

CHILDREN IN GLOBALISING INDIA



CHALLENGING
OUR CONSCIENCE

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Challenging Our Conscience

EDITED BY

Enakshi Ganguly Thukral

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*All grown-ups were once children...
although few of them remember it.*

*Antoine De Saint-Exupéry
in
The Little Prince*

FOREWORD

In its short life of only three years, HAQ:Centre for Child Rights, has made considerable progress. It is not an easy task to attempt to focus attention on a section of society that is so marginalised as to be almost invisible. This forgotten generation — the children of India — who have, until recently, not come into any reckoning, are, paradoxically, our future. It is for the sake of that future, as much as for the children's own sakes, that we must pay attention to them.

HAQ's concern for children, however, is not only because of they are our future, but also because they are our present. As the UNICEF Report on the State of India's Children (1997) points out, the new and sweeping economic reforms which are meant to orient countries towards the needs of the global economy, and its concomitant activities such as promoting export crops, attracting foreign investment, cutting government expenditure, have resulted in cuts in the areas of health, education, food services and the social sector generally. The experience of many countries across the world has shown that these cuts impact most sharply on the vulnerable sectors of society, among whom children occupy a key place.

Within India recent years have shown some activity geared towards a concern for children. In 1992, India ratified the Convention on the Rights of the Child, and more recently, it has begun to prepare its country report for review by the Committee on the Rights of the Child. Nonetheless, a great deal remains to be done. HAQ's recently published study on the Union Budget (looked at from a child rights perspective) shows how little is separately allocated in any sector for children, and how the concept of the rights of the child continues to be the exception rather than the rule. This is further borne out by the unrelenting reports in the media of atrocities on children, of the violence they face every day, not only from society at large but also from their own families and communities, a violence that is made worse for girl children who are doubly discriminated against.

This volume on the state of India's children is thus a warning to all of us and a timely reminder to turn our attention to this most important section of society. A collection of writings that addresses, from different perspectives, various aspects of rights and life conditions of our children, this volume, produced by the HAQ team in collaboration with a number of academics and activists, aims to draw our attention to our children, and demonstrates how they are the emotional, social and economic bedrock on which our society is founded. We ignore them only at our own cost. The volume is, in our view, an important first step, and it is our hope that it will lead to further research and publications on this important issue, as well as generate discussion and debate on our children, and with our children, for our collective present and future.

Urvashi Butalia
President
HAQ: Centre for Child Rights

WE THANK...

...the children of this country who have inspired us to examine their lives. Their resilience in the face of all odds and their ability to bring cheer into all our lives is enormous — and we adults need to thank them for it.

HAQ is a whirlpool. It draws anyone who even murmurs an offer of help. Meenakshi Ganguly and Paromita Shastri offered, and we are grateful to them for agreeing to be part of the editorial committee and wading through manuscripts and editing some of them. Meenakshi Ganguly helped edit the sections on Health and the Young Child. Paromita Shastri helped edit the sections on Child Labour and Juvenile (in) Justice. We also thank Kishore Thukral for his editorial assistance on the chapter on the Legal Regime.

We thank HAQ's President, Urvashi Butalia for her insightful suggestions and for always being there for us. Neelam Singh has been with us through the whole process, allowing us to pick her brains and supporting us morally as well with her ideas. S. Murlidharan's suggestions and comments on the section on the Legal Regime was very helpful.

We thank Alpana Mukherjee for walking into our lives as we were floundering with the load of last minute corrections and proofing. Since then our shoulders felt a lot lighter.

This volume would not have been possible without financial support from the Royal Norwegian Embassy. We are particularly thankful to Renu Wadehra and Jannicke Bain for their interest and support.

We thank all our contributors, many of whom we have browbeaten into writing for us against odds of limited time and workload.

Last but not the very least, we have to thank our families—the ones at home, especially our own children whose own rights may have been neglected, and the one at HAQ for its patience and forbearance while this volume was being put together.

