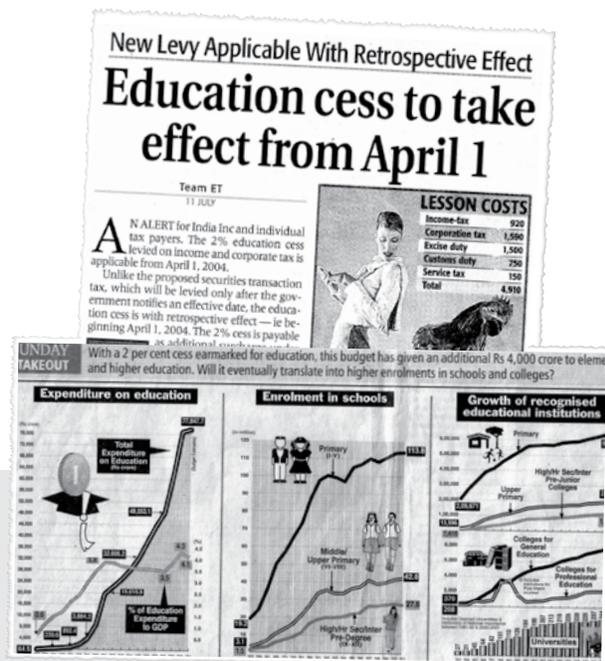


Table 7: Expenditure on Education in the Five Year Plans

Five Year Plan Period	At Current Prices	Per cent of Total Plan
Outlay		
1st (1951-56)	153*	7.9
2nd (1956-61)	273*	5.8
3rd (1961-66)	589	6.9
4th (1966-74)	774	4.9
5th (1974-79)	1710	4.3
6th (1980-85)	2976	2.7
7th (1985-90)	7686	3.5
8th (1992-97) (outlay)	19600	4.5
9th (1997-2002) (outlay)	Not available as allocation made sector wise	

Source: * Education for All, Developments since Dakar, August 2001, MHRD Economic Survey, 2003-04.

26. Tamil Nadu Human Rights Commission, No. 35 Thiru.Vike.Salai, Chennai 660014, Wednesday the 5th dya of May, 2004. SHRC Case Nos. 727, 3865, 3866, 5339, 5349, 7343, 9243 & 9360/2003/ss.

BUDGET SPEAK... 2004-05

- Empowering the people, especially poor, with universal access.
- Provide 'Basic Education' and make sure that the child remains in school for at least 8 years.
- Make sure the child is not hungry while she or he is in school
- 2 per cent cess which will yield about Rs.4000-5000 crores in a year. This will be earmarked for education.
- Cooked mid-day meal for primary school children.
- Technical Education - Upgrade 500 ITIs over the next 5 years at the rate of 100 ITIs a year.
- No mention of working child, street child, girl child – the marginalised sections!

Mr. P. Chidambaram, Honourable Minister of Finance in his Budget Speech. 28 February 2005.

has also shown a decline. According to Dr. B.J. Tilak of NIEPA, while the expenditure by the government in terms of real prices has been declining, there has been an increase in the cost of education, particularly for the poor. This increase has been in several areas like fees in educational institutions (for the limited category of the poor, who with great difficulty manage to send their children to private schools, because of the poor functioning of government schools), prices of other items related to education like cost of uniforms, cost of books, cost of transport, etc., and family expenditure on education (both because of increase in prices and because of the need for private tuitions due to the poor teaching quality).

According to the 6th All India Education Survey 1998, per student annual expenditure in government schools was Rs.774.48 and private aided schools Rs.1185.84. According to Dr. B.J. Tilak,²⁶ it costs Rs.257 per student per annum in rural India, in a government school and Rs.338 per student per annum, in a local body school.

Education comes under the Concurrent List of the Constitution and therefore expenditure is to be incurred primarily by the States. Inability to find the matching share by the State may lead to withdrawal of the Centre's share, leading to a fall in financial resources. Table 8 shows the Centre – State share in Education from 1970-71 to 1996-97.

The Financial Memorandum to the 86th Amendment mentions that an amount of Rs. 98000 crore is needed over a period of ten years to put all children in the school system and ensure eight years of compulsory and quality schooling, which implies that Rs. 9800 crore should be allocated annually for elementary education over and above the existing levels of expenditure in 2001. On this point too, the Honourable Finance Minister has failed to live up to the expectations of those children who are still waiting to avail their right of free and compulsory education of good quality. It is worthy of special mention that the Finance Minister talked about Outcomes as against Outlays. This has to be appreciated, since he has also talked about measurable development indicators. However, measurable development indicators make sense only when the data of the Department of Elementary Education and Literacy can be relied upon. This does not seem to be the case at present, as shown by Dr. Shantha Sinha in her paper, 'The missing children'.

While the percentage share of external aid in allocation for the education sector as a whole

Table 8: Expenditure on Education: Centre State Share (in %)

Year	State/Union Territory	Centre	Total
1970-71	21.4	2.1	13.9
1980-81	20.6	1.6	11.6
1990-91	21.2	2.2	11.7
1996-97 (BE)	19.6	2.8	11.2

A case of missing children

How serious is the government in implementing its promises and in ensuring that the Prime Minister's candid acknowledgement is translated into concrete action? The goal of universalisation of elementary education is still elusive and only 47 per cent of children who enter Class I stay on in school up to Class 8. The figures are even lower when the children from the Scheduled Castes and Scheduled Tribes and girl children are examined.

What must be done if the children's right to education is to be assured? First of all, the Sarva Shiksha Abhiyan (SSA) must verify that the statistics provided by each of the states to the Government of India on the number of children who are in schools and those who are out of schools, are accurate.

The numbers consolidated at the Government of India level show that there are only eight million children out of about 200 million children in the age group 6-14 years who do not go to school as on December 2004. The State Project Directors of SSA submitted this data. This means that only 4 per cent of all children are out of school according to the SSA estimate. Furthermore, the total number of children accounted for by the SSA does not match the number of children enumerated in the 2001 Census of India. For example, in the state of Andhra Pradesh, the SSA has declared that there are 1.53-crore children of school going age while the corresponding figure according to census data is 1.77-crore. The figures simply do not add up. Where have these missing children gone and who accounts for them?

Dr. Shantha Sinha, MV Foundation, Hyderabad

27. The Hindu 2nd March, 1999

went up from 12.63 per cent in 2000-01 to 14.35 per cent in 2003-04, the corresponding share for the elementary education during the same period went up from 29.45 per cent to 30.46 per cent. Does this dependency on external aid have an impact on the nature and quality of education provided in the country?

Table 9: Share of Child Education in the Union Budget

	2003-04 (BE)	2003-04(RE)	2004-05 (BE)	2004-05 (RE)	2005-06(BE)
(A) Elementary Education	4684.40	5227.47	5766.83	7234.18	11219.79
(B) Secondary Education	1750.37	1655.39	1721.02	1610.74	968.57
(A+B) Child Education – Total	6434.77	6882.86	7487.85	8844.92	13188.36
Union Budget – Total	438795.07	474254.67	477829.04	505791.41	514343.80
Child Ed. as %age of Union Budget	1.47	1.45	1.56	1.74	2.56

Note: The budget of Child Education has been drawn out of the Department of Elementary Education and Literacy and the Department of Secondary and Higher Education (Ministry of Human Resource Development). These Departments are primarily responsible for Child Education. Some schemes from Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs and Ministry of Youth Affairs and Sports linked with the school system, contribute directly towards Child Education and have also been taken into account.

Source: Says a Child -Who Speaks for My Rights, Parliament in Budget Session, 2005, HAQ: Cente for Child Rights

Figure 3 shows the education budget over the last three years. Clearly there has been a substantial increase in the allocation in the budget for 2005 - 06. Whether this will lead to changes in the situation of education of children is yet to be seen.

Figure 3: Child Education Budget (6-18 years)

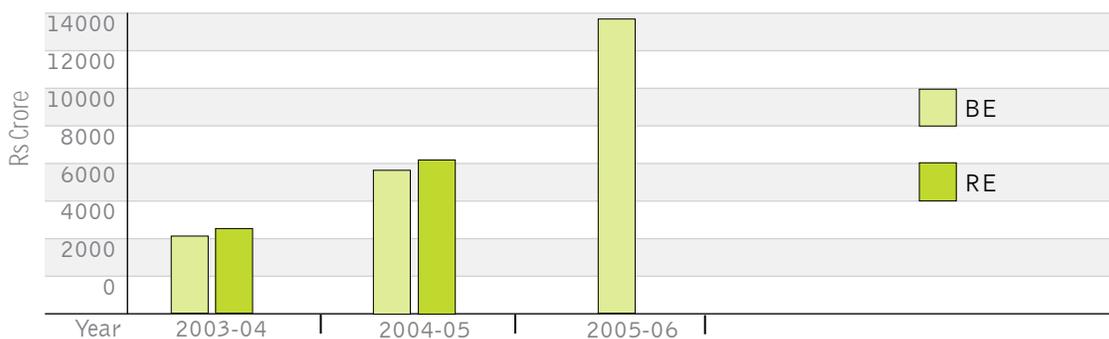
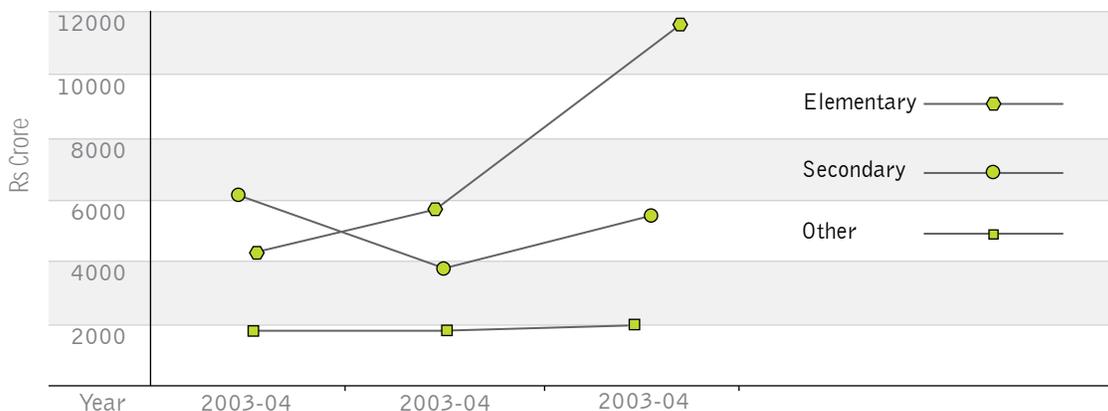


Figure 4: Allocation for Education



Elementary Education vs. Secondary Education

One very startling trend observed in financing of education in India after 2001-02 (when right to elementary education was made a fundamental right) is that increased allocation for elementary education has been at the cost of secondary and other education.

How Interested are our Parliamentarians?

The analysis of parliamentary questions (2003-04) on children undertaken by HAQ shows that although only 3 per cent of all questions raised by our parliamentarians in the two houses of parliament concerned children, education constituted the largest proportion of these questions. Of the 843 questions concerning children,²⁸ 479 questions (57 per cent) were on education.

With the passing of the 93rd amendment to the Constitution, 2003 was the year for education. And yet, while ongoing debates and controversies find a reflection in the questions raised, they do not seem to raise the issues forcefully enough. One would have expected many more questions concerning the amendment, linking fundamental right to education to the existence of child labour in the country.

The questions on education ranged from educational policies to questions related to specific schemes or programmes. They seem particularly interested in the mid-day meal programme (on an average about 5 questions per session). The concern about saffronisation of textbooks find reflection in the questions raised. About 8-10 per cent questions dwelt on curriculum. Kendriya Vidyalaya and Navodaya Vidyalayas were a particularly hot subject in the Budget Session with 26 questions being asked, while only 6-8 questions were asked on this subject in the other sessions. Although there are a number of questions on the ICDS, crèches and other early child hood care and education (ECCD) schemes, they are largely confined to programmatic issues or are honorarium related. They do not seem to emanate from a deep desire to address the early childhood needs, and the importance of intervening at this stage of the child's life. This observation is also based on the fact that there are no questions that link ECCD and elementary education.

Conclusion

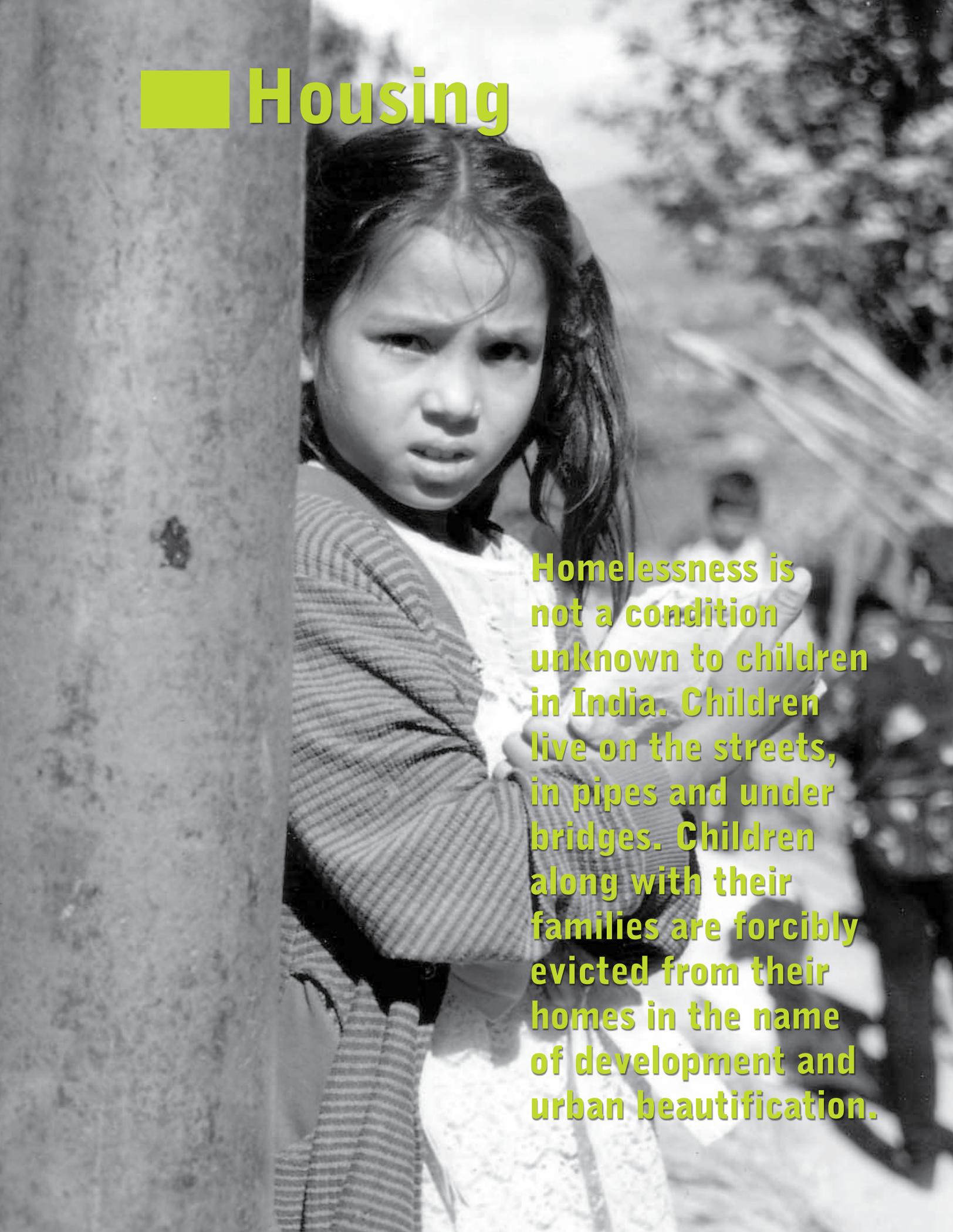
With the situation of education in India, which is perhaps true of the situation of children in general, one cannot help but say, "the more it changes, the more it remains the same". Despite rise in enrolment rates a large number of children remain outside the school system. At one level, the last two years have been filled with education initiatives, both in policy as well as programming.

The UPA government has introduced a cess of 2 per cent on all central taxes in order to finance the commitment to universalise access to quality basic education. This is indeed a welcome move. However, the parameter of "quality basic education" is not clear as the government has been criticised for promoting low quality parallel stream of education through the Sarva Siksha Abhiyan. At the same time, by providing non-formal education for the child labour, the government is inadvertently (or, is it advertently ?) legalising child labour in the country. Unless all children are in full-time school in an equitable system of education, India will continue to have the largest figures of child labour in the world.

The forces of 'de-schooling' too are at work in the form of greater shifts towards a market driven economy and rapid urbanisation leading to displacement of population, etc. Unless fundamental issues like child labour, discrimination based on caste and gender, as well as the impact of the market economy are simultaneously addressed, children cannot be enrolled or retained in school, and we will continue to miss goal post after goal post.

28. Says a Child – Who Speaks for My Rights?, For details see the Parliament in Budget Session 2004-05, HAQ: Centre for Child Rights, 2004.

■ Housing



Homelessness is not a condition unknown to children in India. Children live on the streets, in pipes and under bridges. Children along with their families are forcibly evicted from their homes in the name of development and urban beautification.



Homelessness is not a condition unknown to children in India. Children live on the streets, in pipes and under bridges. Children along with their families are forcibly evicted from their homes in the name of development and urban beautification. Natural disasters and conflicts render many homeless or force them to live in unsafe housing conditions. As a result, whether by acts of commission or omission by the state, their right to adequate housing is constantly violated. The UN Convention of the Rights of the Child (UNCRC) has recognised adequate and safe housing as the right of every child.¹

“In an inadequate housing environment, children were 40-50 per cent more likely to die before reaching the age of five”

Justice Rajinder Sachar, 1992, E/CN.4/Sub.2/1992/15

In practice, adequate housing, or the lack of it, is rarely considered a children’s issue. They are often not seen as a special category with special needs but merely as components that make up the family unit. Hence, the logic that follows is that if the right to adequate housing is protected, promoted and fulfilled for adults, children will invariably enjoy the same benefits. Similarly, it is assumed that the impacts of housing rights violations, including forced evictions, displacement and the loss of housing due to natural disasters, are the same and have the same effects on adults and children alike.

Experience, however, suggests otherwise. Violation and the non-fulfilment of a right has varying impacts on different sections of society. As children form one of the most vulnerable groups, their needs as well as the impacts of violations differ greatly from those of adults. And as children do not form a homogenous group and include a variety of sub-groups based on gender, race, caste, class, descent etc., the impacts of violation of their right to adequate housing differ accordingly.

Increasing homelessness is a growing phenomenon in the wake of globalisation. Global market forces continue to destabilise rural livelihoods. Pressures of globalisation have led to policies and programmes supported by compliant laws and legal decisions that have systematically robbed the people of their right to adequate housing. For instance, the pressure for infrastructure development considered key for attracting foreign investment, has led to the mushrooming of dams, mines and highway projects. Laws like the Indian Forest Act or the Land Acquisition Act have been used to drive people off their otherwise secure and adequate homes and lands. Whether people lose their livelihoods in the villages or are driven off their homes and lands due to mega projects, or infrastructure development projects, they are forced to migrate to other areas, towns and cities, where they live on the streets and footpaths, or in the most appalling housing conditions, in overcrowded slum clusters. Lack of basic facilities and disease becomes a way of life.

The Census traditionally collects information of houseless households, who do not live in a building or census house, but live in the open or on road sides, pavements, pipes, fly overs etc. The data on houseless households provides an overview of the type of such households existing in the country who are

Houseless Households	Number of Households	Population
Rural	259,742	1,164,877
Urban	187,810	778,599
Total	447,552	1,943,476

Source: Census of India 2001

either forced by poverty or other reasons compelled to live in the open. This is the only reliable data that is available on homelessness in the country. There are 447,552 houseless households consisting of 1,943,476 persons in India.

*** This chapter is based on a paper prepared by Malavika Vartak, Consultant to HAQ on Children and Housing Rights.**

¹ Article 16 (1)

1. No child shall be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure within their abilities and financial capacities, the conditions of living necessary for the child’s development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Of these, 58.1 per cent were enumerated in the rural areas, while 41.5 per cent in the urban areas. The Census 2001 for the first time provided data on the average household size. The average houseless households for all areas stood at 4.3, while it was 4.5 for rural and 4.1 for the urban areas.

Homelessness makes children vulnerable to:

- Illness and disease
- Physical and sexual violence and exploitation
- Trafficking
- Illiteracy

Impacts of homelessness on education, health and nutrition, increase in violence and alcoholism are typically some of the fallouts that have been documented. The financial crisis caused by relocation, further aggravated by an overall increase in cost of commodities, forced a large number of women to seek employment or work as wage earners. Thus, both adult males and females in several households were unable to tend

to the needs of their children. The added implication of this is that in the absence of alternative child care facilities, often older siblings, especially girls, have to take on domestic responsibilities as well as look after the younger ones. The relationship between higher drop-out rates in the education system and lack of child care facilities has been fairly well established by now.

To understand how the right to adequate housing applies to children, it is important to first understand the various nuances of the right itself.

What is Right to Adequate Housing?

The Right to Adequate Housing (RAH) has been recognised as integral to the right to an adequate standard of living ever since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. Further articulation of RAH can be found in the International Covenant on Economic Social and Cultural Rights (ICESCR). Article 11 (1) of ICESCR states:

“State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.”

The nature of State obligations vis-à-vis this right is set out by the Committee on Economic Social and Cultural Rights in General Comment 3, which allows for progressive realisation of this right but also recognises that deliberate retrogression is a violation of RAH. General Comment 4 of the Committee entitled “The right to adequate housing,” sets out minimum core obligations of the State in the context of the right.



This is housing provided by contractors to children and their families who work in the iron mines in the Hospet and Bellary belt, Karnataka

These minimum core obligations are as follows:

- **Legal Security of Tenure:** There should be protection against forced eviction and harassment.
- **Availability of services, materials, facilities and infrastructure:** Facilities essential to health, security, comfort and nutrition must be made available. These facilities include but are not limited to, safe drinking water, sanitation and washing facilities and energy for cooking, heating and lighting.
- **Affordability:** Expenditures for housing should be commensurate with income levels as basic needs should not be compromised.

- **Habitability:** There should be adequate space and protection from the elements. Conditions conducive to disease and structural hazards should be eliminated.
- **Accessibility:** All should have access to adequate housing.
- **Location:** Adequate housing must allow for access to employment options, health care, schools and other social services. There must not be excessive financial demands on the household with respect to transportation.
- **Cultural Adequacy:** The housing configuration must not compromise cultural expression.

It has been widely recognised that RAH, as articulated above, is inextricably linked to several other human rights, including the right to life, right to health, right to food, right to work, right to information, right to gender equality, and right to a safe and healthy environment. It is also true that the violation of any of these rights often has an adverse impact on RAH and vice versa.

India's domestic legal regime too has recognised and reinforced the link between the right to adequate housing and the right to life with dignity. The Supreme Court of India, in several cases, including the Francis Coralie case, has recognised the right to adequate housing as integral to the right to life as enshrined in Article 21 of the Indian Constitution.²

Given the above articulations, it is clear that the protection, promotion and fulfillment of the right to adequate housing is critical in the protection, promotion and fulfillment of every child's right to survival, a healthy environment, nutrition, development and growth.

Although all international human rights instruments apply to children and adults alike, given the vulnerability of children and their lack of voice in our society, resulting in their marginalisation, homelessness and forced eviction violates the articles of the UNCRC.

The importance of the right to adequate housing in the life of a child is evident in the observations of the Special Rapporteur on Adequate Housing, Justice Rajinder Sachar, appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1992. Justice Sachar, in his first working paper observed that "in an inadequate housing environment, children were 40-50 per cent more likely to die before reaching the age of five" thus establishing the inextricable link between housing and health, nutrition and ultimately, survival.³

Street Children

Street children or children living and working on the streets are a common phenomenon in urban India. Often treated as an eye sore and nuisance by the public and policy-makers alike, their presence in everyday urban life is difficult to ignore. In spite of the relative high visibility of 'street children', there is very little information available on their exact numbers. The only official figure available is from a 1997 report of the Department of Women and Child Development, Ministry of Human Resource Development entitled '50 years of Child Development: The Challenges Ahead'. The Report states that in India, 11million children live on the streets, of which 420,000 live in the six metropolitan cities of the country. This figure, unfortunately, is at least eight years old and a little has been done to update it.

"When you look at us, please ask yourselves why we are on the streets in the first place"

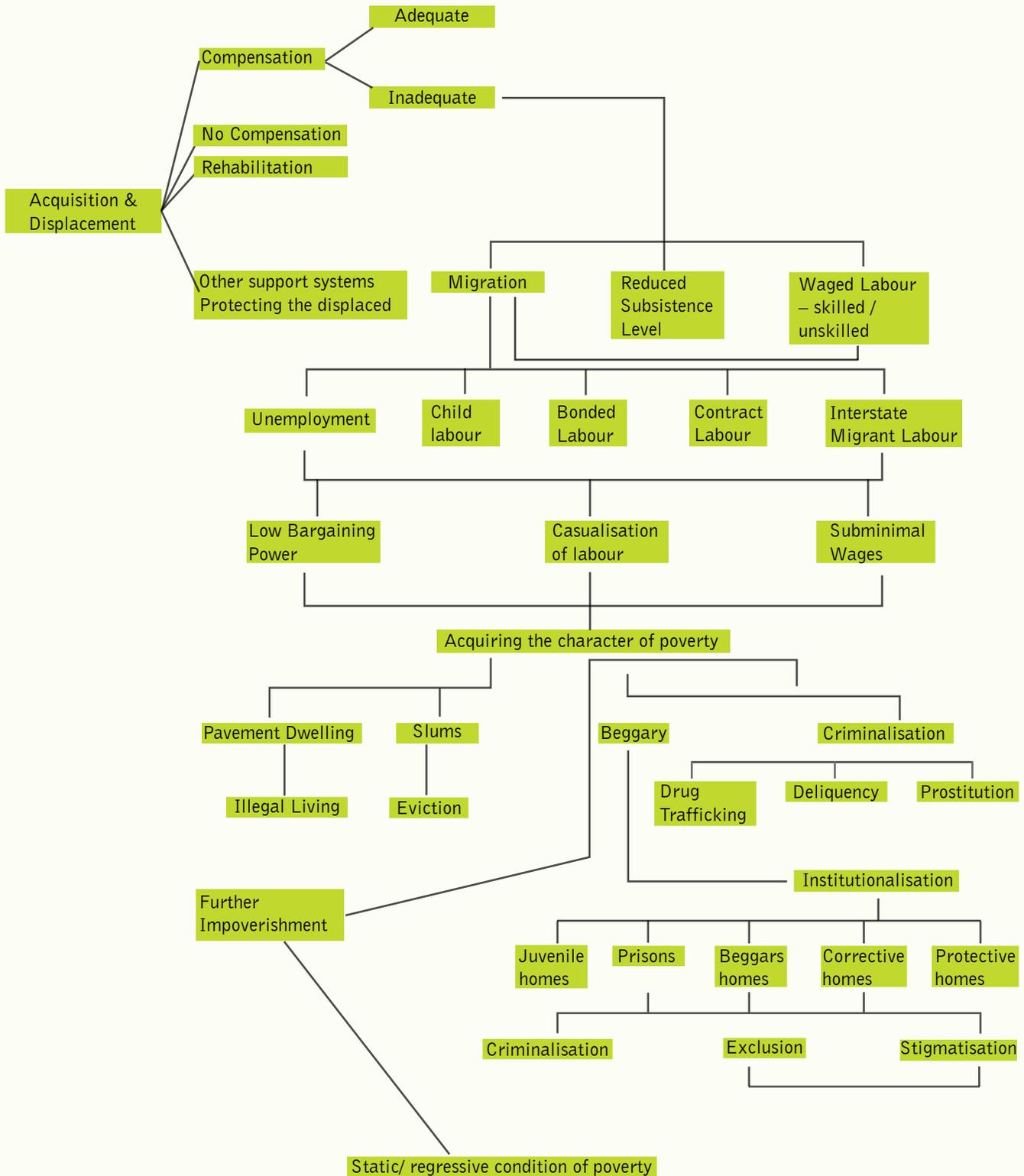
– a street child speaking at a workshop on children and housing at the World Social Forum 2004 in Mumbai

Interactions with children living and working on the streets point to the conditions that have precipitated their homelessness. While many come to urban centres in search of livelihood and in an attempt to escape poverty and caste discrimination, others are induced into leaving their homes with grand promises by child traffickers. There is also a significant number that finds itself on the streets in an attempt to escape violent or abusive homes. Many street children also belong to families that have been forcibly evicted from their homes and lands without adequate rehabilitation, as a result of large

² Francis Coralie vs. The Union Territory of Delhi (1981) 1 SCC 608.

³ E/CN.4/Sub.2/1992/15.

Mapping Impact on Children



Source: Usha Ramanathan. Displacement and the Law, Economic and Political Weekly, June 15, 1996.

development projects. Among street children, there are also those that come to the cities with their families as seasonal migrants. Compared to a scenario of dwindling livelihoods and increasing cases of starvation in the rural areas, the city projects illusions of ever growing opportunity.

Most, however, are disappointed. With the absence of adequate housing in the cities as well, children, because of their homelessness, are exposed to exploitation and a variety of deprivations. Apart from harassment from the police, homeless or street children are vulnerable to malnutrition, lack of health care, lack of education and physical and sexual abuse. In spite of their large numbers and vulnerabilities, there is very little done by the government to provide even night shelters for these children. For instance, in Delhi, of the 12 night shelters run by the government, only one is for children and the other 11 are for men. The single night shelter for Delhi's homeless children houses close to 100 children while the rest are left to fend for themselves. Additionally, in October 2004, the Delhi government decided to close down Palika Hostel, the only shelter for women in the city, in order to use the site for constructing homes for employees of the New Delhi Municipal Council. The eviction also impacted around 60 children who were living with the women.

The above case illustrates not only the current scenario where children's right to adequate housing is being violated simply because the state does not provide the necessary shelters for street children, but also where it is actively violating the bare minimum vestiges of children's right to housing by evicting them without proper rehabilitation from existing night shelters.

Children of Communities Facing Displacement and Forced Eviction

As mentioned earlier, forced evictions in both rural and urban areas also contribute to increasing homelessness. Experiences of dislocation, urban and rural, have shown that little effort is made to ensure that the rights of the displaced are protected. Because children are more vulnerable than adults to situations that confront them, they may need greater attention and support.

For a variety of reasons, including the high rate of occurrence and magnitude, forced eviction has received considerable public attention in the recent past, however, little has changed in the lives of those evicted. Whether it is for saving the tiger or for generating electricity and increasing irrigation or for beautifying a city, entire communities have been evicted without adequate rehabilitation. During the course of an eviction, communities often suffer violence and dispossession and are driven to destitution resulting in their increased vulnerability to human rights violation. Within these communities, it is the children who are rendered the most vulnerable, thus making the freedom from eviction and dispossession critical for their protection, development and growth. But the larger society is not bothered because they are not affected. Indeed, what they see is more urbanisation and more benefits of development. So who cares who pays the price?



Brutal Repression of Rightful Protest!

The sudden 'lathi' charge took the crowd by surprise and they were unable to defend themselves against the blows. A large number of people were chased with sticks by the police, creating a state of fear and leading to a stampede as people ran helter-skelter for cover. Women and children were the main victims of this brutal charge, including five-month-old Rabiya Khatun who was rendered unconscious for several hours as a result. Many other children and adults were beaten, bruised or were estranged from their companions/ guardians in this period.

Shahar Vikas Manch – National Alliance of People's Movements, 7 April 2005

A recent survey by the Punarvasan Sangharsh Samiti in 22 villages and 2 resettlement sites of the Sardar Sarovar Project on the Narmada river, has brought to light some shocking findings, that only go to corroborate that forced evictions have a big impact on children.⁵

Table 2: Child Death and Malnutrition in Resettlement Sites

Month	No. of Child Deaths			Malnutrition Grade				
	Male	Female	Total	Grade I	Grade II	Grade III	Grade IV	Total
April	24	19	43	11	16	0	3	30
May	11	15	26	5	13	1	0	19
June	15	14	29	5	16	0	1	22
Total	50	48	98	21	45	1	4	71

In April, May and June of this year, 98 children have died in the Akkalkuwa block alone, and of these, 71 children were malnourished. Of the malnourished children, 45 were found to be malnourished in the second stage. Obviously, the government has not accepted that the children died due to malnourishment. The cause of their death would be lost in the long list of such causes, (the figures quoted here are obtained from the government under Right to Information). And yet, the study team found the government is unaware of the scale of malnutrition in the area. The government records only 10 per cent of the malnourished children.

Not only are the children malnourished, so are their mothers (the weight range of fully-grown mothers has been found to be between 40-45 kgs). The number of girls who are malnourished children is half of the total, indicating the precarious condition in which the 'future mothers' are nurtured.

According to the Samiti, the root of this malady is deprivation from natural resources, i.e. resources of livelihood. The measures in fields like health, education, employment and supply do not create resources of livelihood, and therefore, these cannot be the decisive remedies of the situation. These would have to be supplemented with the measures in the sector of resources of livelihood, otherwise these peripheral communities face the danger of extinction.

Table 3: Weight range of the mothers (village-wise)

Range	Less than 30 kg	30-35	36-40	41-45	46-50	50-55	Above 56	Total
Andharbari	3	4	9	8	5	0	0	29
Khai	0	5	7	8	3	0	1	24
Dahel	0	9	31	29	12	0	0	81
Rojkund	4	16	36	22	7	2	3	90
Dab	0	4	8	18	9	3	0	42
Gorjabari	0	9	14	18	7	1	1	50
Ohwa	0	7	11	9	5	1	0	33
Narmadanagar	0	13	33	46	21	2	2	117
Rewanagar	0	21	63	68	18	6	1	177
Total	7	88	212	226	87	15	8	643

Impact on Education

The forced eviction also impacts the children's right to education. Around 6000 children used to study in government schools and private schools in Harsud, the town submerged by Indira Sagar Dam in Madhya Pradesh. In addition to the Government College, there were 8 government primary schools, 3 government middle schools, 3 Higher Secondary

⁵ Punarvasan Sangharsh Samiti undertook the survey in 2005 in 22 villages and has prepared the report, titled 'Maranatach He Jag Jagate', based on the outcome of the survey and information obtained through Right to Information.

schools and 6 private schools in Harsud. The 14 government schools in Harsud have now been accommodated in the 2 school buildings and a few tin sheds in New Harsud and a nearby village. Since the school buildings are not yet constructed, 8 schools are held in the two school buildings in shifts. Seven other schools are being held in tin-sheds. Surveys of 299 families living in the five sectors of New Harsud show that 25% of the children studying hitherto have dropped out from schools forever after displacement.⁶



Table 4: Educational and Health Survey of 299 Families in New Harsud, August 2004⁷

S.No	Name of rehabilitation site	No. of families on site surveyed	No. of children studying before	No. of children not studying now	Percentage of children dropped out as a percentage of the children studying earlier
1.	Sector 4	27	45	10	22.22%
2.	Sector 5	27	48	15	31.25%
3.	Sector 6	33	71	23	32.39%
4.	Sector 7	91	192	34	17.7%
5.	Sector 8	106	117	38	32.4%
6.	Sector 9	15	14	2	14.28%
	Total	299	487	122	25.05 %

Forced Evictions in Urban Areas

The last few years have seen very large scale and brutal urban evictions. From December 2004 to March 2005, close to 4,00,000 people were forcibly evicted from various parts of Mumbai in order to 'clean up' or 'beautify' the city. A lesser noted fact is that among those evicted and made homeless overnight were close to 1,80,000 children as estimated by YUVA, a group working on housing and children's issues in Mumbai.⁸ Most of these children belong to Dalit, adivasi and nomadic communities regarded as some of the marginalised communities in the country. With no resettlement for a large section of those evicted, many families along with their children were forced to live in the open. Two children are reported to have died due to exposure to the harsh climatic and living conditions. During evictions, ration cards of the evictees were confiscated, denying them access to the subsidised, public distribution system. As a result, malnutrition, especially among children, became a serious concern. YUVA's report also documents a high 64 per cent school drop-out rate among children of evicted communities.

How many of those evicted have been able to rebuild their lives and how many have been made destitute and homeless remains to be seen. In either case, it is certain that the impact of this housing rights violation has not only affected other rights of the community, especially children, but also that the trauma and violence of the eviction and the uncertainty that followed has left an indelible mark on the young minds.

⁶ Savaging a civilisation: NHPC and Madhya Pradesh government at Indira Sagar dam. A Report on the violations of the human and legal rights of Indira Sagar dam oustees, Madhya Pradesh. August 2004. Jan Sangharsh Morcha, Madhya Pradesh – Chattisgarh; SANDRP, Delhi; Manthan, Badwani; Sandarbh, Indore; Abhivyakti, Nasik.

⁷ *ibid.*

⁸ YUVA, 'Mumbai Evictions (December 2004- March 2005): An Analysis of Impact in Twenty Eight Communities', Mumbai 2005.

Children in Post-disaster Situations

The tsunami of December 2004 wreaked havoc in the lives of tens of thousands of people, many of whom lost family members as well as their homes and livelihoods. The tsunami has had a lasting impact on children in the affected areas. Many have witnessed the death of a parent or a sibling and have had to adjust to changed circumstances, including a change in the surroundings, the loss of familiar social networks, suspension of school and severely reduced family incomes. Post-tsunami rehabilitation, however, has failed to take into account the impacts on children and little has been done to cater to their special needs.

In terms of housing – most of the affected communities in Tamil Nadu are still living in temporary shelters built of tar sheeting. The material known to trap heat in the houses has led to a variety of health concerns including rashes and eruptions on the skin suffered mostly by children. The lack of access to proper health care has aggravated the situation. Lack of adequate space in temporary structures has also meant a decline in privacy for adolescent girls, and therefore, an increase in their vulnerability to gender based violence and sexual abuse. Safety of the children is a major concern in resettlement sites that have been built close to the highway. Relocation has also raised safety concerns among communities as they fear violence from local host communities. Women in Kargilnagar site in north Chennai said that because of their relocation to an unfamiliar area, leaving their children alone at home, particularly adolescent girls, while they went to sell fish, was no longer an option.



Children's education has also suffered, as a number of schools have been destroyed and many resettlement sites are located far away from schools, forcing a number of children to drop-out. There has also been very little attention paid to counselling in order to help children deal with the trauma and fear caused by the tsunami. What is more, temporary shelters have made children more vulnerable to violence and exploitation.

Children's demands vis-à-vis the Right to Adequate Housing articulated as a part of the 'Children's Charter of Demands' at the Rang Tarang Bal Adhikar Mela, 2002

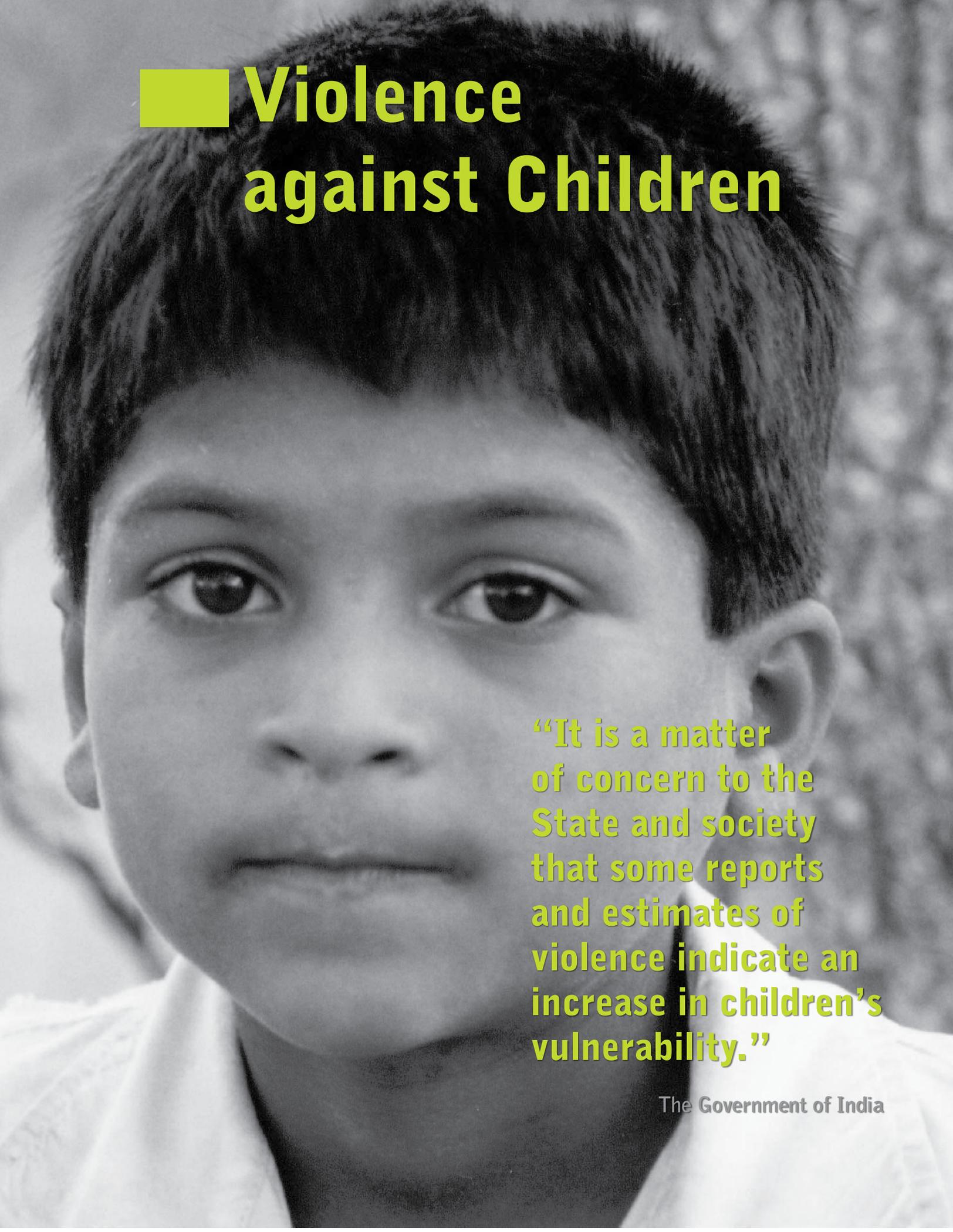
- Every child must have rightful access to a house, from where he will not have to fear anybody evicting him, irrespective of where he lives; streets, pavements or slums.
- Our home should have enough space for all the family members to sit and sleep comfortably.
- Our home must have provision for toilets, water supply and a place to cook food.
- There should not be any dirt or garbage in the vicinity of our houses. There should be proper drainage facility and good roads and all the houses should be constructed with proper planning.
- There should be some space around our houses where we can plant trees, go for walks and play.
- Government should provide street children with group homes and employment, so that they are self-sufficient. Government should also provide small children with shelters, which will take care of all their needs.
- Our houses should not be demolished. If, for some reason, our houses have to be relocated, prior and proper intimation should be given. Also, there should be a concrete and planned rehabilitation plan.