*Enakshi Ganguly Thukral
Bharti Ali*

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LEGAL REGIME



SECTION 1

LEGAL REGIME

Lack of sensitivity to child's rights found

By Our Special Correspondent

NEW DELHI, JUNE 11. By virtue of holding the world's largest child population — estimated at more than 380 million below 18 years — India undoubtedly has an enormous bearing on the state of the children globally. Given the criticality of issues related to children and the priority the subject should get, the Department of Women & Child in the Ministry of Human Resource Development has launched an end-decade review of the goals and its achievements.

Ar "India Report" takes a close look at indicators of both types — the ones which give a "sense of satisfaction" and those which "remind" that efforts must be intensified to bear concrete results.

The report states that India's shortfalls are "not due to lack of administrative or political will but on account of the magnitude of the problem, size of the numbers involved, financial constraints, complexity of the vicious cycle of poverty and the country's determination to rely mostly on the democratic tools of sensitisation, advocacy and motivation rather than on coercion."

nised that the essential needs of children should be given high priority in allocation of resources at the national and international levels.

The Government had reaffirmed its commitment to advance the cause of children, endorsing 27 survival and development goals laid down by the World Summit. The National Plan of Action (NPA) on Children was formulated in August 1992 underlining India's response and commitment towards realising rights and dreams of 380 million children in the country, of whom 137 million approximately live below the poverty line.

The VIII Five Year Plan accorded high priority to child survival, development and protection. NPA set quantified goals in priority areas such as health, education, safe water, sanitation and environment with special concern for children in difficult circumstances and all States. State Plans of Action for children should be formulated to indicate need-based, area-specific goals.

While the report shows some progress in the

The report... inhibit

Widows can adopt children: SC

Syed Liaquat Ali
New Delhi, March 28

THE SUPREME COURT has ruled that widows of a Hindu male married more than 10 years before the Hindu Code Act, 1956, are entitled to adopt a child.

For smokies or brown sugar addicts, the drug provides the pleasure of getting a brief hit "like a sun exploding inside", which then gives "a long after-glow". The horror of child drug addiction unfolds as soon as one hits Shuklaji Street and several Children, at an age, when they should be studying in school, are caught in the clutch of sugar, a

brought about by various alterations and amendments to the personal law of the Hindus."

Such condition, the bench said, would render the task of adoption more cumbersome and paradoxical. It said that deliberate omission of the condition from the Act was aimed at empowering a Hindu female allowing her to independently adopt a child.

Court's observation was made in an appeal by a male against the adoption of a boy by the widow, Sharadamma, a widow left behind by A T Nanja Rao, who died in 1968, adopted B T Shankar in 1984. She died in 1984.

When a dispute between the adopted son and second widow, she challenged the adoption on the ground that her consent was not obtained for the purpose.

The counsel who represented the second widow argued that one widow cannot adopt a child without the consent of the co-widow.

drug addicts, whereas a survey in Calcutta covering 1132 students found the rate of drug addiction to be 37.4 per cent. A police survey in Delhi showed that almost every autorickshaw driver in the Central District of Delhi was addicted to smoking low grade heroin. Another survey found that almost 50 per cent of the police force were addicted to

place for them starting from food to shelter," says a police official. Langars in Gurgaon and a good number in the suburbs of New Delhi are known to have a lot of drug addicts. Beggars are known to be territorial and people from the same area are known to be this groupier. "These groups are very violent and they will not let anyone else come near them," says a police official.

RIGHTS OF CHILDREN

Need For Assurance On Basic Needs

By TUSHAR KANTI SAHA

Mentally ill have rights, says NHRC report

Times News Network
DELHI: In 1999, the state of mental hospitals in India brought out a report in association with the National Institute of Mental Health and Sciences (NIMHANS), titled 'Quality Assessment of Mental Health Services in India: A survey of 37 government hospitals, the report covers a wide-ranging survey on the basic rights of mentally ill patients, providing quality of care, and the rights of the mentally ill.

an out-patient service, preferably in a separate block. Services of clinical psychologists and psychiatric social workers should also be available in the out-patient department (OPD), all forms of modern treatment be made available, including essential drugs for one month, psychoeducation and counselling at individual, family and group levels, psychotherapy and behaviour therapy, and Electro Convulsive Therapy (ECT). Emphasis was given on providing laboratory facilities, including X-ray, ECG, lithium and urine examination, hepatitis B and other blood tests, and screening for HIV.

Elementary Education Bill: Much ado about nothing?

Sakina Yusuf Khan
DELHI: The 83rd Constitutional Amendment, which provides for the inclusion of elementary education in the list of subjects in which the central government can legislate, has been passed by the Parliament.

the age of 11. Tobacco consumption is also quite high among the less educated youth. That brings us to the question of education for children on the street. Article 45 of the Constitution provides for free and compulsory education for all children till the age of 14. provision is put into practice, the battle would be won.

There are a host of international conventions in recognition of the rights of the children — the UN Declaration on the Rights of the Child (1959), the Rights of the Child (1989), and the Inter alia calls for a global guarantee.

On streets, making a packet

Namrata Singh
New Delhi, April 17

TEN-YEAR-OLD CHINTU says he wants to be a beggar when he grows up. Being poor, he has to earn money from the people on the streets.

15,000 child marriages held in Chhattisgarh

Sravani Sarkar
Raipur, May 17

DESPITE PERSISTENT efforts by the government, more than 15,000 child marriages were solemnised in Chhattisgarh within less than a month in six districts of Chhattisgarh, a voluntary organisation has claimed.



Infant married off in Rajasthan

S L Talwar
Jaipur, May 21

villagers denied that any such event had taken place. Ms Sharma admitted that marriages of minors were common in this part of the State. She said action would be taken against officials if it was proved that a child marriage did take place in the village.

wedding finery with a long ghunghat pulled over their head, sat before the havan waiting to be married. Next to these brides, sat bridegrooms in a white suit, wearing turban with kajar in their eyes, garland of crisp five and ten rupees notes.

Law by itself cannot bring about social change or change in social attitudes and practices. Nevertheless, it remains one of the most important tools for ensuring, controlling or directing individual and social behaviour. Examination of a country's legal regime gives an insight into how the country treats its people or any section of its citizens. It is also reflected in the international commitments it makes and how far it translates them into national legal commitments. All these must be examined and analysed in depth to understand the status of the Indian children — male or female — who constitute one-fourth of its most vulnerable and voiceless population.

The Indian constitution accords rights to children as citizens of the country, and in keeping with their special status the State has even enacted special laws. Moreover, India has ratified a range of international human rights instruments that have a bearing on its national legal provisions, programmes and policies.

Principles of international law apply within a country by a process of reception into 'municipal law' or the national or domestic legal system. In some countries the ratification or adoption of an international treaty becomes automatically binding on the domestic courts. These are legal systems that recognise the supremacy of international law over domestic law and subscribe to what is described in international legal parlance as the 'theory of monism'. In some other countries international law and domestic law are two separate systems. In such cases the domestic or national law is bound only by treaties that have been transformed into national legislations in conformity with the treaty obligations. This is the 'theory of dualism' and is followed by England and most other countries, several of them in South Asia, which are influenced by English law. In such countries domestic law must recognise and reflect the provisions of the international law for it to be legally binding and justiciable.

Most ratification of international legal instruments by India are harmonious in spirit with national commitments. Judicial decisions of the Supreme Court of India support the view that international treaties create legal rights and obligations in domestic law only if they have been incorporated in it. In other words an international legal instrument does not automatically become applicable in India merely because it has been ratified. In fact, by ratifying a Convention or Treaty, India commits itself to abiding by such commitment as well as to enacting national law in consonance with it. If the international treaty is in harmony with the domestic law, in letter or in spirit, it is automatically part of the law. If not, the national law shall prevail till such time that it is amended or new legislation is enacted.