*Photo: Malavika Vartak

Conclusion

The above cases establish the importance of the right to housing, not merely understood as a roof over one's head, but in its holistic sense, in the survival, protection and development of children. The differential impacts that a violation of this right has on children as opposed to adults are also obvious. Unfortunately, it is a vicious cycle in which we find ourselves. On the one hand, it is imperative that a case is made with housing rights and children's rights groups, as well as various government departments to recognise the importance of housing vis-à-vis children; on the other hand, it is very difficult to do so, given the few credible studies and statistics on children and housing stemming from the low priority and minimal attention that the issue gets from governments, NGOs and research institutes.

It is therefore imperative for groups working on children's rights, as well as those working on housing rights, to influence and pressurise planners and policy makers to take into account the special needs of children and ensure that these inform all housing plans or preparations for resettlement sites. It is also equally urgent that both housing rights and child rights advocates press for research and documentation on children and housing, especially undertaken by the government. Given the multiplier effect that a violation of the right to adequate housing can have on the lives of children, it is important that housing rights are taken up as much as a children's issue as other rights.



Violence against Children

“It is a matter of concern to the State and society that some reports and estimates of violence indicate an increase in children’s vulnerability.”

The Government of India



Whether it is through our Constitutional commitments or through the ratification of international conventions, we are committed to protecting our children from abuse, neglect and exploitation. And yet India has the dubious distinction of having the largest number of working children in the world as also the world's largest number of sexually abused children. We allow our children to be bought and sold for a myriad reasons – labour, marriage, prostitution, camel jockeys, begging, drug peddling and so on. Even emergency situations such as natural disasters or conflict and riots are used as 'opportunities for exploitation' and trafficking. And what is more, we have become, or are becoming, immune to what we see around us.

All children have the right to be protected wherever they are – at home, in school, on the streets, and at all times – peace, conflict or calamity. Their right to protection is as intrinsic to their well-being, as is the right to survival, development and participation.

Ensuring that all children are protected from violence, abuse and exploitation is the responsibility of their family, their guardians and the state. Unfortunately children do not always have the safe environment that helps them to develop to their full capacity. In fact, many a time it is the same persons who are responsible for their safety and security, such as the members of the family or their guardians, who are responsible for the violence and abuse.

The Government of India has recently presented a country report on violence against children. It admits that "it is a matter of concern to the State and society that some reports and estimates of violence indicate an increase in children's vulnerability. These include some reports of incidents of civil disorder as well as maltreatment arising in conflicts involving different caste, class and community groups. Children of Dalits, minority communities and girl children are especially vulnerable in such situations."¹



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What is Right to Protection?

Every child needs a safe and secure environment to grow and develop. This need of children to a safe and protected environment has been recognised as their 'right to protection' in international human rights instruments such as the Universal Declaration of Human Rights, as well as, in much greater and specific detail, in the Convention on the Rights of the Child (CRC). According to this, right includes freedom from all forms of exploitation, violence, abuse and inhuman or degrading treatment. This also includes the right to special protection in situations of emergency or armed conflict. The purpose is to protect vulnerable children from those who may take advantage of them, and to safeguard their minds and bodies.

1. The India Country Report on Violence Against Children 2005, Department of Women and Child Development, Ministry of Human Resources Development, Government of India, pg 15.

All children, irrespective of where they live or what their socio-economic status, need and have a right to protection. But some groups of children are more vulnerable than others because of their situation. They include:

- Children within the juvenile justice system²
- Children on the street and street children³
- Child labour
- Children with disability
- Children who are trafficked for sexual and other purposes

Some other categories of children who need special assistance and attention are migrants, those affected by armed conflict and other kinds of emergency, such as natural calamities (like earthquakes, floods or cyclone), or those who have lost the support of their families or communities. This is because they are at greater risk of being exploited, manipulated or traumatised.

Today in India, as the very low sex ratios indicate, the girl child's very existence has been threatened. Child sexual abuse has come to be recognised as an area of concern although it continues to be swept under the carpet by society at large. Sex selective abortion or female foeticide and female infanticide are taking a rising toll, while neglect of the 'survivors' of this weeding out also persists. There is no guarantee that the girl child who escapes foeticide or infanticide and is in the 0-6 age group, will escape the cycle of denial that may even result in death because she is less fed, less encouraged to explore the world, more likely to be handed jobs to do, given less health care and medical attention.

Every year, 12 million girls are born – three million of whom do not survive to see their 15th birthday. About one-third of these deaths occur in the first year of life and it is estimated that every sixth female death is directly due to gender discrimination.

According to the NCRB⁴, there is no separate classification of offences against children. Generally, the offences committed against children or the crimes in which children are the victims are considered crimes against children. The general penal code of this country and the various protective and preventive 'Special and Local Laws' specifically mention the offences wherein children are known to be victims. Such offences are classified as 'Crimes Against Children'.

The cases in which the children are victimised and abused can be categorised under two broad sections:

1) Crimes committed against Children which are punishable under the Indian Penal Code (IPC).

- a) Murder (302 IPC)
- b) Foeticides (Crime against being born) Section 312, 314, 315 IPC.
- c) Infanticides (Crime against newborn child) Section 316 IPC.
- d) Abetment of Suicide (abetment by other persons for commitment of suicide by children) Section 305 IPC.
- e) Exposure & Abandonment (Crime against children by parents or others to expose or to leave them with the intention of abandonment): Section 317 IPC.
- f) Kidnapping & Abduction:
 - i) Kidnapping for exporting (Section 360 IPC).
 - ii) Kidnapping from lawful guardianship (Section 361 IPC).
 - iii) Kidnapping for ransom (Section 363 read with Section 384 IPC).
 - iv) Kidnapping for camel racing etc. (Section 363 IPC).
 - v) Kidnapping for begging (Section 363-A IPC).
 - vi) Kidnapping to compel for marriage (Section 366 IPC).
 - vii) Kidnapping for slavery etc. (Section 367 IPC).
 - viii) Kidnapping for stealing from its person (under 10 years of age only) (Section 369 IPC).
- g) Procurement of minor girls (for inducement to force or seduce, to illicit intercourse) Section 366-A IPC.

² Children's treatment by the Juvenile Systems. The term Juvenile comes from the Latin word "juvenis" meaning young. Juvenile systems refer to legal systems that are meant to protect the interests of young persons.

³ All children on the streets are not street children, because they do not live on the streets. They spend the time on the streets but do not make it their home.

⁴ National Crime Record Bureau (NCRB), Crime in India. 2003, Ministry of Home Affairs, Government of India.

- h) Selling of girls for prostitution (Section 372 IPC).
- i) Buying of girls for prostitution (Section 373 IPC).
- j) Rape (Section 376)
- k) Unnatural Offences (Section 377)

2. Crimes against children punishable under Special and Local Laws

- a) Immoral Traffic (Prevention) Act (where minors are abused in prostitution).
- b) Child Marriage (Restraint) Act.
- c) Child Labour (Prohibition and Regulation) Act.

In this chapter, an attempt has been made to provide an overview of the exploitation and abuse that children face. Separate chapters have been dedicated to child labour, child sexual abuse and the juvenile justice system in order to provide detailed analysis and update.

Crimes Against Children

A quick look at the table below (Table 1) should alert us to the dangers our children are facing. There is an 11.1 per cent increase in crimes against children between 2002 and 2003. And this is based only on reported cases. Most cases do not make their way to the thana (Police Station) and even if they do, they do not get recorded in the daily diary of the Police Station— for obvious reasons.

Table 1: Crimes Against Children in the Country and % Variation in 2003 over 2002

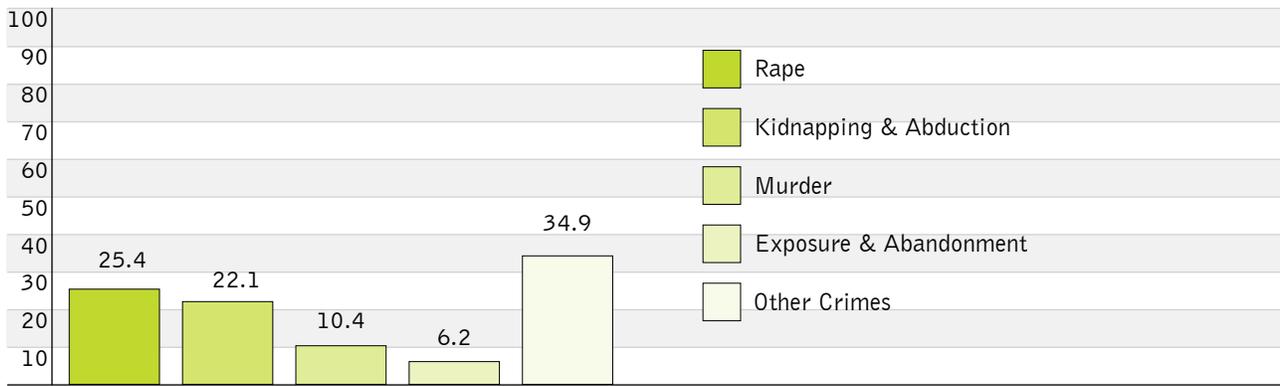
Sl. No.	Crime Head	YEAR			% Variation in 2003 over 2002
		2001	2002	2003	
1.	Murder	1042	1073	1212	13.0
2.	Infanticide	133	115	103	-10.4
3.	Rape	2113	2532	2949	16.5
4.	Kidnapping & Abduction	2845	2322	2571	10.7
5.	Foeticide	55	84	57	-32.1
6.	Abetment of Suicide	26	24	25	4.1
7.	Exposure & Abandonment	678	644	722	12.1
8.	Procuration of Minor Girls	138	124	171	37.9
9.	Buying of Girls for Prostitution	6	9	24	166.7
10.	Selling of Girls for Prostitution	8	5	36	620.0
11.	Child Marriage Restraint Act	85	113	63	-44.2
12.	Other Crimes	3685	3424	3700	8.1
	Total	10814	10469	11633	11.1

Source: National Crime Record Bureau, Crime in India. 2003, Ministry of Home Affairs, Government of India.

According to the National Crime Records Bureau a total of 11,633 cases were reported in the country in 2003. Madhya Pradesh with 2662 crimes showed an increase of 22.9 per cent followed by Maharashtra with a 17.2 per cent increase, Uttar Pradesh showing a 14.6 per cent increase and Andhra Pradesh, 12.6 per cent increase. These are clearly the rogue states. Needless to say the other states are not free of crime against children.

There has been an 11.1 per cent increase in crimes against children in 2003 since 2002. Most crimes go unreported.

Figure 1: Crime Against Children - Crime-wise percent distribution 2002 - 2003 (%)



Source: National Crime Record Bureau, Crime in India, 2003, Ministry of Home Affairs, Government of India.

Some of the crimes such as selling (620 per cent) and buying (166.7 per cent) of girls for prostitution has shown an alarming increase – one more price our children are paying at the alter of globalisation and liberalisation.

The alarming rise in buying and selling of girls is one more price our children are paying at the alter of the new market economy India has entered.

Indeed, there is an increase in almost all recorded crimes against children except infanticide, foeticide and child marriage. This is strange because the reality on the ground as well as the adverse juvenile sex ratio gives a completely different picture. This is a perfect example of under-reporting.

Murder

There has been a 13.0 per cent increase in murders of children, with Uttar Pradesh reporting the highest number of cases (439) and accounting for 36.2 per cent of the total cases reported in the country.

Foeticide or Sex Selective Abortion

The sex ratio has dropped down to an all time low at 927 females for every 1000 males in the 0-5 year age group. And yet there are only 303 cases registered and the government has not been able to come up with a single conviction even in states worst affected by the declining sex ratio – Delhi (868), Punjab (798), Haryana (819) and Himachal Pradesh (896).⁵

No convictions for sex selective abortions in the last 9 years, admits Indian Health Minister

Despite a ban on sex determination tests, sex selective abortions continue to be a growing menace in India. Although as many as 303 cases have been registered with various courts and the police, not a single person has been punished since the Pre-Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act came into effect in January 1996

Infanticide

Infanticide was mistakenly believed to have died out. But clearly it has not. There were 103 reported cases of infanticide in 2003 showing a decline from 115 cases reported in 2002. Separately reported, the figures do not appear very high, in fact they show a decline over the years, but it is estimated that actual occurrence may be higher than reported. Madhya Pradesh accounts for 23.3 per cent of all reported cases of infanticide deaths, followed by Uttar Pradesh, which accounts for 18.4 per cent and Maharashtra, 10.7 per cent.

Girl children are more vulnerable to infanticide. One of the most common methods is to simply abandon the infant. Other methods used are slow death by depriving the baby of adequate nutrition and care, feeding the baby latex of the common calotropis plant (Erukku), paddy grain or salt, or simply asphyxiating the baby with pillow or towel or drowning it in milk.⁶

⁵ Deccan Herald, May 5, 2005 & The Telegraph, May 3, 2005.

⁶ National Crime Record Bureau, Crime in India, 2003, Ministry of Home Affairs, Government of India.

Although, not common, boy babies too are sometimes killed due to superstition, more as sacrifice to propitiate the Gods.

Kidnapping and Abduction

There has been a 10.7 per cent increase in kidnapping and abduction of children. Uttar Pradesh accounts for 21.8 per cent of the cases in the country. The rate of this crime was highest in Delhi at 1.7 per cent followed by Chandigarh accounting for 1.5 per cent. There is definitely a close connection between kidnapping and trafficking of children. Bihar has been in the news for abductions for ransom. There is a close link between abduction and kidnapping, and trafficking of children.

Child Marriage

Society's acceptance of child marriage is a reality that has seldom been addressed. Little wonder then that there is a fall in reportage. Who will dare protest? Shakuntala Verma, an Anganwadi worker, had her arms chopped off because she dared to challenge this practice in Banghar village near the State Capital of Madhya Pradesh, Bhopal. Madhya Pradesh has made Anganwadi workers responsible for stopping child marriages, but has failed to put in place protection measures for them.

The brutal attack on Shakuntala Verma in Madhya Pradesh has once again shown that the struggle against child marriages in India has still long way to go.

The attack on Shakuntala Verma is reminiscent of the rape of Bhanwari Devi in Rajasthan over a decade ago because she had attempted to do the same. Little has changed in the last decade even as India sees itself catapulted into the new world economy. With no protection available for those who protest, even the few who do so will stop.

According to Census reports 2001, nearly 3 lakh girls below the age of 15 years have already given birth to at least one child. The Government is seriously considering amending the Child Marriage (Restraint) Act of 1929, which clearly is no deterrent for this deep rooted practice, even as it is well established that early marriage is hazardous for physical and mental growth of children. Studies indicate that 26 per cent of the reported domestic violence is against wives below 18 years, 29 per cent of the married adolescents had been beaten up by their husbands (or husbands and others) and 41 per cent beaten during pregnancy. Studies also indicate pregnancy complications as one of the prime causes of female mortality in the 15-19 age groups.⁷ 'An older girl will mean more dowry, how can we afford it?', families argue. 'But then taking and giving dowry is a crime', you may want to remind them. 'Oh that is all for you bara log' – pat comes the reply.

The activists too differ in their demands from law on child marriage. One set of activists will argue – "No you cannot declare a child marriage null and void, what will happen to the girl? She will be unacceptable in society, especially if the marriage has already been consummated. Her future is ruined. And no you cannot penalise the poor parents – they do it because they are poor and disempowered. We cannot penalise them more. Besides what will happen to the children when the parents go to jail?" Another set of activists argue that the law must be more stringent and the child marriage must automatically become illegal and thus null and void. Only then will it act as a deterrent. While we continue to debate, argue and procrastinate, little boys and girls are married off, taking away any choices that they may have had in the future, burdening them with responsibilities beyond their age and capacity.

Globalised India is today witnessing a rise in child marriages in Rajasthan, Jharkhand, Bihar, Andhra Pradesh and Chhattisgarh, Uttar Pradesh and Orissa. The poverty argument is belied by the fact that the practice of child marriage is



7 See concept note 'Child Marriages in India' for National Consultation on Child Marriages in India. Held on Saturday, July 17, 2004. India International Centre, Delhi.

Stop child marriages, SC directs SPs

LEGAL CORRESPONDENT

NEW DELHI, MARCH 21

Concerned over the social evil of solemnising thousands of child marriages across the country every year, even in a state like Kerala, the Supreme Court

enforcing the Child Marriage Restraint Act effectively and avoiding prosecution of the offenders, the court took note of the Union Government's submission that a Bill for making the law more stringent in respect of child marriage had already been introduced



not confined to the poor states only. It is also a reality of more socially progressive states such as West Bengal, Maharashtra and Karnataka or economically better-off Haryana,⁸ which is today trafficking in minor girls for marriage from other states because of its own low sex ratio. New Delhi too has child marriages.

Recognising the gravity of the situation, the Supreme Court has directed Superintendents of Police in the country to prevent child marriages which take place in most states during festivals like Akshay Trtiya, Akha Teej, Ram Navami, Basant Panchami and Karma Jayanti. Child marriages are not confined to only Hindus, neither is it confined to any one caste or community. Tribals too engage in customary child marriage, as do Muslims. There are churches in the country who have taken a stand on the issue and do not allow underage marriages in church.

Where minor girls enter into wedlock

SALEM: Kondaiyanoor, a tribal settlement in the Sheveroy Hills, witnessed a rare celebration recently. Films songs blared out from nine closely-situated houses in the hamlet. The cacophony reverberated around six hill hamlets situated around five kilometres. There were nine marriages on a single day. Six of the brides were minors. The Malayali tribals went about conducting the marriages giving two hoots for the law. Only last month, the parents of a 13-year-old girl from the neighbouring village Vellore were jailed for giving their minor daughter in marriage.

Source: New Indian Express, Thursday, 28 April 2005.

Corporal Punishment

Corporal punishment in homes and institutions remains a major challenge. Somehow Indians continue to believe in the adage 'spare the rod and spoil the child'. While governments of some states have been able to address this issue in schools through legislations (see chapter on Education for details), violence in the homes and institutions, in the name of disciplining continues. There is no explicit prohibition of corporal punishment in other institutions and forms of childcare services. Section 24 of the Guardians and Wards Act (1890) states – "A guardian of the person of a ward

Around 15 per cent of the complaints that reached the children's helpline, Makkala Sahaya Vani (MSV) 1098, pertain to children who don't want to stay at home because of abusive parents. Children say they are depressed, but after a bit of counseling they admit that it was all because of their abusive parents, say counsellors.

Source: 'Bangalore wakes up to child abuse', Paawana Poonacha, Times News Network, Tuesday, 3 August 2004.

is charged with the custody of the ward and must look to his support, health and education...". Guardianship may be removed for ill-treatment (Section 39). Other laws applicable to the use of corporal punishment and protection from abuse in alternative care settings include the Delhi Police Act, the Probation of Offenders Act (1959), the Women and Children's Institution (Licensing) Act (1956) and the Immoral Traffic (Prevention) Act (1956). Corporal punishment is unlawful and is a 'sentence for crime' under the Juvenile Justice (Care and Protection of Children) Act,

which prohibits torture and other cruel, inhuman or degrading treatment or punishment and does not list corporal punishment among permitted sanctions (Section 21).

Although, often seen as a measure of disciplining children, research shows that corporal punishment is the most ineffective form of discipline as it rarely motivates children to act differently, nor does it bring an understanding of what children ought to be doing. Clearly, it does not offer any kind of reward for being good. On the other hand there is a large body of international research suggesting the negative outcome of corporal punishment. For instance, it sends out a message that violence is the appropriate response to conflict or unwanted behaviour. Moreover, corporal punishment can be emotionally harmful to children and psychologically damage the child in the long run.⁹

8 A petition filed in Supreme Court (Writ Petition (Civil)) under Article 32 of the Constitution of India has been filed by Forum for Fact Finding Documentation and Advocacy, Chhattisgarh against the States of Chhattisgarh, Madhya Pradesh, Rajasthan, Bihar, Jharkhand, Orissa, Andhra Pradesh, Maharashtra, Uttar Pradesh, Karnataka.

9 COCAMP Resource Book, 1st National Conference on Child Abuse for Multidisciplinary Professionals, February 11-13, 2004, SRMC, Chennai.

Unfortunately there is very little research on the subject in the Indian context. Much of the available information is based on micro-level studies and media reports. Some such reports indicate that competition in schools pushes parents and teachers to ensure that their children perform best. This in turn leads to over expectation and thus coercive disciplining of children. At the same time, there are some child-care specialists who are now changing the way they look at teen suicide – from a uni-dimensional performance anxiety-oriented issue to that of a poor overall development environment for a child, at school and home.¹⁰

A comparative study of attitude, perception and practice of parents and teachers with regards to corporal punishment of children at home and in the school by Dr. Sibnath Deb from the Department of Applied Psychology, University of Calcutta clearly shows that teachers and parents use physical punishment to discipline children and that more number of women (female teachers and mothers) than men are found to be abusive. It also brought out a clear picture of intergenerational abuse i.e. teachers and parents who were physically punished during childhood used to punish students/children more than those who were not physically punished in their childhood. But in the case of female teachers and mothers a good number of those who had not been subjected to any physical punishment during their childhood were also abusive.

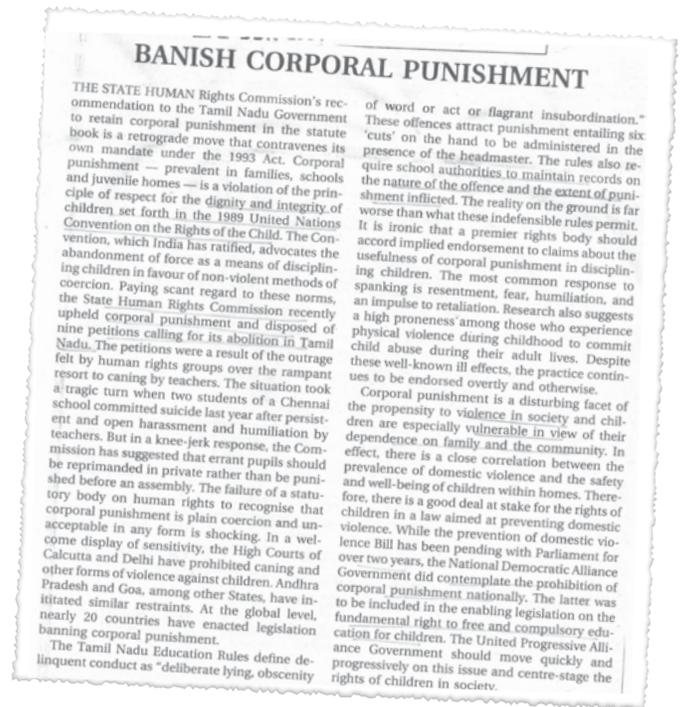
Child Sexual Abuse

Child sexual abuse is much more than rape. But the law does not treat any other form of sexual abuse as seriously. In law if there has been no rape, that is penile entry, then it falls in the realm of 'outrage of modesty' – the wordings being a legacy of our colonial past, as is the law for dealing with sexual abuse of boys.

While there has been a fall in the total number of reported other rape cases in 2003 (15456 cases) since 2002 (16009 cases), there has been an increase in the number of child rapes reported. There has also been an increase in incest rapes of children.

Incest is rape by family members or persons close enough to be family, and clearly by persons the child knows and trusts. Because it is 'in the family', it is also very seldom reported. There also has been an increase in incest rapes of children. Incest is believed to be the most common form of child sexual abuse in India. A study by Sakshi, an organisation based in Delhi, showed that in 1997, 63 per cent of girls in Delhi, have experienced child sexual abuse at the hands of a family member. Another study undertaken by RAHI (Recovering and Healing from Incest) based on a sample of a 1000 girls from 5 different states in India has shown that 50 per cent of the girls said that they had been abused when under 12 years of age, 35 per cent had been abused between the ages of 12-16 years of age. In what has come to be known as the rape capital of the country, Delhi, there has been an 8.67 per cent increase in incest and 20.86 per cent increase in other rapes in 2003. Once again, these statistics are based only on reported cases.

Child sexual abuse has been dealt with in greater detail in a separate chapter, as has been other forms of violence such as trafficking of children and economic exploitation.



While there has been a fall in the total number of reported other rape cases in 2003 (15456 cases) since 2002 (16009 cases), there has been an increase in the number of child rapes.

10 Krithika Ramalingam, 1 Feb 2005 <http://www.indiatogether.org/2005/feb/chi-pressure.htm>

Table 4: Disposal of Cases for Crimes Committed Against Children by Courts during 2003

S. No.	Crime Head	Total No of Cases For Trial including Pending Cases	No. of Cases				Pending Trials	
			Withdrawn by Govt.	Compounded or Withdrawn	Convicted*	Acquitted or Discharged*		Total* ^
1.	Infanticide	204	0	0	30	29	59	145
2.	Murder	3617	5	6	249	380	629	2982
3.	Rape	7768	0	16	419	802	1221	6531
4.	Kidnapping & Abduction	6774	2	14	366	590	956	5804
5.	Foeticide	60	0	0	2	10	12	48
6.	Abetment of Suicide	77	0	0	3	20	23	54
7.	Exposure & Abandonment	653	0	3	6	51	57	593
8.	Procuration of Minor Girls	354	0	7	15	43	58	289
9.	Buying of Girls for Prostitution	41	0	2	1	23	24	15
10.	Selling of Girls for Prostitution	70	0	0	0	2	2	68
11.	Child Marriage Restraint Act	370	0	1	20	26	46	323
12.	Other Crimes	11537	0	370	817	1064	1881	9286
	Total	31525	7	419	1928	3040	4968	26138

*Cases in which trials were completed. ^ Total no. of cases = Convicted + Acquitted or Discharged

Source: Crime in India, 2003, National Crime Record Bureau, Ministry of Home Affairs, Government of India

Disposal of Cases of Crime

The extremely low rate of disposal of cases and conviction is one of the biggest deterrents. Table 4 clearly shows that a large percentage of the crimes are pending trial. Of the 3617 cases of murder of children, only in 249 cases have there been convictions, while of the 7768 cases of rape, only 419 have been convicted. It is not without reasons that people do not vest their faith in the justice system that is over loaded, insensitive and at best apathetic.

Government Initiatives

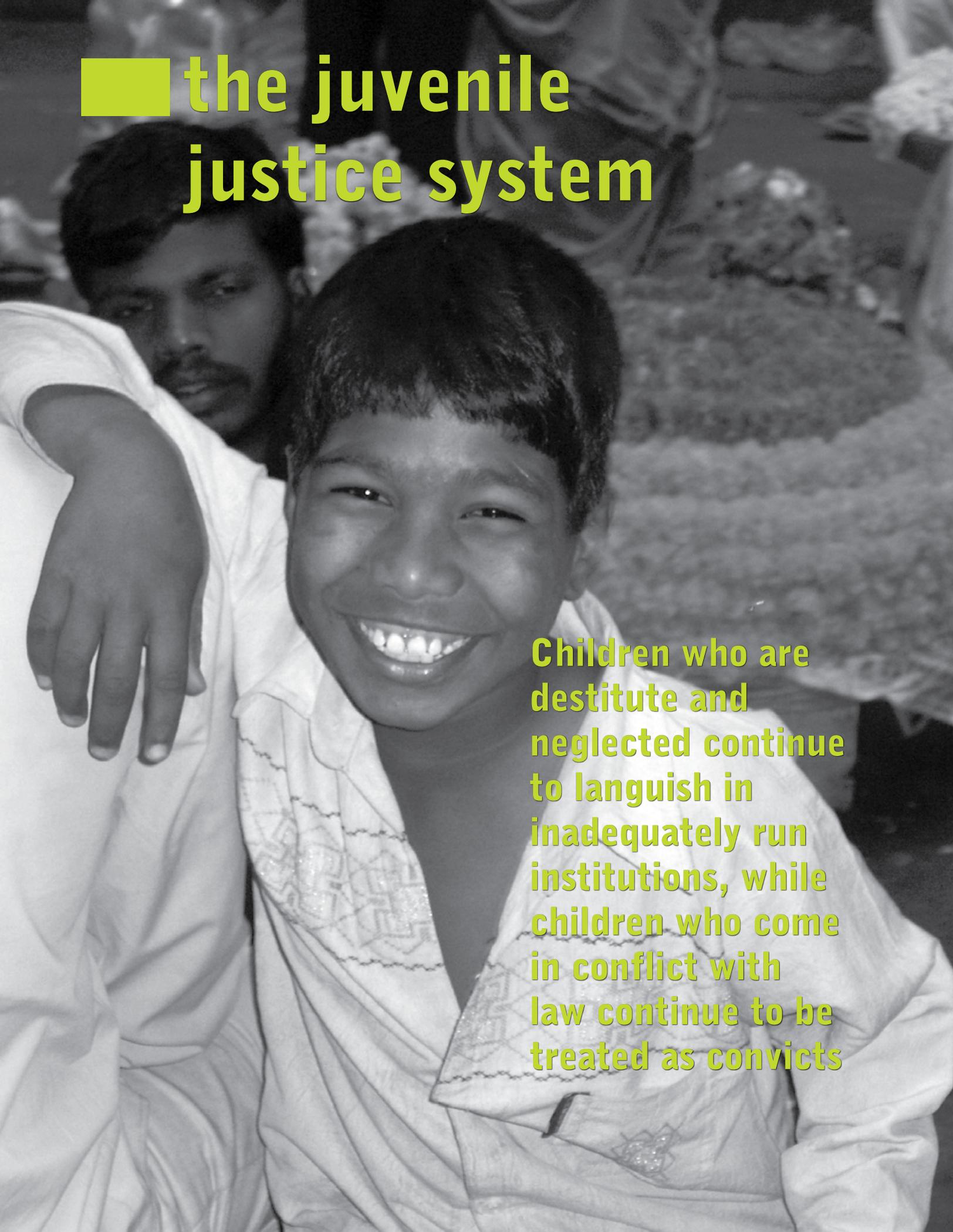
It is not as if the government or the ruling parties are not aware of the fact that our children need protection. In the last two years since HAQ's last report¹¹ the government has passed the National Charter for Children, 2003 which has addressed this issue as has the National Plan of Action, 2005, the Government is also in the process of drafting the Offences Against Children Bill, 2005. The Common Minimum Programme specifically states that "The UPA Government will protect the rights of children, strive for elimination of child labour, ensure facilities for schooling and extend special care to the girl child." However, there is no mention of exploitation and abuse of children in especially difficult circumstances such as children who are trafficked, on the streets or affected by armed or ethnic conflicts etc.

Conclusion

While it is recognised that children need protection, in practice, their right to be protected from exploitation and abuse is violated in myriad ways. The worst affected are children marginalised on account of gender, caste, class, ethnicity, religion, disability or the difficult and harsh circumstances surrounding their existence. Today, more than ever, the little baby girl foetus and infant is calling attention. One of the principal protection issues for the girl child is her right to be protected at birth or even be allowed to be born. The plight of the girl child, issues of child labour, child trafficking and child sexual abuse, children in emergency situations and juvenile justice are some of the core child protection issues dealt with in separate chapters in this publication. The increasing vulnerability of children to abuse and exploitation clearly calls for a greater commitment to child protection. Union Government's allocation towards child protection is only 0.03 per cent of its total budgetary allocations (BE 2005-06).¹² This certainly, is not sufficient to ensure the right to protection for all children of India.

¹¹ Children in Globalising India: Challenging Our Conscience, HAQ: Centre for Child Rights, 2002.

¹² Says a Child... Who Speaks for My Rights? Parliament in Budget Session, 2005, HAQ: Centre for Child Rights.



■ the juvenile justice system

Children who are destitute and neglected continue to languish in inadequately run institutions, while children who come in conflict with law continue to be treated as convicts



Juvenile justice is the legal system that is meant to protect all young people. The juvenile justice system in India is designed to address two categories of children, those in conflict with the law, and those in need of care and protection, which includes children who are begging, in prostitution, neglected children, abandoned children, abused children and street children, all of them with different needs and vulnerabilities. India has had interventions on Juvenile Justice since 1850. First through the National Children's Act, enacted in 1960, followed by the Juvenile Justice Act, 1986 and presently the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act). However, the concerns that relate to children who fall within the purview of the law, in particular, and the system as a whole, have remained.

In the two years since our last report, efforts have been made to address the flaws in the law through the drafting of amendments. Efforts at creating better management systems of institutions that house children are also being experimented with through co-management or joint management initiatives between government and non-governmental organisations.

The Juvenile Justice Act 2000 defines a child as all persons upto the age of 18 years.

Juvenile comes from the Latin word *juvenis* meaning young. But over the years, the word has come to be used together with and often even interchangeably with "delinquency" – which describes children or young persons who are in conflict with law – thereby harking to an association with crime and violence. Therefore even though the word juvenile and child refer to persons in the same age group, they conjure different images. While the word child relates to the image of 'innocence', 'vulnerability' and the need for protection, the word juvenile, due to its association with 'court' and 'delinquency' replaces the image of innocence with that of a 'hardened criminal'. It is precisely why child rights groups in this country have been strongly arguing for the need to do away with the term juvenile and use the less judgemental one i.e. child, instead.

However, international and national laws on children tend to approach this issue in a broader sense to include all children who may have committed statutory offences (actions considered offences by the law of the land) and therefore infringed the law, and also children who need to be cared for in special institutions. They may be street children, children rescued from trafficking, disabled children, victims of abduction or/and rape and then abandoned by the family, or those living in special family circumstances such as refugee camps.

Source: Juvenile (In) Justice In India, Children in Globalising India.
HAQ: Centre for Child Rights, 2003

However, even as the law exists, implementation remains weak and invisible, which is reflected in the situation of the children. Children who are destitute and neglected continue to languish in inadequately run institutions, while children who come in conflict with law continue to be treated as convicts and get further criminalised while the law remains inadequate both in its construction and its implementation.

One of the biggest problem in the implementation of the JJ Act lies in the narrow understanding of civil society regarding the 'use' or jurisdiction of the law. Since the very beginning, the word juvenile has come to be seen as synonymous as 'delinquency'. With the inclusion of 'child in need of care and protection', the understanding of the ambit of the law has somewhat increased. However, it still remains confined to street children, orphans or lost children, most of whom have been rescued by the 'police'. It is not as widely used for children who are victims of abuse and exploitation. For example children rescued from labour will seldom be produced before the Child Welfare Committee (CWC), although they will be produced in labour courts. Similarly, children apprehended for 'illegally' entering a reserved forest will be apprehended under the forest protection laws, but seldom produced in the Juvenile Justice Board.

Lacunae in the Law

The Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force from April 1, 2001, replaced the Juvenile Justice Act, 1986. However, it has been widely recognised that this Act is weak on care jurisdiction and does not cover after-care and follow-up of the children in difficult circumstances.¹ There are other problems as well.

1. This Act has been discussed in detail in Children in Globalising India: Challenging Our Conscience, HAQ: Centre for Child Rights, 2002.

The administrative machinery and implementation of the Act has not taken off despite four years of enforcement. For example, the website of the Social Welfare Department of NCT still shows the 1986 Act which treated the child in conflict with law as a delinquent, the age of delinquency as 16 years of age and the approach as correcting behaviour in a punitive manner, as the governing Law instead of the Act of 2000. This is anathema to the essence of the JJ Act 2000. Incorporated in the law was the power of the Central Government under S.70 of the Act “To remove difficulties” – a power that gets extinguished two years after the JJ Act becomes operational. We are now into the fifth year of its being ‘operationalised’.

Although it is the law on juvenile justice, it does not clearly lay down protocols or procedures for dealing with children who are victims of criminal acts such as rape, abduction, violence or trafficking. For example, while in the case of children who are in need of care and protection under the Act, the Child Welfare Committee can decide a place of safety, aid in prosecution and further the cause of rehabilitation of such children, similar procedures are not as clearly stated for child victims of crime. The procedures are through adult courts, not necessarily in-camera trials (if the act of crime was not sexual in nature such as a case of child bought and sold into labour, victim of child marriage etc.). The absence of a clear-cut care jurisdiction and system of providing community based rehabilitation to children under the Act, thus becomes a major flaw. There are no mechanisms for selection, monitoring and evaluation of foster care programmes, sponsorship programmes and after-care programmes. The State Rules fail to have inter state and intra state uniformity on these crucial parameters.

Children, who come in conflict with law, are necessarily produced before the Juvenile Justice Board where they are granted bail, or sent to special homes for behaviour modification or probated in the community under the supervision of a welfare officer. Unfortunately mechanisms and reasons for bail/release on probation are not very well laid down leaving it often to the discretion of the magistrate, which is often affected by the background of the child produced before him/her.²

On the crucial issue of adoption which is not recognised by the personal laws of either Christians or Muslims, the JJ Act 2000 makes no such exception. Buddhists, Jains and Sikhs are covered under the word ‘Hindu’ for the purposes of the Act. Muslims, Christians, Parsis and Jews are specifically excluded. Further, S.5 of the Hindu Adoption and Maintenance Act, 1956 says adoptions made in contravention of that Act “shall be void.” Even for Hindus, S 11 (i) and (ii) state that only children of the opposite gender of biological children may be adopted. There is no reference in either enactment to the other.

It is also not clear whether the JJ Act would be the law for inter country adoptions or the Guardianship and Wards Act would be applied, whether this adoption would be at the behest of the Child Welfare Committee under the JJ Act 2000 or it would be under the District Courts. The roles of the institutions thus remain ambiguous. Definition of a uniform age of childhood remains elusive because though the JJ Act 2000 had defined it to be 18, the other Acts are yet to arrive at a consensus and variously define the age as 7 (age of criminal liability), 14 (age under the hazardous occupations and processes under the Child Labour (Prohibition & Regulation) Act, 1986), 18 and 21 (under the Child Marriage (Restraint) Act, 1929), 16 (in case of sexual assault and regarding age of consent for sexual intercourse by girls) and so forth. Elements of diversion and restorative justice remain conspicuous by their absence.



2. For details see Tables 4, 5 and 6 in the chapter.

Following the two years of its promulgation, the Ministry of Social Justice and Empowerment drafted amendments to the Juvenile Justice (Care and Protection) Act, based on expert advice and legal opinion of NGOs, lawyers and child rights activists who drafted alternative clauses and sent them to the Ministry after national, zonal and state level consultations.³ Recommendations were sent to the ministry. Appeals were also sent to Parliamentarians seeking their support on the recommendations made. In the Lok Sabha on 24th July 2003, a Bill seeking amendment to the JJ Act 2000 was introduced. This bill was then referred to the Standing Committee on Labour and Welfare before which depositions have been made by experts and NGOs working on the issue. Presently, the Government has announced the final version of the amended Act, which is to be placed before the Parliament.

A Bill was presented in the Rajya Sabha on 3 December 2004 entitled “The Neglected, Exploited And Underprivileged Children (Welfare) Bill, 2004” to provide for the welfare measures to be undertaken by the State for the neglected, exploited and underprivileged children such as street and vagabond children, children born of pavement dwellers, sex workers, mentally challenged mothers, jail inmates, etc., by taking on their custody, maintenance, upbringing, education and rehabilitation and other incidental matters.⁴ This Bill proposes a national policy for street children and the children of pavement dwellers, which would aim at withdrawal of children from professions of rag picking or begging or petty crimes and rehabilitate them with proper board and lodging and other necessary facilities including free education, vocational training and employment opportunities. This Bill also lays down penalties for those who exploit and abuse children for commercial and sexual exploitation. This Bill has not come up for discussion.

Establishment of Juvenility – A Constant Struggle

One of the major problems with the JJ Act was determining the *age of juvenility* in case of a child in conflict with law. This is critical because this is what will determine what treatment is to be meted out to the child. The Act is not clear on this, thereby leaving it to the interpretation of the judges. Is it the age of the child as on the date on which the offence was committed or age of the child on the date the child was produced before the Magistrate (There is often a long gap between the date of commitment of the crime and appearing before the Magistrate.)? Activists have long held that it must be the age on the date of commitment of the offence. Following the case precedents, the age of juvenility remains suspended, as the Apex Court of the land, has not seemingly made its mind. For example, in *Umesh Chandra vs. the State of Rajasthan*⁵, which was decided under the Rajasthan Children Act, 1970, it held that the age at the date of commission of the offence was relevant for determining applicability of the Act.

However in 2001, the judgement in *Arnit Das vs. the State of Bihar*,⁶ based on the JJ Act 1986 held that the age of juvenility applied to children below age of 16 only if they were below the specified age on the date of offence and continued to be so when presented before the court. Thus, any delay in production of a child before the Magistrate, would mean that the child would be treated as a major and the punishment would be as per the adult laws. The Court did not ask the question – who caused the delay nor did it consider a situation of a child attaining that age once proceedings were initiated under the Juvenile Justice Act. While in this retrograde interpretation of the law, the court did not consider who caused the delay, the consequence of such a delay was grave, because he/ she was no longer treated as a “child/ juvenile”

In our last report we had written about Chenchu Hansda, a 14-year-old tribal boy who was convicted in 1999 for the murder of Australian Missionary, Graham Staines and his two sons. His crime was that he was part of the mob. The High Court awarded him life imprisonment. For three months Chenchu remained in police custody, as his family was unable to bail him out with their meagre resources. After a lot of pressure from NGO activists, Chenchu was moved to a Juvenile Home (Probation Hostel) in Angul.

Today he is over 18 years old. Will he be shifted to an adult jail or will he be released, as he is no longer a juvenile? The Juvenile Board will have to consider his case. But the Orissa Government's delay in constituting a board and now its poor functioning has meant that Chenchu has been denied the opportunity to appeal against his life sentence. Till then he remains in the probation hostel although no longer a juvenile.

In the mean time the high court has set aside the death sentence of the prime adult accused Dara Singh.

3. One of the most circulated and discussed drafts was by Mumbai based lawyers, Maharukh Adenwala and Yug Mohit Chowdhury in 2003.

4. Bill No. VII of 2004, Server 1 Bill 2004/Rajya Sabha/799RS.

5. *Umesh Chandra vs. State of Rajasthan*, (1982) 2 SCC 202 : 1982 SCC (Cri) 396.

6. *Arnit Das vs. State of Bihar*, (2001) 7 SCC 657.

The Supreme Court has settled the age of juvenility in its judgement in *Pratap Singh vs. State of Jharkhand & Anr.*⁷ It decided that the age at the date of commission of offence was the correct date to base charges on and not the date of production before the Magistrate. Moreover, the JJ Act of 2000 could be applied retrospectively for cases brought before the courts after the passing of the Act but may also delay in its implementation.