However, non-transformation of international commitments into domestic law must not be viewed dismally and as a major limitation. Activists and persons concerned with rights of children should and must use litigation in courts to create a legal environment through getting the courts to expand their judicial and legal interpretations.

All human rights instruments are applicable to human rights of children and can be drawn upon whenever relevant. Some Treaties or Conventions have specific Sections or Articles dedicated to children. However, there is one Convention,

namely the Convention on the Rights of the Child that is dedicated solely to children, thereby making it the most powerful and comprehensive instrument available for them. It is the single Convention that has been ratified by all the countries of the world, save one — the United States of America.

THE RECOGNITION OF CHILD RIGHTS ¹

The international concern for children's rights was viewed and linked to women's rights and can be seen in the instruments on child labour and women's work adopted by the International Labour Organisation (ILO), which expressed its concern over regulating child labour with its Convention on Night Work in 1919. Since then, the ILO has periodically brought in several other Conventions and early recommendations that supplemented these Conventions. In recognition of the exploitation that women and children suffer in the workplace, the ILO attempted to humanise their situation by setting standards such as those relating to minimum age limits, health and safety. Based on the legal tradition that viewed them as 'weak' and in need of protection from sexual exploitation and slavery the ILO also promulgated instruments such as the Convention for the Suppression of Traffic in Women and Children (1921) and the Slavery Convention.

Undoubtedly modern discourse on child rights owes much to the 'West' and as such continues to be viewed by critics as a 'Western concept', rather a 'Euro-centric concept'. In fact it is often denounced as being 'against our culture', as propagating individualistic values as against 'family' values. 'How can children have rights, when they have no duties?' was a comment made by a senior Indian politician and minister in his conversation with an activist at an informal gathering during a recent international convention on child rights in New York.

Savitri Guneseckhere argues that cross-cultural influences have taken place across the world, and there are sometimes common roots to problems that societies face in a given period of their histories. (1997). This is true of how children, their needs and their rights have been viewed. Most countries, east or west, have largely viewed children as an extension of adults. Inevitably fathers were allowed to exercise much greater authority over minor children born within a marriage. At the same time, although rare, there are evidences of some rights of children in some religions, such as Islam's recognition of the option of puberty which is based on the concept of personal autonomy and right of a person who has reached the age to reject decisions made by adults (ibid). She argues that children in Asia today continue to struggle as a result of a common legacy of authoritarianism and exploitation that they shared with the rest of the world, which, in Europe, was modified through a basic process of social, economic and legal changes. The concept of and need for recognition of the human rights of children is as valid for us in India and the rest of the developing world as it is for the rest of the countries.

Tracing the history of discourse on child rights reveals that the first expression of concern that child rights must receive priority on its own merit, irrespective of ideology of protection, was in a statement by a Polish doctor named Janus

¹This section draws greatly from the work of Dr. Savitri Guneseckhere – Children, Law and Justice: A South Asian Perspective.

Korezak, in which he advocated a strategy of rights in place of adult duties towards children. Although his concept of child rights instead of adult duties was not accepted, his thinking has definitely influenced international approach, and has led to the gradual movement from policy declaration to the articulation of separate rights for children.

The concept of child rights, as understood and accepted by the world today, seeks to balance the perspective of child rights with the perceptions of adult responsibilities and duties that alter the evolving capacities of the child as he/she grows from childhood to maturity.

The idea of a formal expression of child rights, which could harness political and public commitment for improving the lives of children, can be traced back to 1923, to the five point Declaration on the Rights of the Child drafted by Eglantyne Jebb, founder of the Save the Children movement. The League of Nations, the inter-war predecessor to the UN, adopted it the following year.