While upholding the judgement of *Pratap Singh vs. State of Jharkhand & Anr.*, another judgement from the Supreme Court of India in *Bijender Singh vs. State of Haryana and Anr.*, also qualified that the retrospective effect of the Act is limited by the proviso in Section 20 and 64 of the Act. This means that the offender should be below 18 years of age as on the date of enforcement of the Act. It states, “Section 20 of the 2000 Act would, therefore, be applicable when a person is below the age of 18 years as on 1.4.2001. Provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001.”⁸

Implementation of the Law

The implementation of the JJ Act requires the formulation of state rules and the setting up of the juvenile justice system machinery, primarily the Child Welfare Committees and the Juvenile Justice Boards. But at the time of the report the Act had not been implemented through out the country, thereby leaving children outside it. (For details see Annexure)

Mechanisms to Implement Juvenile Justice

The Ministry of Social Justice & Empowerment is primarily responsible for the implementation of Juvenile Justice in the country. It does so through its programmes and the many autonomous institutions that it has set up.

The Social Defence Bureau¹⁰ of the Ministry caters to the requirements of: neglected and delinquent juveniles who need care and protection for want of support or are in conflict with the society or the law, children of sex workers, and street children. It also deals with mechanisms for adoption of abandoned and neglected children through the Central Adoption Resource Agency (CARA). The programmes and the policies of the Bureau aim at equipping this group to sustain a life of respect and honour and to become useful citizens. In this process, the Bureau plays the role of a catalyst and has promoted voluntary action. The State Governments, autonomous bodies, NGOs and even the corporate world are involved in formulating and implementing the policies. All the programmes are meant to aid, prevent neglect, abuse and exploitation, and provide assistance to the deprived and to help mainstream them.

Introduced and developed by the Childline India Foundation, Mumbai, the Child Line Service today is a 24-hour toll free telephone service that can be accessed by children in distress or by adults on behalf of these children, presently working in 55 cities. The basic objectives of Childline, inter-alia, are responding to children in difficult situations and facilitating their rehabilitation and providing a platform for networking amongst Government and non-Government agencies in the area of child welfare and sensitisation of functionaries working in police, judiciary, hospitals etc., towards child protection issues. In each city, Childline works in close proximity with the Child Welfare Committees (CWCs) and Juvenile Welfare Boards (JWBs). Upto September 2004 Childline India had responded to 60, 58,197 calls since its inception in 1998. Table 1 is a summation of Child Line services provided to children.¹¹

Status of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 in the States/UTs.⁹

- State Rules formulated and notified: 18
- State Rules being finalised: 4
- States with CWC and JJB: 19
- States with CWC and JJB in process: 7
- States with Juvenile Welfare Board (1986 institutions in JJ Act 2000): 2
- State/UT not requiring CWC/JJB: 1
- States with Observation Homes, Children’s Homes, Special Homes, After care Organisations: 20

7. *Pratap Singh vs. State of Jharkhand & Anr.* (2005) 3SCC 551.

8. *Bijender Singh vs. State of Haryana and Anr.* (2005) 3 SCC 685.

9. <http://socialjustice.nic.in/social/impleJJ.htm>

10. The Central Adoption Resource Agency (CARA) is an autonomous body under the Bureau. It deals with all matters relating to child adoptions. The two schemes under the Agency are: Assistance to Homes for Infants and Young Children for Promoting In-country Adoption where financial assistance is provided to non-governmental organisations which are maintaining destitute and orphan children with a view to rehabilitating them through In-country Adoptions. Grant-in-aid is provided upto Rs. 6 lakhs per year to each Shishu Greh which covers costs for maintaining the children such as Staff, Medicines and other necessities and Programme for Voluntary Coordinating Agency where financial assistance is provided from the General Grant-in-aid Programme for Assistance in the Field of Social Defence to Voluntary Coordinating Agencies (VCAs) which are involved in active promotion of In-country Adoptions and clearance of children for Inter-country Adoptions at the State level.

11. Childline India Foundation, 2004-2005.

Table 1: Call Statistics

Categories	Total
Intervention	
Medical	31623
Shelter	31200
Repatriation	15270
Rescue	8087
Death Related	436
Sponsorship	5124
Missing Children	31386
Emotional Support and Guidance	142140
Information	993383
Silent/ Blank/ Follow-up/ Did not find/ Wrong/ Phone Testing/ Crank/ Fun/ Abusive/Administrative etc.	4799100
Unclassified	449
Total	6058197

Source: Childline India Foundation, 2004-2005.

The National Institute of Social Defence (NISD) is an autonomous body under the administrative control of the Ministry and its objective is to strengthen and provide technical inputs to the social defence programmes of the Government of India and to develop and train the manpower resources required in the area of social defence.

NISD, in collaboration with Childline India Foundation,¹² has launched the National Initiative for Child Protection (NICP). The ultimate goal of this campaign is to create systematic changes to ensure that every child has the right to a childhood. As part of NICP initiative, NISD has been organising trainings on the Juvenile Justice Act. In April 2005, NISD organised its first one-month certificate course on Child Protection.

The programmes initiated by the Ministry relating to child welfare focus on street children, children who are vulnerable to abuse, abandoned and orphaned children, children in conflict with law, children affected by conflict or disaster, etc. These programmes aim to reach out to such children for ensuring that their basic needs are fulfilled and efforts are made for their long-term rehabilitation. One such programme is an Integrated Programme for Street Children,¹³ which has the objective to prevent destitution of children who are without homes and family ties and facilitate their withdrawal from life on the streets. The programme provides for shelter, nutrition, health care, education, and recreation facilities for street children and seeks to protect them against abuse and exploitation. The main programme components of a project under this scheme are the establishment of 24-hour drop-in shelters, non-formal education programmes, vocational training and placement as well as capacity building and advocacy and awareness.

The GOI-UNICEF Work Plan-2003 had been prepared for implementation of various priority projects of the Ministry with the assistance of UNICEF. The Work Plan had four sub-projects with the following stated objectives:

- i) assess various situations of children in need of special protection and develop a knowledge base in the area,
- ii) assess impact of the Childline Services throughout the country,
- iii) conduct sensitisation programmes with stakeholders and train personnel to facilitate service delivery,

12. The Ministry envisages Childline Service as a National Service in each city. The Childline is a 24 hours free phone service, which can be accessed by a child in distress or an adult on his behalf by dialling the number 1098 on telephone. Childline provides emergency assistance to a child and subsequently based upon the child's need, the child is referred to an appropriate organisation for long-term follow up and care. The service focuses on the needs of children living alone on the streets, child labourers working in unorganised sector, domestic workers and sexually abused children. Childline India Foundation (CIF) serves as a link between the Ministry and the NGOs in the field and it has been established as an umbrella organisation to identify, provide support services and to monitor efficient service delivery of the centres at various locations. Secretary of the Ministry is the Chairperson of the Governing Board of the Foundation.

13. The programme component of a project under this scheme can be:-
City level surveys; Documentation of existing facilities and preparation of city level plan of action; Contact programmes offering counselling, guidance and referral services; Establishment of 24 hours drop-in shelters; Non-formal education programmes; Programmes for reintegration of children with their families and placement of destitute children in foster care homes/hostels and residential schools; Programmes for enrolment in schools; Programmes for vocational training; Programmes for occupational placement; Programmes for mobilising preventive health services; Programmes aimed at reducing the incidence of drug and substance abuse, HIV/AIDS etc; Post ICDS/Anganwadi programmes for children beyond six years of age; Programmes for capacity building and for advocacy and awareness building on child rights (www.socialjustice.nic.in).

- iv) to develop a website for children in need of special care and protection
- v) capacity building of personnel in order to facilitate repatriation through legitimate systems
- vi) to assess available interventions and the need for services for children in need of special care and protection (including HIV/AIDS) with a view to building a knowledge base on available quantity and quality of services for children in such need. The Ministry has, in collaboration with UNICEF, initiated action for developing a website on missing children, which would serve as an effective means for speedy restoration of such children to their families.

For the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Ministry is implementing a scheme called, A Programme for Juvenile Justice¹⁴. The objectives of the Programme for Juvenile Justice are:

- i) to extend help to State Governments to bear the cost of infrastructure and services development under the Juvenile Justice Act in order to ensure that under no circumstances is a child in conflict with law lodged in a regular prison,
- ii) to ensure minimum quality standards in the juvenile justice services,
- iii) to provide adequate services for prevention of social maladjustment and rehabilitation of socially maladjusted juveniles,
- iv) to ensure participation of community and other organisations in the care and protection of children in conflict with law who are perhaps more vulnerable than other groups of children. Under the scheme, the Ministry provides 50 per cent assistance to State Governments and UT Administrations for the establishment and maintenance of various levels of institutions for juveniles in conflict with law and children in need of care and protection. There is also a scheme for working children and children in need of care and protection, which is covered by other programmes of the Ministry.

During the formulation of Tenth Five Year Plan in the year 2000, the Committee constituted for Children living in Difficult Circumstances worked out additional requirements of Homes in the country. According to the committee, 280 Children's Homes, 308 Observation Homes, 258 Special Homes, 101 After-Care Homes, 596 Shelter Homes were required. Besides this, the government was to establish Child Welfare Committees – 410, Juvenile Justice Boards – 315 & Special Juvenile Police Units in all the 704 police districts in the country.

At present, 287 observation homes, 290 juvenile homes, 35 special homes and 50 after care institutions in the country are assisted under the Scheme,¹⁵ which is inadequate for the efficient implementation of the Act.

Children in need of Care and Protection

The juvenile justice system includes the widest range of deprived and marginalised children with different needs and vulnerabilities. But the real magnitude of the numbers is difficult to estimate in the absence of detailed research. There continues to be an urgent need for in-depth sectoral studies on this.

The largest group of marginalised children is that of street children. By conservative estimates around 25 to 30 million children in India spend their lives on the streets.¹⁶ UNICEF's estimate of 11 million street children in India in 1994 is considered to be conservative. There are an estimated 100,000-125,000 street children each in Mumbai, Kolkata and

14. Integrated Programme For Juvenile Justice

During 1998-99 the scheme for Prevention and Control of Juvenile Social Maladjustment, which the Ministry has been operating since 1986-87, was also revised with a view to strengthening the implementation of the Juvenile Justice Act 1986 in the country and bringing about a qualitative improvement in the services provided under the scheme to both neglected as well as delinquent children. The salient features of the revised scheme called 'A programme for Juvenile Justice' are as follows: (i) Establishment of a National Advisory Board (NAB) on juvenile justice to advise the Government on matters relating to the implementation of the Juvenile Justice Act 1986 in the country including the quality of infrastructure and the staff available under the Act. The Chairperson of the NAB is the Secretary, Ministry of Social Justice and Empowerment and it has representation from other Central ministries, State governments, Juvenile Welfare Boards, Juvenile Courts, Schools of Social Work, Law Schools and NGOs; (ii) Creation of a Juvenile Justice Fund; (iii) Establishment of a Secretariat for the National Advisory Board; (iv) Constitution of a Social Audit Panel (SAP) comprising of 5-6 eminent persons to report upon juvenile justice facilities in the country; (v) Appointment of observers to report upon implementation of the Act in different States/UTs; (vi) Institution of a Chair on Juvenile Justice at the Child and the Law Centre of the National Law School of India University, Bangalore; (vii) Institution of awards for the best maintained juvenile justice institutions in each State and at the National level; (viii) Training, orientation and sensitisation of judicial, administrative, police and NGO personnel responsible for implementation of the Juvenile Justice Act 1986; (ix) Provision of hundred per cent financial assistance to States/UTs/Voluntary Organisations to facilitate creation of infrastructure prescribed under the Act in hitherto uncovered districts of the country; (x) Financial assistance to bring about a qualitative improvement in the existing infrastructure; (xi) Expansion of non-institutional services such as sponsorship, foster care, probation, etc., as alternates to institutional care; and (xii) Provision of scholarships to children being processed under the Act for excelling in academics or in extra curricular activities.

15. <http://wcd.nic.in/crcpdf/CRC-8.PDF> and http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2_ch4_3.pdf

16. <http://www.foodrelief.org/news/articles/40/1/The-plight-of-children-in-India>

Delhi, with another 45,000 in Bangalore.¹⁷ A series of studies carried out by the National Labour Institute in the early nineties in the larger cities had shown that there are 25,000 street children in Bangalore, 25,000 in Madras, 10,230 in Bombay (in just 3 wards out of 23), and 5,000 in Kanpur.¹⁸ There has clearly been an increase in the number of street children since then. Micro studies show that the number is increasing as a result of urbanisation and increasing rural impoverishment. If we add other categories of marginalised children to these estimates, the numbers will balloon. Violence in the family, and failure to perform in schools and fear of corporal punishments are also reasons why children leave home and end up on the streets.

The number of children seeking care and protection from child abuse has crossed the 500 mark within just 11 months of setting up of a Child Welfare Committee in Bangalore city. Of these 126 cases are of children who confided to counsellors about parents beating and branding them. ('Bangalore wakes up to child abuse', Paawana Poonacha, Times News Network, Tuesday, August 03, 2004). It is children growing up in such circumstances who run away and find themselves on the streets. According to the Ministry of Social Justice and Empowerment, since the inception of the programme, 2,50,938 street children have been extended help by the Ministry through 214 organisations in 24 States/UTs.¹⁹

Children in Conflict with Law

The first legislation in India, which addressed the needs of children in the age group of 10-18 convicted by courts by providing for vocational training that might help their rehabilitation was the Apprentice Act 1850. It was followed by Reformatory Schools Act, 1897. The Indian Jail Committee (1919-1920) brought to the fore the vital need for fair trial and treatment of young offenders. Its recommendations prompted the enactment of the Children Act in Madras in 1920. Bengal and Bombay Acts followed this in 1922 and 1924 respectively. The three pioneer statutes (i.e. Acts concerning Madras, Bengal and Bombay) were extensively amended between 1948 and 1959.

The central enactment was the Children Act, 1960, which was followed by the Children (Amendment) Act 1978. To bring the operations of the juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice, the 1986 Juvenile Justice Act was enacted. This was followed by the current law.

So far, we only have figures for the number of children against whom complaints are filed. It needs to be evaluated whether the infrastructure and provisions in the Act and its implementation are sufficient to address the issue of crimes by and against children. One way of doing this could be by accessing the National Crime Records Bureau data in its annual publication, Crime in India.

The highest number of juvenile delinquency cases under Special and Local Laws (SLL) was reported from Tamil Nadu (4,002), which accounted for 50.8 per cent of total juvenile crimes under SLL. Andhra Pradesh has reported 831 cases followed by Gujarat (738) and Haryana (523). These four states taken together have accounted for 77.4 per cent of total juvenile delinquency under SLL reported in the country. It appears that these four states enforced these laws against juveniles effectively.²⁰

Juvenile rapists claim innocence, wish they could turn clock back

NAZIYA AIVI
New Delhi, September 4

WHEN POLICE had gone to arrest nine-year-old Raju (name changed), he did not even know that he was wanted for any crime. Let alone rape. Now, he has to lead an incarcerated life in the city's Juvenile Observation Centre.

Raju, charged with rape, claims he had just followed the "directions" of his 13-year-old friend, Rohit, a co-accused, against whom a case under section 376 (punishment for rape) of the IPC was lodged two years ago. They had allegedly raped an eight-year-

Nearly 200 rape cases are pending with the Juvenile Justice Board. On an average 10 rape cases against juveniles are registered every month. Police records state that, in up to 30 per cent of rape cases, the offender is a juvenile.

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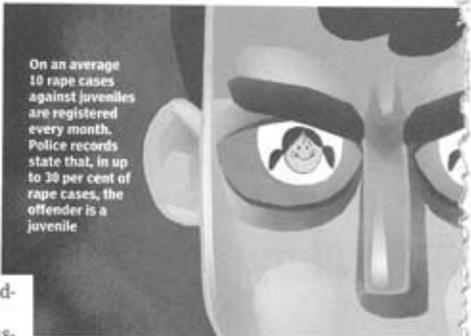
ed an accused. In over 90 per cent cases, the accused belonged to a lower middle-family or from slum clusters of city.

At a very young age, juveniles from poor classes get exposed to the world of poverty and hunger. Most of these accused themselves first become victims of sexual abuse and when they get an opportunity they tend to do the same. But to believe that such acts are not prevalent in juveniles from middle or rich classes would

be wrong. To a large extent their cases do not get reported. Most of these juveniles make girlfriends in schools at age 12 or 13 and go for consensual sex," said Rajesh Nagar, associate professor of psychiatry at AIIMS.

Juveniles also said that they committed such acts out of curiosity and because of lack of parental guidance. Few accepted to have done it under the influence of drugs. Some said they provoked after watching pornographic films and magazines.

ARIYA PRAHARA



17. <http://www.streetchildren.org.uk/reports/India%20Child.doc>

18. These were studies sponsored by the National Labour Institute in the above-named cities.

19. www.socialjustice.nic.in

20. NCRB – Crime in India 2003

The share of crimes committed by Juveniles to total crimes reported in the country during 1997 to 2000 was constant at 0.5 per cent. However, in 2001 this increased to 0.9 per cent and further marginally increased to one per cent in 2002. (This increase may be partly attributed to the inclusion of delinquent boys from 16 to 18 years of age following the enactment of the new Act.)

Table 2: Crimes committed by children

Year	Incidence	Rate
2001	16,509	1.6
2002	18,560	1.8
2003	17,819	1.7

Source: NCRB – Crime in India 2003

During 2003, 3,584 juveniles in the age-group 7-12 years were apprehended, as against 4,488 in 2002 and 11,687 juveniles in the age-group 12-16 years were apprehended, as against 13,864 in 2002. The bulk of juveniles (18,049) arrested were in the age-group 16-18 years. The ratio of girls to boys arrested for committing IPC crimes during 2003 was nearly 1:13. This ratio during 2002 was 1:16.

Table 3: Juveniles Apprehended under IPC & SLL by Sex (1999 - 2003)

S.No	Year	Boys	Girls	Total	Percentage Age of Girls
1	1999	13088	5372	18460	29.1
2	2000	13854	4128	17982	23.0
3	2001	31295	2333	33628	6.9
4	2002	33551	2228	35779	6.2
5	2003	30,985	2,335	33,320	7.0%
Total	For 4 yrs	91788	14061	105849	–

Source: NCRB – Crime in India 2003

However small the percentage increase in reported crimes by children may be, it none-the-less must be noted with seriousness. Do we dismiss these young persons as criminals and leave them to their fate or regard them as victims of a malaise affecting society? A total of 33,320 juveniles were arrested and sent to various courts during 2003. The percentage of juveniles awaiting trial at the end of 2003 was 36.1 per cent (12,049 out of 33,320). It cannot not be pointed out that the official document of the Government still refers to “arrests” and “courts” even though terminologies have long undergone change. It only goes to show that a change in language means little in actual practice or in attitudes.

The NCRB classifies juveniles in conflict with law according to attributes. Indeed the statistics with respect to arrested juveniles continues to be revealing in terms of identifying who is the juvenile who typically falls within the system. According to Crime in India 2003, “the large chunk of juveniles (73.8 per cent) belonged to the poor family whose annual income was up to Rs. 25,000/-. Out of the total juveniles involved in various crimes 9,618 juveniles were illiterate and 13,505 had education up to primary level. These two categories have accounted for 69.4 per cent of the total juveniles arrested during the year.” In 1999 it has observed, “As expected, low education, poor economic set-up are generally the main attributes for delinquent behavior of the juveniles.” Clearly it is all those who cannot get bail, who continue to go to ‘jail’. Property related crimes still account for the largest head of crimes that juveniles engage in.

Our question posed in the last report remains. Is this only because it is juveniles from ‘low income backgrounds’ who commit crimes, or is it also related to the fact that the enforcement mechanism does not treat crime committed by the more affluent with the same degree of seriousness? For example the bail provisions with their surety and personal bond requirements are more likely to be used by the offenders who are relatively economically well off as opposed to the poor. The ability to manipulate the criminal law in favour of the defendant is more likely in the case of the better off.

Also should children ‘arrested for rioting’, especially those as young as 7-12 years be seen as offenders or as victims of adult conspiracy and instigations? Similarly should children ‘booked’ under the Narcotics Act or the Immoral Traffic Prevention Act, 1956, be treated as children in conflict with law or children who need care and protection?

The National Crime Records Bureau still refers to “arrests” and “courts” even though terminologies have long undergone change.

Table 4: Juveniles Apprehended under IPC and SLL Crimes by Age Groups and Sex during 2003

S. No.	Crime Head	7-12 Years		12 - 16 Years		16 - 18 Years		Overall Age Group		Total B+G
		Boys	Girls	Boys	Girls	Boys	Girls	Boys*	Girls	
A	IPC Crimes									
1.	Murder	25	1	197	30	308	20	530	51	581
2.	Attempt to commit Murder	31	0	206	9	294	25	531	34	565
3.	C.H. not amounting to Murder	3	1	8	1	12	0	23	2	25
4.	Rape	15	0	224	3	290	3	529	6	535
	i. Custodial Rape	0	0	0	0	0	0	0	0	0
	ii. Other Rape	15	0	224	3	290	3	529	6	535
5.	Kidnapping and Abduction	4	0	67	7	150	6	221	13	234
	i. Of Women and Girls	3	0	49	6	119	2	171	8	179
	ii. Of Others	1	0	18	1	31	4	50	5	55
6.	Dacoity	12	0	61	0	97	0	170	0	170
7.	Preparation & Assembly for Dacoity	0	0	17	0	30	0	47	0	47
8.	Robbery	4	0	95	1	161	4	260	5	265
9.	Burglary	190	7	1564	24	1125	35	2879	66	2945
10.	Theft	325	39	2160	88	2015	112	4500	239	4739
	i. Auto Theft	27	0	343	0	441	4	811	4	815
	ii. Other Theft	298	39	1817	88	1574	108	3689	235	3924
11.	Riots	73	2	545	45	1039	108	1657	155	1812
12.	Criminal Breach of Trust	0	0	20	1	46	3	66	4	70
13.	Cheating	6	0	38	1	91	6	135	7	142
14.	Counterfeiting	1	0	4	0	3	0	8	0	8
15.	Arson	1	0	13	0	30	0	44	0	44
16.	Hurt	172	15	1336	136	2099	366	3607	517	4124
17.	Dowry Death	1	0	12	2	39	12	52	14	66
18.	Molestation	17	0	203	1	517	0	737	1	738
19.	Sexual Harassment	1	0	60	0	265	1	326	1	327
20.	Cruelty by Husband and Relatives	7	6	66	36	101	81	174	123	297
21.	Importation of Girls	0	0	0	0	0	0	0	0	0
22.	Causing Death by Negligence	0	0	14	1	61	4	75	5	80
23.	Other IPC Crimes	317	21	2018	157	4018	364	6353	542	6895
24.	Total Cognizable Crimes under IPC	1205	92	8928	543	12791	1150	22924	1785	24709
B.	SLL Crimes									
1.	Arms Act	0	0	70	0	175	0	245	0	245
2.	Narcotic Drugs and Psycho-tropic Substances Act	3	0	9	0	51	1	63	1	64
3.	Gambling Act	17	0	235	0	913	0	1165	0	1165
4.	Excise Act	3	1	144	3	375	9	522	13	535
5.	Prohibition Act	29	9	242	36	762	123	1033	168	1201
6.	Explosive & Explosive Substances Act	0	0	3	0	8	0	11	0	11
7.	Immoral Traffic (P) Act	0	0	2	2	11	57	13	59	72
8.	Indian Railways Act	0	0	49	4	60	0	109	4	113
9.	Registration of Foreigners Act	2	0	15	23	37	9	54	32	86
10.	Protection of Civil Rights Act	0	0	0	0	0	0	0	0	0
	i. PCR Act for SCs	0	0	0	0	0	0	0	0	0
	ii. PCR Act for STs	0	0	0	0	0	0	0	0	0
11.	Indian Passport Act	2	1	3	0	8	0	13	1	14
12.	Essential Commodities Act	0	0	2	0	7	0	9	0	9
13.	Terrorist & Disruptive Activities Act	0	0	0	0	0	0	0	0	0
14.	Antiquity and Art treasure Act	0	0	0	0	0	0	0	0	0
15.	Dowry Prohibition Act	0	0	2	0	0	1	2	1	3
16.	Child Marriage Restraint Act	0	0	1	4	0	1	1	5	6
17.	Indecent Representation of Women Act	0	0	0	0	0	83	0	83	83
18.	Copyrights Act	0	0	0	3	30	3	30	6	36
19.	Sati prevention Act	0	0	0	0	0	0	0	0	0
20.	SC/ST (Prevention of Atrocities) Act	1	0	13	1	17	0	31	1	32
	i. Atrocities Act for SCs	1	0	13	1	17	0	31	1	32
	ii. Atrocities Act for STs	0	0	0	0	0	0	0	0	0
21.	Forest Act	0	0	0	0	7	0	7	0	7
22.	Other SLL Crimes	2152	67	1335	15	1266	94	4753	176	4929
23.	Total Cognizable Crimes under SLL	2209	78	2125	91	3727	381	8061	550	8611
C.	Grand Total (A+B)	3414	170	11053	634	16518	1531	30985	2335	33320

Source: NCRB – Crime in India 2003

*As per new definition of Juvenile Justice Act, boys in the age group of 16-18 years have also been considered as Juveniles.

Table 5: Disposal of Juveniles Arrested (under IPC and SLL Crimes) and sent to Courts during 2003 (State and UT-wise)

S. No.	Crime Head	Arrested and sent to Courts	Sent to Home after advice or Admonition	Released on Probation & placed under care of		Sent to Special Homes	Dealt with Fine	Acquitted or otherwise Disposed of	Pending Disposal
				Parents/ Guardians	Fit Instt.				
States									
1.	Andhra Pradesh	2673	200	449	202	209	347	232	1034
2.	Arunachal Pradesh	196	108	88	0	0	0	0	0
3.	Assam	378	18	124	39	115	0	23	59
4.	Bihar	292	25	46	0	100	0	9	112
5.	Chhattisgarh	1602	71	154	42	494	46	351	444
6.	Goa	87	2	7	0	25	0	0	53
7.	Gujarat	2717	254	387	96	268	97	321	1294
8.	Haryana	2026	0	0	0	22	29	31	1944
9.	Himachal Pradesh	124	14	14	0	0	0	2	94
10.	Jammu & Kashmir	18	0	1	0	0	0	0	17
11.	Jharkhand	821	192	65	25	165	75	125	174
12.	Karnataka	358	39	32	5	47	0	24	211
13.	Kerala	764	294	82	8	101	4	10	265
14.	Madhya Pradesh	7672	1011	2587	364	403	512	304	2491
15.	Maharashtra	5070	672	1235	414	774	39	105	1831
16.	Manipur	0	0	0	0	0	0	0	0
17.	Meghalaya	35	2	0	0	19	0	0	14
18.	Mizoram	84	4	5	5	3	1	0	64
19.	Nagaland	1	0	0	0	0	0	1	0
20.	Orissa	313	23	91	30	16	0	12	141
21.	Punjab	132	46	5	0	3	15	11	52
22.	Rajasthan	1862	175	560	107	355	7	103	555
23.	Sikkim	17	5	3	0	0	1	2	6
24.	Tamil Nadu	4895	153	3081	178	334	411	40	698
25.	Tripura	0	0	0	0	0	0	0	0
26.	Uttar Pradesh	61	0	4	3	21	1	1	31
27.	Uttaranchal	30	26	0	0	4	0	0	0
28.	West Bengal	123	6	33	8	55	1	5	15
	Total (States)	32349	3340	9053	1526	3533	1586	1712	11599
Union Territories									
29.	A & N Islands	9	0	0	0	0	0	0	9
30.	Chandigarh	116	12	9	0	6	4	6	79
31.	D & N Haveli	2	1	1	0	0	0	0	0
32.	Daman & Diu	2	0	0	0	0	0	0	2
33.	Delhi	802	59	11	0	396	2	11	323
34.	Lakshadweep	0	0	0	0	0	0	0	0
35.	Pondicherry	40	1	0	0	1	0	1	37
	Total (Union Territories)	971	73	21	0	403	6	18	450
	Total (All of India)	33320	3413	9074	1526	3936	1592	1730	12049

Source: NCRB – Crime in India 2003

Juvenile home: HC asks govt to explain

Meenal Dubey
New Delhi, February 26

REACTING TO A *Hindustan Times* report on a North Delhi juvenile home, the Delhi High Court on Wednesday sought an explanation from the Delhi government.

A division bench of Justice D.K. Jain and A.K. Sikri issued notices to the Delhi government and director of social welfare and the superintendent of the Observation Home for Boys at Majnu ka Tila.

On February 10, *HT* had reported the deplorable state of juvenile inmates of the home. Not only are

these inmates routinely battered, they often go without adequate food and clothing.

This revelation came after a surprise visit by principal magistrate Santosh Snehi Mann, who heads the Juvenile Welfare Board. The board was conducting a survey on whether government institutions provided residential facilities to abandoned juveniles.

The board noted that 17 inmates had been kept in isolation at a separate dormitory. The juveniles complained of assault by welfare officer Muzem Khan and security guard Naveen. They also said they had to do with one pair of clothes.

88 delinquents escape from remand homes

HT Correspondents
Patna/ Ara, March 13

AT LEAST 88 delinquents have escaped from two remand homes in the state since March 10, 2004.



Later, senior superintendent of police N H Khan said six more inmates, who had escaped with 76 delinquents from the remand home, were nabbed in the evening. A section of the police force deployed at the remand home had been placed under suspension for dereliction of duty and an inquiry ordered into the incident.

10 juveniles escape observation home

NGO Says The Boys Were Afraid, Government Blames It On Lax Security

Delhi: Ten boys escaped on Thursday morning from the Observation Home at Dohi Gate. The boys were reportedly overpowered the two private securitymen at the home.

Police officials say Piyasa is run on a "kiddie-friendly" mode and hence the security is not very tight. "It is not like a jail," said Choudhury, who is in charge of the home.

for the home, said the boys had "walked out" because of a "lax" perimeter. On Wednesday evening, the juvenile court convicted two boys accused of escape. They had to be moved to the observation home for their trial. The court said the boys' escape was a result of lax security. The court also ordered an inquiry into the incident.

Table 6: Juvenile Delinquency (IPC) under different Crime Heads and Various Percentage Changes in 2003 over 1993, QA and 2002

S. No.	Crime Head	Year					
		1993	1998	1999	2000	2001	2002
1.	Murder	297	253	250	267	531	531
2.	Attempt To Commit Murder	182	163	179	196	449	469
3.	CH not amounting to Murder	15	22	21	27	34	22
4.	Rape	168	199	159	198	399	485
	i) Custodial Rape	*	*	*	*	0	0
	ii) Other Rape	*	*	*	*	399	399
5.	Kidnapping and Abduction	184	153	83	83	122	164
	i) of Women and Girls	140	134	66	54	79	109
	ii) of Others	44	19	17	29	43	55
6.	Dacoity	51	35	25	33	59	63
7.	Preparation and Assembly for Dacoity	5	2	2	7	51	46
8.	Robbery	98	52	68	79	164	207
9.	Burglary	1138	1294	1344	1241	1687	1723
10.	Theft	2404	2143	2172	2388	3196	3361
	i) Auto Theft	*	*	158	256	437	563
	ii) Other Theft	*	*	2010	2132	2759	2798
11.	Riots	1023	574	509	532	1228	1066
12.	Criminal Breach of Trust	15	19	13	24	59	39
13.	Cheating	63	32	31	37	83	88
14.	Counterfeiting	1	0	7	3	4	3
15.	Arson	*	24	40	29	48	107
16.	Hurt	*	1645	1472	1497	3234	4137
17.	Dowry Death	*	77	52	78	50	65
18.	Molestation	*	136	116	151	380	522
19.	Sexual Harassment	*	37	27	41	105	265
20.	Cruelty by Husbands and Relatives	*	249	273	334	349	262
21.	Importation of Girls	*	*	0	0	0	0
22.	Causing Death by Negligence	*	*	*	*	49	60
23.	Other IPC Crimes	3821	2243	2045	2022	42288	4875
	Total Recognisable Crimes under IPC	9465	9352	8888	9267	16509	18560

* indicates that the Crime Head was not introduced till that year.

Source: NCRB – Crime in India 2003

Care and Protection of Children in JJ Institutions

The safety of children in government run institutions has remained a matter of concern ever since the juvenile justice system has been in existence. Reports of violence faced by children regularly make headlines as do the escape of children from these institutions.

Nationally the capacity of the Homes (Nari Niketan, Shelter, Remand Homes) is estimated at 3,50,000, but it was found that more than 13 lakh children were housed in these institutions.

The Ministry of Social Justice and Empowerment at the national level and corresponding state government departments are responsible for children in conflict with the law and children in need of care and protection, which include street children and orphans.²¹ A ministry official told Human Rights Watch that the ministry did not have an estimate of how many children it was responsible for.²² The ministry also licenses adoption agencies, and, through the Central Adoption Resource Agency, monitors and regulates them.²³ The state is also responsible for “[re]view of the quality of care and treatment provided to the child who has been placed in institutions for care and protection.”²⁴

In case of children in care institutions and care jurisdictions, the Act remains silent on the discriminatory practices of testing children for HIV.²⁵ Human Rights Watch found several cases in which institutions had turned away children because of their own or their parents’ HIV status, and NGOs confirmed that this practice was occurring. Although some of these institutions were private institutions, the government is supposed to regulate childcare institutions. Besides, government relies on private institutions to care for children where no government institutions are available.

21. www.socialjustice.nic.in

22. Human Rights Watch, *Future Forsaken – Abuses Against Children Affected by HIV/AIDS in India*, 2004, USA.

23. Government of India, *Second Periodic Reports of States Parties due in 2000*, paras. 385, 402.

24. *Ibid.* para 381.

25. <http://www.lawyerscollective.org/lc-hiv-aids/Abstracts/Children.htm>

The Joint Secretary of the Ministry of Social Justice and Empowerment told Human Rights Watch that orphanages for children younger than six, when children are most likely to be considered for adoption, “definitely test” for HIV. “Every child picked up is routinely screened.” She added that there are some HIV-positive children in government institutions. “When asked if she knew of cases where homes turned away HIV-positive children, she told Human Rights Watch that she had “not personally come across this.”²⁶

Where children come in conflict with the law, the provisions of the Juvenile Justice Act 2000 are applicable. Under this law, the juvenile justice system has the power to test a child for HIV without her/his consent. Further there are no safeguards to protect medical records and the child can be isolated on the basis of her/his HIV-positive status.

Alternative Models being Explored

The process of co-management or joint management of homes initiated in Delhi has now spread to other states as well. Andhra Pradesh, Assam and West Bengal, have introduced Home committees with both state and NGO representatives to manage children’s institutions.²⁷ Similar processes are being initiated in other states such as Madhya Pradesh. The experiments seem to vary. While in some cases NGOs provide technical support for better management of the institutions, there are others where they are encouraged by the government to completely take over the running of the homes.

The criticism being made of this model, especially where the homes are being handed over to NGOs is that such models allow for abdication of state responsibility. For the effective and holistic intervention for upholding the rights of the children in difficult circumstances, it is essential that the different ministries and departments work in a co-ordinated manner. This necessarily means that programmes under the Ministry of Human Resources Development for compulsory education under its Department of Education; the Integrated Child Development Scheme and now National Commission for the Protection of Rights of Children, under the Department of Women and Child Development; and Child Protection schemes under the Ministry of Social Justice and Empowerment merge synergistically with constant supervision by statutory bodies like the National Human Rights Commission (Ministry of Home Affairs). In this way, the education and nutrition schemes for all children in the juvenile justice process, health facilities and justice concerns, rehabilitation and reintegration of children in their respective communities will be linked up. May be this task will be undertaken by the National Commission for Protection of Children’s Rights in the near future or may be it will confine itself to child protection issues only. The position is not very clear.

Conclusion

The setting up of the juvenile justice system is in recognition of the vulnerabilities of children, and the responsibility on the state for setting up systems for the welfare and development of children. Similar responsibility vests with the family and society. However, as it stands, all of them are almost culpable agents in the physical (torture), sexual (trafficking and prostitution) and commercial (child labour) abuse and exploitation of children in these situations. The criminal justice system is oriented to deal with adults, and hence it is imperative that the juvenile justice system is geared to provide an alternative child friendly system accommodating the special needs of children, particularly reformation and rehabilitation. Nevertheless, it is critical that a common minimum quality institutional care programme for children, partnership of the state and civil society (as co-management), sensitisation of the donor community to the needs of children in residential care (infrastructural aid), community-based rehabilitation programmes for non-institutional services, be explored for an effective and child friendly juvenile justice system.

26. Human Rights Watch interview with Jayati Chandra, Joint Secretary, Ministry of Social Justice and Empowerment, New Delhi, December 4, 2004 in 22. Human Rights Watch, *Future Forsaken – Abuses Against Children Affected by HIV/AIDS in India*, 2004, USA.

27. Note prepared by Rajib Halder, Executive Director, PRAYAS (Undated).

ANNEXURE

Status of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 in the States/UTs

S.No.	State/UT	Status of Implementation of JJ Act 2000
1	Andhra Pradesh	<ul style="list-style-type: none"> a. Rules notified on 8.5.2003 b. 10 Observation homes, 2 special homes, 5 children homes and one after care organisation functioning in the State. c. In addition, 2 special homes, 2 children homes and 10 shelter homes are required to be added/constructed. d. Juveniles Welfare Board constituted for all Homes. e. City Advisory Boards constituted at Hyderabad, Vizag, Vijayawada where CHILDLINE services are functioning.
2	Bihar (20.10.2003)	<ul style="list-style-type: none"> a. Rules notified on 1.9.2003. b. Setting up of 9 JJ Boards – one in each Divisional Headquarters and CWC in Patna under process. c. Juvenile Police Officers have been notified in some police station.
3	Chhattisgarh	<ul style="list-style-type: none"> a. Constitution of JJ Boards under processing and for Child Welfare Committees in districts, Selection Committee to be notified. b. Draft Rules prepared.
4	Goa (8.8.2003) (22.7.2004)	<ul style="list-style-type: none"> a. Framing of State Rules under process b. JJ Board constituted for entire State c. CWC constituted for entire State d. 2 Observation Homes, 2 Special Homes and 2 Children Homes run by Govt. And one NGO run Children home set up. e. Special Juvenile Police Units created.
5	Gujarat (26.3.2004) (29.7.2004)	<ul style="list-style-type: none"> a. Rules notified on 31.12.2003. b. JJ Boards and Child Welfare Committees constituted in each district. c. Observation Homes (16 Govt. and 7 NGO), 13 Govt. Special Homes and 63 Children Homes (33 Govt. and 30 NGO) notified d. Appointment of Inspection Committee under consideration. e. 3 After Care Institutions to act as Shelter Homes f. Good network of machinery for adoption related matters exists. g. Creation of Fund for welfare and rehabilitation of juveniles under process h. State Advisory Board constituted i. Training of functionaries taken up j. Setting up of JJ Police Unit under consideration
6	Haryana (7.6.2004)	<ul style="list-style-type: none"> a. Rules notified on 11.10.2002. b. JJ Board set up at Ambala, Sonapat, Gurgaon and Hissar. c. Child Welfare Committees constituted in each district under the Chairmanship of Deputy Commissioner. d. One Observation Home, one Special Home and one After Care Home being run by the Govt. e. Children Homes at Chhachhrauli and Rewari notified. f. Inspection Committees for Children Homes approved and case under submission for nomination of social workers. g. Shelter Homes at Chhachhrauli and Rewari notified. h. Necessary provisions made in the JJ Rules for rehabilitation and social reintegration of children i. JJ Fund set up. j. Advisory Board at State level set up. k. Crime Against Women Cells functioning in each district nominated to act as special juvenile police units. l. Training courses organised for police officials.

Source: www.socialjustice.nic.in/social/impeJJ.htm

7	Himachal Pradesh (26.5.2004)	<ul style="list-style-type: none"> a. Rules notified on 4.5.2002. b. Juvenile Justice Boards have been constituted at Shimla and Una. c. Constitution of Child Welfare Committees under consideration. d. Special School at Una declared as Observation cum Special Home. e. Juvenile Home at Sundernagar notified as Children Home. f. Inspection Committees constituted. g. Bal/Balika Ashrams run by HPCCW at Sarahan, Tissa, Kullu and Suni declared as Shelter Home-cum-drop in centers. h. Formulation of guidelines and schemes for rehabilitation; creation of fund for welfare and rehabilitation of juvenile; constitution of Advisory Board; and training for police officers are under examination.
8	Karnataka (24.4.2004)	<ul style="list-style-type: none"> a. Rules notified on 26.9.2002 b. JJ Boards constituted in 5 districts namely, Bangalore, Mysore, Shimoga, Dharwad and Gulbarga c. Child Welfare Committees constituted in 27 districts d. 5 Observation Homes 2 Special Homes (one for boys and one for girls) and 46 Children Homes set up. e. District level inspection committees constituted. f. Action being taken to identify NGOs for setting up of shelter homes g. Action being taken for creation of Juvenile Welfare Fund. h. State level Advisory Board constituted. i. Special Juvenile Police Units set up in all the 27 districts. j. Minimum standards for Children Homes determined.
9	Kerala (21.1.2003)	<ul style="list-style-type: none"> a. 14 Juvenile Courts set up under the previous Act working in the State. b. 14 Juvenile Welfare Boards set up under the previous Act working in the State. c. 13 Observation Homes are functioning for both child in need of care and protection and child in conflict with law. d. No Shelter Home.
10	Madhya Pradesh (13.4.2004) (25.6.2004)	<ul style="list-style-type: none"> a. JJ Rules notified on 15.7.2003 b. Action being taken for constitution of JJ Board and Child Welfare Committee. c. 18 Observation Homes and 3 Special Homes functioning in the State. There seems to be no need for setting up more observation and special homes. d. 3 Children Homes functioning in the State. Action underway for setting up of 16 Children Homes by making necessary provisions therefore in the premises of 16 observation homes. e. Two After Care Institutions being run. f. Constitution of JJ Board, Child Welfare Committees and State Advisory Board under process. g. District Advisory Boards constituted in 14 districts which are proposed to function as inspection committees. Action being taken to set up such boards in the remaining districts. h. Action underway to set up shelter homes in collaboration with NGOs. i. Provision made in the Rules for formulating guidelines and scheme for adoption related matters. j. JJ Fund set up. k. Special Juvenile Police Units set up in all districts l. Training calendar drawn up for police officers and Departmental officers. The training programmes would be conducted in collaboration with Madhya Pradesh Administrative Academy, Bhopal
11	Maharashtra	<ul style="list-style-type: none"> a. 56 Observation Homes (14 –Govt., 42 run by NGOs), 148 Children Homes (32– Government 116 NGO run) 4 Special Homes (3 Government 1 NGO run). b. 30 Juvenile Justice Boards, 37 Child Welfare Committees functioning in the State.

		<ul style="list-style-type: none"> c. The Rules under Juvenile Justice Act, 2000 are now prepared and notified on 30.8.2002. d. City Advisory Boards are set up at some places for monitoring children services.
12	Manipur (19.5.2004)	<ul style="list-style-type: none"> a. Rules notified. (date not mentioned) b. One JJ Board and one Child Welfare committee constituted for the entire State. c. One Observation Home and one Special Home set up by the State Govt. d. One Children Home set up by State Govt. e. 8 Homes being run by NGOs, out of which few will be declared as Children Homes for reception of children in need of care and protection f. 3 Adoption Centres being run by NGOs in the State. Sponsorship also being taken up by NGOs. g. Regional level training programme for Police personnel and members of JJ Board and CWC organised from 18 to 20th January 2004.
13	Mizoram (23.3.2004) (17.6.2004)	<ul style="list-style-type: none"> a. Rules notified on 1.8.2003 b. Selection Committee constituted to select members of Child Welfare Committees. c. JJ Board constituted. d. Two observation homes and two special homes being run by the State Govt
14	Meghalaya(4.8.2003)	<ul style="list-style-type: none"> a. Rules under finalisation. b. Constitution of JJ Board and Child Welfare Committee under active consideration c. 3 Observation Homes being run in the State. d. The State proposes to set up one Special Home, four Children Homes, two Shelter Homes and one After Care Organisation.
15	Pondicherry(8.8.2003)	<ul style="list-style-type: none"> a. Rules notified on 22.3.2002. b. Constitution of Child Welfare Committee and Juvenile Justice Board under process. c. One Observation Home, one Special Home, one children home and one after care organisation functioning in the State. d. One children home and one shelter home are proposed to be added/constructed.
16	Punjab (16.7.2002) (8.12.2003)	<ul style="list-style-type: none"> a. Draft Rules have been framed and under process of notification. b. Two Observation Homes and Two Special Homes and Five Children Homes have been established. c. A programme has been chalked out to provide training to Police Officers dealing with juveniles. d. Constitution of Juvenile Justice Boards in place of Juvenile Courts has been referred to the Registrar, Punjab & Haryana High Court. e. Proposals for constitution of Child Welfare Committees under consideration of State Government. f. Inspection Committees for Children Homes being appointed shortly. g. Constitution of Advisory Boards at State, District and City level under consideration. h. Child Welfare Committees at Gurdaspur, Patiala, Ropar, Jalandhar and Bhatinda.
17	Rajasthan(26.5.2004)	<ul style="list-style-type: none"> a. Rules notified on 23.7.2002. b. JJ Boards and Child Welfare Committees constituted in nine districts. c. Homes one each at Ajmer and Kota declared as Observation Homes., 4 Juvenile Homes(Jaipur, Jodhpur, Udaipur and Bikaner), and Children Home for girls at Jaipur recognised as Children Homes. State Women Centre, Jaipur recognised as Special Home for girls. d. State Advisory Board constituted e. Special Juvenile Police Unit and Child Welfare Officer in all Police Stations designated.

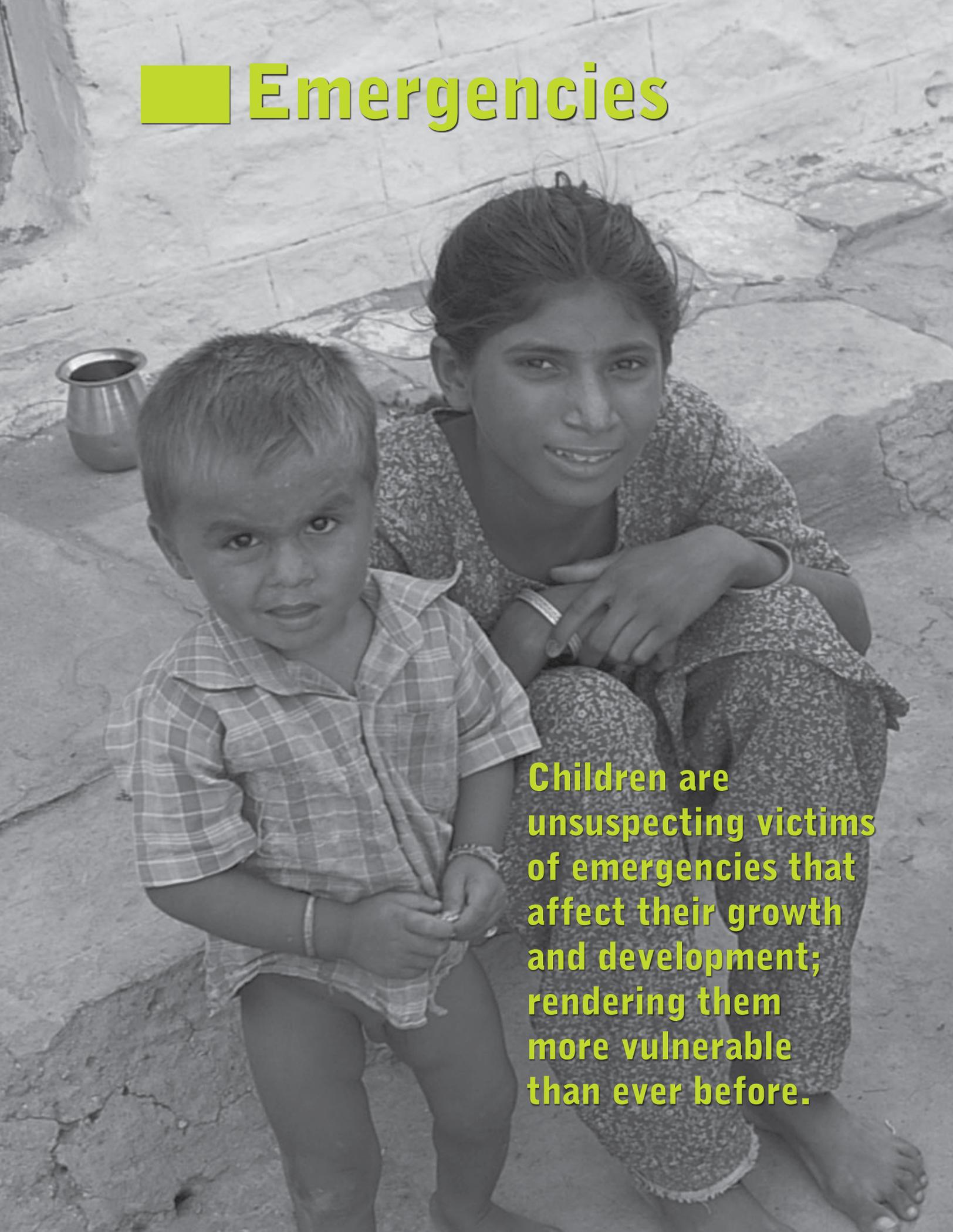
		<ul style="list-style-type: none"> f. Action being taken for constitution of inspection committees. g. Proposals invited from NGOs for running Shelter Homes h. The Child Welfare Fund set up under the previous Act being proposed to function as the JJ Fund.
18	Sikkim (21.8.2003) (1.3.2004)	<ul style="list-style-type: none"> a. Rules notified on 13.03.2003 b. One Juvenile Justice Board, Two Child Welfare Committee and Inspection Committee constituted. c. One Observation Home at Gangtok with residential facility for 25 inmates maintained by the State Govt. Another OH proposed to be set up at Nanchi (South). d. There is no Children Home in the State.
19	Tamil Nadu(1.1.2004)	<ul style="list-style-type: none"> a. Rules notified on 14.2.2002. b. 8 Observation Homes, 2 special homes (one for boys and one for girls), 32 children homes (11 Govt. institutions and 21 NGO based, and 3 Govt. After Care Organisations established. c. 8 Juvenile Justice Boards established and 18 Child Welfare Committees to be constituted. d. District level Advisory Committees which are also the inspection committees established. e. Constitution of State Advisory Board under consideration. f. Child Welfare Officers approved for all Police Stations, and DSP (District Crime Record Bureau) designated as officer in charge of Special Juvenile Police Units. g. Orientations on JJ Act 2000 given to all Police personnel. h. Social Welfare Fund for Women and Children set up by the Govt. could be used as Juvenile Justice Fund.
20	Tripura(5.8.2003) (28.7.2004)	<ul style="list-style-type: none"> a. Rules notified on 23.3.2002 b. One observation home is functioning in the State, and another is proposed to be added. c. JJ Board constituted d. Constitution of Child Welfare Committee under process. e. A Committee constituted for monitoring and evaluation of running of homes. f. A scheme and guidelines framed for rehabilitation and social integration of children g. Constitution of Advisory Board at State, District and city level under process h. Action yet to be taken for creation of Fund and training of Police Officers.
21	U.P. (24.6.2004)	<ul style="list-style-type: none"> a. Rules notified on 31.3.2004 b. JJ Boards constituted in 25 districts and Child Welfare Committees in 12 districts. Action underway for constitution of the Boards and Committees in the remaining district. c. 22 observation homes and two special homes functioning in the State.No proposal from any NGO for setting up of observation homes/special homes received. d. 10 children homes for boys, 5 children homes for infants (shishu), and 4 children homes for girls functioning. No proposal from any NGO received. e. Constitution of Inspection Committees under consideration. f. Action being taken to set up Shelter Homes. g. An NGO recognised for rehabilitation of children. A detailed rehabilitation project is being formulated. h. Action being taken on matters relating to adoption of children. i. 4 organisations being run for after care of children. j. Guidelines issued to district authorities regarding adoption of abandoned children k. There are 58 Observation Homes, 23 children homes, 4 Special Homes and 7 After Care organisations in the State. l. Creation of Fund for the welfare and rehabilitation of Juvenile children

		<p>under consideration.</p> <p>m. The State Level Advisory Board has been constituted. Advisory Boards not set up at district/city level.</p> <p>n. Orientations training for Departmental functionaries and NGO representatives have been organised.</p> <p>o. Setting up of Juvenile police unit under consideration.</p>
22	West Bengal	<p>a. 2 Juvenile Justice Boards have been constituted for all Districts of the State.</p> <p>b. Child Welfare Committees have been constituted covering all Districts of the State.</p> <p>c. 5 Observation Homes run by Government have been established.</p> <p>d. 5 Special Homes run by Government have been established.</p> <p>e. 13 Children Homes have been established and are run by Government.</p> <p>f. 21 Shelter Homes run by NGOs have been recognised.</p> <p>g. 8 After Care Homes are being run.</p> <p>h. Formulation of Rules under consideration of Government</p>
23	Andaman & Nicobar Islands (11.7.2002)	<p>a. Draft Rules have been prepared and under consideration of the UT Admn.</p> <p>b. Observation Home/ Special Home/Children Home are being maintained by the UT Admn.</p> <p>c. Inspection Committee for Children Home will be appointed.</p> <p>d. Proposal of constitution of Advisory Board at State level under active consideration.</p> <p>e. Creation of Special Juvenile Police Unit being undertaken.</p>
24	Chandigarh(4.3.2004 & 14.6.2004)	<p>a. Rules notified on 15.3.2002</p> <p>b. JJ Board and Child Welfare Committee constituted</p> <p>c. Observation Homes and Special Homes have been notified</p> <p>d. Home for old and destitute people declared as Children Home for reception of male juveniles and the Nariniketan as Children Home for reception of female juveniles. Land for construction of a separate building earmarked and construction in progress</p> <p>e. Inspection Committee has been constituted</p> <p>f. A meeting being convened to identify a reputed and capable organisation as Shelter Home</p> <p>g. To ensure social reintegration of children, Missionaries of Charity, an NGO doing adoption work given recognition. Balniketan Society, another NGO is working for orphan and destitute children</p> <p>h. Decision regarding creation of JJ Fund yet to be taken</p> <p>i. There is no necessity to constitute Advisory Board keeping in view the small size of UT.</p> <p>j. The matter regarding setting up of Special Juvenile Police Unit taken up with the Home Dept. However, child and women support unit set up by the Police Dept. also functioning actively in the city.</p>
25	Daman & Diu (20.6.2002)	<p>a. Model Rules have been adopted by the U.T. Govt.</p> <p>b. Child Welfare Committee will be formed soon.</p> <p>c. Action initiated for constituting Juvenile Justice Boards</p>
26	Delhi (26.3.2004)	<p>a. Rules notified on 19.8.2002.</p> <p>b. One JJ Board and 3 Child Welfare Committees constituted</p> <p>c. 3 Observation Homes (one by an NGO and 2 by the State Govt – one each for boys and girls) set up.</p> <p>d. 8 Children Homes for boys and 3 Children Homes for girls being run by the State Govt.</p> <p>e. 10 District level inspection committee constituted</p> <p>f. 3 Shelter Homes set up and another Shelter Home under process.</p> <p>g. Formulation of guidelines for rehabilitation and social integration of children including those relating to adoption matters under process.</p> <p>h. State level Advisory Board constituted.</p> <p>i. Creation of JJ Fund approved by the Finance Dept. Fund likely to be operative shortly.</p> <p>j. Training of police officers organised.</p>

27	Lakshadweep	There is no problem relating to juveniles in the Territory. However, they have earmarked a room in Working Women's Hostel at Kavaratti to accommodate such cases, if required.
28	Dadra & Nagar Haveli (17.3.2004 & 29.7.2003)	<ul style="list-style-type: none"> a. Rules notified on 5.4.2002. b. One JJ Board, Selection Committee and one Child Welfare Committee constituted. c. No fund for welfare and rehabilitation of juvenile/children earmarked d. No Homes required to be set up. e. No Advisory Board constituted as there is no Home f. No Police Officer trained as no case has been reported.
29	Orissa	<ul style="list-style-type: none"> a. Rules framed and notified b. 28 Juvenile Justice Boards Constituted and 2 Boards are under construction. c. Child Welfare Committee Constituted in 30 districts. d. 15 Observation Homes out of which 12 being run by the NGOs and 2 being run by the State Government. e. 3 Special Homes has been set up f. Steps are being taken to set up 12 Good Child Care Institutions as 'Children's Homes'.

Note: The above information is purely based on data provided by State/UT Governments and would be continuously changed as and when information is received.

■ Emergencies



Children are unsuspecting victims of emergencies that affect their growth and development; rendering them more vulnerable than ever before.



A situation of emergency, as the very term suggests, requires immediate and specific action. India is witness to a number of emergency situations that are both human-made and natural. While all emergencies in a broad sense have physical and psychological impacts, their nature and long term consequences are very different. Even while there are deep rooted emotional consequences such as the sense of loss and fear after a natural disaster, there is a somewhat greater acceptance of an event that human beings have no control over. Armed conflict on the other hand is totally humanly created, decisions for which have not been by those who bear the impact.

India is witness to a number of emergency situations that are both human-made and natural. While all emergencies in a broad sense have physical and psychological impacts, their nature and long term consequences are very different.

A number of India's children grow up in areas where there is violence and strife. They know no other reality. Apart from witnessing or directly becoming victims of the situation, conflict also affects the social sector such as health or education, that directly impact the life of a child. It perpetuates or enhances prejudices, which impacts on the ability of a child to make choices. Living and growing up in such an atmosphere, they imagine these to be natural and therefore, many are at risk of being easily indoctrinated into becoming child combatants.

Every year some part of India is affected by a natural disaster, whether floods, droughts, earthquakes or cyclones. These too can injure or kill children directly or indirectly. A natural disaster too affects health, education or infrastructure, which have both long and short-term impacts on the life of a child. When families lose their homes or livelihood, ineffective rehabilitation can result in the trafficking of a child or forced labour.

Apart from random articles in news papers and magazines or some short case studies, very little systematic documentation has been undertaken on how such emergency situations impact children. In our last report we had included a chapter on the impact of conflict on children. In this report we have attempted to also study the impact of natural disasters. It is not possible to document the impact of all the natural disasters that have affected India, big or small, but an examination of the situation of children in some of them helps highlight the major concerns that need to be addressed.

There are a number of international protocols that are supposed to form the guiding principles while dealing with emergency situations. Many of them call for special protection of vulnerable groups, including children. Yet, awareness of these and their implementation remains a problem.

Armed Conflict and Children

Generations of children across India grow up in situations of conflict, witness to caste, ethnic, religious or political violence. In its 2002-03 annual report, the Ministry of Home Affairs had said that India faces internal armed conflict in 16 out of 28 states.¹ Conflicts on issues of autonomy or secession are witnessed in the states of Assam, Arunachal Pradesh, Jammu and Kashmir, Meghalaya, Manipur, Mizoram, Nagaland and Tripura. In addition, 76 districts in nine states including Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Orissa, West Bengal, Madhya Pradesh, Maharashtra and parts of Uttar Pradesh are affected by left wing movement that has claimed numerous lives in recent months.²

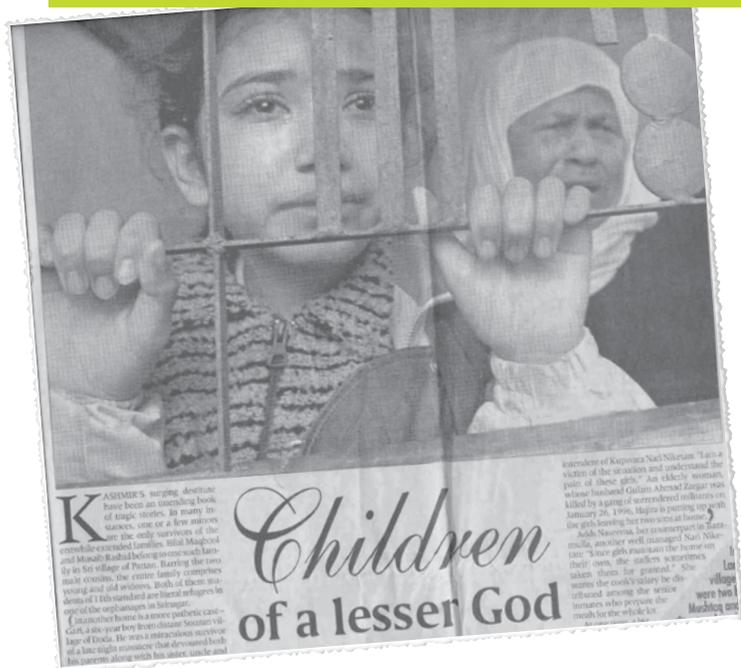


1 Asian Centre for Human Rights. The Status of Children in India. An Alternate Report to the United Nations Committee on the Rights of the Child on India's First Periodic Report (CRC/C/93/ADD.5).
 2 Ministry of Home Affairs, Annual Report, 2004-2005, <http://mha.nic.in/AR2004-2005/AR04-05Eng.pdf>.

Blast near a school in Pulwama

Militants had placed a car filled with explosives near a Central Reserve Police Force bunker near a school. When they triggered the blast at eleven in the morning, fourteen people, including three children, were killed and over a hundred people were injured. According to teachers, the students had only just returned to their classes after physical education drills outside. If the explosion had occurred a few minutes earlier, many more children would have been killed.

According to human rights defenders, teachers say that they find their students psychologically traumatised by the violence. While some children faint if they hear any loud sound that might be a bomb explosion, teachers also report that many children suffer from trauma related disorders such as bedwetting or seizures.⁵



play a significant role in the creation of conflict that the world faces today, but what he said about the impact on children remains true. They are unsuspecting victims of situation they are not responsible for.

Children growing up in areas affected by conflict are vulnerable to violence and atrocities by both state and non-state parties. Often they are unwitting victims of crossfire between the two groups. Growing up in these circumstances affects children in a number of ways. They have to survive in an atmosphere of fear, poverty, disease and exploitation. Access to education, health, nutrition is disrupted. Their rights to survival, childhood, participation, and safety is severely compromised, all of which have adverse impacts on children's growth and development. For instance, parents in Jammu and Kashmir often say that they live in dread every time

'Armed conflict' is the use of armed violence to resolve local, national and/or international disputes between individuals and groups that have a political, economic, cultural and/or social (as opposed to interpersonal or criminal) origin. It is a mechanism of social transformation that may originate either in competing claims over resources or power or in conflicting cultural or social values, and is often aggravated by low levels of human security. The term 'armed conflict' is preferred to that of 'war' because its usage commonly encompasses a far broader range of circumstances and conditions, from violent political protest or insurgency, to violence enacted by trained and organised military units and to genocide.³ In an armed conflict by non-state parties, the recruitment of combatants and the selection of the targets is often indiscriminate and incidental. In this scenario, other than traditional arms, small arms and landmines are used. For example, the Landmine Monitor⁴ has reported that non-state actors use anti-personnel mines, anti-vehicle mines and improvised explosive devices in Jammu and Kashmir, Central India, and North East India.

In 1953, the President of the United States of America, Dwight D. Eisenhower, had said, "Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and are not clothed. The world in arms is not spending money alone. It is spending the sweat of its labourers, the genius of its scientists, the hopes of its children... This is not a way of life at all, in any true sense. Under the cloud of threatening war, it is humanity hanging from a cross of iron."⁶ Needless to say, his country continues to

The UN Committee on the Rights of the Child expressed serious concern over the plight of children involved in the armed conflicts in Jammu and Kashmir and the North East of the country. It urged the government to ensure respect for human rights and humanitarian law aimed at the protection, care, physical and psychological rehabilitation of children affected by armed conflict.

UN Committee on the Rights of the Child, Concluding Observations: India, UN Doc. CRC/C/15/Add.228, 30 January 2004

3 Boyden Jo, Jo de Berry, Thomas Feeny, & Jason Hart, Children Affected by Armed Conflict in South Asia: A review of trends and issues identified through secondary research. RSC Working Paper No. 7. January 2002. Working Paper Series. Queen Elizabeth House International Development Centre, University of Oxford.

4 Landmine Monitor, India <http://www.icbl.org/lm/2003/india.html>

5 Interview with Meenakshi Ganguly, Researcher, Human Rights Watch.

6 Former U.S. President, Dwight D. Eisenhower, in a speech on April 16, 1953.

their child steps out of the house because they can fall prey to a bomb blast, get caught in cross-firing, be recruited by a militant group or be detained, tortured, even killed by security forces.

As livelihood of adults gets disrupted, entire families are forced into poverty, leading to the illegal trafficking of children or forcing them into labour. Children are drawn into the conflict as they are often recruited as combatants, either to participate in the armed conflict or as porters, messengers or spies. Constant killings, bloodshed and insecurity, loss of parents and family, leads to a long term psychological impact upon children. In this atmosphere of hatred, even as adults continue to battle over their ethnic, linguistic or religious identities, children grow up believing that this situation is “normal”.

There is no clear strategy for monitoring the situation of children in conflict-prone situations, which would include increasing the capacity of front line organisations, individuals, and national child protection networks to document and disseminate reliable information about violations against children. Since the data does not exist, the atrocities committed on these children too remains undocumented. This also makes it very difficult to adhere to the international norms and show compliance to the United Nations Security Council mandate for children in armed conflicts.

Killings of Children

Both security forces and the armed groups in India have placed children at risk and in some cases, have been responsible for their deaths. Security forces have often set up bunkers near schools, which are then targeted by militants. According to the South Asia Terrorism Portal, nearly 20,000 civilians have been killed in internal conflicts between 1995 and 2005.⁷ A number of these casualties can be assumed to be children. For instance, in Kashmir, children have died in grenade attacks in crowded places or during election meetings. They have also been killed in cross fire. Three boys were killed in July 2005 when an army platoon mistook them for militants and opened fire.⁸ The same can be said of any other situation of conflict in the country.

Detention and Anti-terror Laws

India has several laws to combat situations of internal conflict including the ‘National Safety Act’, the ‘Armed Forces Special Powers Act’ or the ‘Disturbed Areas Act’. Two laws, specially enacted to counter terrorism, the ‘Terrorist and Disruptive Practices Act’ and the ‘Prevention of Terrorism Act’ were criticised by human rights activists because of widespread abuse. While TADA was allowed to lapse, POTA, which was enacted in 2002, was repealed in 2004.

Both TADA and POTA had been used to arrest and detain children as alleged terrorists. At times, children ended up in custody simply because they were in the wrong place at the wrong time. Children have also been thrown into adult prisons violating the law of juvenile justice in the country. When it was reported that eight children escaped from a remand home in Ranchi, throwing chilli powder into the eyes of the security guards, a horrible truth was exposed. According to the news report, “Of the eight children, five had been arrested for links with Maoist guerrillas and one was facing a murder charge, police said”.⁹

“I was studying in 10th standard. My job was to go to school and study and that was what I was doing. As a result of the charges that I faced, my friends don’t talk to me and they don’t want to play with me. I want to know why I was charged under POTA and had to suffer so much... I was made to strip and remain in my undergarments. In Kallavi police station I was beaten with lathis and was questioned by a Q Branch police official. I was not informed of the case against me at any point of time nor did I sign an arrest memo. The police then videographed me” says Prabhakaran, age fifteen, arrested under POTA.

Source: Testimony from - A Report on the People’s Tribunal on the Prevention of Terrorism Act and other Security Legislations, New Delhi, March 2004, Combat Law Publications Pvt. Ltd.

Among the nearly 200 people arrested in Jharkhand under the draconian ‘Prevention of Terrorism Act’ (Pota) are Gaya Singh, 12, and Rajnath Mahto, 81. According to a confidential police file, the total number of children arrested as terrorists under Pota is 10. And two of these “terrorists” are over 60.

“Pota does not specify that students providing information to Naxalite groups would be exempt from arrest. If a student is providing information to Naxalite groups or a 12-year-old is carrying a rifle, he has to be arrested under Pota,” says Home Secretary, Jharkhand Shri. J B Dubit.

Source: Akshaya Mukul. Times of India, Times News Network, February 20, 2003.

7 South Asia Terrorism Portal, Institute for Conflict Management, <http://www.satp.org/satporgtp/countries/india/database/fatalities.htm>

8 3 boys mistaken for militants killed in J&K, Rediff.com, <http://us.rediff.com/news/2005/jul/24boys.htm>

9 Eight children flee from remand home. Ranchi, 9 May 2005. IANS.

While in custody, children remain at risk of being tortured by security agencies. They can also “disappear.” In a report in 1999, Amnesty International expressed concern about the “disappearance” of children and the way the “disappearance” of family members affects them. Children suffer an enormous sense of fear, responsibility and despair as they search for their dependents.¹⁰

The only law under which children can be detained is the ‘Juvenile Justice (Care and Protection) Act, 2000’. However, an analysis of its implementation (refer to chapter on Juvenile Justice) shows that not all states have implemented it. This requires that children be detained in separate facilities from adults. Keeping children in detention with adults can place them at risk of violence, abuse or indoctrination. As is the case with most laws in the country, the ‘Juvenile Justice (Care and Protection) Act, 2000’ too does not automatically extend to the state of Jammu and Kashmir. Although the State government had extended the ‘Juvenile Justice Act, 1986’, (which too laid down special facilities for detaining children) it has not done the same with the present law. In the absence of separate facilities for juveniles in Jammu and Kashmir, they are detained in the same jails as adults. Some Kashmiris who had recently come out of jail told Human Rights Watch that they met child combatants or suspects, some as young as twelve, while being held in detention.¹¹ Twelve year old Tariq Hussain Wani, in district jail at Kathua since May 2003, detained under the Public Safety Act and fifteen year old Jaffar Wani, also in the same jail, are two such examples of children seen to be participating in armed conflict detained in adult jails.

Children are thus doubly victimised, first by the armed groups and then by law enforcement agencies. Special care has to be taken to protect children who are particularly vulnerable in situations of armed conflict and can be coerced, trafficked, sold, enticed or victimised into participating in the hostile activities.

Recruitment of Children

It has been found that significant numbers of adolescents and even younger children, mostly boys, but also girls, are directly embroiled in armed struggle in both government and rebel forces and amongst political activist groups. Since the young tend to be particularly obedient and loyal and have a special talent for escaping surveillance, their recruitment is an overt strategy of many armed forces.¹² Young conscripts tend to perform ancillary tasks, as porters, messengers, intelligence gatherers, cooks or cleaners. Some occupy combat functions, as soldiers, guards or political agitators, and are responsible for patrolling and manning checkpoints, the laying, detection and clearing of land mines and bearing arms in battle.¹³

These children can be drawn into combat in a number of ways.

Some children are trafficked or abducted and forced to fight. Others join armed groups enticed by promises of food, shelter and survival or to avenge atrocities upon their communities. Children sometimes equate armed violence with power. Enlistment may also be linked to political commitment, ethnic loyalties, peer pressure, hunger and the opportunity to engage in looting.¹⁴ Whatever the reasons or the means, the reality is that children are used as child soldiers. In a recent meeting on armed conflict at the United Nations Security Council, the Deputy Permanent Representative, on Children

Naxals using children as shields



Amid reports of mass abduction and sexual abuse of kids, Maoists rebels operating along the Uttar Pradesh border have announced raising a militia of children, who will form a human shield during police crackdown

Source: The Pioneer, 12 March, 2004.

10 Amnesty International, “If they are dead, tell us;” “Disappearances” in Jammu and Kashmir, AI Index: ASA 20/002/1999, March 2, 1999, [online] <http://web.amnesty.org/library/Index/engASA200021999>

11 Interview with Meenakshi Ganguly, Human Rights Watch.

12 Additional Protocol to the Geneva Conventions, 8 June 1977.

Art 77 (2) says that The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.

13 Article 4, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts states that: “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.” [online] <http://www.unhcr.ch/html/menu2/6/crc/treaties/opac.htm> (retrieved August 15, 2005).

14 Boyden Jo, Jo de Berry, Thomas Feeny, & Jason Hart Children Affected by Armed Conflict in South Asia: A review of trends and issues identified through secondary research. RSC Working Paper No. 7. January 2002. Working Paper Series. Queen Elizabeth House International Development Centre University of Oxford.

and Armed Conflict at the United Nations Security Council, Mr. A. Gopinathan said that most often, it is not possible to make a distinction between a forced and a voluntary child soldier. For instance, plagued by insurgency and conflict for the last 5 decades, the North East states especially Manipur, Nagaland, Assam and Tripura are witnessing a dangerous trend of traumatised and disturbed children being forced into insurgency. Children are not just getting caught in the crossfire but are also being targeted in many cases and are bearing the brunt of violence.¹⁵ Male youths aged between 15 and 18 reportedly joined a variety of armed groups in North-Eastern states primarily to escape poverty and provide for their families¹⁶. Armed groups operating in Indian-administered Kashmir have often recruited children.¹⁷ Parents complained to human rights defenders that they are always fearful that their children will be indoctrinated in schools or mosques, or by militants operating in the area.¹⁸ The first ever suicide attack in Indian-administered Kashmir was by a seventeen-year-old schoolboy called Afaaq Ahmed, who blew himself up outside the army headquarters in Srinagar in December 2000.¹⁹

“Enticed by promises of food, shelter and security, and sometimes plied with drugs, child soldiers are at times led to commit atrocities against other armed groups and civilian populations, sometimes even against their own communities. The use of children in armed conflict has been aggravated by the proliferation of small arms and light weapons worldwide”

A. Gopinathan, Deputy Permanent Representative, on Children and Armed Conflict

The use of children in armed conflict has been aggravated by the proliferation of small arms and light weapons worldwide. These weapons are inexpensive, durable, small, lightweight, easy to maintain and small enough for them to handle. Illegal arms trafficking and poor monitoring of the legal trade make it easy for them to access such weapons. A recent United Nations report said that, “While no leniency should be shown to crimes perpetrated on innocent children, we need to see in perspective the fact that many children responsible for reprehensible crimes have often been manipulated by unscrupulous adults to take part in armed conflicts.”²⁰

The state also recruits children. The Child Soldiers Global Report 2004 prepared by the Coalition to Stop the Use of Child Soldiers covers the period from April 2001- March 2004. According to this report, the minimum voluntary recruitment age was 16.²¹ The Report states that in India, recruitment into the armed forces is regulated by the Air Force Act, the Army Act and the Navy Act.²² None of these Acts stipulates a minimum voluntary recruitment age but India told the UN Committee on the Rights of the Child in 2003, “Persons who are recruited at the age of 16 undergo basic military training for up to two and a half years from the date of enrolment and are then inducted into regular service.”²³ India had previously reported to the committee that “children are not inducted into the armed forces and hence do not take a direct part in hostilities”.²⁴

As part of the compilation of the Global Report, the coalition’s researchers sent out requests for information, the Government of India issued the following answer- “Our rules of recruitment are very clear and there is no question of using child soldiers in India of course, and the voting and recruitment norms are all as per civilised norms.” The Indian government did not impart any information on recruitment of children by non-state actors despite growing evidence and reports of continuing recruitments of children by the Maoist-Communist, People’s War Group in Andhra Pradesh. However as far as Jammu and Kashmir was concerned, Indian defence sources were quoted in the national media as saying that half the members of armed groups in Kashmir were aged between 14 and 18, although this information was impossible to verify independently.

Source: Charu Lata Hogg. Tehelka: The People’s Paper, December 4, 2004. Charu Lata Hogg was Research Consultant to the Coalition to Stop the Use of Child Soldiers to research child soldier use and recruitment in the Asia Pacific.

15 Binalakshmi Nepam, Gun Wars and Drug Deaths in South Asia, 22 March 2004. http://action.web.ca/home/cpcc/en_resources

16 Child Soldiers Global Report, 2004.

17 “Ultras Using Children, Mentally Challenged People: Army,” Press Trust of India, 12 August 2005, http://www.kashmirlive.com/full_story.php?content_id=52581&type=ei

18 Interview with Meenakshi Ganguly, Human Rights Watch.

19 Muzamil Jaleel, “When death is the weapon, and message,” The Indian Express, <http://www.expressindia.com/kashmir/kashmirlive/terrorism3.html> (retrieved August 17, 2005).

20 <http://www.un.int/india/ind1076.pdf>

21 Charu Lata Hogg. Tehelka: The People’s Paper, December 4, 2004. Charu Lata Hogg was Research Consultant to the Coalition to Stop the Use of Child Soldiers to research child soldier use and recruitment in the Asia Pacific. http://www.child-soldiers.org/document_get.php

22 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004, India, http://www.child-soldiers.org/document_get.php?id=851.

23 Second periodic report of India to UN Committee on the Rights of the Child, UN Doc. CRC/C/93/Add.5, 16 July 2003, <http://www.ohchr.org>

24 Initial report of India to UN Committee on the Rights of the Child, UN Doc. CRC/C/28/Add.10, 7 July 1997; Indian Army, <http://joinindianarmy.nic.in> (Careers, Other ranks).

Concern over children being used as shield by the Naxalites in Chhattisgarh

Shrimati Mohsina Kidwai (INC): Children from schools in tribal districts of Chhattisgarh are being kidnapped to be trained both as frontline combatants and as shields during operations against security personnel. The children were leading the attack, forcing the police to retreat, as they did not want to harm the children. The Naxalites are closing down schools and forcibly taking way tribal children, both boys and girls to training camps where they are taught how to use weapons and deal with explosives. In Konta, District Panchayat Chairman has been brutally killed by naxalites for violation of their diktat not to contest elections.

In Badgaon, Kanker SDO office of the Forest department has been blown up by the naxalites and looted arms and wireless set. There seems to be complete intelligence failure as the naxalites groups have been targeting and attacking police stations, government installations and general public with impunity. Earlier, there used to be a post of I.G. Naxalites operation, which has now been abolished. The administration has also alleged that these groups are getting arms, ammunition and monetary help from foreign countries. The state administration has sought the help of Gujarat Police, which will not solve the problem. I request the Centre to step in to wipe out the reign of fear perpetrated by Naxalites.

Source: Rajya Sabha, Special Mentions, 10 May, Budget Session 2005.

Impact on Education

Situations of violence can affect access to education in a number of ways. Curfews or strikes can force educational establishments to shut down for extended periods of time, and eventually impact examination schedules. Children are often known to have lost academic years because of relentless violence. Teachers can come under attack, particularly in remote areas where they are among the best educated in the community. Often the only concrete structure in an area, schools can also be used as shelter by troops or by the armed groups, putting children at risk. The disruption of education

An NGO named Sarhad has done quite a recommendable job in this field. The whole idea was to enrol children back to school and in different ways protect their childhood. When Sarhad first put advertisements, a deluge of applications met them. Many were desperate to enrol children so that they could study and live life elsewhere. Since June 2004 children from nursery to third standard have moved to Pune along with some teachers and caretakers from J&K. At present SARHAD plans to educate them till the tenth standard. The school also includes children from the local area. In order to integrate them in the mainstream, but integration is difficult. More so because of the trauma these children have encountered, ten-year-old Ishrat, who is otherwise exceptionally brilliant in her studies, quietly pulls an imaginary trigger to show how her father died.

has a serious impact on the development of children growing up in these areas, for education is the most powerful instrument for social change and development.

Education can, and has sometimes been manipulated as an instrument of propaganda, promoting chauvinistic and racist ideas that undermine cultural plurality and encourage discrimination and prejudice. There are numerous reports that schools are being used by this organisation to conduct propaganda, recruitment and cultural or ideological activities.²⁵ In several states, text books have been criticised by human rights defenders because they teach communal hatred.

Boyden, Feny and Hart, in their study on the impact of armed conflict on children, state that in Kashmir a total of 891 schools have been deliberately attacked or destroyed in the course of military confrontation. Less than half of these have been reconstructed. Security forces have used other school buildings as barracks, thus putting them out of bounds. 2997 adult and non-formal education centres have closed in the region since 1990 due to financial constraints and staff shortages. 10,000 registered Hindu teachers have left since the trouble began. Teachers that remain are wary of travelling long distances to work and non-attendance is high. Strikes, security threats, bomb blasts, arrests of teachers and absenteeism have taken their toll on educational performance. In 1989 students attended an average of 210 school days a year, in 1993 this had dropped to 60. Educational achievements show a marked decline: the pass percentage of the Class 10 Matriculation exams decreased from 33.0 per cent in 1986 to 24 per cent in 1994. The pass percentage of the Class 12 Higher Secondary Exams declined from 49.7 per cent in 1986 to 26.5 per cent in 1994. Schools and colleges that still function have a backlog of exams. Students in Kashmir University report that on an average their courses are extended for a year, as exam dates get rescheduled.²⁶

²⁵ Boyden Jo, Jo de Berry, Thomas Feeny, & Jason Hart Children Affected by Armed Conflict in South Asia: A review of trends and issues identified through secondary research. RSC Working Paper No. 7. January 2002. Working Paper Series. Queen Elizabeth House International Development Centre University of Oxford.

²⁶ *ibid*.

Conflict can lead to an increased level of drop-outs. There is link between dropping out from schools and recruitment in the armed ranks. In the North East, recurring ethnic clashes have brought education to a grinding halt. As a result of the ethnic clashes in Churachandpur, which broke out in June 1997, many students had to be transferred to safer school (areas) to prevent kidnapping or assault by warring tribes. Many children had to discontinue their studies. Also, children in refugee camps, unable to continue their studies, were forced to work for their livelihood. Strikes, security threats, bomb blasts, arrests of teachers and absenteeism have taken their toll on educational performance.²⁷

Impact on Health

Situations of internal conflict can have a severely adverse impact on both physical and psychological health. There is a high incidence of death and injury from guns, landmines, bombs or grenades. Medical care systems are damaged because of the risk of violence leading to a collapse of vaccination and immunisation systems. This leads to added risk of disease. Conflict also impacts on children's health through poor nutrition over long periods of time. Children are often sexually abused, also leaving them at risk of sexually transmitted diseases.

There are more than 500,000 conflict-induced internally displaced persons (IDPs) in India, many of them from poor tribal communities in the North East. Most of them languish in relief camps for years on end, without access to health or livelihood. Health is adversely affected by the unsanitary and overcrowded conditions that prevail in the temporary camps. The shelter homes and relief camps are not adequately equipped. The camps often lack basic amenities like drinking water and sanitation facilities. Because of limited access to privacy, girls and women are embarrassed to consult doctors.

Increasing Sexual Violence

There are several instances when many young girls and minors have suffered sexual harassment or rape by security forces as well as members of militant groups in areas where there are internal armed struggles. These victimised girls are doubly victimised by a society that looks down on them and are seen as immoral and unclean. There is an added risk of increased child marriages because parents consider it safer for their daughters to be married early. Girls who join armed groups have later complained of sexual abuse. Those who become pregnant face the additional pressure of protecting and providing for their babies with little or no support from a community that resents their presence. With no other means of supporting themselves, many can even be forced to become sex workers.

Psycho-social Impact

Armed conflict situations lead to the death and injury of relatives and neighbours, challenges the family unit through displacement and inflicts intense economic, psycho-emotional and social pressures. The incidence of domestic abuse, trafficking and neglect commonly appears to rise.

A recent study on the situation of children in Jammu and Kashmir carried out by Muzamil Jaleel, the Kashmir Bureau Chief for the Indian Express, concluded: "Kashmir children are socialised to violence and if this socialisation towards violence continues unabated, there will be a revival of large-scale militancy after a decade... For the Kashmiri child, A stands for arms, B stands for bullet, C stands for curfew". In one reported incident, 10-year-old Mushtaq took a bayonet to Burnhall school in Srinagar to show off to friends. He was outdone by another 10-year-old boy, who had brought a grenade and pistol in his lunch box. The school's vice principal said that children frequently brought guns to school.²⁸

In Jammu and Kashmir in the night of 22 to 23 April 1997, during a raid of Wavoosa village near Srinagar, at least four security personnel raped 14-year-old Gulshan, her 15-year-old sister Kulsuma and her 16-year-old sister Rifat. In a neighbouring house they raped 17-year-old Naza and at least three adult women. Army and civilian authorities made inquiries into the incident but (Amnesty International, Children in South Asia: Securing their rights). On July 2003, members of an armed opposition group gang-raped 15 - year - old Kunjabati Reang and then burnt her alive to wipe off all evidence in remote Karbook area under Natun Bazar police station of South Tripura.

Source: Asean Centre for Human Rights, 2003.

27 Boyden Jo, Jo de Berry , Thomas Feeny, & Jason Hart Children Affected by Armed Conflict in South Asia: A review of trends and issues identified through secondary research. RSC Working Paper No. 7. January 2002. Working Paper Series. Queen Elizabeth House International Development Centre University of Oxford.
28 Children in South Asia, Securing Their Rights, <http://www.amnesty.org/ailib/intcam/childasia/report3.htm>

Even time can't heal these wounds

Protracted militancy is leaving a scar on children's minds



PERVANA ANJUM
Srinagar

SALAH AHMAD is lying in bed nursing the injuries he suffered during an exchange of fire on 1d. His face is scarred and there are minor burns on his face. More than the injuries that hurt him is the loss. Sajad had gone alone that day, attacking the enemy, hurting one bomb after another. Two of his opponents, hiding behind bushes, took him by surprise; their bombs exploding on his face. In the confusion, the one Sajad was holding too went off.

a war on the children's minds. Many of them, belonging to the middle class, play games like those in which violence plays a major part. Firecrackers become bombs in their hands, toy guns sell like hotcakes, and 'War' becomes a favourite pastime.

Sajad's excitement knows no bounds when he speaks about the game he loves.

Children are imitating real-life characters. They pose as militants and soldiers

"We pool Add (money given to children by elders on 1d) and split into two groups. Then we divide an area into two halves," says Sajad. "Then we hurl crackers on each other and fire rockets. The winners are the ones who capture others' land and arrest them."

"We try to replicate the incidents happening around us. It is thrilling and excit-

ing. This gives us a chance to understand what a war means. It must be an adolescent in war as it is here," Anis, a 10th standard student and Sajad's friend, says.