UN CONVENTION ON THE RIGHTS OF THE CHILD

Continued concern for specific expression of rights for children led to the adoption of a revised version of the original declaration drafted by Eglantyne Jebb. However, the new Declaration on the Rights of the Child was a statement of principles rather than a document to which governments could be held responsible. A new and binding Convention on the Rights of the Child was called for in 1978, in advance of the following year — the International Year of the Child. The drafting of the Convention took another ten years during which the political situation of the world, especially the cold war rivalries, played an important role in determining the wide-ranging nature of the Convention. It incorporated the whole spectrum of human rights — civil, political, economic, social and cultural — and set out the specific ways in which these should be made available to children. It was adopted by the UN General Assembly on 20 November 1989. It became an international law after ratification by 20 states on 2 September 1990.

The Convention looks upon children not merely as extensions or dependents of adults, but as human beings and rights-holders who can play an active part in the enjoyment of their rights. Owing to their particularly vulnerable position in society, they need protection. But they also have their strengths and, if allowed and encouraged, are able to participate in decisions that concern them. Every child has the same rights, irrespective of abilities, origin or gender. The Convention views parents as the primary carers and protectors of children, who must be supported in doing the best for their children. However, it also recognises that there are situations or occasions when parents or guardians are unable or fail to act in the best interests of their children. Under such circumstances there must be systems in place to protect the child and provide it with the best standard of alternative care.

'Those lawgivers confuse duties with rights. Their declarations appeal to good will when they should insist. They plead for kindness when they should demand.'

Quoted in 'Children Law and Justice: A South Asian Perspective'
by Savitri Guneseckhere.

India ratified the Convention on the Rights of the Child on 2 December 1992.

WHAT DOES THE CONVENTION SAY?

The 54 Articles of the Convention can be divided into three main parts:

- The Key Principles
- Specific Rights
- Ways in Which These Rights Will Be Monitored

The Key Principles

- The right to survival and development
- Respect for the best interests of the child as a primary consideration
- The right of the child to express its views freely in all matters affecting them
- The rights of all children to enjoy all rights of the Convention without discrimination of any kind

Specific Rights

The Convention incorporates a whole spectrum of human rights — civil, political, economic, social and cultural — and sets out specific ways in which these should be made available:

- The definition of children as all persons less than 18 years age, unless the legal age of majority in the country is lower.
- Civil rights and freedoms, including the right to a name and nationality, to freedom of expression, thought and association, to access to information and the right not to be subjected to torture.
- Family environment and alternative care, including the right to live with parents, to be reunited with parents if separated from them and to the provision of appropriate alternative care where necessary.
- Basic health and welfare, including the rights of disabled children, the rights to health care, social security, childcare services and an adequate standard of living.
- Education and cultural activities, including the right to education, the aims of education and the right to play, leisure and participation in cultural life and the arts.
- Special protection measures covering the rights of refugee children, those caught up in armed conflicts, children in juvenile justice system, children deprived of their liberty and children suffering economic, sexual or other exploitation.

Ways in Which These Rights Will Be Monitored

The last 13 articles of the Convention establish ways in which the implementation of the Convention will be monitored. These include the setting up of a Committee on the Rights of the Child, which receives initial reports from governments two years after they have ratified the Convention and every five years thereafter. UN Agencies and NGOs are invited to submit information to the Committee in order to support its work.

Save the Children, 1999.

Society has obligations to children. The standards set out in the Convention correspond to fundamental values, such as a belief in human dignity, tolerance, equality, solidarity, peace and freedom. The Convention lays down clearly that children must not be discriminated against, exploited or abused. No child should live in poverty. The child's right to survival and development must be ensured through the provision of healthcare, education and other services. Children must be protected from war or civil unrest and allowed to grow in an atmosphere of freedom, dignity and justice.