The game is fast picking up among youngsters in the Valley, especially in Downtown Srinagar, which has borne the brunt of militancy in the past 14 years. Like tree encounters, kids even interrogate each other. Many a times children are injured and hospitalized. Even the fear of injury doesn't deter the children. Such is the popularity of the game. "Earlier I used to be scared handling crackers, but not now. One who has been seeing violence since both cannot fear death. Moreover, it is fun and challenging," says Sajad. He has witnessed two live encounters in his vicinity. "I remember an encounter which took place in Lal Bazar locality few years ago. I had entered the house, where militants were hiding, saved by police," he adds.

The game is a pointer towards the impact of conflict on juvenile psyche. "The part of conflict on juvenile psyche," the children bore during the insurgency have been brought up with images of violence. They listen to parents discussing incidents at home or witness chaotic," says Anis Shah, reader in faculty of sociology, Kashmir University. "They try to imitate such characters from real life. That is why in this very game they pose as militants and army. Earlier they would play games imitating characters from films and playing characters of doctors and police. But now characters of militants and soldiers are gone," she adds.

Moreover, such games indicate the absence of the fear of death. "Natural fear of death is important for the balance of the society. If there is no fear of death, it can give rise to crime," says Anis. That's something Kashmir can do without. ■

According to an ongoing research in post-traumatic stress disorder (PTSD) by Dr. Akash Yousf Khan, "64.28 per cent of children in Kashmir – from 3 to 16 years – who have witnessed a shocking incident directly, or have had it narrated to them, suffer from somatic complications like loss of appetite, altered sleep patterns or headache. Disturbingly, 21.42 per cent, of the 70 children studied for the research, perform badly in school, while 17.8 lose interest in all activities. And 32.14 per cent of the children show an increased outburst of anger. According to reports, the number of suicides among teenage girls has also gone up."²⁹

Lt. Col. Shafali Lumba, head of Muskaan, an orphanage in Srinagar run by the Indian Army, while talking about the children of the orphanage said that "the kids lack the basics of social behaviour that one picks up at home. The kids represent a generation that has grown up in an environment that is not conducive to developing healthy personality."³⁰

In November 2001 the police in Assam launched a UNICEF-backed program, Aashwas (Reassurance), to provide some psychological aid and counselling to children who had lost family members in conflict-related

violence. However, in 2002 the problem of children traumatised by armed conflict in Assam was reported to be acute because of the lack of awareness of the condition and unavailability of psychiatric counselling.³¹

On 9 February 2004, the government adopted a National Charter for Children, which states that "The State shall in partnership with the community take up steps to draw up plans for the identification, care, protection, counselling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically, and re-integrate into society."³²

In the absence of a complete package on disarmament, demobilisation and rehabilitation, children continue to suffer. There were no official government programs to assist the reintegration of former child soldiers or war-affected children. Little was available for victims of the conflict in Jammu and Kashmir, although the army provided some financial assistance and in 2003 launched an education program for war-affected children.³³

Disasters and Impact on Children

India is geographically prone to natural disasters with floods, droughts, cyclones, earthquakes and landslides becoming a recurrent trend. About 60 per cent of the landmass is prone to earthquakes of various intensities; over 40 million hectares is prone to floods; about 8 per cent of the total area is prone to cyclones and 68 per cent of the area is susceptible to drought. In the decade 1990-2000, an average of about 4344 people lost their lives and about 30 million people were affected by disasters every year.³⁴ The loss in terms of private, community and public assets has been astronomical.

The December 26, 2004 tsunami, which struck the west coast of northern Sumatra and spread through the coastal areas in India, Indonesia, Sri Lanka, Thailand and Maldives, as well as in Myanmar, Seychelles, and Somalia, killed more than 280,000 people in South and Southeast Asia, including more than 10,000 in India.³⁵ The ravaging sea has destroyed large sections of India's coastal areas. Some 200,000 homes were destroyed or damaged on India's mainland.³⁶

29 Tariq Bhat, Stunted by Conflict: The trouble in Kashmir takes a toll on the mental health of children, *The Week*, 31 July Vol 23. No 35, 2005, Kochi: Malayala Manorama, pg16.

30 *ibid*.

31 Reuters, "Child trauma hits strife torn Assam", 6 May 2002, http://www.child-soldiers.org/document_get.php

32 Ministry of Human Resources Development, National Charter for Children 2003, No.F-6-15/98-CW, 9 February 2004, <http://wcd.nic.in/nationalcharter2003.doc>. http://www.child-soldiers.org/document_get.php

33 Y. Rana, "Army sponsors J&K children's education", *Times News Network*, 17 September 2003, <http://timesofindia.indiatimes.com/articleshow/186478.cms> as in *Child Soldiers Global Report 2004*.

34 National Disaster Management Division, August 2004, *Disaster Management in India – A Status Report*, New Delhi: Ministry of Home Affairs, Government of India.

35 After the Deluge India's Reconstruction Following the 2004 Tsunami, May 2005 Vol. 17, No. 3 (C) Human Rights Watch, pg1.

36 *ibid*.

According to an estimate made by the officials carrying out aids work at the venue, one in every three died during tsunami was a child. Thousands of children lost their lives in the disaster.³⁷ In Karaikal region, Pondicherry, 251 out of 490 total casualties were children, of which 148 were girls.³⁸ In Tamil Nadu, children account for 40 per cent of the casualties.³⁹

According to a UNICEF official, 'an estimated 2.5 million children have lost their two safe havens – their homes and schools in Gujarat Earth Quake 2001.'⁴⁰ The Gujarat earthquake in 2001 destroyed three hospitals, 21 primary health centres, and four community health centres.⁴¹

"Children are bearing the worst brunt in the aftermath of the quake. Apart from the initial cases of injuries, there has been a sudden spate of premature births since the earthquake..." says Dr. Shantu Patel, a pediatrician who runs the only neonatal hospital in Bhuj.⁴²

Disaster management does not specifically find mention in the 7th Schedule of the Indian Constitution which lists subjects under the Central and State Governments. At present no state government, save those of Orissa, Gujarat and Bihar has instituted a state level disaster management authority. That leaves a gap in accountability when there are shortcomings in the administrative response to a disaster. On the legal front too, there is no legislation by the central government or any state government to deal with the management of disasters. However, by and large, the state government has the basic responsibility of undertaking rescue, relief and rehabilitation in the event of a natural disaster, with the central government supplementing the efforts with financial and logistical support.

In the absence of a comprehensive National Disaster Management Policy/law that would address the impact of disasters on children and also in the absence of any scheme of any Ministry/Department of the Government of India specific to children affected by disasters, these children stand at great disadvantage.

CRF, the Scheme for Constitution and Administration of the Calamity Relief Fund and Investments has been constituted by each State for the purpose of financing natural calamity relief assistance. NCCF, the Scheme for Constitution and Administration of National Calamity Contingency Fund, on the other hand, is constituted by the Government of India. The items and norms of expenditure under these relief schemes contain only two provisions directly relating to children (See Appendix).

The government, acknowledging the need for a disaster management policy, has framed the Disaster Management Bill, 2005, which was introduced in the Rajya Sabha on the 11 May 2005. The bill is presently with the Parliamentary Standing Committee on Home Affairs.⁴³

Any disaster management legislation has to include adequate training of district, block and village level officials to include the protection of vulnerable communities, particularly children. It is also important that students and teachers are given some knowledge on disaster management and life saving skills. With proper training, schoolteachers and children can become model disaster managers for a community. Government of India, Ministry of Human Resource Development,



37 Seth Mydans, One in three dead is a child, Times of India, 29 December 2004.

38 United Nations Country Team India, Recovery Framework in Support of Government of India for a Post-Tsunami Rehabilitation and Reconstruction Programme, Section 1.4 The Recovery Framework: The Underlying Differential Impacts, Vulnerabilities and Risks, March 2005, www.undp.org, pg24.

39 Editorial, The Hindu, Tsunami's Children, 14 January 2005.

40 Quake leaves million homeless, news.bbc.co.uk, 6 February, 2001.

41 Alert – India: Earthquake, 12 March 2001, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/OCHA-64D2K4?OpenDocument>

42 Rupa Chinai, Aftermath, The people of quake-ravaged Kutch have been hit badly, but their spirit is alive, Humanscape, Vol VIII Issue IV, May 2001.

43 <http://rajyasabha.nic.in/legislative/bil/204billpend.htm>

in its Tenth Five Year Plan emphasised the need for integrating disaster management in the existing education system in India. In a first such attempt, the Central Board of Secondary Education (CBSE) has integrated a short course on Disaster Management in the school curriculum for class VIII and Class IX. There are proposals to add a course for Class X in 2005 – 2006. More than a thousand teachers have also been trained.⁴⁴

The primary emphasis of this training is on:

- Awareness and sensitisation of students and teachers on various hazards
- Preventive and precautionary measures on various hazardous situations

Under the Government of India and United Nations Development Programme (UNDP), Disaster Risk Management Programme (2002 - 2007), special emphasis has been laid on preparing the communities to face various hazards by generating awareness and increasing the capacity of various stakeholders to counter the adverse affects of disasters. This includes integration of disaster mitigation into development planning, conducting special training for the disaster management personnel, creating public awareness as envisaged in the National Disaster Management Framework (NDMF) by the Ministry of Home Affairs.

Health Services

Not only are children more vulnerable in a natural disaster because they are less able to protect themselves, they are susceptible to epidemics that might result. Scarcity of clean water and food lead to diseases like gastroenteritis, diarrhoea, cholera and dysentery.

Five lakh children have been rendered homeless in the devastating floods in 2004 in Assam. “The biggest problem that we are beginning to face is the shortage of baby food, nutritious food and medicine for this huge population of children, a large chunk of whom are infants,” says, Assam Health Minister Bhumidhar Barman.⁴⁵

Prompt action by authorities and child care organisations can prove effective. This became apparent after the tsunami. There were no major epidemics because there were preventive measures taken immediately after the tsunami. The World Health Organisation (WHO) issued prompt warnings against water-borne diseases. Nearly 350,000 children were feared to be at risk. Immediate efforts by the government and voluntary agencies however, prevented epidemics of diarrhoea, cholera, and measles.⁴⁶ There were, however, a few cases of chicken pox reported among children accommodated in temporary shelters for tsunami victims in Nagapattinam, according to Special Commissioner for tsunami victims, Shanta Sheela Nair.⁴⁷ The experience after the tsunami proves that the government must include policies and training to protect children as part of its disaster management scheme.

Education

Natural disasters disrupt access to education because of displacement, injuries or deaths of teaching staff, destruction or damages to school buildings or loss of educational materials. Additionally, financial losses often force children to drop out because their families can no longer afford the fees. Due to lack of resources and refugee camps, it is often the schools and

The Ministry of Health and Family Welfare in coordination with the Health Services of the affected States and partner agencies had developed a plan to decrease morbidity and mortality of the under 5 children in the affected areas. This plan included the following:

A. Immunisation interventions:

- Administration of one dose of Measles vaccine and 1 dose of OPV to all children in the age group of 6 month to 59 months (irrespective of the previous immunisation status)
- Vitamin A supplementation for children 6 – 59 months of age as per the existing guidelines

B. Other priority interventions included:

- Provision of ORS packets for prevention and treatment of dehydration and Paediatric Co-trimoxazole for treatment of ARI and gastroenteritis.

Source: Dr Paul Francis, Dr.Karan Singh Sagar and Dr Vinod Bura Chennai and Nagapattinam, Report of the campaign to strengthen immunisation and decrease morbidity and mortality in children in areas affected by the tsunami in Tamil Nadu, http://w3.whosea.org/LinkFiles/India_IND11JAN05.pdf

44 Central Board of Secondary Education, Towards a safer India...Education in Disaster Management.

45 Samudra Gupta Kashyap, Cramped in Assam's relief camps, five lakh children wait for food, medicine, Indian Express, 27 July 2004.

46 Human Rights Watch, After the Deluge India's Reconstruction Following the 2004 Tsunami, May 2005 Vol. 17, No. 3 (C), pg 13.

47 rediff.com, Chicken pox reported among children in Nagapattinam, 21 January, 2005.

colleges which are turned into refugee camps in any natural disaster. Even after the situation normalises, the lack of an adequate rehabilitation mechanism compels the people to stay back and the schools have a long vacation.

The primary school of the village of Olipur, Bihar, for instance, was forced to close when floodwaters gushed into the village in August 2004.⁴⁸ Floodwater receded, but it left the school building in shambles. Classes began after a week - under a tree, since the school building had not been repaired. This is the story all over the flood prone states in the country. Situation like this eventually affect the attendance in schools and there are obvious chances of dropouts. "Children are not coming to school," said Chandrika Rai, the local school teacher in Olipur.⁴⁹ Only ten of his 143 students returned to school for the outdoor classes. The state government of Bihar has determined that more than 43,000 schoolrooms in primary schools have been damaged or destroyed. The state has a total of 1,229 secondary schools. Assessments indicate that the number of 'fully damaged' schools is 166, and there are 427 partially damaged schools.⁵⁰

According to an estimate made by the government officials, about 250,000 students from around 560 schools in Tamil Nadu's coastline have been affected by the tsunami.⁵¹ Most of the students have lost their books, and uniforms, which also affected their ability to attend school. However, the government promised a tuition waiver and a number of voluntary groups helped the children by subsidising books and uniforms.

Lack of Protection

Children are particularly vulnerable to unscrupulous traffickers or paedophiles after a natural disaster because they may be separated from parents or regular care givers.

After the tsunami, a UNICEF representative in Nagapattinam, Tamil Nadu, narrated the horrifying story of a man who claimed to be an orphan's uncle only to be unmasked by the child's refusal to go with him.⁵³ According to report published in *The Week*, at Akkarapettai and Keechankuppam villages in the district of Nagapattinam, adolescent girls in camps, especially those who lost their mothers, have to deal with eve teasing. The report also said that, 'sexual harassment at the camps is rampant.'

Quoting from a government report, the UN said, that after the Gujarat earthquake in 2001, out of 38 Secondary schools, 6 were completely destroyed, 14 suffered heavy damage and remaining 12 partially damaged. Only 6 were in good condition. Out of 1288 non-Government schools, 9 destroyed, 11 suffered heavy damage, 99 partially damaged and only 9 in good condition.⁵²

India has a host of children orphaned by disasters. Ministry of Social Justice and Empowerment put the number of children orphaned by the tsunami in 2004 to 529.⁵⁵ Children were also orphaned during the Gujarat earthquake in 2001 and Orissa cyclone in 1999. The super cyclone in Orissa, for instance, had affected around 3.7 million children and orphaned about 1500.⁵⁶ UNICEF sources say that one non-governmental relief group estimated the number of children orphaned in the Gujarat earthquake at 7,000 to 8,000.⁵⁷ Interventions for these children are still being implemented.

The Government of India has become very cautious in relating to the protection of orphaned children. A WHO report after the 2004 tsunami said "The affected states/UTs have been sensitised by Government of India about the apprehension of orphaned children being trafficked. The state governments/UT administrations have been requested to keep vigilance about the safety of the children who have been orphaned and women who have been widowed in the Tsunami and prepare list of such orphaned children and widows and monitor their welfare."⁵⁸

Voluntary groups had warned after the tsunami that babies may be trafficked for adoption, and teens (girls) for marriage. Steps were immediately taken to carefully monitor the adoption of orphaned children. Renuka Chidambaram, Secretary

48 Anupama Srivastava, Schooling sputtering to a start in flood-affected districts of Bihar, 27 September 2004, www.unicef.org

49 *ibid.*

50 *ibid.*

51 Shekhar GC, 2.5 lakh students hit, *Hindustan Times*, 5 January 2005, New Delhi.

52 UNDMT Gujarat Earthquake Update #23, 16 February 2001, <http://www.un.org.in>

53 Child trafficking rears ugly head in tsunami aftermath, written by Surojit Chatterjee, 18 January, 2005, Ecumenical Press.

54 Litta Jacob, Women of Tsunami, *The Week*, 3 April 2005.

55 Arun Kumar Das, All alone: Tsunami orphans are yet to be adopted, 3 April 2005, *Sunday Times of India*, New Delhi.

56 Children Without Parental Care - A Socio-Legal Analysis from Indian Perspective- submitted by Committee for Legal Aid to Poor (CLAP) to: United Nations Committee on the Rights of the Child for the Day of General Discussion on 16 September 2005.

57 India Earthquake 2001 UNICEF Television B-Roll.

58 Emergency Preparedness and Response South-East Asia Earthquake and Tsunami India Tsunami Situation Report, 15 January 2005, WHO.

of the Central Adoption Resource Agency (CARA), said, 'we do not want to hurry the process as these children were badly traumatised and uprooting them and placing them with adoptive parents would have aggravated their pain.'⁵⁹ There was an overwhelming response from the Non Resident Indians to adopt the children orphaned by the tsunami. But the government's first preference has been domestic adoption.⁶⁰ Narrating the past experiences from Orissa cyclone and Gujarat earthquake, experts had suggested that it would be better for the children to remain within the community.⁶¹ In the first few months after the cyclone, as an immediate response to the children orphaned and women who lost their families, mamta grihas or houses of love were established with support from the community. Widows were put together with the orphan children and livelihood support was provided to the women. Subsequently these were dismantled and children were placed within the community as part of the community based rehabilitation.

Following this method, in Gujarat too, it was extended family that took the children into their homes. It is reported that not a single child was left out for adoption, although there were reports of trafficking of children.⁶²

During tsunami, humanitarian organisations suggested that long-term care arrangements, including adoption, should not be made during the emergency phase. In the long run, if family reunification is not possible, then adoption may emerge as an option.⁶³ Human Rights Watch, however, warned that: "[A]ny adoption has to be determined as being in the child's best interest and in keeping with national and international law. In the best interests of the child, the government should ensure that families are not inadvertently separated because of loss of livelihood as a result of the crisis. Utmost efforts should be made to locate relatives who are willing and capable of caring for affected children."⁶⁴

Voices of People

The Gujarat earthquake-affected people spoke out in a public hearing on rehabilitation related problems:

- rehabilitation measures and compensation disbursement remain grossly inadequate, leaving huge backlogs. Especially, getting compensation for lives lost during the days following the earthquake is cumbersome due to lack of medico-legal documentation
- people without property entitlement or tenure record have been denied compensation for habitat loss. Banks refuse to give loans to rebuild their lost livelihood. The poor as well as minority communities, with less voice in public affairs, find the rehabilitation and compensation distribution process outright discriminatory
- the psychosocial needs of the survivors and the special needs of the physically disabled survivors are not adequately addressed in the rehabilitation process. Low literacy levels have amplified the survivors' problems

The above excerpt is based on testimonies of the victims in the public hearings conducted by The Indian People's Tribunal (IPT) in Kutch and Rajkot districts of Gujarat on August 20, 2001

The team headed by Mr. Justice (Retd.) K. Sukumaran, who has served the High Courts of Kerala and Bombay, included 10 experts working on specific sectors. Over 2000 earthquake-affected villagers, people's representatives, humanitarian workers as well as a few government officials and media personnel testified before the panel at hearings held at Satapar near Anjar, Samakhjali near Bachao and Maliya, and during the IPT members visits to several villages.

Source: No foresight... no follow up, an enquiry into the relief and rehabilitation process in the earthquake hit areas of Gujarat, December 2001, Tribunal Headed By: Justice K. Sukumaran (Retd. Judge, Bombay and Kerala High Courts).

Rehabilitation

It is crucial that communities are effectively rehabilitated after a natural disaster. In many cases, millions are left without homes. Livelihood is badly affected. There is extensive damage to infrastructure including roads, bridges, telecom, hospitals, schools and other social sector buildings. Children end up among the worst sufferers. Natural disasters often lead to massive drop out from schools, with a number of children forced to join the labour force.

59 Govt to facilitate adoption of children orphaned by tsunami, National Herald, 26 February 2005.

60 Arun Kumar Das, All alone: Tsunami orphans are yet to be adopted, Times of India, 3 April 2005.

61 Mari Marcel Thekaekara, Needed: humane options for orphaned children, The Hindu, 6 January 2005.

62 *ibid.*

63 Human Rights Watch, After the Deluge India's Reconstruction Following the 2004 Tsunami, May 2005 Vol. 17, No. 3 (C), pg 14-5.

64 *ibid.*

The tsunami, for instance, affected the coastal areas of Tamil Nadu, Andhra Pradesh and Andaman & Nicobar Islands destroying 2.39 lakh dwelling units and over 83,000 fishing boats.⁶⁵ If the community is not rehabilitated adequately and provided with adequate support, children will be badly affected.

In Orissa, many families remain homeless even after four years of super cyclone. The state government was supposed to construct eight lakh Indira Avas Yojana houses after the super-cyclone.⁶⁶ However, only 5,86,296 houses have been completed in the cyclone affected areas in Orissa.⁶⁷

Rehabilitation does not only mean offering physical assistance to the victims but it is much more important that they come out of the trauma or fear of the tragic incident that befell on them. It is often that the psychological rehabilitation is missed out or given little attention. In Orissa, since there was not enough of psychosocial rehabilitation of the cyclone survivors, as many as 59 people have committed suicide in the last five years in Ersama block alone. The victims belong to the age group 14-35 years, and were mostly women and girls.⁶⁸ The tsunami has also left a number of people shock stricken, many of them children. They need immediate psychological assistance to get rid of long-term consequences – fear, vulnerability, depression, anger and sleep disorders, as well as repeated re-living of the event itself.⁶⁹ UNICEF, in collaboration with the State Social Welfare and Education Departments, is implementing the psychological care and support programmes for more than 100,000 traumatised children in the 13 affected districts.

Discrimination

Crisis situations like natural disasters bring prejudices to the fore. Religious or caste based discrimination leads to a lack of access to relief materials.

Caste discrimination has cast a long shadow over the relief measures provided by the government. In Nagapattinam, Dalit families from 63 affected villages who survived the tragedy have been spending their nights out on the streets. They were debarred from using the toilets at facilities provided to survivors. In Thanjavur, 31 Dalit families took shelter in a girls' school after being forced out of relief camps by the fishing community. V Vanitha, a Class X Dalit student informs that adolescent girls are prevented from using the toilet area in Tharambagadi. "There are no toilets here and they prevent us from going to the area that serves as an open toilet," she says.⁷⁰

The disabled too face discrimination and have remained largely excluded in the mainstream policy for relief and

Bhagyaraj, a hawker earns his living by selling utensils. His utensil kiosk has been washed away by the tsunami in December 2004. Bhagyaraj waited for the government to rebuild it. But in utter despair, he is placing his daughter as domestic maid, as he does not have the means to feed her.

"I can't feed them here. The relief is irregular and there is no sign of any help to rebuild my shop," said the 46 year old father, who lost two other daughters to the giant waves.

There would be many such Bhagyaraj who in case of inappropriate relief and rehabilitation would give up and their children would have to face the burnt of poverty.

Source: Kids carry tsunami load, The Telegraph, 28 March 2005.

Disaster-hit need help to fight trauma

Mental health should be top priority

Tsunami stays

Nine months after the tsunami ravaged Kerala, the elders have picked the places, not the kids. They probably never will. Children here suffer from sleeplessness and phobias, says a new study.

16,818 children surveyed

ALLIE BLUES
Children live in constant fear. Some have become suicidal

1,093 live in fear
276 in shock and 15 don't speak
839 children fear water, sound
466 can't sleep at night
1,164 can't concentrate
137 are socially withdrawn
15 refuse to attend school

HOME ALONE
The waves snatched some of their dearest ones

13 kids lost their mothers
2 their fathers
16 lost their siblings

BODY BLOW
16 are blind
28 deaf
43 asthmatic
556 complain of stomach and headaches

Source: Study, Project for the Open and Democratic of the South-Indian Children's Centre, in Periyarpet, Chennai

SANCHITA Sharma
New Delhi, October 10

SIX MONTHS after the Orissa cyclone, post-traumatic stress among survivors was as high as 56 per cent. No wonder, then, that the National Commission on Macroeconomics and Health set up by the Union health ministry recommended that the mental health needs of the disaster affected should be given immediate attention.

It is estimated that the rates of psychopathology (psychological illnesses) increase by 20-60 per cent after a disaster. These rates are twice those for common mental disorders. Systematic efforts taken after the Bhopal gas tragedy, earthquake in Maharashtra and Gujarat, the Orissa supercyclone and the recent tsunami have led to the conclusion that disaster mental health is an area that needs immediate attention. It recommends in the *Burden of Disease in India*.

Unfortunately, when disaster strikes, mental health gets low priority as health workers focus on the physical needs of the survivors. The Indian Red Cross

has allotted 10,000 blankets and 1,400 tents and are offering water purifying units with a capacity of 150,000 litres, if required. We have to first make sure the survivors pull through physically and then address the mental trauma of loss and insecurity," says director general of health services Dr S. P. Agarwal, who also authored the authoritative book, *Mental Health: Indian Perspective*, last year.

Even without a disaster, about 6.5 per cent people suffer from mental and behavioural disorders in India. Of these, 5.7 crore people have major mental disorders, another 2.6 crore have common mental disorders such as depression and phobias, and about 1.62 crore are alcoholics.

Mental disorders are far higher among children and adolescents, with 12.8 per cent of children aged between 1-6 years being affected, found an Indian Council of Medical Research study done between 1997-2001 in Mysore and Lucknow.

After cancer and diabetes, mental disorders impact life the most. In the non-communicable diseases category,

65 Home Minister's Statemnet in the Lok Sabha, Parliament of India, 10 March 2005.

66 Prafulla Das, The agony of the living, Frontline, Nov. 06 – 19, Volume 21–Issue 23, 2004, The Hindu.

67 Lok Sabha Unstarred Question No 377, 7 July, Monsoon Session 2005.

68 Prafulla Das, The agony of the living, Frontline, Nov. 06 – 19, Volume 21–Issue 23, 2004, The Hindu.

69 Asha Krishnakumar, Orphans of the waves, Frontline, Jan. 15-28, Volume 22 – Issue 02, 2005, The Hindu.

70 The Indian Express, 6 January 2005.

rehabilitation. In January 2005, the National Center for Promotion of Employment for Disabled People, a Delhi based non-governmental organisation, called for improved monitoring of disabled people affected by the tsunami and urged authorities to address disability concerns in their ongoing efforts at revival of livelihoods.⁷¹ In meetings with activists, government officials in Tamil Nadu admitted that there was no special policy to protect disabled people affected by the tsunami, but said that they would consider all recommendations made in this regard.⁷²

According to Human Rights Watch, 'Nearly 7,000 people were injured in the tsunami, although the government has not yet provided any data on the number of people who were physically disabled'.⁷³ The Government of India approved a special package of Rs.3644.05 crore named as "Rajiv Gandhi Rehabilitation Package for Tsunami affected area," to provide assistance for immediate relief and response, revival of fishery and agriculture sectors, immediate construction of temporary (intermediate) shelters and repair/restoration of infrastructure, besides special relief to orphans, unmarried girls above 18 years of age, widows and disabled.⁷⁴

The Ministry of Social Justice and Empowerment also announced that 1,981 assistive devices had been distributed to persons with disabilities in South India, and another 200 had been distributed in the Andaman & Nicobar Islands.⁷⁵ It is very important that all those who have been disabled by tsunami are identified so that they can claim compensation and receive assistance. Compensation is a core issue for many disabled people. The disabled people who were affected by the Gujarat earthquake in 2001 are still awaiting compensation or complain that whatever they have received is too little. The same is the case with many people who have lost their families or their livelihoods and shelter. As a result, there is acute trauma, sadness, and, at times, anger among people.⁷⁶

Conclusion

The impact of emergencies on children has never been assessed in a systematic manner. However, there is enough documentary evidence to inform any policy or law in the making on disaster and disaster preparedness. Being the most vulnerable segment of the population, their situation and violation of rights deserve special attention and certainly far greater in situations of emergency.

71 Human Rights Watch, *After the Deluge India's Reconstruction Following the 2004 Tsunami*, May 2005 Vol. 17, No. 3 (C), pg 19-20.

72 *ibid.*

73 *ibid.*

74 Home Minister's Statement in the Parliament, Lok Sabha, 10 March 2005.

75 Ministry of Social Justice & Empowerment, Press Release, 21 March 2005, <http://pib.nic.in/release/release.asp?relid=7999>.

76 The Indian People's Tribunal on Environment and Human Rights, *No foresight... no follow up, an enquiry into the relief and rehabilitation process in the earthquake hit areas of Gujarat*, December 2001, pg 23.

Appendix

Revised List of Items and Norms of Expenditure for Assistance from Calamity Relief Fund(CRF) and National Calamity Contingency Fund(NCCF) for the Period 2000-2005

Sl.No.	Items	Norms of expenditure for assistance from CRF and NCCF
1.	<p>Gratuitous Relief</p> <p>(a) Ex-Gratia payment to families of deceased persons</p> <p>(b) Ex-Gratia payment for loss of a limb or eyes.</p> <p>(c) Grievous injury requiring hospitalisation for more than a week .</p> <p>(d) Relief for the old, infirm and destitute, children.</p> <p>(e) Clothing and utensils for families whose house have been washed away</p>	<p>Rs.50,000/- per deceased .</p> <p>Rs.25,000/- per person. (The Gratuitous relief for loss of limb etc., should be extended only when the disability is more than 40% and certified by a Govt. doctor or panel doctors from approved by the Govt.)</p> <p>Rs.5,000/- per person</p> <p>Rs.20/- per adult, Rs.10/- per child, per day</p> <p>Rs.500/- for clothing and Rs.500/- for utensils -per family</p>
2.	Supplementary Nutrition.	Rs.1.05 per day per head as per ICDS norms
3.	<p>Assistance to small and marginal farmers for -</p> <p>(a) Desilting etc.</p> <p>(b) Removal of debris in hill areas, and</p> <p>(c) Desilting/Restoration/Repair of fish farms</p> <p>(d) Agriculture input subsidy where crop loss was 50% and above.</p> <p>(I) For agriculture crops, horticulture crops and annual plantation crops</p> <p>(II) Perennial crops</p> <p>(e) Loss of substantial portion of land caused by landslide, avalanche, change of course of rivers.</p>	<p>25% and 33-1/3% to small farmers and marginal farmers respectively on the basis of NABARD pattern subject to ceiling of Rs.5, 000/- per hectare.</p> <p>Rainfed areas Rs.1000/- per hectare</p> <p>Rs.2500/- per hectare in area with assured irrigation</p> <p>Rs. 4,000 per hectare</p> <p>Rs.10,000/- per hectare</p>
4.	Employment Generation (Only to meet additional requirements after taking into account, funds available under Plan Schemes viz., JRY, IJRY, EAS, etc.)	As per Jawahar Gram Samridhi Yojana norms.
5.	<p>Animal Husbandry Assistance to small and marginal farmers/agricultural labourers</p> <p>(a) For replacement of draught animals, milch animals or animals for haulage or for livelihood</p> <p>(b) For provision of fodder/fodder concentrate</p> <p>(c) Procurement, storage and movement of fodder</p> <p>(d) Movement of useful cattle to other areas</p>	<p>As per pattern of subsidy under Swarnjayanti Gram Swarozgar Yojana for small and marginal farmers.</p> <p>Large animals -- Rs.12.00 per day ,</p> <p>Small animals -- Rs.6.00 per day</p> <p>To be assessed by NCCM</p> <p>To be assessed by the NCCM for NCCF/by State level Committee for CRF</p>
6.	<p>Assistance to Fishermen</p> <p>(a) For repair/replacement of boats, nets and damaged or lost</p> <ul style="list-style-type: none"> - Boat - Dugout-Canoe - Catamaran - Nets <p>(b) Input subsidy for fish seed farm</p>	<p>Subsidy will be provided other equipments subject to ceilings on subsidy per family as per SGSY pattern.</p> <p>The cost of boats will also be determined with reference to approved cost under SGSY</p> <p>Rs.2,000/- per hectare</p>

Continued on page 18

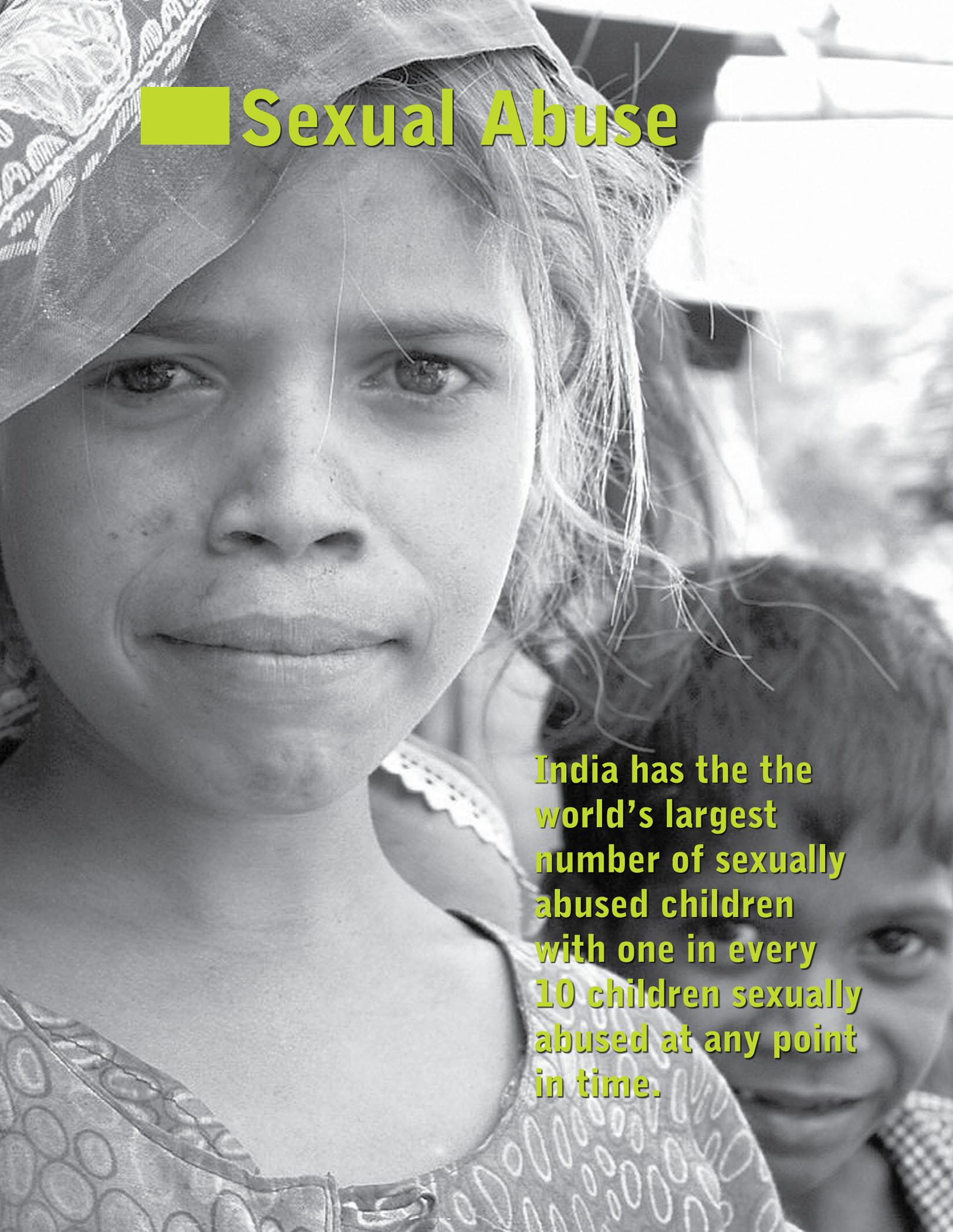
Sl.No.	Items	Norms of expenditure for assistance from CRF and NCCF
7.	Assistance to artisans in handicrafts sector by way of subsidy for repair/ replacement of damaged equipments. (a) Traditional Crafts (i) For damaged equipments (ii) For raw material (b) For Handloom Weavers (i) Repairs/ replacement of loom equipments and accessories (ii) Purchase of yarn and other materials	Rs.1,000/- per person Rs.1,000/- per person Rs.1,000/- per loom Rs.1,000/- per loom
8.	Assistance for repair/ restoration of damaged houses (a) Fully damaged houses (i) Pucca house (ii) Kuchha House (b) Severely damaged houses (i) Pucca House (ii) Kuchha House (c) Marginally Damaged Houses	Rs.10,000/- per house Rs.6,000/- per house Rs.2,000/- per house Rs.1,200/- per house Rs. 800/- per house
9.	Emergency supply of drinking water including transportation of drinking water in urban areas	To be assessed by NCCM Team for NCCF /by state level committee for CRF.
10.	Provision of medicines, disinfectants, insecticides for prevention of outbreak of epidemics	-- do --
11.	Medical care for cattle and poultry against epidemics.	-- do --
12.	Evacuation of people affected/ likely to be affected	-- do --
13.	Hiring of boats for carrying immediate relief & saving life	-- do--
14.	Provision for temporary accommodation, food, clothing, medical care etc. of people affected/ evacuated	-- do --
15.	Air dropping of essential supplies	-- do --
16.	Repair/restoration of immediate nature of the damaged infrastructure relating to communication, power, public health, drinking water supply, primary education and community owned assets in the social sector.	--do-- -- do --
17.	Replacement of damaged medical equipments and lost medicines of Govt. hospitals/health centres	
18.	Operational cost (Of POL only) for Ambulance Service, Mobile Medical Teams and temporary dispensaries.	-- do --
19.	Cost of clearance of debris	-- do --
20.	Draining off flood water in affected areas	-- do --
21.	Cost of search and rescue measures	-- do --
22.	Disposal of dead bodies/carcasses	-- do --
23.	Training to core multidisciplinary groups of the State Officers drawn from different cadres -expenditure to be met from CRF	

*NCCM - National Centre for Calamity Management

NCCF - National Calamity Contingency Fund

POL - Petrol, Oil and Lubricants

(As per recommendations of the Eleventh Finance Commission (EFC) on financing of relief expenditure on natural calamities for the period 2000-2005, which were accepted by the Government of India)



■ Sexual Abuse

India has the the world's largest number of sexually abused children with one in every 10 children sexually abused at any point in time.



World Health Organisation (WHO) estimates that globally, 8 per cent of boys and 25 per cent of girls below age 18 suffer sexual abuse of some kind every year.¹ India has the dubious distinction of having the world's largest number of sexually abused children with a child below 16 years raped every 155th minute, a child below 10 every 13th hour, and one in every 10 children sexually abused at any point in time.² An estimated 6,00,000-7,00,000 children are sexually abused in India.³ Government of India, in its report to the UN Committee on the Rights of the Child, presented in January 2003, identified child sexual abuse as a priority issue and one that required urgent attention.

Alerting Governments and civil society organisations to play a more active role in the promotion of and respect for the rights of the child (article 19 and 34 of the Convention on the Rights of the Child) and contributing to the prevention of child abuse, in 2000 the Women's World Summit Foundation (WWSF) launched 19 November as the World Day for Prevention of Child Sexual Abuse.

What is Child Sexual Abuse ?

Sexual abuse of a child is the involvement of a child in a sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or that violate the laws or social taboos of society.⁴ Any sexual conduct with or using a child i.e. a person below 18 years of age or exposure of such a person to sexual conduct by another person with or without the consent of the child for purposes of sexual gratification of self or with the intention or knowledge that it is likely to cause or lead to physical or psychological trauma and exploitation of the child amounts to child sexual abuse. Clearly, child sexual abuse or sexual assault is not just rape. Indeed rape is just one form of child sexual abuse.

Child sexual abuse occurs when an adult or another child who by age or development in relationship of responsibility, trust or power uses a child for sexual gratification. It involves exposing the child to sexual contact, activity or behaviour which may be through sexual actions such as touching, fondling or intercourse, use of language and gestures or action that are sexual in nature, indecent exposure or any other forms such as prostitution or pornography.

This data is merely the tip of an iceberg as child sexual abuse cases remain unreported and under-reported, cloaked in secrecy, taboo and traditional patriarchal mind sets which subsumes child's victimisation to adult dominance. This has resulted in the myth of non-victimisation of boys or that sexual abuse of children is confined to men who rape young girls. Sixty five per cent of rape victims in Delhi are minors. A huge 80 per cent of these cases took place in areas frequented by the victimised children. Only 20 per cent of the reported cases result in conviction because the victim turns hostile fearing humiliation in the courts.⁵ Is it then surprising that most abusers walk away scot-free?

Rima⁶ was four years old when she was sexually abused by her neighbour, her friend's maternal uncle. The doors of their houses face each other, Rima lives in a government apartment, which has been allotted to her mother, who is a staff nurse and works in the hospital on campus, it is not easy for Rima and her parents to change residence. Rima parents decided to register a case against the abuser. The doctors who examined her were very supportive and willing to testify. The abuser was arrested, but the hearing in court came up after a gap of two years. By this time Rima was six years old, She had slowly forgotten her trauma as her parents had worked very hard to help her cope with it. When the case was up for hearing, the parents although willing to come to court themselves, refused to bring Rima. Their logic was simple and understandable. Rima had finally regained some of her confidence, was not as traumatised and they did not want a set back in her condition. The police said they were helpless.

1. World Report on Violence and Health, Abstract, Available from: URL: [http://www.who.int/violence_injury_prevention/violence/worldreport/en/abstract % 20 final.pdf](http://www.who.int/violence_injury_prevention/violence/worldreport/en/abstract%20final.pdf). Accessed on November 22, 2003.. in Sexual Abuse of Street Children Brought to an Observation Home. Deepti Pagare, G.S. Meena, R.C. Jiloha and M.M. Singh. Indian Pediatrics Volume 42. February 17, 2005.

2. Asha Krishnakumar, Silent Victims Front Line, Volume 20 - Issue 21, October 11 - 24, 2003.

3. <http://www.chennaionline.com/society/06june12th.asp>

4. World Report on Violence and Health, Abstract, Available from: URL: [http://www.who.int/violence_injury_prevention/violence/worldreport/en/abstract % 20 final.pdf](http://www.who.int/violence_injury_prevention/violence/worldreport/en/abstract%20final.pdf). Accessed on November 22, 2003.. in Sexual Abuse of Street Children Brought to an Observation Home. Deepti Pagare. G.S. Meena, R.C. Jiloha and M.M. Singh, Indian Pediatrics Volume 42. February 17, 2005.

5. Times of India, New Delhi, 7th June 2004, Times News Network.

6. Name of the child changed to maintain anonymity.

Two rapes take place every hour in India. One in five victims is a child. Nineteen out of twenty rape accused walk free. In 2002, 132 cops were tried for custodial rape, only 4 were convicted.

Conspiracy of Silence – The Times Of India, New Delhi, 8th May 2005.

of sexually transmitted diseases. Strangers were the most common perpetrators of sexual abuse.⁷ That boys too are victims of sexual abuse has been acknowledged by the Law Commission – “Not only women but young boys, are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence.”⁸ There are several other misconceptions as well: that the child invited the sexual advance and abuse, that children enjoy it, the perpetrators are mentally ill or abnormal and that child sexual abuse is the malaise of poverty and ignorance. A reading of *Bitter Chocolate* by Pinky Virani, who has successfully brought this subject into middle class homes shows that children are abused across class, caste and religion.