CHILD RIGHTS IN THE LAST DECADE : SIGNIFICANT GLOBAL COMMITMENTS

On September 30, 1990, the World Summit for Children was held, and for the first time in history, 71 Heads of State and Governments met at the United Nations Headquarters in New York. They declared their determination to protect the physical and mental development of children throughout the world. The summit goals were:

- Reducing child mortality for children under 5 years by one-third by combating diarrhoeal diseases, measles, tetanus, whooping cough and pneumonia
- Halving the 1990 maternal mortality rate
- Halving severe and moderate malnutrition among children under 5 years
- Providing access to safe drinking water and sanitation
- Providing universal access to basic education and completion of primary education to at least 80% of primary school age children
- Reducing adult illiteracy rate to no more than half the 1990 level with emphasis on female literacy
- Protection of children in especially difficult circumstances, particularly in situations of armed conflict

On 20 November 1989, the UN General Assembly adopted the Convention on the Rights of the Child (CRC). On January 26, 1990, the opening day of the session, 61 countries had signed it. It came into force on September 2, 1990 with 20 ratifications.

The CRC contains 54 articles covering civil, political, economic, social and cultural rights; and can be broadly grouped under the following heads:

- Survival
- Development
- Protection
- Participation

It covers all children under the age of 18 years, regardless of sex, colour, language, religion or race.

India ratified the CRC in 1992

In the United Nations General Assembly Special Session on Children held in June 2002, India became party to the 'World Fit for Children' declaration. This sets the goal for children for the next decade.

The CRC has not adopted the individual complaints procedure under international law when domestic legal system does not provide relief. It is based on the belief that the State rather than the individual is the subject of international law. The lack of an 'individual complaints procedure' has been viewed by many as one of the weaknesses of the Convention. This means that children, or those representing children, cannot file complaints. Relief to them will be available only in domestic courts, if the provisions of the Convention have been incorporated, or transformed into domestic or national law. The CRC addresses the problem of inaction or violation at the national level by monitoring State performances through the reporting procedures.

'Legal enactments invoke differential age specifics creating a dilemma whether the same human being is or is not a child and she depends upon the law which is invoked in a given case. ...The laws, which relate to transgression by the child, are under the general rubric of Juvenile, which distinguishes treatment vis-à-vis the adult for offences like begging/ stealing/ drug taking/ peddling or crime. Free legal aid is available, under the Public Utility Litigation Provisions. But the disparity between the age-identified child and the laws applicable in terms of maturity levels and child's ability to articulate needs, require congruent thinking in policy and their enactments.'

*Department of Women and
Child Development, Country
Report, February, 1997.*

THE NATIONAL LEGAL REGIME

The Indian child is protected by constitutional provisions and laws enacted over the years. Although there was some bits-and-pieces legislation dealing with child labour and protection for children, it was only the Constitution of India, adopted on 26 January 1950 that brought in a fairly comprehensive understanding of child rights in the country. It recognises the rights of the child as a citizen and includes articles dealing with liberty, development, non-discrimination, the need for free and compulsory elementary education and prohibition of employment in mines, factories and hazardous employment. (See Appendix 1).

However, by not clearly defining the CHILD and specifying an age up to which an individual will be deemed to be a child, it has left such definition to the various laws and interpretations. These different age-specifics under different laws create a dilemma. Whether the same human being is or is not a child depends upon the law that is being invoked in a given case.

'The finest investment in the future for any country to make is in the nourishment, physical and mental, to babies, boys and girls. Every matchbox or cracker, every bangle, every brassware, every handmade carpet or polished precious stone has on it streaks of innocent blood and tormented tears of some child forced to slave. No alibi can absolve this crime of State and society and rightly our moral pretensions and spiritual credentials hardly carry conviction within or without Bharat.

The Convention of 1989 and the earlier instruments stress the need for special safeguards and legal protection of children, especially those living in exceptionally difficult conditions and desperate disabilities. India's accession to the Convention obligates it to chart out meaningful measures to make juvenile justice an accomplished fact (not phoney legality) of the social order. Illicit transfer of children is obnoxious and the interests of the child and its individual violation must be the first consideration in shaping its affairs...