Contrary to popular belief that the threat of sexual abuse is always from outsiders, the abuser in almost 90 per cent cases is someone the child knows and trusts. He may be a member of the family – father, uncle, cousin older siblings or servants, driver’s gardeners, family friends or neighbours. When the sexual abuse is by someone from the family it is recorded in criminal records as incest. According to Anuja Gupta of RAHI “the enormity of the problem can be realised by the fact that in India alone, at least 25 per cent of the adult population has been molested before the age of 16. At least 27 million

They needed Rima to come and recognise the accused. How else could he be charged? The accused was now pleading temporary insanity and had even managed to get psychiatrists to testify on his behalf.

While girls are more vulnerable to being sexually abused, against popular belief, boys too are victims. A study conducted to assess the magnitude and pattern of sexual abuse among male inmates of an observation home in Delhi showed that 61.1 per cent showed physical signs and 40.2 per cent showed behavioral signs of sexual abuse. Forcible sex was reported by 44.4 per cent of victims and 25 per cent had signs suggestive

The Abuser

The abuser usually violates a relationship of trust and takes advantage of his/her power and position. Abusers use:

- Threat or force
- Other forms of coercion and persuasion
- Abduction, fraud or deception to get access to the child through
- Power or take advantage of the child’s position of vulnerability
- Enticement and allurements by giving or receiving of payments or benefits.

There are several ways in which a child may be abused:

- Sexual intercourse through penile penetration or use of objects or other parts of body. Penetration may be oral, anal or vaginal
- Exposing children to pornography and using them for producing pornographic materials
- Directly or indirectly touching any part of the body of a child with an object or with a part of body for sexual gratification or making the child touch the adult’s genitals or any other part for sexual gratification.
- Exposing or flashing genital organs or other parts of the body with sexual intent
- Deriving voyeuristic pleasure by showing sexual activity or forcing two or more children to have sex with each other
- Verbal or other sexual suggestion by passing sexually coloured remarks or verbally abusing a child using vulgar and obscene language or actions.

7. Pagare Deepti, G.S. Meena, R.C. Jiloha and M.M. Singh, Sexual Abuse of Street Children Brought to an Observation Home, *Indian Pediatrics* Volume 42, February 17, 2005.

8. Law Commission Of India, One Hundred And Seventy Second Report On Review Of Rape Laws. March, 2000.

females are adult survivors of child sexual abuse. Incest is the most common form of child abuse.”⁹ But it is also the most unreported form of abuse because it puts the “family honour” at stake. Of the 400 cases of incest reported in 2003,¹⁰ 41 per cent or 163 of the victims were below 18 years of age.

As with most information in the country, any analysis of child sexual abuse is severely constrained by lack of information. Given the societal attitudes towards victims and the long judicial processes, very few cases are registered. The information in Crime In India, 2003 does give some valuable insights, however, the handicap one faces is that the information is only confined to rape or at best trafficking for prostitution. There is very little information that pertains to the larger understanding of child sexual abuse.

One in every five women raped in 2003 was below 18 years of age. There is 16.5 per cent increase in incidences of child rape in 2003 compared to 2002.

Table 1: Age- Group-Wise Victims of Incest (Rape) Cases during 2002 and 2003

Year	Up to 10 Years	Up to 10- 14 Years	Up to 14- 18 Years	Total
2002	15	58	77	150
2003	23	41	99	163

Source: National Crime Records Bureau, Crime In India 2002 and 2003, Ministry of Home Affairs.

Table 2: Age-Group-Wise Victims of other Rape Cases during 2002 and 2003

Year	Up to 10 Years	Up to 10- 14 Years	Up to 14- 18 Years	Total
2002	396	796	1248	2440
2003	366	890	1693	2949

Source: National Crime Records Bureau, Crime In India 2002 and 2003, Ministry of Home Affairs.

Although there has been a fall in the total number of rape cases recorded by the National Crime Records Bureau, there is a 16.5 per cent increase in the case of child rape. Madhya Pradesh has reported the highest number of cases (699) followed by Maharashtra (605). These two States taken together accounted for 44.2 per cent of the total cases reported in the country

The coverage of paedophilia and child pornography in the media and its links with the tourism industry in last couple years has opened up the issue to the larger society and exposed the seriousness of the situation. The problem now is of how to nab and punish the abusers. Because these paedophiles are often foreigners, India must have extraterritorial jurisdictions based extradition treaties with countries if it has to successfully prosecute the abusers. Even recently Jorg Harry Ringelmen, the paedophile written about in the Tehelka exposé was deported, which meant he was not being prosecuted in India as

Proactive policing, following the TEHELKA exposé on child molesters in Goa, has led to the arrest of an Italian child paedophile

Catching them naked in paradise

FREDERICK NORONHA
Panaji

PAEDOPHILIA DREW attention in a big way in Goa when TEHELKA exposed foreigners preying on poor children in August 2004. After initial stonewalling, Chief Minister Manohar Parrikar directed the state police to mount a massive surveillance operation on all suspected foreign paedophiles.

This proactive policing has led to the arrest of Giorgio Lazzini, a 56-year-old Italian. Lazzini has been accused of sexually abusing a child from the Lamani tribal community. "In this case, the police have been very cooperative. Personally, I do appreciate the efforts of Superintendent of Police Varma, and DSP Mohan Naik,

the slip. The exposé revealed that Middleton continued visiting Goa anonymously after fleeing from the police and had developed a network of sympathisers who gave him safe houses to live in.

"One reason we don't rush to the police is because they want hard facts upfront without even showing an interest in

child molesters. To back its charges, it offered a shocking film made through hidden cameras, with names, documents, first-person quotes and other details.

The sting operation, *Sin in Paradise*, exposed the modus operandi of European child sex abusers in the sun 'n' sand state of Goa. Apart from promising a strict police vigilance and action against foreign child sex abusers, Chief Minister Manohar Parrikar vowed to release a secret documentation of the extent of tourism-related paedophilia in the state.

The investigation made the revelation that the UK government, on the request of Goa government, had agreed to investigate the extent of paedophilia in Goa. The request was made by the same chief minister in 2001. The UK gov-



9. Shekhar Chandran, Incest – the most common form of child sexual abuse, Anuja Gupta & RAHI helping overcome the torment of incest, <http://www.the-south-asian.com/Feb%202003/Incest.htm>

10. Crime in India 2002 and 2003, National Crime Records Bureau, Ministry of Home Affairs. Government of India.

Child Abuse – It is Real!

“Why are we spending so much time on this topic – after all only one per cent children are sexually abused in this country?”, said one participant at a recent workshop. “Besides all this talk about sexuality comes from the west...all the western influences in our lives”, added another. These from persons who say they work for and with children, child rights activists attached to one of the foremost child rights organisations in this country. Of course when it comes to sexual abuse of boys, the topic is taboo because it invariably leads the discussion into the inadequacy of the law (Section 377 of the IPC) and its irrelevance in the case of consenting adults and therefore the ongoing debate surrounding it. But then that is western influence too, we are told. Why does this not shock me any more? Because this is the kind of response I have come to expect. Nonetheless, it continues to concern me and even upset me. It upsets me enough to write this piece.

This is the attitude we encounter in spite of reports in the newspapers every day, and will begin to see around us, closer home, if we care to look. A sixteen-year-old girl was raped by a tutor from whom she was taking tuition. A 6-year-old boy of a leading public school in Delhi was sexually abused in the school premises by his teacher. Fifty-year-old Bishnu Prasad Sinha has been convicted for the rape and murder of little Barnali Deb, a class three student, who was travelling with her parents in a bus from Agartala in Tripura to Tuensang in Nagaland. Whether we agree with the punishment meted out to Dhananajoy or not, the fact remains Sejal was raped and killed. Young boys in tourist resorts are easy targets of paedophiles. These are cases that have been reported, registered and are in public knowledge. Thousands of ‘cases’ occur every day that never get out of the four walls of the house. Some of the victims are only a few months, even a few days old. The child’s silent screams are muffled and stifled.

When I bring up this topic in drawing room conversations, friends respond – “Arré yaar these things happen in the jhuggis and slums where these people live on top of each other, not in our type of families.” Tell them about this corporate honcho who has been consistently abusing his little daughter, or about the brother of someone who abused his nephew in a posh middle class locality, or even remind them about Tehelka’s sting operation in Goa uncovering paedophilic activities by rich white tourists, the response is – “But yaar these are perverts – one in a hundred or more!” But, clearly, it does not happen “out there”. It happens everywhere. It permeates all societies and cultures and cuts across all caste and class barriers, assuming different forms and manifestations. Any child can be a victim and what is worse; they are most often physically and sexually abused in their very own homes by people they trust most. Even it does happen to be one per cent children who are abused (where do people get these numbers from anyway?), it would mean one per cent of 420 million children in the country. This means 4.2 million children in the country. Is that not a large enough number to bother our adult heads about? I would like to believe it is a matter of grave concern if even one child is abused. Because that means we have failed to protect that one child. It is also an indication that many such children continue to be unprotected. Since discomfort with discussing sexuality (it is not part of our culture yaar!) does not stop sexual violence, is it not time we confronted this reality? Culture and false morality be damned. According to the National Crime Records Bureau 2002, there have been 150 children victims of incest, 2440 children victims of rape, 1986 cases of kidnapping and abduction of children for purposes like, marriage, illicit intercourse, prostitution, adoption, begging, sale, slavery and other unlawful activities – and these are only based on recorded cases. Look around and we will see many more. Does this not scare you? It scares me. Not just because I am a mother but more so because as adults we shy away from reality. After all that one child may be mine or yours.

Enakshi Ganguly Thukral

65% rape victims are minors

TIMES NEWS NETWORK

New Delhi: Almost two out of every three victims of rape in the city are minors. Most of the rape accused in the city have not studied beyond secondary school and about 35% of them are school dropouts. These are just few of the startling revelations recently made in a detailed study on rape cases in the city by Delhi Police.

According to the police, 59% of the rape accused are 18 to 25 years. Most rapes are committed by first-timers with no criminal past. About 25% of the rape victims

years of age to 180 last year. Ironically, these figures draw flak from some quarters for coming up with a new thing to say about rape.



pe boys for 43 other oth register

8-yr-old boy sodomised, killed

HT Correspondent New Delhi, October 14

resources. The boy was abducted from outside his D-block Bhopal

Child sexual abuse rampant

By Sreerexha Kaimal

September 1

IT was Renu’s first day in college. She got into a crowded BMTC bus and was sexually abused in full view of commuters who never intervened. Another day, during an evening walk, a cyclist touched and groped her. Tomboyish that she was, she chased that man and bashed him up. With the support of her caring family, she came out of the trauma, though the incident keeps haunting her.

Not all are like Renu. The emotional trauma a child undergoes

FOR PARENTS

- Be aware of their movements and company
- Build their self-esteem
- Remove loneliness
- Discuss potential abusers with them
- Tell them how to protest themselves

IF THE CHILD DISCLOSES SEXUAL ABUSE:

- Tell the child that you believe him/her
- Make it clear that whatever happened is not the child’s fault
- Reassure the child that she should

Taking serious note of this least addressed and sensitive issue, the seminar dealt with the trauma and the unresolved emotions that can disturb the life of the survivors decades after the horrifying incidents.

Teachers, social organisations and above all, parents, need to work towards providing a secure, protective and caring atmosphere to the children. “It is a childhood issue; it’s a sex and sexuality issue; it’s an issue of power and dominance. Child sexual abuse doesn’t mean rape, it can be touching and fondling too,” said Dr. Shekar Seshadri, associate professor of psychiatry, NIMHANS. “Parents



On an average, 50 cases of sodomy involving children

have the Swiss couple Wilhelm and Lilli Martis, who had been arrested and charged for child pornography. Child sex tourism is not confined to Goa but is increasingly spreading to other tourist destinations across the country and has a close link with trafficking of children both boys and girls. Duncan Grant of Anchorage Shelter infamy, Helmut Brinkmann and John Wheeldon are other paedophiles who got away scot-free. Recently Alan Walters another paedophile, has been extradited from USA to India to face trial for sexual abuse and torture.

In the absence of extradition treaties for action against the offending paedophile, it becomes extremely difficult to exercise extra-territorial jurisdictions. Sometimes, deportation of the offender as a criminal paedophile incur for him/her a harsher sentence than the sentence she/he is likely to get in the country where the crime was committed. In other cases, the offender must be brought back to the country where the crime against the child was committed so that precedence can be laid down for future offenders.

Is it Societal Apathy or Merely a Question of 'Honour'?

That our society chooses to pretend ignorance or chooses not to act are both matters of concern. Every once in while society wakes up in moral outrage, but even in this there seems to be hesitancy. There is collective outrage expressed when the victim is a middle class child and yet complete silence when it is a poor child. If the incidence is not reported or the abuser is from within the family, there is complete silence.

The long judicial process does not help either. It is lethargic and insensitive; at best apathetic and overloaded. The conviction rates are low and do not in any way inspire confidence in either the victims or their families to approach the law and stake 'family honour'.

It is not unknown for society to take the position "oh! She asked for it!" when victims are girls. The attitude of society is reflected in the Shiv Sena's article in its mouthpiece Saamna where it described the attack of the 16-year-old girl in Mumbai as inhuman but also chose to caution youngsters against "bold fashion". After all "if a man is incited by such clothes who can one blame?" While it may be seen as a characteristic Shiv Sena type response, this is also often society's "high moral ground" response.

Inadequate Laws

The laws dealing with sexual offences as they are today do not address child sexual abuse. The Indian Penal Code 1860 does not recognise child abuse. Only rape and sodomy can lead to criminal conviction. Penile penetration is the only type of sexual abuse that is currently being considered by the law as child rape; penetration by other parts of the body or objects are not. Anything less than rape, such as forcing the penis into a child's mouth, "slips through the legal cracks" or is defined by law only as outrage of female modesty. The word rape does not include boys and sodomy is tagged under 'unnatural offences', while intercourse is often interpreted to mean sexual relationship with an adult.¹¹

11. Virani, Pinky (2000), Bitter Chocolate: Child Sexual Abuse in India, New Delhi: Penguin, pp. 25-26 & Parul Sharma, Child Abuse and The Law, Tehelka, The People's Paper 05/02/05.

Legislation to prevent violence against children to be examined. AVIJIT GH

Child abuse: politicians had shown indifference

Social activists fighting against child abuse have been crying hoarse for many years that the Indian law needs to be more stringent and comprehensive in dealing with the social evil. More so, at a time when new technologies like the Internet are being misused by paedophiles.

Now, finally there is some positive movement on this front. The department of women and child development under the Union ministry of human resources is in the process of examining various aspects of child abuse and the gaps which exist in the current legislation. A day-long workshop to this end was held in September and a core group formed to look into the matter. "We have to see whether we need a comprehensive legislation on the subject or an amendment would suffice," says a senior ministry official.

The ministry is looking at all aspects of child abuse, including its definition and issues like corporate punishment. "There are many as

According to the World Health Organisation, one in every 10 children is sexually abused. Separate studies in North America show that one in four girls and one out six boys have been sexually abused before 18. Studies in India also show that child abuse, both physical as well as sexual, is widely prevalent. In a country where many victims are forced to remain silent due to fear of social stigma, it isn't easy doing research on the subject.

TELLING FIGURES

● According to the World Health Organisation, one in every 10 children is sexually abused. Studies in India also show that child abuse, both physical and sexual, is widely prevalent in a country where many victims are

many occasions, the accused has escaped with sentences ranging between six months to two years.

"Legal activists point out that the police find it very difficult to put child abuse under a particular section. This is because the Indian Penal Code does not specifically deal with child abuse. "Any legislation should create a proper section for this in the Indian Penal Code," says Supreme Court lawyer Meenakshi Arora, who has represented Sakshi, which had filed a PIL in the Supreme Court on this issue.

Activists believe that a legislation on child abuse has been delayed because of political indifference. Most politicians with a legal background agree that a law on the subject is urgently required. But the issue has never been on the priority list of any political party. Says senior Supreme Court lawyer Abhishek Singhvi, "Parliamentary overcrowding of bills, lack of priority and disruption of the House means that the legislation will happen in its own sweet time. This is an unaccept



"A tourist in Goa enjoys a sense of anonymity and freedom. A paedophile can come, hang around with children on the beach and not be questioned. For him the setting is just perfect. At any given time during the six month tourist season (October- March); there could easily be 100 paedophiles operating in the state. No, do not underestimate the figure, for a paedophile generally exploits more than one child, at times up to 20 children, during a stay of 15 days to five months."

Nishtha Desai and Fiona Dias-Saxena, See the Evil: Dealing with a Disease, Tehelka, Saturday August 21 2004.

The definition of rape is part of the problem

Namita Bhandare
New Delhi, October 17

MOST WESTERN countries define rape as forced intercourse that includes both psychological coercion and physical force. We in India differ. Rape laws are covered under Sections 375 and 376 of the Indian Penal Code. Under these sections, rape is seen only in terms of penile-vaginal penetration. It does not include, for instance, anal or oral penetration. It does not include penetration by objects. It certainly does not include the rape of boys and men. There is no concept of marital rape. And don't even think of date rape. As a result of these loopholes, very often, judges find themselves trying 'rape' cases under more watered down sections: 'outraging the modesty of a woman', for instance. Goes without saying that these sections carry lighter punishments — if in fact the case ever reaches the conviction stage.

NO DETERRENCE - II



have asked the judges for a review of the definition of rape. It is not as if women's groups or even the government aren't seized of the inadequacies in the law. In 2000, in anticipation of Women's Empowerment Year 2001, the Planning Commission set up a task force with the brief to review existing legislation related to women and children. It made four recommendations: the most significant of which related to rape laws.

A man is said to commit rape if he had sexual intercourse with a woman with or without her consent, when she is under sixteen years of age. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

That is because the only legal provision addressing the sexual abuse of boys is Section 377 of the IPC dealing with 'unnatural sexual offences', which unfortunately also covers consensual adult homosexual sex. There is a movement and case filed in court to 'read down' Section 377 to preclude adult consensual sex. There is also an appeal to bring in a more comprehensive legislation to address child sexual abuse in all its forms. The Law Commission of India has recommended measures to redefine rape laws to prevent the sexual abuse of children and women.¹² Furthermore, no law permits separating a child from parents on grounds of their abuse. The only ground for separation from parents is desertion of the child.

The state's response to these crimes has been appallingly indifferent. Peats' conviction was a rare prosecutorial success in an ocean of neglect and failures. More typically, cases are rarely brought, and almost never concluded properly. A good example of this is the case of John Colin Middleton, a 71 year-old Briton, who was arrested on 19 March 2001 from a guest house where he was found with three children he brought with him from Nepal. He was alleged to have served a sentence for a previous conviction for sodomy with a child in New Zealand. Middleton was released on bail on 23 March 2001. His passport was later returned to him and the case against him was declared 'closed'. Such arbitrary waivers of prosecution and punishment are common.¹³

"The 156th Report of the Law Commission has recommended that penile/oral penetration and penile/anal penetration be covered by section 377 IPC and that finger penetration and object penetration into vagina or anus can be adequately covered under section 354 with a more severe punishment. This recommendation requires reconsideration. Such a restrictive view fails to take into consideration several forms of child abuse and the further fact that very often the sexual abuse of children is by persons known to them. As a matter of fact, rape is really intended to humiliate, violate or degrade a woman sexually. It adversely affects the sexual integrity and autonomy of women and children. The aforesaid recommendation of the Law Commission therefore defeats the very object underlying the Criminal Law (Amendment) Act, 1983 which inserted sub-section (2) and in particular clause (f) thereof in section 376. The above recommendation also does not take into account the fact that a child of tender years can not discern the degree of difference in terms of which orifice of hers is penetrated."

"Substitution of existing section 375 of the IPC recommended. We accordingly recommend that the existing section 375 be substituted by the following:

- (a) Penetrating the vagina (which term shall include the labia majora), the anus or urethra of any person with –
 - i) any part of the body of another person or
 - ii) an object manipulated by another person except where such penetration is carried out for proper hygienic or medical purposes;
- (b) Manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia majora), the anus or the urethra of the offender by any part of the other person's body;
- (c) Introducing any part of the penis of a person into the mouth of another person;
- (d) Engaging in cunnilingus or fellatio; or
- (e) Continuing sexual assault as defined in clauses (a) to (d) above..."

Law Commission Of India, One Hundred And Seventy Second Report On Review Of Rape Laws, March 2000

12. Law Commission of India, One Hundred And Seventy Second Report on Review of Rape Laws. March, 2000.

13. <http://www.indiatogether.org/2004/dec/chi-abuse.htm>

MP wants law to define sexual abuse:

New Delhi, May 6 : An MP Friday asked the government to introduce a comprehensive legislation that defines various degrees of sexual assault to control the increasing cases of child sexual abuse. Raising the issue in the Lok Sabha, P. Satheedevi from Kerala wanted an amendment in the Indian Penal Code (IPC) to consider sexual intercourse as consensual only when the girl was at least 18 years old. She pointed out that child sexual abuse accounted for at least 40 per cent of rape cases reported in the country. Drawing the attention of the house to cases reported of sexual abuse of infants of three to six months, Satheedevi pointed out that in 1999, of the reported 3,153 cases, 731 were rapes of children below 10 years.

“Cases of violence against young women like acid throwing, obscene phone calls, kidnapping and sale of girls and women for flesh trade have also grown enormously,” she said, adding that there was no clause in IPC to deal with sexual crimes against children. The MP said there had been a very low rate of conviction in child abuse cases. Out of 444 rape cases decided by the courts in Delhi in 2002, there were only 98 convictions. Referring to the Suryanelli case, in which a minor girl was gang raped, Satheedevi said the accused were acquitted by the Kerala high court saying that the victim was 17 years old at the time of the incident. “The judges found that the rape was done with the consent of the girl only because she was 17. This is ridiculous,” Satheedevi told IANS outside parliament. Section 375 of IPC defines that sexual intercourse with a woman less than 16 years of age – with or without consent – would be treated as rape. “This implies that a girl after attaining the age of 16 years could easily be lured or compelled to have sexual intercourse and the accused could justify it as having done with her consent and escape from being convicted,” Satheedevi said. She demanded that the age limit be raised to 18 that is considered as age of maturity in the country. (IANS)

Source: MP wants law to define sexual abuse, India News, Webindia123_com.htm

For years, child rights and women’s rights groups have fought a battle for greater sensitivity in court procedures when dealing with victims of sexual abuse, particularly children. The Supreme Court at last heard the plea in *Sakshi vs. Union of India & Ors.* (Writ Petition (Crl.) No. 33 of 1997 with SLP (Crl.) Nos. 1672-1673 of 2000). In its judgement on 26 May 2004 laid down three important guidelines for cross-examination of the rape victims and witnesses, especially minor victims:

- a screen or curtain should be provided between the victim and the accused so that they cannot see each other. It is necessary as the victims are always vulnerable to threat and humiliation.
- the question put up to the victims of sexual abuse about the incident should be given in writing to judicial officer who may put them to the victim or the witness in a language that is clear and not embarrassing.
- the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

This is the first step in law reform on child sexual abuse. Much still remains to be addressed. The Court has suggested that Parliament should “give a serious attention” to address the issue of sexual abuse of children. We do hope that the Government shall take this seriously.

Recognising that extent of abuse faced by students, the Central Board of Secondary Education has formulated a Policy paper for Help-Line for women and Girl Students for Prevention of Sexual Harassment Related Incidents in Schools. The Board has already (vide its circular dated 29th October, 2001) from its Joint Secretary (Affl.) advised schools to set up a cell and send the Action taken Report on quarterly basis to the Joint Secretary (Affl.) who has been appointed the Nodal Officer. The Department of Women and Child Development, Ministry of Human Resources Development is also in the process of drafting a law on child abuse.

Fifty year old Bishnu Prasad Sinha and his accomplice have been convicted for the rape and murder of little Barnali Deb by the session’s court in Guwahati. The case received widespread media attention and was believed to be the first instance of any court awarding the capital punishment for rape and murder in the region. However, there is a precedent of a Morigaon session’s judge awarding death sentence in October 2004 to accused Ganesh Das for the same offence of rape and murder

Govt does not favour death for rapists

The government on Wednesday told the Rajya Sabha that it is contemplating changes in criminal laws, including those relating to women, under the Criminal Procedure Amendment Bill awaiting Parliament's nod. Replying to supplementaries during Question Hour, Union Home Minister Shivraj Patil said state governments would have to address the problem of violence against the girl child at their level. Admitting that laws vis-à-vis crime against women need to be changed in the country, Patil said the United Progressive Alliance government has taken several initiatives in this regard.

Reply to a question whether the government is considering death penalty for rapists, Patil said that introduction of capital punishment for such cases could create problems. On the recent rape of a minor in a police outpost in Mumbai, Patil said it was an unfortunate incident.

Rediff.com /PTI, April 27, 2005, Wednesday



of minor Pampi Das.¹⁴ The hanging of Dhanonjoy in 2004 had caused similar furore across the country in June 2004. He too, had been convicted for rape and murder.

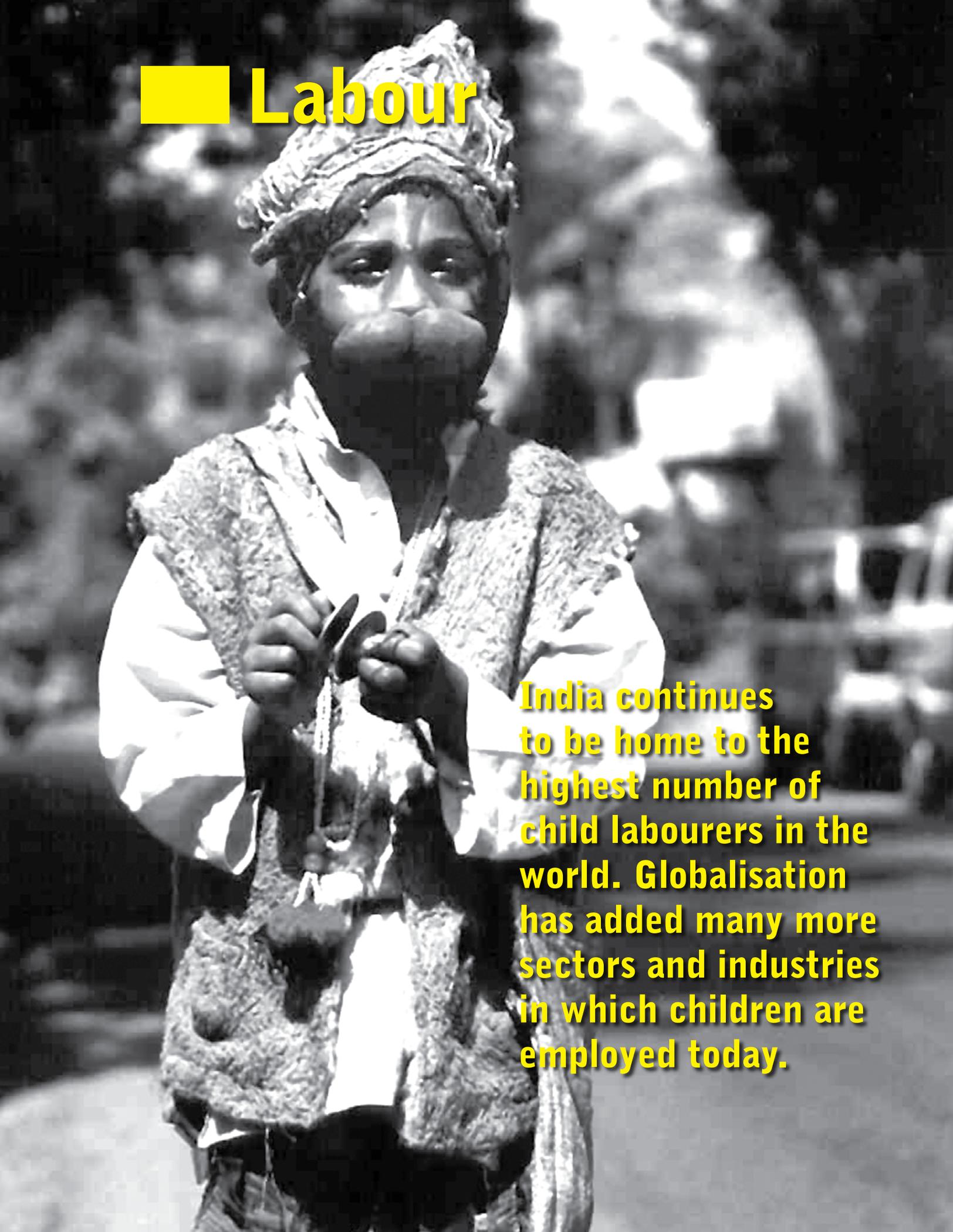
Divergent views exist regarding the punishment to be meted to the abusers and rapists. There are those who are demanding that all rapists be killed or castrated, while others argue that in simply doing so, we are avoiding the deeper issues of inequality and powerlessness that lie at the root of such crimes against children and indeed women. But one issue is clear. There is an urgent need to review and amend laws that deals with child sexual abuse. Simultaneously, much greater efficiency and humaneness are required in the implementation of the law. Low levels of conviction and the lengthy judicial processes are the

biggest deterrents to reporting cases. As per statistics of the National Crime Records Bureau, as of 2003, of the 7768 cases of rape of children pending trial, only in 1221 cases had trial been completed. Of these, in 419 cases there were convictions, while in 802 cases the accused was acquitted or discharged. A massive 6531 cases are still pending trial.

Conclusion

While the law to protect children from child sexual abuse and punish the abuser remains inadequate, societal attitudes continue to be an even bigger impediment. How can children be protected when there is no acknowledgement of the problem? Is capital punishment the solution? Perhaps not. But clearly there is a need for re-examination of both the legal framework as well as the mechanisms to educate and sensitise society.

¹⁴ Crime in garb of punishment? Telegraph. Wednesday, April 27, 2005.



■ Labour

India continues to be home to the highest number of child labourers in the world. Globalisation has added many more sectors and industries in which children are employed today.



Discussions around child labour are not new. Indeed, over the last two decades, any discussion on child rights has become almost synonymous with child labour, often making one wonder whether it is the only form of violation of children that the society recognises. Children in school are made to undertake projects on child labour, even as children are employed in many of their homes, and multi-lateral and bi-lateral donors support programmes on child labour.

Despite this awareness, there is very little that has changed in the lives of working children in this country. If anything, children are employed in many more sectors and industries. And since the fallacious distinction between hazardous and non-hazardous occupations continues to exist in law, their employment is not illegal. Despite realisations that the Child Labour (Prohibition & Regulation) Act, 1986 is inadequate, there has been no move to amend it.¹ India continues to have a declaration² on Article 32 of the UN Convention on the Rights of the Child, and this has been commented upon by the UN Committee on the Rights of the Child in their Concluding Observations.³

That there is a contradiction between the existence of child labour and the constitutional guarantee of fundamental right to education for all children is by now well established. This was even acknowledged by the Chairperson of the Sub-Committee to review the Draft Free and Compulsory Education Bill in his meeting with a delegation of concerned citizens who went to meet him.⁴

A matter of even greater concern is the fact that in India the forces of liberalisation and market economy are pushing more and more children into work. With India embracing free trade and free market economy, it is time to sit back and reflect on the kind of impact it is going to have. The situation of children employed in the generation of hybrid cottonseeds and in iron ore mines are cases in point. However, as far as the government and society goes, the alarm bells are yet to ring.

Just like agriculture, domestic work too, is not part of the list of prohibited occupations under the Child Labour (Prohibition and Regulation) Act. Yet we see that their employment in these sectors is injurious to children, even resulting in death in some cases.

1. A Public Interest Litigation has been filed in the Supreme Court of India on 8.7.2005. Union of India and others vs. Shantha Sinha and others, to prohibit all forms of labour.

2. While fully subscribing to the objectives and purposes of the Convention, realising that certain rights of the child, namely, those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India, the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and other relevant international instruments to which it is a State Party.

3. CRC/C/15/Add.228 30 January 2004.

4. In a meeting on 15 March with a delegation of concerned persons who have been active on the issue of the proposed Bill on Free and Compulsory Education, Mr. Sibal shared some of the features of the proposed Bill 2005. This has been discussed in detail in the chapter on Education.



Focus on Elimination of Child Labour

Elimination of child labour continues to be one of the major focus areas of the Labour Ministry. The Labour Ministry has taken an initiative for framing an omnibus legislation prescribing 14 years as the minimum age for employment and work in all occupations except agricultural activity in family and small holdings producing for their own consumption. The proposed legislation will also fix a minimum age of not less than 18 years to any type of employment and work which by its nature or circumstances is likely to jeopardize the health, safety or morals of young persons. The measure would also help in ratification by India of the International Labour Organisation's (ILO) new convention on child labour. The ILO convention defines for the first time what constitutes the "worst forms of child labour" in order to eliminate these on priority basis. As of date, employment of children has been prohibited in 13 occupations and 51 processes in the country bringing the total to 64. It is proposed to raise their number to 73 by notifying additional nine hazardous occupations and processes.

The Labour Ministry is running two major schemes for elimination of child labour, viz., National Child Labour Project Schemes (NCLP) and the Grant-in-Aid scheme for voluntary organisations. At present 93 child labour projects are working in ten child labour endemic States for rehabilitation of 1.9 lakh children. As of now 1.5 lakh children have already been covered by over 3000 special schools/learning centres under the 93 NCLPs. Over 70 projects are also under implementation under the grant-in-aid scheme. The Labour Ministry meets 75 per cent cost of these projects by way of grants.

India and the ILO signed a Memorandum of Understanding extending International Programme on Elimination of Child Labour (IPEC) in India for another two years. India under the ILO's IPEC programme has taken up 154 action programmes on child labour covering more than ninety thousand children with direct funding by the ILO/Area Office to the NGOs.

The Labour Ministry sanctioned setting up of a National Child Labour Project (NCLP) in super-cyclone hit Cuttack district of Orissa. It also took steps to set up similar NCLPs in nine other cyclone-hit districts of Orissa aimed at rehabilitating 31,456 working children through 511 schools/centres.

<http://www.indianngos.com/issue/incomeneration/govt/policies.htm>

It truly is a no-win situation. Just because an occupation is judged to be "non-hazardous" and therefore not prohibited by law, there is no intervention made by the Government to address the situation of children employed in these sectors. On the other hand, when an occupation is designated as "hazardous" or employment of children is prohibited, as in mines, the government sometimes turns a blind eye.

In this chapter, we will concentrate on child labour in some of the sectors – in hybrid cottonseed farming, silk industry, mining and domestic work. Although these are not the only sectors that employ children, the first three are examples of the impact of the global market in the increase of child labour. These have been areas in which concerted action has been taken in the years since our last report.⁵ However, this is not the case in domestic work where despite growing realisation and reportage that domestic work is extremely hazardous, there is great resistance to address this. This is largely because the middle class, including several policy makers themselves have a vested interest in the continuance of domestic child labour in their own homes. Child labour campaigns have been campaigning for domestic work to be declared as hazardous. Groups working with children have now petitioned the courts on this issue.

Hybrid Cottonseed⁶

The exploitation of children in cottonseed farms is one of the best examples of how child labour is linked to the larger market forces as several large-scale national and multinational seed companies, which produce and market the seeds, are involved in perpetuating the problem of child labour. India is the first country in the world to introduce hybrid varieties in cotton crop for commercial cultivation.

"The current crop season began with a death of a 13 year old boy, Mallesh, on June 29, 2004, due to pesticide exposure in Dudekonda village in Kurnool district. Mallesh was employed as a bonded labourer and apart from doing other operations on the cottonseed farm of his employer, he was also entrusted with the task of spraying pesticides on the field. Indiscriminate use of chemical pesticides in cottonseed cultivation is going on unabated and it is causing a lot of health problems to the children working in the fields, who are directly exposed to pesticides, such as during the cross-pollination work. Children stand in the fields of cotton plants, which reach up to their shoulders, and they bend over them as they identify flowers ready for pollination. The elder boys are also occasionally entrusted the task of actual pesticide spraying work. In the course of doing these works, the children are exposed to pesticides for prolonged hours in a day." - Davuluri Venkateswarlu

5. HAQ: Centre for Child Rights. Children in Globalising India. Challenging Our Conscience, New Delhi, 2002.

6. HAQ acknowledges the assistance and inputs received from Shantha Sinha, M.V. Foundation, in the writing of this section.

Over 150,000 children are engaged in the production of hybrid cottonseed, which is one of the fastest growing industries in India. Though hybrid seeds are used in most states in India, hybrid cottonseed production is concentrated in five states, namely, Andhra Pradesh, Gujarat, Karnataka, Maharashtra and Tamil Nadu. These five states account for more than 95 per cent of the area under cottonseed production in the country.⁷ Andhra Pradesh alone accounts for 65 per cent of cottonseed production in the country. And Mahabubnagar and Kurnool districts contribute more than 90 per cent of cottonseed production in the state.

Approximately, 14,000 acres of land are under hybrid cottonseed cultivation in the country. The seed companies use local middlemen to negotiate deals with the farmers and provide the farmers with the foundation seeds. Credit and technical support is also provided to them but it is the seed companies who fix the price. There is no transparency in sharing of information of the sites and contracts with farmers. Reference to child labour in the contracts of MNCs with farmers is dismissed in one single statement as follows: “The grower hereby agrees to comply with all the central and state laws including the Child Labour Act.” While the contracts have elaborate and detailed clauses dictating instruments for quality control for every cottonseed produced, there is no mention of Corporate Social Responsibility.

In a detailed study, Davuluri Venkateswarlu,⁸ shows how in hybrid cottonseed production, children, particularly girl children, are engaged in most operations. They comprise 90 per cent of the labour force and very often school going children are also recruited. Ninety per cent of the labour force comprises bonded labour of which migrant children constitute 30 per cent. Migrant children put in 11-13 hours of work a day while local children work for 9-10 hours. Even in areas where adults are available for work the labour employed for cross-pollination work is exclusively made up of girl children. In India nearly 400,000 girl children, in the 7 to 14 years age group are employed in cottonseed fields. According to a survey in Andhra Pradesh, it was found that the total number of 247,830 children, who accounted for 90 per cent of the total labour force in cottonseed production, were employed in this sector in Andhra Pradesh. Eighty five per cent of these children were girls.

Nearly 400,000 children, mostly girls between seven and 14 years of age, toil for 14-16 hours a day in cottonseed production across the country.

The growing media attention and interventions by the government and other agencies against employment of child labour in the state are partly responsible for some seed companies taking a decision to slowly relocate their seed production base to other states like Gujarat and Karnataka where the child labour issue has not yet received much attention. This is reflected in the significant rise in the total area under cottonseed production in Gujarat and some pockets of Karnataka.

It is also due to increased media attention and frequent inspections from the labour department that farmers in several places have started adapting new strategies to hide their irregularities. Young girls of 11 to 14 years are made to wear adult

Table 1: Gender Division of Labour and Requirement of Labour Days or Different Activities (per acre)

Activity	Gender Division	No. Of Labour Days (approx)	Percentage
Emasculation and pollination	Mostly girls (about 90%)	2000	90.2
Ploughing	Only Adult male	5	0.2
Sowing	Adult female and girls	8	0.4
Fertiliser application	Only adult males	3	0.1
Weeding	Adult females and girls	25	1.1
Pesticide application	Only adult males	25	1.1
Harvesting kapas (cotton),	Mostly girls (about 90%)	100	4.5
Other activities (irrigation, cutting cotton plants after harvest, transport of yield	Only adults	50	2.2
Total		2216	99.8

Source: R. Venkat Reddy. Exploitation of Girls on Cottonseed farms. M.V. Foundation. 2005

7. Davuluri Venkateswarlu, Child Labour In Hybrid Cottonseed Production In Gujarat And Karnataka, Study commissioned by India Committee of the Netherlands. Not dated.

8. *ibid.*

From dawn to dusk : Daily work schedule of a migrant child labourer

Kamala, a 13 year old girl, started working as a wage labourer in cottonseed farms since 2002. She belongs to a poor tribal family in a small village called Amlia in Udaipur district, Rajasthan. Her father has died and she lives with her mother and younger sister. Her family owns two acres of dry land but income from the land is insufficient and they primarily depend on wage labour. She studied up to fourth class and discontinued in 2002. In 2002, her mother took an advance of Rs 500 from a labour contractor and sent Kamala to Gujarat to work in cottonseed farms. Since then she has been migrating to Gujarat for cottonseed every year. Several labourers from Kamala`s village also migrate every year to Gujarat for about two to three months (during August and October months) to do crosspollination activity in cottonseed farms.

Davuluri Venkateswarlu, Child Labour In Hybrid Cottonseed Production In Gujarat And Karnataka, Study commissioned by India Committee of the Netherlands

advances and loans extended to their parents by local seed producers, who have agreements with the large national and multinational seed companies. They are made to work long hours, exposed to poisonous pesticides used in high quantities in cottonseed cultivation and are prone to inhalation of pesticide such as Endosulphan, Methomyl, Cypermethrin, Monocrotophos, Nuvacran and Metasystox. The migrant girls mostly sleep in makeshift camps (20-30 per camp) or in cowsheds. Other children commute from villages near and afar, in overcrowded trucks and auto rickshaws early in the mornings and return home late, only to go back to work the next day, often leading to accidents due to over work and exhaustion. Health problems such as headaches, weakness, vomiting, and depression are widely reported. Health hazards and even deaths often go unnoticed. Children are forced to work even when they are sick and have little or no access to medical aid.

The growing concern and criticism regarding the employment of children forced the cottonseed manufacturers to take note of this problem and address it. Due to global and local pressure, the Child Labour Elimination Group (CLEG) was constituted by the Association of Seed Industry to monitor child labour in cotton farms but they have not followed up this issue with the seriousness it deserves. NGOs such as the M.V. Foundation have started initiatives to motivate seed organisers and farmers against employing children. They have been campaigning to raise awareness and bring pressure on the national government to take recourse to legal action against MNCs and national seed producers through community pressure and public action. They are trying to get MNCs to take responsibility to fulfil all the commitments made in previous discussions and meetings, and ensure that MNCs do not shy away from their responsibilities. Initiatives have also been taken at the local level to build pressure on farmers to stop recruiting children in cottonseed farming. This is being done through community mobilisation and legal action of local officials in various districts.

Sometimes MNCs take responsibility as principal /primary employers and accept that they are part of the problem. On other occasions they disown and pretend that they have nothing to do with the issues and have not shown any seriousness in disseminating the message regarding the elimination of the use of child labour at the local/farm level and children continue to be engaged as bonded labour.

women's clothes and disguised as adults. By bribing local officials, seed farmers are securing incorrect age certificates in order to claim that the children they employ are above the age limit prescribed under law.

Although the proportion of children employed in Gujarat is less than in Andhra Pradesh and Karnataka, over two thirds of the labour force was found to be in the age group of 8-18 years. Children below the age of 14 years account for 34.9 per cent of the total labour of whom 88 per cent are girls.⁹ Here too, girls outnumber boys and a majority of the labourers are tribals, many of them inter-state migrants.¹⁰

The farms producing seed for MNCs like Unilever, Bayer, Monsanto, Syngenta and Advanta,¹¹ accounted for about 19 per cent of the total children working (53,500 out of 247,830) in cottonseed production in the state. Children were employed on a long-term contract basis through

Main Investors	
Multinational Corporation	Indian subsidiary/ joint venture
Bayer (Germany)	Proagro
Advanta BV, (Netherlands)	Advanta India
Emergent (USA)	Mahendra hybrids
	Paras Extra Growth Seeds
Monsanto (USA)	Mahyco-Monsanto
Syngenta	Biotech Limited

9 ibid.

10 ibid.

11. The names of the Indian subsidiary or joint venture companies of these MNCs are Hindustan Lever Limited (for Unilever), Syngenta India (for Syngenta AG), Advanta India (for Advanta BV), Monsanto India and Mahyco (for Monsanto) and Proagro (for Bayer). HLL transferred its seed business to a new company called Paras Extra Growth Seed and sold 74 per cent of its stake in this new company in March 2002 to an American based seed company called Emergent Genetics.

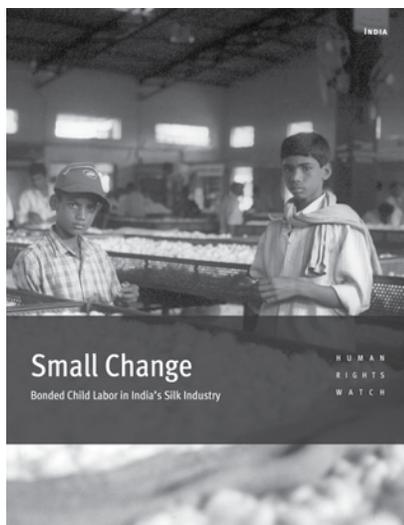
Silk Industry

The Kancheepuram silk industry, with its 500-year-old tradition, is known for producing heavyweight stiff silk saris. The saris are woven with three ply, high denier threads using thick zari for supplementary warp and weft patterns that consist of unique and intricate designs. Over 75 per cent of such silk saris that are produced in Tamil Nadu are woven in Kancheepuram, where over 80 per cent of the local inhabitants are involved either in its production or sale. Estimates of the number of looms in the town vary from 50,000 to one lakh, most of them located in individual households, each employing at least one adult and one child. "Silk weaving started in Kancheepuram because of the migration of a large number of weavers from Gujarat's Saurashtra region to this small town. The native Mudaliars and Chettiars picked up thread."¹² Later, with the demand for silk rising within and outside the country and the dwindling returns from agriculture, other communities such as Gounders and Naickers took up weaving. While the children of the weavers were naturally drawn to the craft, people from other communities sent their children to master weavers so that they could learn a skill. With the boom in the silk industry in the 1980s, there was no looking back. From a turnover of a few crores of rupees about 50 years ago, today the industry generates business worth several hundreds of crores.¹³



Thousands of children slog it out in the silk-weaving industry in Kancheepuram and Tiruvannamalai districts of Tamil Nadu, trapped in bondage imposed by the debts of their parents who are impoverished by a crisis-ridden industry.

Behind the bright silk, Asha Krishnakumar in Kancheepuram, *Frontline*, February 15-28, 2003.



In its report on child labour in the silk industry¹⁴ Human Rights Watch has investigated three states prominent in the silk industry. They found that although child labour employed in the carpet industry has received attention in Uttar Pradesh, the limited attention to silk has pushed the child labour that was in factories into individual homes. In Tamil Nadu, the state government has simply abandoned the Supreme Court's rehabilitative framework for any children found working in hazardous occupations after 1997, in clear violation of the Court's order. In Karnataka, silk thread production still depends almost entirely on bonded children.

In the factories and workshops that make silk thread, children suffer injuries from the machines and from sharp threads. Sericin vapours from the boiling cocoons, smoke, diesel fumes from the machines, and poor ventilation cause respiratory ailments such as chronic bronchitis and asthma. From immersion in scalding water and handling dead worms, reelers' hands become raw, blistered and sometimes infected.¹⁵

Child Labour in Mines

Law prohibits employment of children in mines. But does that mean that children do not continue to be employed in them? The situation of children employed in the iron ore mines in Bellary district of Karnataka provides a glimpse into the horrifying conditions in which they continue to be employed even as the honourable minister denies any such employment.¹⁶ As in the case of child labour in the Hybrid Cotton industry, here too there is a connection between the processes of globalisation, growing market economy, and increase in child labour. Small children crawl around on the hot ferrous stones, learning to sort out the 'ore' from the stone and grade them according to quality almost as soon as they can

12. Asha Krishnakumar, Behind the bright silk, *Frontline*, Volume 20 - Issue 04, February 15 - 28, 2003.

13. *ibid.*

14. Human Rights Watch, Small Change. Bonded Child Labour in India's Silk Industry, January 2003, Vol.15, No. 2 (C).

15. *ibid.*

16. This section is based on the findings of a fact finding team that went to this area from 14-16 April 2004 and consisted of Shantha Sinha (MVF and Child Rights Protection Forum -Hyderabad), Enakshi Ganguly Thukral (HAQ: Centre for Child Rights-Delhi & CACT), Bhanu Kalluri (Samata- Hyderabad and Mines Minerals and People (mm&P)), C.Narsimha Murthy and Harish Jogi (Abhiruddi and CACL Karnataka). Satya Lakshmi Komarraju (mm&Pand Movement Against Uranium Projects) Bhagyalakshmi -Convenor, Women and Mining, mm&, India and Dominique .D- Oxfam Swaraj, Karnataka.

"The Mines Act, 1952 does not permit employment of children below fourteen years of age in mines. Therefore, there is no question of fixing their working hours and wages."

Shri Sis Ram Singh Ola, Minister of Labour and Employment in response to a question on Plight of Mine Child Workers in Rajasthan Shri Motilal Vohra (INC)". [Ref. No. RSUSQ 980, 22 July 2004]

walk and talk. Large tracts of agricultural lands across Sandur, Hospet and Bellary Talukas of Bellary District, Karnataka, have over the last three years been converted into iron ore mines. These have drawn large number of migrant labour from neighbouring districts or from Andhra Pradesh.

While most of the leases given by the mines department are on the hills spreading across 180 kms of Bellary district, it is the smaller and much more prolific private mines which have extended into the agricultural lands almost as close as Hospet town itself. In order to make quick money, farmers have either chosen to lease out their lands for mining or undertake mining themselves, or in some cases, have been forced to do so due to crop failure because of the heavy dust pollution caused by mining on neighbouring lands. Consecutive droughts in the last four years have led to reduction in agricultural activities and the immediate returns from mining has played a big role in enticing many farmers to make the shift. They have started illegal digging in their own fields. This has reached such vast proportions that it is very difficult to assess the extent of illegal mining operations, as there is a strong nexus between the mine owners, political leaders and government officials in keeping such mining operations quiet.

The mining in this area primarily caters to the export market. Iron ore in the form of lumps (small pieces) or fines (dust) is exported to China, South Korea and Australia. The labourers who come here have, in many cases, been forced out of their own homes by failure of agriculture, or drying up of agricultural labour due to mechanisation of agriculture or then introduction of seed patents and hybrid seeds. With the destruction and replacement of the traditional weaving by granite mining, traditional Illakal weavers are now working as mine labour. Men do the digging while women and children carry the head-loads and dump them in piles. They then hammer them into smaller pieces called lumps. The lumps are then sieved and sorted by them according to size.

Little 3-year-old Ramesh carries an iron basin filled with iron ore 'lumps' on his head, getting inducted into the world of mining and exploitation as part of his childhood. His load is not the 15 kilos that all the other children carry up and down, while their backs and head hurt. But as they say "can we complain at all"?

and blisters. At its hazardous best, this "occupation" causes severe injuries and even results in maiming and death as heavy stones fall or the hammer in tired hands misses its aim.

On a half-acre plot of land, taken on lease by a contractor, there are eight households with 15 adults and 25 children. Five to six year old Gangamma, Ishwamma and Shekamma spend between 6- 8 hours a day hammering away through pile of iron stock so that they can build up their pile of iron ore "lumps". The pile at the end of the day and number of basins they fill with these lumps will determine how much their families will earn. They are not the only ones.

This is not just an ordinary job that these children do. Sitting hunched over hot ferrous ore, chipping away steadily with a hammer can never be child's play. At its safest it is painful for the shoulders and the back, the wrist joints and arms hurt while the little hands are filled with bruises

While occasionally mine owners supply drinking water by trucks, most of the time it is the water that gets collected after digging that is collected for domestic use. A whole family is forced to survive on one litre of drinking water for the entire

Papinayakanahalli is a village that cannot do agriculture because their lands are denuded due to mining activities in the area. The men used to be employed for loading and unloading work. Bulldozers and dumpers and migrant workers have replaced them. At 1.30 in the afternoon children in the age group of 5-10 years came running to meet us. Little adult 5-year-old Vandanamma is a miniature version of her mother. She along with her friends walks 3 kilometres to a site where they sort out, collect and pile iron rubble. They get Rs.5 per putti (iron basin). She works till her mother relieves her at 1 p.m. Five-year-old Vandanamma's day does not end. She has now to finish her mother's unfinished housework, as do her friends.

While Vandanamma has never seen a school, other children are being pulled out of schools and sucked into mining related activities.

day. All the evils of the unorganised sector are prevalent here in terms of wages, working conditions, living conditions, health, accidents and injuries (which are very common in mining), etc.

The mine owners claim that they only employ the adults, but as the families live at the mine site and the children cannot leave their parents, they too join in the mining activity. The owners justify this by saying that it is the parents who appeal to them to employ the children. The parents admit that the children find it difficult to work in the mines and also showed their children's hands which were blistered as a result of hammering of stones, but since they cannot survive without using their children's labour, they are forced to involve them.

Granite mining and all the activities connected to it is another big industry in this region. Although, children are not directly engaged in the blasting operations that break the large rocks into manageable pieces, they are on the mining sites engaged in loading and other activities. They are also employed in the hundreds of granite cutting and polishing units that have been set up. Most of these factories have their own mines too.

Stone quarrying is a major industry in Anantpur district of Andhra Pradesh. It thrives and flourishes on child labour. Huge amounts of limestone are also found in this district. L&T Cements and Pennar Cements are the two major industries in this area which use this limestone. There are 144 such quarries in the district which are generally leased out to interested parties. The labour employed generally belong to the backward communities.¹⁷

Taking kerosene out of white mud

Children engaged in taking kerosene out of mud? Sounds completely bizarre does it not? And it is just that—totally bizarre or should we call it innovative? Not just that, it is also a reflection of the abysmal levels of existence that we, as nation force our people into, with impunity.

Girls and women sit on piles of white slush generated by the granite factories in the process of cutting and polishing granite rocks. They scrape together this semi dried white slush into iron basins, pour water into it and begin to knead it like dough till the kerosene begins to float on top, which they then pour out by cupping their palms into plastic mugs. Once all the sediments settle, this is pored into used Bisleri, Aquafina and other mineral water bottles. In the evening a 'contractor' comes and buys the bottles of kerosene from them at Rs.10 a litre and sells it back to the factories at Rs.18-20 a litre. The women and girls cannot carry home the kerosene they have distilled. It has to be sold to the 'contractor' – at the most they can request him for some.

The granite market is booming. The best quality granite is exported. The biggest market is China. Chinese buyers come all the way to buy cheap and best granite.

Mounds of white slurry are dumped all across the countryside. It is not as though they are auctioned – they are just there polluting the land and making it infertile. No drafter of any labour legislation would have imagined that such a hazardous occupation could be 'developed'. The little hands that knead the slush are roughened and weathered by constant exposure to kerosene. They drop out of schools or never reach them so that they can knead slush and distil used kerosene. Once again it is the failure of agriculture and weaving that has forced them into this. One more price of globalisation and open market!

Report on Child workers in mines; NHRC takes suo-motu cognizance

New Delhi, 26th May 2005

The NHRC has taken suo-motu cognizance of a news item quoting a report stating that lakhs of children are employed in State Mines in Karnataka.

The news story appeared in a national daily dated 16th May 2005 wherein it was reported that an NGO named HAQ-Centre for Children Rights published a report alleging that several lakh children starting from the age of five are working in the mines at Hospet, Sandur and Ikal belt of Karnataka in horrible and hazardous conditions and in violation of Child and Labour laws. These children it quoted the report as stating are illegally forced into mining activities and used for digging, breaking stones, loading, dumping, transporting and processing of iron ore with no safety equipment, fixed wages and working hours. The report further alleged that most of the workers working in these areas are migrant labourers working in hazardous and painful condition in the mines and related ancillary activities. The children, it reported, are handling high level of toxic wastes and exposed to mine dust, which is above the permissible level and, therefore, are susceptible to serious chronic health problems. The Mine owner, it stated, is blatantly violating labour laws by employing children and making them work under exploitative and inhumane conditions. The school dropout rate in the region is high, as the children have been sucked into the vicious labour market the report quoted.

The NHRC has directed that a copy of the news story be sent to the Chief Secretary, Karnataka and Secretary, Department of Women and Child Development, New Delhi to look into the allegations and submit their comments within two weeks.

¹⁷ Pramila H. Bhargava, The Elimination of Child Labour, Whose Responsibility. A Practical Workbook, 2003.

The mines in Karnataka and Andhra Pradesh discussed here are not the only ones in which children are employed. The question addressed to the Minister of Labour was about children employed in mining in Rajasthan. Clearly, despite all legal provisions children continue to work in mines and it is time we addressed this issue with the seriousness it deserves.

Zari and Embroidery Work

It is well known that the zari industry thrives on child labour. This is not a new area in which child labour has suddenly been employed. In fact the zari workers of Varanasi have traditionally trained their children and initiated them into the intricacies of zari weaving. However, recognising that it is harmful for children, it has been included in the schedule of prohibited occupations under the Child Labour Act. However, what is of greater concern is the spread of this industry into other areas as well. Children are trafficked from villages of Bihar and Bengal, brought to Delhi and other cities and towns where they are engaged in zari and embroidery work. Even Shahpur Jat, the village in which HAQ's office is located, has at least a 100 such workshops. It is not that the children or their employers are not aware that it is illegal to employ children because as soon as we visited the workshops the children dropped the needles and pretended to be doing something else. The police, too, are aware of their existence but do little to apprehend the employers. They are all together in 'a friendly partnership'. Surely, that children continue to be employed in the zari industry is no secret. So when the Union Textiles Minister Shri Shanker Singh Vaghela, announced on the floor of the Parliament (in his reply to Lok Sabha Unstarred Question 2347, 23 July 2004) that no incidence of employment of children under age of 14 in the Zari industry has been reported to the government, it is a matter of shock and surprise. Little wonder that existence of child labour continues unabated in India!

Domestic Work

About 20 years ago, a young girl named "Nandi" (that was not her name, but the name given to her to protect her) was rescued from Cuttack, Orissa, where she had been branded by hot iron knives by her "uncle" whose house she lived in. While escaping from her employers, she unknowingly hid in the garden of a retired Judge. That is what saved her, because her relative cum employer was a policeman! She was placed in S.O.S Children's Villages. Today she is a self assured trained beauty therapist, but the scars on her back remain and her mind has not been able to completely blank out the nightmare that she lived through so long ago. Even today she recalls

Child Labour in Zari Industries of Varanasi

The honourable minister denied the existence of child labour in the zari industry in reply to a question raised by an MP (Lok Sabha Unstarred Question 2347, 23 July 2004). Need we remind him that even as per an ongoing base line survey conducted by Labour Department in Varanasi, in eight blocks and urban slums- Chirai gaon, Cholapur, Araji Line, Kashi Vidya Peeth, Seva Puri, Haraouah, Bada Gaon, and Tindra – there are 2,200 children working in the Zari / Zardozi sector. This base line was carried out with the help of 32 NGOs.

According to the Basic Education Department there are about 3,000 out of school children in Varanasi, whom they would consider as child labourers. However, the labour department feels that the number is higher and therefore plans to extend the NCLP scheme till 2007. There are forty NCLP schools in the areas where Zari and Zardozi work takes place. These NCLP schools accommodate 2,000 child labourers released from this sector.

32 NGOs are engaged in the government's programme on Elimination of Child Labour. This information comes from one such NGO, Human Welfare Association, headed by Dr. Rajnikant based in Saranath, Varanasi.

Percentage of Domestic Working Children

Shri N P Durga (TDP) asked:

- The percentage of children below the age of 14 working as domestic workers in the country;
- The cases of violence, abused and ill treatment of child labour reported during the last one year; and
- Whether government proposed to regulate the domestic labour to ensure their human rights?

Shri Sis Ram Ola, Minister of Labour and Employment answered:

- Separate data on domestic child labour is not available.
- The Child Labour (Prohibition and Regulation) Act, 1986 does not cover the issue of violence, abuse and ill treatment, hence, the information on these issues is not maintained by the Ministry of Labour.
- Domestic workers are a part of the large unorganised sector. Government feels that a separate legislation to regulate domestic workers is not necessary at this stage.

Source: Lok Sabha Unstarred Question 450, 15 July 2004

Sunita (12) was allegedly beaten, harassed and even poked with red-hot knives by her employers. She suffered this for months as a domestic servant before she made a dramatic escape on Saturday night from an apartment in the city's Krishnarajapuram area. Sunita (name changed to protect identity) climbed down from the third floor of her employer's apartment. Hanging onto the pipes at the rear of the building, she crept down. Down below, a tea vendor, Raju, gave her refuge and food for the night. Sunday morning, Sunita's tale of woes shook the neighbourhood.

She used to be beaten even for small matters. The employers used to heat spoons and knives and poke her with them. She had burn scars on her face and arms. Incidentally, her employers were a doctor and his software engineer wife. She was reportedly hired to look after an infant. Questioned by the Concern India Foundation volunteers, the employers branded the girl as mentally disabled. The doctor's wife said the girl was mad and violent and that they had spent about Rs. 20,000 on her medicines.

Source: Rasheed Kappan, The Hindu, April 04, 2005, Monday

it with the same vividness and pain that she had experienced then. Not much seems to have changed in the situation of domestic child workers in these two decades. Every other day there are reports of child domestic workers being beaten, branded or even killed. Impregnable middle class walls muffle their screams.

The employment of children in domestic work continues, allowed by law and sanctioned by the middle class families who pay less, feed less, get longer hours of work and beat them to silence. "If we do not employ them, they will starve" is the argument. "At least here they get food to eat and have a roof over their heads." So, little children carrying the school bags of children their own size continues to be an acceptable sight, which no one need bother their conscience over. In fact, in their minds, society is doing these 'poor children' a good turn by keeping them in their homes! After all the children of the poor must work, that is their fate determined by their birth.

Delhi court acts to curb abuse of child domestics

The court questions the city's social welfare department about rules to regulate the functioning of dubious placement agencies that pick up street children and turn them into child labourers

In a move that could bring some relief to children working as domestic help in the capital's households, the Delhi High Court has asked child welfare committees to answer to complaints about child abuse, including sexual abuse, of working children. In response to a criminal writ petition, in which the petitioner sought to trace a child missing since 2002, a division bench comprising judges T S Thakur and J P Singh asked the committees to inform the court about the nature of the allegations and the action taken by them so far.

The bench also summoned the secretary of the social welfare department to appear before it, on October 25, 2004, to inform the court as to whether any rules had been framed, or could be framed, to regulate the functioning of placement agencies dealing with domestic child labour, and to check child abuse.

Aparna Bhatt, the petitioner acting on behalf of the missing child, Kalpana Pandit, also sought the regulation of placement agencies allegedly engaged in picking up street children and placing them as domestic help. These children are often later shifted to hazardous jobs or, worse, into child prostitution. Bhatt said the absence of regulatory control over the functioning of the agencies, which are commercially run, defeated the very spirit of the Juvenile Justice (Care and Prevention of Children) Act, 2000.

She added that the child welfare committees had received a number of complaints regarding the abuse of children working as domestic help. Verification of complaints had proved that the children were subjected to various forms of abuse, including sexual abuse.

Source: Indo-Asian News Service, October 10, 2004

Atrocities on child labourers on the rise

IN WESTERN ORISSA, THE PRADEEP KASHI...
...8-year old Prashant to sit on a hot heater that a beast even can't bear. Puspalata beat him at sensitive areas and threw rice gruel at him more often than not. Eventually, the Rani and her husband were arrested by police. In yet another case recently, 10-year old Banita sustained severe injuries when a couple, both bank employees, allegedly beat her with a bamboo stick for not properly washing their child's clothes. This is the situation of some 40 lakh child labourers in...

One of the classic examples of the ongoing exploitative child labour is the case of 8-year old Narsima Begum. Three weeks ago, Narsima Begum was tortured by a hot iron rod by her employer couple at Palla in Bhadrak district, about 100 kilometers from here. The girl's father, S K Jayul is a rickshaw puller. He had...



Children in the precious stone industry

India is the world's largest precious stone-cutting centre. Seventy per cent of global diamond production was handled in India in 1995. The diamond industry is concentrated in Mumbai and Surat (Gujarat), and the orders are subcontracted out to numerous small workshops. The industry employs some 800,000 workers, only one per cent of whom are children.

India also cuts precious stones such as emeralds, rubies and sapphires, semi-precious stones (lapis lazuli and turquoise) and synthetic stones. This sector is the speciality of the cities of Jaipur (Rajasthan) and Trichy (Tamil Nadu). In this sector, unlike the diamond industry, children aged six to 14 represent as much as "40 per cent of the labour force," estimates Yamina de Laet of the International Chemical, Energy and Mine Workers' Federation (ICEM).

The children are taken on at the age of five or six and are not paid until they reach the end of their two-year apprenticeship. According to a survey carried out in India in 1997 by the Universal Alliance of Diamond Workers (UADW), the children's wages are three times lower than the adults'. They earn only 150 to 200 rupees (2.70 to 3.60 euros) compared to the 500 to 600 rupees (9 to 10 euros) paid to adults. Although low, this salary may make up as much as 40 per cent of their family's income.

The children work in small workshops, crouched in the same position for ten to 12 hours a day, piercing, cutting and polishing stones. They suffer from back problems. Their sight is affected by the poor lighting, and their fingers are damaged by the splinters of stone and the polishing discs. Any at-



tempts to organise are severely repressed, and work is increasingly subcontracted out to home workers in order to circumvent labour laws.

AN INTERNATIONAL ETHICAL LABEL

The ICFTU launched a public campaign in 1997, following a survey of child labour in the stone-cutting industry. It led to two diamond multinationals, De Beers and Rio Tinto, adopting internal codes of conduct intended to guarantee the absence of child labour. But child labour remains present both in the extraction of diamonds (in African diamond mines, such as in Sier-

ra Leone or Congo) and in the processing of diamonds (in India and Thailand).

In response, ICEM, in partnership with the NGO Global Witness and the Belgian Federation of Diamond Bourses, will launch an ethical label in 2005, which will require the diamond industry to commit to five criteria: Corruption-free, Clean (no money laundering), Child labour-free, Conflict-free and Compliance with social standard SA 8000. The initiative has been dubbed "The Fifth C", as it adds an ethical criterion to the industry's four professional criteria, which all begin with "C" (Cut, Clarity, Carat and Colour). ●

Table 2: State-wise Distribution of Working Children in the Age Group 5-14 years according to 2001 Census

SL. No.	Name of the State	2001 Census
1	Andhra Pradesh	1363339
2	Assam	351416
3	Bihar	1117500
4	Gujarat	485530
5	Haryana	253491
6	Himachal Pradesh	107774
7	Jammu & Kashmir	175630
8	Karnataka	822615
9	Kerala	26156
10	Madhya Pradesh	1065259
11	Maharashtra	764075
12	Chhattisgarh	364572
13	Manipur	
14	Meghalaya	53940
15	Jharkhand	407200
16	Uttaranchal	70183
17	Nagaland	
18	Orissa	377594
19	Punjab	177268
20	Rajasthan	1262570
21	Sikkim	16457
22	Tamil Nadu	418801
23	Tripura	21756
24	Uttar Pradesh	1927997
25	West Bengal	857087
26	Andaman & Nicobar Island	1960
27	Arunachal Pradesh	18482
28	Chandigarh	3779
29	Dadra & Nagar Haveli	4274
30	Delhi	41899
31	Daman and Diu	729
32	Goa	4138
33	Lakshadweep	27
34	Mizoram	26265
35	Pondicherry	1904
36	Total	12591667

Source: RGI and Census Commissioner 2001. Rajya Sabha Question 2467, 26 August 2004

organising public hearings, holding rallies and marches and even going to court. Both the Campaign Against Child Labour and Save the Children UK-India¹⁸ have concentrated on this issue.

Data on Child Labour

Access to government data relating specifically to child labour is difficult. Latest figures on child labour cannot be found either in the Labour Ministry's own website or its Annual Reports. What is available is the information that can be derived

18. Child Domestic Work: A Violation of Human Rights. Study designed and edited by D. Lakshmi Rani and Manabendranath Roy. Study conducted by Socio Legal Information Centre. Save the Children UK India Programme, New Delhi, 2005.



Although, there is growing evidence that domestic work is one of the most “hazardous” sectors of employment, it continues to remain outside the list of prohibited occupations and processes listed out in the Child Labour Act. It is precisely because of the silent acquiescence that shrouds this issue that the government has so little information regarding it. The government’s apathy on this issue is clear from the response of the honourable Union Minister of Labour and Employment to a question on violence, abuse and ill treatment of domestic child labour. (Rajya Sabha Unstarred Question 450, 15 July 2004).

Recognising the need to address the situation of children in domestic work, activists have been drawing attention to it by

from the Census of India 2001 in its tables on 'Workers by Educational Level, Age and Sex', under which one category is 5-14 years. The collection of information is by the same categories and criterion that is applicable to adults. No information on children less than 5 years who may be employed, and are known to be so, is available. Therefore, like adults, child workers in the 5-14 age group are also categorised as Main Workers and Marginal Workers. It was using this information that the government too responds to queries on child labour. Table 2 shows the data presented by Shri Sis Ram Singh Ola, Minister of the Labour and Employment, in response to Rajya Sabha Question 2467, 26 August 2004 by Dr. Narayan Singh Manaklao (BJP).

Table 3: State-wise Statistics (Provisional) Child Labour (Prohibition & Regulation) Act 1986 for the year: 2003 up to 31.5.2003

S. No.	States/UTs	Prosecution	Convictions	Acquittals under the Act.
1.	Andhra Pradesh	563	0	0
2.	Andaman & Nicobar U.T.	0	0	0
3.	Arunachal Pradesh	0	0	0
4.	Assam	0	0	0
5.	Bihar	354	0	0
6.	Chandigarh U.T.	0	0	0
7.	Dadra & Nagar H. U.T.	0	0	0
8.	Daman & Diu U.T.	0	0	0
9.	Delhi U.T.	36	0	0
10.	Goa	0	4	3
11.	Gujarat	7	3	5
12.	Haryana	11	23	0
13.	Himachal Pradesh	3	3	0
14.	Karnataka	300	56	0
15.	Kerala	1	1	0
16.	Lakshadweep U.T.	0	0	0
17.	Madhya Pradesh	35	17	1681
18.	Maharashtra	0	0	0
19.	Manipur	0	0	0
20.	Meghalaya	0	0	0
21.	Mizoram	0	0	0
22.	Nagaland	0	0	0
23.	Orissa	1	0	20
24.	Pondicherry U.T.	0	0	0
25.	Punjab	0	0	0
26.	Rajasthan	55	57	92
27.	Sikkim	0	0	0
28.	Tamil Nadu	808	127	48
29.	Tripura	0	0	0
30.	Uttar Pradesh	321	23	171
31.	Uttaranchal	3	4	13
32.	West Bengal	6	0	17
33.	Total	2504	318	2050

Based on reports received from States and Union Territories. 0 = Nil information reported by States / UTs.

Source : Rajya Sabha Unstarred Question 313, Parliament of India, Winter Session 2003.

The National Crime Records Bureau regularly provides statistics on crimes against children through its publication, Crime In India, including crimes registered under Special and Local Legislations. However, illegal employment of children or any other information related to it is not included. Clearly, child labour is not perceived as a crime against children and humanity. Sheela Ramanathan in an article questioning the ethics of a journalism that endorses child labour quotes a newspaper report informing that by August 2000 the enforcement wing of the Labour ministry was unable to get a single offender sentenced to jail out of the 3,488 prosecutions and 1426 convictions against employers violating the Child Labour (Prohibition & Regulation) Act 1986 (CLPRA).¹⁹ The last time information on prosecutions and convictions under CLPRA could be accessed was through the response of the Labour Minister to a question raised in the Parliament in 2004.

The data on prosecutions, convictions and acquittals is truly revealing in its lack of information. It must be read with data provided in Table 2, which gives us the government's statistics on the number of child labour in the country. That there should have been no or such few prosecutions in states where the government acknowledges the existence of child labour, is itself truly revealing regarding the efficacy of the act.

Conclusion

At one point of time, in the history of child rights movement in India, child labour was the only child rights issue understood and taken up by both the government and the civil society organisations. Despite more and more NCLP projects and increased partnership with ILO-IPEC there seems to be no real change. The situation continues to look grim, especially in view of the free trade policies in a globalised, liberalised and privatised global economy wherein ensuring the rights of working children rather than 'elimination of child labour' seems to have become the call for the day for government and many international and even national organisations. Indeed 'elimination of child labour' almost sounds like killing all children in the labour force, and the call for 'eradication of child labour' like any other harm reduction strategy, in this case, to reduce risks and regulate working conditions of children. Finally, this harm reduction strategy becomes a thrust area in itself and overtakes the larger rights-based mandate to ensure all children all rights in all situations, thereby resulting in the continuation of exploitation of children in many areas of work.

As mentioned above, the Child Labour (Prohibition and Regulation) Act 1986, follows this trend making a distinction between prohibited and regulated (hazardous and non-hazardous) occupations. As a result, children in occupations such as domestic work, in hotels and dhabas, tailoring and sweatshops, wherein they fall prey to exploitation and abuse, continue to remain unprotected. This distinction is not peculiar to the Indian law. The Common Minimum Programme of the UPA government too makes this fallacious distinction between hazardous and non-hazardous work. So there is little hope for change in the near future. The UNCRC too makes this distinction, as does the ILO Convention 182, which refers to worst forms of labour. Several international agencies too, have accepted this distinction and intervene to protect children only from what is perceived as harmful work. They do not make a distinction between child work and child labour to distinguish between harmful and non-harmful forms of work, but instead use the term 'child work' to refer to all forms of child work, explicitly identifying different degrees of harm where necessary. Thus, the unpaid agricultural work of many girls and boys on family-run farms, and the domestic tasks done by many children in their own homes, are included in this definition.²⁰ And yet, in all such situations, children are economically exploited.

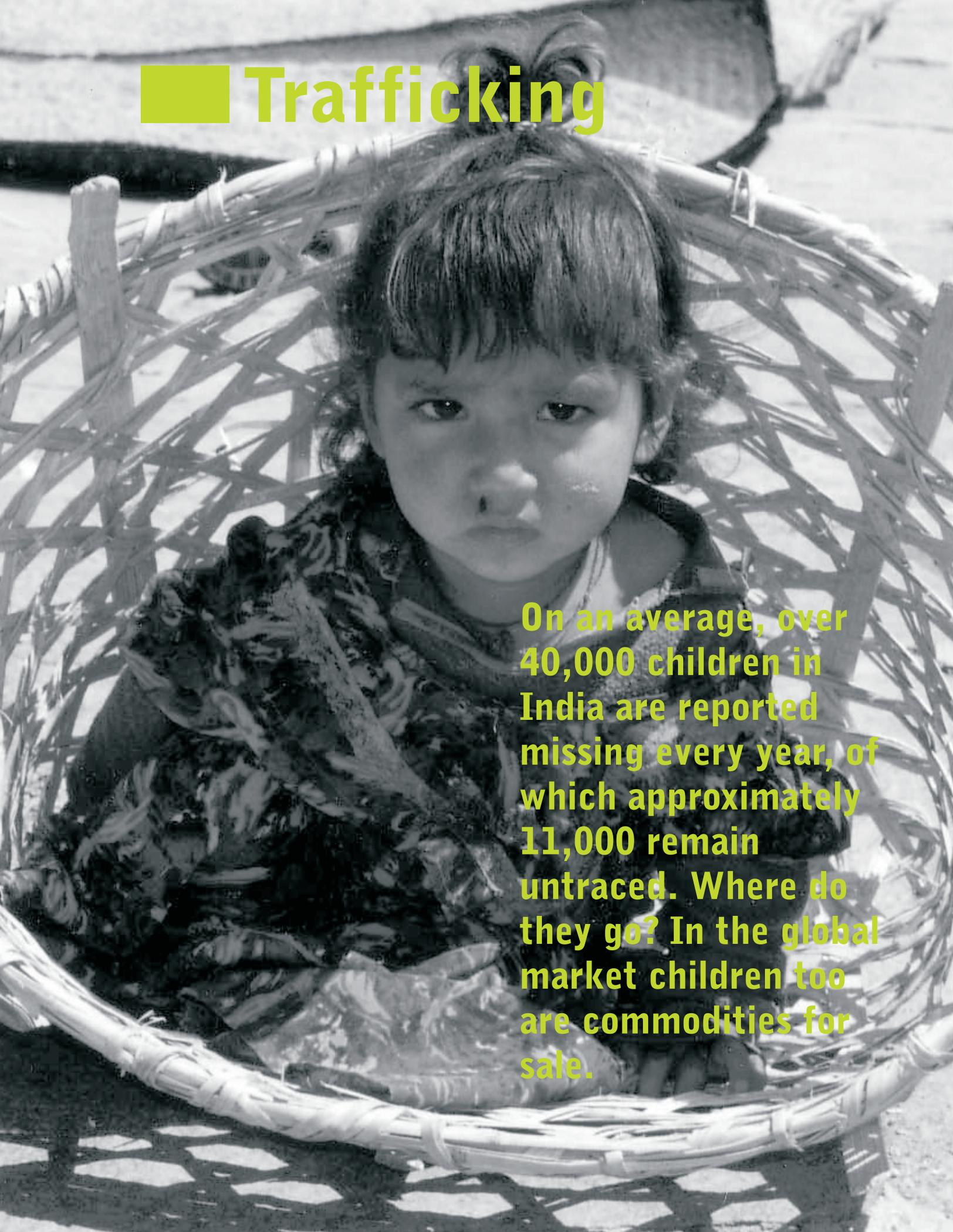
However, this broad based understanding leads to ambiguities that get reflected not only in the formulations of laws and policies, but also in the nature of the data that gets collected, or more relevantly the inadequate information that is available.

At the same time there are also agencies and groups that make the argument that any form of work that children are engaged in for economic gain and which denies them their basic rights is child labour. Indeed many such groups identify all children who are out of school as child labour, because even if they are not working today, they are potential child labourers. What must also be recognised, especially in the light of the 86th Amendment to the Indian Constitution, that

19. http://www.lawyerscollective.org/lc-mag/free_downloads/magazine2000/August_2000/comments.htm

20. International Save the Children Alliance. Save the Children's position on Children and Work. www.savethechildren.net

allowing the continuation of child labour contradicts the promise of Fundamental Right to Education for all children in the 6-14 year age group. How can a child realise this fundamental right to education, if she/he is simultaneously asked to continue to be made responsible for earning a living? Recognising this, groups across the country have initiated a campaign to amend the existing 'Child Labour (Prohibition and Regulation) Act, 1986', to ensure that all forms of labour are prohibited and every child can be in school. As we move towards a global economy and to becoming an economic superpower, we must be able to guarantee all our children an equal opportunity to participate in the economic growth of the nation, which only equal and compulsory access to education can ensure. Only then will they be able to participate equally in the democratic governance of this country as future informed adult citizens.



■ Trafficking

On an average, over 40,000 children in India are reported missing every year, of which approximately 11,000 remain untraced. Where do they go? In the global market children too are commodities for sale.



Trafficking of humans – men, women and children is not a new phenomenon. However, over the last few decades the growing numbers of people being trafficked, and the myriad forms it has begun to take, has been calling for much greater attention. Historically, the term trafficking in human beings was associated with slavery and indentured labour. Slowly human trafficking became almost synonymous with prostitution or commercial sexual exploitation as it is now referred to, that too towards what came to be better known as “white slave trade”, which was trafficking of white women for prostitution. This understanding has slowly been extended to the rest of the world. Therefore, it is not surprising that the only form of trafficking on which targeted intervention has been made by most civil society groups, governments and international bodies is the trafficking of women and girls for commercial sexual exploitation (prostitution).

Violence against children, sexual abuse, child marriage and also children being forced into prostitution is not new and has also received attention. Therefore instances of adolescent girls sold in marriage continues to be seen as a problem of child marriage and bringing of children as cheap domestic labour for middle class homes or industry as that of child labour. Over the last four years, some understanding and awareness on this issue has been created. Activists and even governments are waking up to the large scale trafficking of children for myriad purposes, within and across countries.

Over the last four years, some understanding and awareness on this issue has been created. Activists and even governments are waking up to the large scale trafficking of children for myriad purposes, within and across countries.

In the last status report on children,¹ we had examined the concept of child trafficking and its various forms and purposes as they exist in the country. Since then, reports from newspapers and partners in CACT (the Campaign Against Child Trafficking)² have reinforced the need to examine and address this problem even further.

In the two years since the last report, trafficking for marriage, labour, circus and adoption seem to have emerged as areas to be taken particular note of. In addition to trafficking for sexual purposes, these four forms of trafficking have drawn specific attention from the media too. This report therefore looks at each of these four forms of child trafficking in some detail. In addition, it also delves into some other emerging areas of concern and ongoing discussions amongst people and agencies engaged in anti-trafficking interventions. As there has not been much change in the law and policy framework since the last report, this one will present some highlights on the implementation of existing laws and other mechanisms and share some of the new and forthcoming legal, policy and programmatic measures proposed to be undertaken by the Government of India.

Child Trafficking – Recognition and Understanding

From a point when there was a very limited understanding of human trafficking, today India has moved to a situation where the issue is being recognised as an organised crime requiring a comprehensive and holistic approach. The last five years have witnessed a lot of struggle on the part of civil society groups in India to understand and define human trafficking and advocate with the Government for appropriate law and policy to deal with it.

The definition of human trafficking as laid out in the United Nation’s Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, has come to be accepted globally. Also known as the Palermo Protocol, it is gradually receiving more and more signatures from the various UN Member States and in the absence of any other international definition of human trafficking so far, organisations are using and adapting it to arrive at a working definition for their anti-trafficking initiatives.

Recognising the vulnerability of children, international organisations like the International Terre des Homes Federation and its various European Chapters, Save the Children, UNICEF and national networks like the Campaign Against Child Trafficking have particularly focussed on child trafficking. While each of these groups

¹ Children in Globalising India: Challenging our Conscience. HAQ: Centre for Child Rights, 2002, New Delhi.

² CACT is a national campaign with chapters in 17 states of India. The National Secretariat is housed by HAQ: Centre for Child Rights, New Delhi.

have established their working definition of child trafficking, the one that adds to the Palermo Protocol, extending the definition to both cross-border and internal trafficking is by the Campaign Against Child Trafficking in India.

Campaign Against Child Trafficking defines child trafficking as :

“...the recruitment, transportation, transfer, harbouring or receipt of persons up to the age of 18 years, legally or illegally, within or across borders by means of threat or use of force or other forms of coercion, of abduction, of deception, of the abuse of power or of position of vulnerability or, of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, with the intention or knowledge that it might lead to exploitation”.

(Adapted from the definition of trafficking in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children).

Child trafficking has different faces:

- Sexual Exploitation – Forced prostitution; socially and religiously sanctified forms of prostitution; sex tourism and pornography
- Illegal Activities – Begging; Organ trade; Armed Conflicts, Drug peddling and smuggling
- Labour – Bonded labour; Domestic work; Agricultural labour; Construction work; Carpet industry, garment industry, fish/shrimp export as well as other sites of work in the formal and informal economy
- Adoption
- For and through marriage
- Entertainment and Sports



Magnitude of the Problem

The biggest challenge to any intervention on child trafficking remains the lack of a holistic understanding and awareness of the problem. Because of this lack of understanding, there are no reliable estimates of the magnitude or a comprehensive legal framework. In fact there is no definition of the term “trafficking” in the Indian Law. The last national level field-based research providing trafficking related data was by the Central Social Welfare Board in 1991, and it was confined to trafficking for prostitution. Since then several micro research studies have been undertaken by NGOs and INGOs in India, once again, focused primarily on trafficking for prostitution.

In this scenario the major study undertaken by the National Human Rights Commission (NHRC)³ has been a very important milestone. The NHRC report, based on both field research and literature review, is a welcome step in as much as it goes beyond trafficking for prostitution and talks about trafficking of both women and children (boys and girls) for various purposes including labour, camel jockeying, adoption etc.

The National Crime Records Bureau⁴ records 171 cases reported on procurement of minor girls, 24 on buying of girls for prostitution, 36 on selling of girls for prostitution, 46 for importation of girls and 722 on exposure and abandonment.

A further study of the data put out by them also shows that although not identified as trafficking by the Bureau, there are 2571 cases of kidnapping and abduction in 2003 which actually amount to a case of child trafficking. Of these 1369 were for kidnapping and abduction

³ A Report on Trafficking in Women and Children, 2002-2003. NHRC, UNIFEM and ISS Project.

⁴ Crime in India 2003, National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India.

for the purpose of marriage, 383 for illicit intercourse, 58 for prostitution, 109 for unlawful activity, 21 for adoption, 13 for sale, 6 for begging and 6 for slavery. While 48 cases involving juveniles were reported under the Immoral Traffic (Prevention) Act, cases of juvenile delinquency under the Narcotic Drugs and Psychotropic Substance Abuse Act were 62. While reflecting on juvenile delinquency, these cases also shed light on treatment of children as criminals than as victims of trafficking.⁵

“It is bewildering to note that in India, on an average, 44,476 children go missing every year and that out of these, 11,008 children remain untraced annually”, says NHRC report. This report also indicates that many of the missing persons are not really missing but are instead trafficked.⁶ According to ILO estimates, 15 per cent of the country’s estimated 2.3 million prostitutes are children.⁷ While some may be children of sex workers, who have also been sucked into the trade, needless to say most of them are also trafficked. A survey undertaken by Bhoomika Vihar, a NGO based in Kishan Ganj, Bihar estimates that more than 25000 girls have been trafficked in the Kosi Mahananda Region for marriage.⁸

Trafficking for Domestic Labour

The fallacious and weak Child Labour (Prohibition and Regulation) Act, 1986 leaves a lot of scope for trafficking of children for labour, especially in those occupations that are not listed as ‘hazardous’, including domestic work. Most of the children who are trafficked as domestic labour face the threat of not only physical maltreatment and abuse, but also sexual exploitation. According to the Human Rights Law Network (HRLN), there are over 1.5 million domestic workers in India. While precise enumeration of child domestic workers in India is not available, UNICEF’s State of World’s Children Report, 1997 reports that 17 per cent of domestic workers are under 15 years old and that girls in the 12 to 15 years age group were the preferred choice of 90 per cent of employing households. The situation has worsened since then, as more and more children are being trafficked for domestic labour and “placed” to work at homes. The traffickers have become more organised and the recruitment of trafficked victims is more systematic now through the “placement agencies”.

Lack of systematic and reliable data on child domestic workers can be traced to the fact that child domestic work does not get covered under any of the labour laws in the country; the Child Labour (Prohibition and Regulation) Act does not recognise child domestic work as hazardous or non-hazardous occupation; these children have no right to workers’ compensation, weekly holidays and minimum wages in any law whatsoever; and, there is no licensing of ‘placement agents/agencies’ or other measures to check these operations on a regular basis.

For a few dollars more
 A 11-year-old girl, Marina Khatun, faces a bleak future. She is physically deformed, slow in her mental faculties and unlettered. Compounding her misery is the fact that her family, located in West Bengal's Murshidabad district bordering Bangladesh, is poor and cannot overcome her needs because there are other children in whom making an investment makes some sense.

Kolkata is a major transit point for children being transported to the Gulf to work as beggars and camel jockeys, says

Bonded labourers rescued in Haryana

Seven children rescued from zari factory, owners wanted

13 rescued from zari units

The routes of child trafficking

Graphics by Varghese Kallada

Savita, 10, was made to sleep on the floor in winter with no warm bedding. Rabia, 15, was sexually abused, both by her employer and his driver. Raji, 10, is a domestic worker in a Delhi household. She is beaten with a broom every time she makes a small mistake. Rashida's employer hit her so hard with a spoon that her front teeth broke.

Source: (The Dark Side of Indian Homes, November 2004 www.indiatogether.org /2004)

5 Crime in India 2003, National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India.
 6 NHRC, UNIFEM and ISS Project, A Report on Trafficking in Women and Children 2002-2003, Volume 1, Chapter 14 pp 203-217. & Kaul Malvika, Young flesh in the trade, October 2004, New Delhi (WFS) <http://www.indiatogether.org/2004/oct/hrt-traffic.htm>
 7 US Dept. of State, Human Rights Report, 1999.
 8 Bhoomika Vihar, Bojh the Burden, 2004.

The Child Welfare Committee (CWC) in Nirmal Chhaya, Tihar Jail Complex, Delhi (established under the Juvenile Justice (Care and Protection) Act 2000), has expressed serious concern on the increase in trafficking of children and states that in most such cases produced before it children are found to be trafficked for domestic labour. The CWC has even written to the Police Commissioner of Delhi in this regard.

Recognising the gravity of the problem a Public Interest Litigation (PIL) in the Supreme Court was filed in 2002.⁹ The PIL challenged the inadequate social and legal protection extended to this section of society, demanding better working conditions like mandatory national holidays and two weeks of paid leave, in addition to weekly off for workers. Also, it sought medical assistance for accidents caused 'on-site' and during employment. Maternity benefits, provident fund benefits as well as a proposal to issue identity cards to the workers were called for.

However, the problem that remains in these PILs is the relegation of child trafficking to a collateral position with the main issue being the placement agencies and betterment of the employers working conditions. The root cause of how children are trafficked by the placement agencies and the touts that they employ for the transportation of these children thus remains unaddressed.

Trafficking for Marriage

Young girls being sold and bought for marriage is not a new phenomenon. Reports of girls being bought by Arab Sheikhs, or poor girls being sold into marriage, thereby saving dowry, have dominated the media for sometime now. It is also perhaps quite well known that not all trafficking that happens in the name of 'marriage' is for the purpose of marriage. Marriage may also be a means to get young girls into prostitution or for labour. Organisations working in the Balasore district of Orissa have reported an increasing trend of girls belonging to poor families being lured by middlemen to Eastern Uttar Pradesh with promises of a good dowry-less marriage. Inevitably, the aspiring grooms are already married or old. These girls are forced to work as agricultural labourers during the day and cater sexually not only to their husbands but to others too at night.

What is new is the linkage between falling sex ratio and increase in child trafficking for marriage. While in the low female sex ratio states, sex selective abortions or foeticide continues unabated, trafficking of girls has seen a marked increase.

The fact that the falling sex ratio has led to trafficking of girls for marriage is one example of the 'demand' dimension of trafficking. Trafficking and bartering of childhood will continue as long as there is a 'demand' side to their exploitation. These demand factors keep on evolving in the consumerist global market, where more and more children are treated as commodities.



Due to demographic imbalance in Haryana – about 850 girls to every 1000 boys- there is a shortage of women in many villages. So the easy way out is to buy girls from other regions through a network of touts who help the men – young, old and widowed – to find women from states like West Bengal, Assam and Bihar. Women come cheap. Many of them are bought for prices cheaper than buffaloes. A healthy looking minor, on the other hand, can fetch Rs.10,000 to her seller."

Source: Sahara Times. New Delhi 15 November 2003

A number of illegally bought and sold girls in the Mewat area of Haryana is estimated at 5000 in the past few years

Source: Tribune, 8 April, 2004

⁹ National Domestic Workers Welfare Trust & Ors. v. Union of India & Ors. Writ Petition 160 of 2003 (This petition was filed by the Human Rights Law Network (HRLN) on behalf of the National Domestic Workers Welfare Trust, SETU (a project of Nirmala Niketan, College of Social Work) and Youth for Unity and Voluntary organisation (YUVA), two NGOs based in Mumbai).

Trafficking for Entertainment in the Circus Industry

Circuses have been a source of entertainment in India and the world for children and adults for generations. A few years ago they came into controversy, led by animal rights activist and the former Union Minister for Social Justice and Empowerment, Mrs. Maneka Gandhi, for using animals for entertainment. In October 1998, Mrs. Maneka Gandhi banned the use of bears, monkeys, tigers, lions and panthers in circuses.¹⁰ In 2000, a Supreme Court ruling¹¹ banned the Circus Federation of India from using these animals in their shows. It also banned exhibition and training of endangered animals. However, little thought was given to the human performers – where did they come from, how were they recruited, how were they treated?

In the last couple of years the close link between child trafficking and the circus industry has become quite clear. The first ever survey of the problem commenced in July 2002, with the commissioning of a study by an NGO, the South Asian Coalition against Child Servitude (SACCS).¹² While, till a few years ago, the circus troops consisted largely of Indians, particularly from Kerala, over the last decade, performers from Nepal have been brought in.¹³

The study undertaken¹⁴ shows that the Indian circus industry today exhibits a higher child: adult ratio amongst its workers than in most other industries, with children often outnumbering adults. The circus management is eager to “contract” young children, as it is easy to train them given their greater physical flexibility (e.g. for gymnastics) and they are less likely to rebel against management decisions. Younger children are especially cost effective as they can be held for longer contract periods (5 to 7 years) before they reach their mid teens when their services are often no longer required. Most of these child performers in the circuses are trafficked children from impoverished communities. In addition to the activities of professional agents, often the children’s relatives or neighbours and friends act as agents by concocting fictitious offers, contacting recruiters and brokers, or simply luring them away from homes and contracting them directly to circuses or brothels. Usually a group of young girls are smuggled across the border from Nepal by both male and female traffickers, and then contracted to the circuses for 5 to 7 years depending upon their age. Agents may pay parents an up front amount of cash (approximately 2000 rupees - £25) with the promise of continued income during the period of the contract (500 – 1000 rupees - £6 - £12). This salary may or may not be forthcoming in the end. In some instances it is clear that the arrangement is lucrative for the family.

Lok Sabha Matters under Rule 377, 8 December 2004

Qs. Where do we stand in terms of international standards of protection and rehabilitation of victims of trafficking?

Ans. by Shri Abdullakutty, a Parliamentarian (CPI-M) – “circus is a harmonious blend of both sports and entertainment. Yet this industry is left to fend for itself and is moving towards extinction for various reasons. Child labour laws and Indian Wildlife Act provisions in India have turned out to be too stringent for circus industry. This has to be looked into. I, therefore, urge the Government to encourage the circus industry by giving it a status at par with sports and entertainment.

Trafficking for Adoption

There are 44 million destitute children in India and 12.44 million orphans.¹⁵ The official number of adoptions (in-country and inter-country) is only around 5000 a year,¹⁶ of which about 20 per cent were inter-country adoptions in the year 2004 (1021 children placed in inter-country adoptions in 2004).¹⁷ Even the Central Adoption Resource Agency (CARA) admits that there are reports of delays, excessive adoption charges and huge donations given to Indian agencies and of course illegal practices including buying and selling of infants for adoption.¹⁸

Adoption rackets responsible for sale of infants have been in news for quite some time now. While many states have reported such incidents, until a few years ago Andhra Pradesh was most in the news for buying and selling infants for

10 <http://www.petaindia.com/circuses.html>

11 Balakrishnan vs. Union of India AIR 1987 SC 2386 (<http://www.elaw.org/resources/text.asp?id=1370>).

12 Sudhar, Newsletter for Child Welfare Scheme, Issue No. 3 February 2003 (<http://www.childwelfarescheme.org/news/sudhar/sudhar3.pdf>).

13 <http://www.bbasaccs.org/circus3.php>

14 *ibid.*

15 Child Adoption : Statistics (<http://www.indianngos.com/issue/child/adoption/statistics/>).

16 *ibid.*

17 As per records available with CARA, the number of children placed in inter-country adoption (foreign as well as NRI) through its recognised Placement Homes is as follows: 1364 in the year 2000, 1298 in 2001, 1066 in 2002, 1024 in 2003 and 1021 in 2004 (<http://www.cara.nic.in/carahome.html>).

18 Indian adoptions run into problems (<http://www.familyhelper.net/newscy.html#india>).

- Abandoned babies in government hospitals / private nursing homes.
- Stolen babies from government hospitals
- Children stolen, kidnapped and supplied through agents from poor households or bus stands, railway stations etc.
- Government of Tamil Nadu Cradle Baby Scheme
- Orphanages and children's homes
- Surrender of babies by unwed mothers/ parents who want to reject the baby due to maintenance of other children
- Shelters run by adoption agencies / half way homes for deserted or unwed mothers and young girls
- Transfer of babies from one adoption agency to another, the first having direct dealings with the baby runners and sometimes no license

The existing laws, policies, rules and regulations concerning adoptions contain several loopholes that get used to the advantage of people and agencies trading in infants. There is an urgent need to re-look at these mechanisms and take necessary action. With the Juvenile Justice law of the country also allowing adoptions now, it has become all the more necessary to take immediate steps to check trafficking of children for adoption.

The existing laws, policies, rules and regulations concerning adoptions contain several loopholes that get used to the advantage of people and agencies trading in infants.

In addition to adoption rackets there are many unofficial and illegal adoptions by individuals that seldom come to notice. Of late Tamil Nadu too has gained a notorious image for both organised adoption rackets as well as illegal adoptions by individuals.

Some Concerns and Ongoing Discourse

For those working against trafficking in human beings, some issues have emerged as critical areas of concern in the last few years. These include:

- The linkage between migration and trafficking
- HIV/AIDS and trafficking
- Community Rehabilitation
- Re-trafficking of victims
- Victim protection and witness assistance
- Prosecution of offenders

Migration and Trafficking

With globalisation and privatisation, displacement, conflict and natural calamities, and shrinking employment opportunities for adults, migration is inevitable. Over the years, migration has come to be recognised as a situation that renders migrating populations vulnerable to trafficking. Interventions are being made in the region by UN and bilateral agencies and other international organisations to prevent trafficking by addressing such situations. For instance, the International Organisation for Migration (IOM) has been looking at issues of safe migration as a measure to prevent human trafficking. However, there are related issues and practices that continue to be debated and discussed internationally, nationally and locally.

Better employment opportunities, ability to earn and send money back home, quest for a better life are all factors responsible for migration. To treat such instances as those of trafficking has been a human rights debate for sometime now. Migration is a right while trafficking is undoubtedly a violation of rights. While in the West the debate has been in the context of adults and children migrating from other developing or under-developed countries, in India it is in the context of both inter-state and intra-state migration and trafficking. Sometimes however, even today, for most practitioners or those engaged in rescue operations, it is tricky to decide on whether the case before them is one of migration or of trafficking or smuggling.

It is increasingly becoming important to understand the distinction between migration and trafficking and also that not all people migrating are trafficked persons. This is particularly so because many poor migrating women, men and children are being treated as trafficked persons and sent back to where they came from. Agencies supporting anti-trafficking initiatives in the direction of rescue, rehabilitation and restoration of victims too need to be cautious about this.

The question of whether issues of women and children coming to Delhi to work as domestic servants should be seen as that of migration or one of trafficking, has grappled many activists for a long time. Organisations and networks working on trafficking in Jharkhand and Orissa from where many of these women and children hail, use migration and trafficking interchangeably in such situations. There will always be someone to show these women and children a way to Delhi, who could be a member of the family or village, a relative or friend. However, involvement of placement agencies and touts who make maximum benefit out of this situation, false promises and allurements and exploitation of women and children placed in jobs clearly establishes these cases as those of trafficking rather than mere migration.

On the other hand it is difficult to classify all cases of children from Punjab going to Paris and other European destinations under any specific category.

In a meeting with some children from District Hoshiarpur in Punjab, now living at Enfants du Monde - Droits de l'Homme, a child care institution in Paris, it was very clear that most children had left their villages and come all the way in search for better life and did not want to go back. Nonetheless, some of them were victims of false promises and were deceived into believing that they would find decent jobs or education. One of the boys had actually applied to a University in Russia, but landed up in Paris, much to his dismay. Little did he know that he would be taken all the way to Paris and left to fend for himself. All he knew was that his parents had spent a fortune in trying to send him out for better studies and that he could not go back now without being in a position to help them out of the loans they took for him.²³

Child Trafficking and HIV/AIDS

As trafficking related work in the country has concentrated mainly on trafficking for sexual exploitation, there is very little documentation to establish the direct link between all other forms of trafficking and HIV/AIDS. Nonetheless, child trafficking, whether it is for prostitution, begging, drug peddling, labour, marriage or entertainment, increases the vulnerability to HIV/AIDS.

All trafficked children are prone to various kinds of abuse and exploitation, including the risk of coercive sex and drug use that may lead to HIV/AIDS. Children who are sexually abused and exploited do not have any say in the manner of their abuse and they are in no position to demand safety from sexually transmitted diseases. There is no doubt that children in prostitution or sex-tourism have to face multiple abuses and endure intercourse with multiple partners, which increases their vulnerability to the deadly disease. To make matters worse, these children are often discriminated against and denied access to medical care, education and pre and post counselling for HIV/AIDS testing.²⁴

What generates concern is the clash of interests between those working on trafficking and groups working on HIV/AIDS as the increase in rescue operations in brothels is taking women and girls away from brothel based prostitution to non-brothel based prostitution, thus making it difficult for them to have access to HIV/AIDS related interventions. Just as rescue is the right of every victim, access to information, care and treatment is also a right for those who are infected with HIV/AIDS.

The other concern is regarding HIV/AIDS care and treatment after the victims are repatriated. Once sent back to their families there is no guarantee that the victims will receive HIV/AIDS related counselling for voluntary testing and will be provided adequate care and treatment if detected positive. Besides counselling of the survivors, their families too need to be counselled, and that poses yet another challenge. The fear and stigma attached to victims of trafficking is a big hurdle in their rehabilitation, social re-integration and restoration. The scare of HIV/AIDS only adds to the problem and lack of

HIV/AIDS is both a cause and consequence of being trafficked. The disease heightens poverty and has left millions of children as orphans. Child prostitutes are particularly susceptible to HIV/AIDS. Domestic workers, street children and child labourers are frequently victims of rape. The stigma often attached to AIDS orphans or rape victims intensifies their vulnerability to trafficking and rights violations.

Source: Child Protection: A Handbook for Parliamentarians No.7, Inter Parliamentary Union and UNICEF, pg 88, 2004.

²³ CACT National Secretariat, November 2004.

²⁴ Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India, Human Rights Watch, 2004.

adequate follow-ups to assess the status of victims sent back to their families is the biggest bottleneck in ensuring successful rehabilitation and restoration.

Community Rehabilitation

Rescue, rehabilitation, reintegration and restoration are four important aspects of a comprehensive programme for victims of trafficking. While rescue is clear to all, the other three terms tend to be used interchangeably. There is no doubt that rehabilitation, re-integration and restoration are all interconnected, but in the implementation of a post-rescue programme for victims of trafficking, they relate to different phases in the life of a victim/survivor. What is common to each of these is the element of 'community rehabilitation'.

Once a child victim of trafficking is rescued by NGOs or Police, the Child Welfare Committee set up under the juvenile justice system of the country comes into the picture to decide on the care and protection, rehabilitation and restoration of the child. Where Child Welfare Committees do not exist, Sessions Courts decide the matter. The principle followed in taking such decisions is that effective rehabilitation and restoration of trafficked children must begin in the family and the community to which they belong. The Courts usually send the victims back to their families without delving much into the question of best interest of the child. Often the Child Welfare Committees too follow the same line although they have the discretion of deciding in the best interests of the child and can order handing over the custody of the child to some fit person or institution other than the family.

Community rehabilitation so far has largely been confined to a perfunctory home study and repatriation of the children back to their families and places of origin. In some instances it has been air flight back home (by the intercepting NGO) and next train to another metro (by the trafficker/pimps)!

In some states community rehabilitation programmes for victims of traffic are primarily about getting the victims married so that they have 'settled' in life, even if it may be a settlement for a different kind and degree of torture and exploitation. If the goal of 'community rehabilitation' is meant to be the restoration of the victims to a useful place in the society, then that is yet to be achieved through any of the existing 'community rehabilitation' programmes for trafficked victims in India or its neighbouring countries.

'Economic Rehabilitation of Trafficked Victims (ERTV)', initiated in India by the International Organisation for Migration for sustainable rehabilitation of rescued victims of trafficking should be seen as a step in the direction of real 'community rehabilitation' and 'restoration'. This initiative is in collaboration with NGOs such as Prajwala in Hyderabad and Prayas in Delhi, the corporate sector such as Amul, and the Government of India. By initiating micro-credit and building livelihood options for trafficked victims/survivors, the initiative has already become successful in most places where it started. Amul Pizza Parlours in South India, Delhi and West Bengal, and the Manavi Designer Collective in Mysore, are all operated by the survivors who are also able to earn a decent living at the end of the day. Not only have they acquired skills but have regained self-confidence and the sense of self-worth, finding a respectful space for themselves in society.

While the ERTV model of rehabilitation and restoration can work well for young adults, it cannot be used for younger children, as the idea is not to create more child labour in the country but to ensure that every child is able to enjoy his/her right to childhood, education, development, care and protection.

Therefore, even if the approach to 'community rehabilitation' is restricted to sending the victims back home, the principle of best interest must always be put to test before the child is sent back, and adequate system and programmes must be in place to ensure a regular follow-up and to monitor the child's well-being. Failing this, re-trafficking of the victims is likely to be a result.

There is no doubt that rehabilitation, re-integration and restoration are all interconnected, but in the implementation of a post-rescue programme for victims of trafficking, they relate to different phases in the life of a victim/survivor.

Rescued child labourers may end up with employers

New Circular Allows Custody To Relatives, Activists Say Bogus Cases Abound

By Rajini Shrivastava/TNN

Mumbai: It's a sight familiar to people who work with child labourers: each time children are rescued in raids, the employers or their friends show up with bogus documents claiming to be relatives of the children they have been exploiting for months. Now, they may actually get custody of the hapless children if...

Activists say they have seen hundreds of cases in which the employer has turned up at the police station or children's home with a document to show that the child is his brother, nephew or cousin and has later been found to be a friend of the employers. The children are often too scared to admit that they are not related to the person...



According to child rights group Pratham. The superintendent of the home could not be contacted on his telephone. "In our experience, most of the claims we have encountered have been fake," said Santosh Shinde of Baijafala, who is part of the task force set up to eradicate child labour from Mumbai. "Now we are seeing many homes releasing children without even verifying the documents, and all the hard work is being...

An important aspect of the redressal of wrongs, from a human rights perspective, is the guarantee of non-repetition of such egregious violation. The fact that a quarter of the respondents are victims of re-trafficking shows that their rights have been violated with impunity as they continue to be victims of abuse.

Source: A Report on Trafficking in Women and Children, 2002-2003, NHRC, UNIFEM and ISS Project.

Re-trafficking

There is enough evidence to suggest that a significant number of girls rescued from commercial sexual exploitation get re-trafficked. Recent reports of children rescued from the zari industry in Mumbai and Delhi between June and August 2005 also prove that just sending the children back to their family and community may only bring the children back in the labour market.

The study on trafficking in women and children conducted by the National Human Rights Commission in 2002-03²⁵ delves into the life of both survivors of trafficking and those that continue to be victims of commercial sexual exploitation. The evidence of re-trafficking is alarming.

This report accepts that there is not much known about re-trafficking as long term records of victims who have been sent back home are not available. Based on certain case studies and the research undertaken, the report draws attention to the following factors responsible for re-trafficking:

- **Flaws in the law enforcement system and the existing programmes of rescue, return and rehabilitation**

"Rescue is sometimes provisional. That is, the victims are taken to rescue homes and shown in the records as having been rehabilitated, yet they need to be rescued again".

Source: A Report on Trafficking in Women and Children, 2002-2003, NHRC, UNIFEM and ISS Project.

74 girls were restored to their families this year. Out of these around 30 are still with their families but about the rest there has been no follow up. There have been serious lapses in the follow up of cases in the home districts. This lapse has been largely due to the fact that Prajwala depends on the local NGO to follow up and monitor the cases. In the absence of such a follow up the girl is not able to access support when it is urgently required. There have been reports of instances of girls being re-trafficked due to lack of support in the home districts.

Source: <http://prajwalaindia.org/restoration.htm>

- **Nexus between certain officials in the law enforcement agencies and exploiters**

"First, the victims are accused of the crime, arrested and convicted. The exploiters then bail them out. On being released, they are re-trafficked and pushed back into exploitation with a higher debt burden. The vicious cycle continues, thanks to the nexus between certain officials in the law enforcement agencies and exploiters. Unless this nexus is broken, there is little hope for the rescue and rehabilitation of the victims".

Source: A Report on Trafficking in Women and Children, 2002-2003, NHRC, UNIFEM and ISS Project.

- Coercive tactics used by the traffickers
- Non-acceptance by the family and community
- Lack of alternative sources of income or livelihood options
- Pressure from the brothelkeepers
- Debt bondage of the victim vis-à-vis the earlier brothelkeeper

The NHRC report also points out that effective and prompt law enforcement, especially against the traffickers and exploiters, appropriate redressal mechanisms with victim assistance programmes, as well as empowerment of the rescued victims to sustain themselves in dignity are all essential measures for addressing re-trafficking. Regular monitoring to see that there is no re-trafficking needs to be ensured. All of this requires substantial investment of resources, which the Government must take on.

²⁵ A Report on Trafficking in Women and Children, 2002-2003, NHRC, UNIFEM and ISS Project.

Victim Protection and Witness Assistance

Critical for any intervention on rehabilitation of victims of trafficking and for ensuring prosecution of offenders is victim protection and witness assistance.

Trafficked persons often find themselves victimised again and again as a result of the treatment they receive at the hands of the authorities. This clearly hampers the process of rehabilitation. If for instance, the victims have to face the police and the court time and again only to prove that they were wronged, no trauma counselling will work and the process of recovery will either be very slow or will get stalled forever. Whether kept in a shelter home or sent back to their family, if not protected and assisted adequately, the victims are likely to get trafficked again. No wonder the families find it extremely difficult to accept their children back as they don't want to face the rigours of the system and the pressures from the traffickers. In all this the prosecution of the offenders also gets affected.

Unfortunately, the current models of protection offered to trafficked persons too often prioritise the needs of law enforcement over the rights of trafficked persons. Often 'protection' still means repression of victims' rights. We call for victim protection to be redefined and reworked so that it means supporting and empowering those who have been trafficked. Protection of victims per se, is not the same as protection of victims' human rights. The challenge for governments is to live up to their obligations under international law and to make the protection of all human rights a reality for trafficked persons who escape their situation.

Source: Human traffic, human rights: redefining victim protection, Anti-Slavery International, 2002.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (2000) incorporates measures for protection and assistance to trafficked persons. Unlike the criminal provisions in this Protocol, which are obligatory on State Parties, the human rights protections are discretionary under the Protocol. India has signed the Protocol and also intends to ratify it according to the latest National Plan of Action for Children, 2005.

In the meanwhile, after series of consultations with civil society groups, the Department of Women and Child Development in the Ministry of Human Resource Development, Government of India, has come out with a Protocol for pre-rescue, rescue and post-rescue operation and rehabilitation of child victims of trafficking for commercial sexual exploitation. The Protocol marks the beginning of a positive approach to victim protection and witness assistance. Though limited to just one form of trafficking, it needs to be extended to child victims of all forms of trafficking.

The only doubt at this point is regarding the implementation of the Protocol as it is a set of guidelines for the States with no provisions and mechanisms built in to ensure that it gets followed. In any case, in the absence of a law to deal with child trafficking, implementation of the Protocol by the States is left to their whims and fancies.

Prosecution of Offenders

Poor prosecution of offenders is what has put India in Tier 2 in the Trafficking in Persons Report (TIP) of 2005 released by the US State Department, Office to Monitor and Combat Trafficking in Persons on 3 June 2005. While one may question the very basis of a TIP report and the ranking of countries by the US Government as well as the sanctions it imposes, there is no doubt that prosecution of offenders in India, particularly in the context of trafficking is weak. There are several factors responsible for it. These may be listed as follows:

- There is no comprehensive law on human trafficking in India. As a result many cases of human trafficking are not even booked by the police. For example, trafficking of children from Jharkhand, Chattisgarh and Orissa to work as domestic servants in the cities never gets booked as an offence since there is no law to deal with it. In fact it does not even get booked as a case of child labour because the existing child labour law does not prohibit employment of children as domestic help.
- Absence of law and inability to register a case as an offence of trafficking makes it difficult to assess the magnitude of the problem as well as maintain statistics for investigations, arrests, prosecutions and convictions in the context of

human trafficking. Most cases of trafficking get registered as various different offences in the Indian Penal Code (IPC), unless it is a clear cut case of trafficking for prostitution, which gets booked under the Immoral Traffic (Prevention) Act in addition to some of the IPC provisions. The records therefore reflect information on the particular offence(s) under which a case is booked but not on trafficking. In such a situation, it is left to the interpretation of the researchers as to what they see as a case of trafficking and what they leave out while making an assessment.

- Prosecutions often fail when the victims turn hostile and withdraw their case or do not turn up for hearings. What makes it difficult for a victim of trafficking to sustain through the trial is the unfriendly and insensitive court procedure, lack of protection from the traffickers and exploiters during the course of trial, lack of legal aid and assistance and lack of other support services such as trauma counselling/adequate shelter etc.
- Once a victim is sent back home as part of community rehabilitation, prosecution becomes even more difficult. Families may not wish to pursue the matter or there may be other threats and fears that hold them back. In case of cross-border trafficking, the situation is even worse as it is not possible to get the children back for trials once they are repatriated. Fast trials and residency permit for the victims at least till such time that the trial is completed must be ensured in such cases, failing which prosecution is likely to suffer a setback.

Fast-track justice in child trafficking case

For the first time perhaps, a fast track court in the city has delivered a fast judgment, as it tried and convicted a woman accused of trafficking children just a year after her arrest.

On April 23, a fast track Sessions Court convicted Farida Pathan for buying two kidnapped minor girls, Salma and Khairun (names changed) and forcing them into prostitution in a brothel near Kennedy Bridge, Grant Road. The two girls were rescued in a raid in February last year. Social workers say that this conviction is significant because cases of trafficking of children and women usually take an average of five or six years to reach the conviction stage. Two factors helped Salma and Khairun in getting justice. One was the transfer of the case to a fast track court set up to clear the backlog of cases in the sessions court. The second was the involvement of IJM.

Pathan, 39, the alleged trafficker was arrested and released on bail in July. She was convicted for a maximum term of seven years for three sections of PITA, apart from offences under the IPC and CrPC.

Source: Manoj Nair, 16 May 2004, www.mid-day.com/news/city/2004/may/83397.htm

Comprehensive statistics on trafficking-related investigations, prosecutions, convictions, and sentences were not available, though statistics obtained from several key cities and states showed 195 prosecutions and 82 convictions obtained for offenses related to trafficking for sexual exploitation in 2004. An estimated 2,058 prosecutions and 1,051 convictions for child labor offenses were obtained in 2004 throughout India.

In 2004, courts in Mumbai prosecuted 53 persons for trafficking-related offenses, handing down 11 convictions. While this is an increase over 2003, the level of prosecution remains inadequate relative to Mumbai's role as the largest center for sex trafficking in India. Mumbai lacks special "fast-track" courts for trafficking crimes; consequently, trafficking prosecutions can take as long as eight years, often resulting in acquittals due to lost evidence and unavailable witnesses.

Source: Trafficking in Persons Report 2005, Released by the Office to Monitor and Combat Trafficking in Persons, US State Department, Washington DC, June 3, 2005.

Law and Policy

In the last two years there has been no change in the legal and policy framework for dealing with human trafficking or child trafficking in particular. Existing policies and programmes of the Government of India continue to address only victims of trafficking for commercial sexual exploitation. The ITPA continues to be used to arrest girls for soliciting and adoption guidelines and procedures remain unchanged to be flouted off and on. What has actually changed and remarkably so is the willingness of the UPA Government to distinguish child trafficking from prostitution and re-look the whole issue of child trafficking as a phenomenon beyond just commercial sexual exploitation and also as an organised crime. An indication of this is a distinct section on trafficking in the National Plan of Action for Children 2005, its goals, objectives and strategies that clearly spell out the need to stop all forms of child trafficking. The chapter on Child Trafficking in the 2005 India

Country Report on Violence Against Children, the 2005 Protocol for pre-rescue, rescue, post-rescue and rehabilitation of child victims of trafficking for commercial sexual exploitation and a proposed scheme of the Department of Women and Child Development for rehabilitation of both female and male victims of all forms of child trafficking are also some other indications in this regard.

Some legal and policy reform is already on the anvil. For example the Immoral Traffic (Prevention) Act (ITPA) is being amended to do away with provisions that further victimise the victims. The Inter-Ministerial Committee on Trafficking in Persons has drafted revisions to the ITPA, in consultation with civil society groups, and has submitted these revisions to the Parliament for consideration. The revisions would eliminate Section 8 that was responsible for arrest of girls found soliciting. Higher punishments are being laid out for those who traffic minors into prostitution, thereby affording victims of trafficking greater protections. For details see Annexure 1. What is debatable however is whether this Act must incorporate the definition of human trafficking as given in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) or should it become part of the Indian Penal Code or, should there be a separate and comprehensive legislation to deal with all forms of trafficking. Incorporating the Palermo Protocol definition into the ITPA will not be much help as ITPA is only about trafficking for immoral purposes. In that case the shape of ITPA must change completely to become a new legislation on all forms of human trafficking.

A “Prevention of Child Marriages Bill, 2005” is also being discussed by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice under the Chairmanship of Mr. E.M. Sudarsana Natchiappan. However, this bill has no safeguards to prevent trafficking of girls for marriage and provide adequate protection for it. The Bonded Labour Act and the Child Labour (Prohibition and Regulation) Act are also under review.

Positive indications must also reflect in positive action. The biggest challenge is the implementation of existing legal and policy provisions, schemes and programmes. Shakti Vahini, a Haryana based anti-trafficking NGO filed a Public Interest Litigation in the Supreme Court in April 2002 questioning the apathy of the Central Government towards the implementation of the “Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children”, prepared in 1998 by the Department of Women and Child Development, Ministry of Human Resource Development, Government of India. The Supreme Court ordered the Centre and the State Governments to file their replies. Shakti Vahini collated all the replies in its report, Trafficking in India 2004. A tabular presentation of the status of implementation of existing anti-trafficking measures is presented in Annexure 2.

While we continue to grapple with the implementation of existing mechanisms, newer measures being put into place are bound to suffer the same fate.

Some of the other challenges that need to be overcome through policy and legal reform in order to deal with child trafficking may be listed as follows:

- In the absence of proper and efficient birth, marriage and death registration, tracing the victims becomes a problem and assessing the extent of the problem is difficult.
- There is no coordination between the Ministry of Tourism, Labour Ministry and the Ministry for Surface Transport to combat internal (domestic) and external (cross border) trafficking.
- There is no evolution of better cross border policing, prevention and protection mechanism between the neighbouring nations for the children trafficked across borders.
- The police and the judiciary fail to use the existing legal provisions creatively while dealing with a case of child trafficking. This is primarily because their understanding is again very limited to trafficking for commercial sexual exploitation.
- There are lacunae in the proposed National Commission for Children which aims to function as guardian of children’s right with powers to take suo motu cognizance of child right violations. The proposed draft of the Commission does not reflect the widely held consultative meetings and discussions. It lacks independent statutory powers and is being

formed in the absence of documentation on the implementation of the existing laws for children. What needs to be done on an urgent basis is not just signing and ratifying the International Conventions and Protocols to show solidarity with the International Community, but actually incorporating those principles in the national laws and reading the Constitution and other relevant laws liberally in the absence of a definition of trafficking. It also means that there are not only legislative reforms required but also judicial activism to ensure the best interests of children who are victims of all forms and purposes of trafficking.

Addressing the root causes of vulnerability arising out of lopsided developmental goals, patriarchal setting and indiscriminate liberalization of trade and policies could be another way of tackling the issue.

The State has to allocate more funds for shelter, food, clothing, health care, counselling, education, training and skill development, so as to facilitate social and economic rehabilitation of rescued victims.

The police, judiciary, media and medical authorities need to be sensitised towards trafficked victims, especially during the investigation process and trial of victims of trafficking and improve quality of services. A lot more effort is required in this direction. Unless such training is institutionalised and a code of conduct is brought into the picture for the police, judiciary and media, little is going to change in the years to come.

Ensuring participation of children in formulating child friendly laws and their implementation is an important intervention. In fact there should be a component on sexuality education and child safety for children in the curriculum. Children should know the laws that protect them and how to use them. They can help their panchayats and the police in keeping a record of missing children. They can also help their peers who may be in vulnerable situation.

Community awareness through campaigns and mobilizing the communities from where the children are trafficked from for the rehabilitation and reintegration of the trafficked children is one way of ensuring the protection of the trafficked children. Another way is addressing the demand side of trafficking and ensuring the service providers and consumers of child trafficking are punished.

Regulation and legalisation of activities like domestic child labour, child prostitution and pornography that promote trafficking in children only divert the attention from zero tolerance to conditional acceptance and harm reduction. A clear stand is required when it comes to exploitation children in any form whatsoever.

Conclusion

The process of trafficking victimizes the child physically, emotionally, psychologically, sexually and financially. The human rights as well as rights of a child are jeopardized in this process and the child grows up as an adult with limited skills and choices. Trafficking of children, as is the case with all other social problems, cannot be understood or indeed addressed in isolation. It is intrinsically linked to all other problems such as illiteracy, homelessness, and greater influence of the market - all of which creates greater demand. The lack of stringent laws and even weaker implementation of the existing ones only make it easier for traffickers to continue functioning, as does the lack of an inter-related approach on child trafficking. A concerted and well-coordinated effort by all Ministries and Departments of the Government can make a difference. It goes without saying that adequate investment of human and financial resources must back all initiatives. The situation does not look as grim as it was two years ago but there is still a lot that needs to be achieved.

Annexure 1

AMENDMENT PROPOSED IN IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section	Existing Provision	Amendments proposed
2(aa)	"Child" means 'a person who has not completed the age of sixteen years'	"Child" means a person under the age of eighteen years.
2(ca)	"major" means 'a person who has completed the age of eighteen years'	May be deleted
2(cb)	"minor" means 'a person who has completed the age of sixteen years but who has not completed the age of eighteen years'	May be deleted
2(k)	After the existing entries after 2(j) add clause 2(k)	<p>a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</p> <p>b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used;</p> <p>c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a);</p>
3(1)	<p>Punishment for keeping a brothel or allowing premises to be used as a brothel</p> <p>Any person who keeps or manages, or acts or assists in the keeping or management of a brothel shall be punishable on first conviction with RI for a term of not less than one year and not more than three and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with RI for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.</p>	<p>Punishment for keeping a brothel or allowing premises to be used as a brothel</p> <p>Any person who keeps or manages or acts or assists in the keeping or management of a brothel shall be punishable on first conviction with RI for a term of not less than three years with fine which may extend to ten thousand rupees and in the event of second or subsequent conviction with RI for a term of not less than seven years and also with fine which may extend to two lakh of rupees.</p>
7(1A)	Where an offence committed under Sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.	Where an offence committed under Sub-section (1) is in respect of a person of less than 18 years, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.

8.	<p>Seducing or soliciting for purpose or prostitution whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not-</p> <p>(a) by words, gestures, willful exposure of her person (whether by sitting by a window or on the balcony of a building or a house or in any other way) or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of any persons for the purpose of prostitution; or</p> <p>(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public places or to offend against public decency, for the purpose of prostitution,</p> <p>Shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year and also with fine which may extend to five hundred rupees.</p> <p>Detention in a corrective institution</p>	<p>May be deleted.</p> <p>May be deleted</p> <p>May be deleted</p> <p>Detention in a corrective institution.</p>
10(a)	<p>Where-----</p> <p>(a) a female offender is found guilty of an offence under Sec.7 or Sec.8 and</p> <p>(b) the character, state of health and mental condition of the offender and</p> <p>It shall be lawful for the Court to pass, in lieu of a sentence of imprisonment, an order for detention in corrective institution for such term, not being less than two years and not being more than five years as the Court thinks fit.</p>	<p>(a) a female offender is found guilty of an offence under Sec. 7; and</p> <p>(b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instructions and discipline as are conducive to her correction,</p> <p>It shall be lawful for the Court to pass, in lieu of a sentence of imprisonment, an order for detention in corrective institution for such term not being less than two years and not being more than seven years.</p>
13(2)	<p>The Special Police Officer shall not be below the rank of an inspector of police</p>	<p>The special police officer shall not be below the rank of a sub-inspector/ inspector of police.</p>
13(3)(b)	<p>The State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers, wherever practicable) to advise him on questions of general importance regarding the working of this Act</p>	<p>The State Government shall associate with the special police officer or officers a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers, wherever practicable) to advise him/them on questions of general importance regarding the working of this Act.</p>

New provision proposed.

(i) Provisions for confiscation of property and assets of traffickers and agents of organized prostitution/flesh trade as under:

(1) As from the commencement of the amended act, it shall be lawful for any person to hold any illegally acquired property either by himself or through any other person on his behalf;

(2) Where any person holds any illegally acquired property in contravention of the provision of Sub-section (1), such property shall be liable to be forfeited to the Central/State Governments in accordance with the provisions of this Act.

(ii) A provision providing protective mechanisms, immunities and safeguards for the members of voluntary agencies who take initiatives for preventing, trafficking, facilitating rescue or carrying out victims protection activities to be included in consultation with the Ministry of Law and Justice.

Consequential changes in various sections where the term 'his' or 'her' has been used.

The words 'his' and 'her' wherever occur in the Act should be substituted by a gender neutral word for example 'person' so as to cover both sexes.

Check List on State Action on Trafficking of Women and Children for Commercial Sexual Exploitation

State / UT	Status of NPA on CSE&T	State Advisory Committee (under NPA on CSE&T)	Co-ordination Committee (under NPA on CSE&T)	Advisory Committee of social workers (under NPA on CSE&T)	Special Police Officers (under ITPA)	Task force (under NPA on CSE&T)	Anti trafficking cells (under ITPA)	Mahila Thana	Special Acts	Implementation: Protective homes (under ITPA)	JJ institutions: CWC/ JJB	Rehabilitation Schemes	Health/AIDS intervention
Andhra Pradesh	✓	✓	✓	-	-	-	✓ NHRC State Nodal Officer	-	Andhra Pradesh Devdasi (prohibition of dedication) Act	-	-	Rehabilitation and rescue fund for rescued victims White ration cards for PDS	-
Bihar	×	×	×	×	×	×	×	×	×	-	-	-	-
Chandigarh	×	✓	×	✓	✓	×	×	✓	×	×	×	×	×
Chattisgarh	×	✓	✓	✓	×	×	×	×	×	×	×	×	-
Dadra & Nagar Haveli	×	✓	✓										
Delhi	×	✓	✓	✓	×	✓	✓	×	×	✓	✓	✓	✓
Gujarat	×	✓	✓	×	×	×	×	×	Goa children's Act	✓	✓	✓	×
Goa	×	✓	×	×	✓	×	×	×		✓	✓	-	-
Haryana	×	✓	×	×	×	×	×	×	×	✓	✓	-	-
Jharkhand	×	×	×	×	✓	✓	✓	×	×	×	×	×	-
Karnataka	×	✓	✓	×	✓	-	×	✓	Devdasi prohibition act of 1982	✓	✓	✓	✓
Kerala	×	✓	✓	×	✓	✓	×	×		✓	✓	×	✓
Madhya Pradesh	×	✓	✓	×	✓	×	×	×	×	✓	-	×	-
Maharashtra	×	×	×	×	✓	✓	×	✓	×	✓	✓	✓	✓
Orissa	×	✓	✓	×	×	×	×	✓		✓	-	✓	✓
Punjab	×	✓	✓	×	×	×	×	✓	×	✓	✓	✓	✓
Pondicherry	×	✓	×	×	×	×	×	×	×	✓	✓	✓	✓
Rajasthan	×	✓	×	×	×	×	×	✓	×	✓	✓	-	×
Tamil Nadu	×	✓	✓	×	✓	✓	✓	✓	Madras Devdasi (Prevention of Dedication) Act, 1947	✓	✓	✓	✓
Sikkim	×	✓	✓	×	✓	✓	✓	×		-	✓	-	-
Uttanchal	×	×	✓	×	×	×	×	×	×	✓	×	×	-
Utar Pradesh	×	✓	×	×	✓	×	×	×	×	✓	×	×	✓
West Bengal	×	✓	✓	×	✓	×	✓	✓	×	✓	✓	✓	✓
Manipur	×	✓	×	✓	×	×	×	×	×	✓	✓ (though CWC and JJB have not been established)	×	✓
Meghalaya	×	✓	✓	✓	✓	✓	✓	×	×	✓	-	×	✓
Nagaland	×	×	×	×	✓	✓	×	×	×	✓	×	×	-
Mizoram	×	✓	×	×	✓	×	×	×	×	✓	-	-	-
Tripura	×	×	×	×	×	×	×	×	×	-	-	-	-

Source: Shakti Vahini, Trafficking In India Report – 2004

NPA on T&C, CSE – National Plan of Action to Combat Trafficking and Commercial sexual exploitation of Women and Children; ITPA – Immoral Traffic Prevention Act;

NHRC – National Human Rights Commission; JJ – Juvenile Justice; MSJ&E – Ministry of Social Justice & Empowerment; CWC – Child Welfare Committee;

JJB – Juvenile Justice Board