The grandiloquence of international obligations is underscored by the rulings of the highest Court which has interpreted the Constitution benignly, upgrading the duty to the child as a fundamental right under Article 21. The poetry of the judges' notwithstanding, the Administration's implementation is romantic fiction and harsh violation of jural, moral promises. The girl child is the worst victim of neglect under the Indian sun...

*Justice V.R. Krishna Iyer
Former Judge, Supreme Court of India
in Child and the Law in India, 1998.*

DEFINITION OF CHILD

The Convention on the Rights of the Child, which India has ratified, defines children as persons below the age of 18 years. However, in India there is no one definition of a child. The Census of India defines children as persons below the age of 14 years. Most government programmes are targeted at children below the age of 14. On the other hand, while making use of standard demographic data, social scientists include females in the age group of 15–19 years under the category of the girl child.

According to the Constitution (Article 23), no child below the age of 14 must be employed to work in any factory or mine or engaged in any other hazardous employment. Article 45 says that the State will provide free and compulsory education to all children up to the age of 14 years.

The legal definition of a child tends to vary. While the age of majority is 18 years for girls and 21 years for boys under the Indian Majority Act, the child has been defined differently for different purposes under various other laws. The following details the age specified by various laws:

Criminal Law:

Indian Penal Code, 1860

Nothing is an offence, which is done by a child under the age of 7. The age of criminal responsibility is raised to 12 years if the child has not attained the ability to understand the nature and consequences of his/her act.

Attainment of 16 years of age for a girl is necessary for giving sexual consent, which is not less than 15 years in case she is married.

Juvenile Law:

Juvenile Justice (Care and Protection of Children) Act, 2000

A juvenile is a child who has not completed the age of 18 years.

Family Law:

Child Marriage Restraint Act, 1929

Child means a person who, if a male, has not completed 21 years of age and, if a female, has not completed 18 years of age.

Labour Law:

Apprentices Act, 1961

A person is qualified to be engaged as an apprentice only if he is not less than 14 years of age, and satisfies such standards of education and physical fitness as may be prescribed.

Factories Act, 1948

A child below 14 years of age is not allowed to work in any factory. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorised medical doctor. A child between 14 to 18 years of age cannot be employed for more than four and a half hours.

Given the fact the deprived child's birth is either inadequately or incorrectly recorded, the reliability and impact of laws cannot be fully regulated in terms of age. This lack of uniformity in ages specified by different laws creates confusion.

Mines Act, 1952

No person below 18 years of age shall be allowed to work in any mine or part thereof.

Child Labour (Prohibition and Regulation) Act, 1966

Child means a person who has not completed 14 years of age.

Army Headquarters Regulations:

The age of recruitment in the Army is from 16 to 25 years. Persons who are recruited at the age of 16 years, undergo Basic Military Training for up to two-and-a-half years from the date of enrolment and are then inducted into regular services.

Indian Contract Act, 1872:

A person below the age of 18 years has no capacity to enter into a legal contract.

Provision of Free and Compulsory Education:

Article 45 of the Constitution, recently amended by the 86th Amendment to the Constitution, states that all children between the ages of 6 and 14 years have a fundamental right to education.

'In light of Article 1, the Committee is concerned that the various age limits set by the law are not in accordance with the general principles and other provisions of the Convention. Of particular concern to the Committee is the very low age of criminal responsibility under the Penal Code, which is set at 7 years; and the possibility of trying boys between 16 and 18 years as adults. The Committee is concerned that there is no minimum age for sexual consent for boys. The Committee is further concerned that minimum-age standards are poorly enforced (e.g. 1929 Child Marriage Restraint Act).

The Committee recommends the State Party to review its legislation with a view to ensuring that age limits conform to the principles and provisions of the Convention, and take greater efforts to enforce those minimum-age requirements.

Committee on the Rights of the Child, 23rd Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: India.

Civil Rights and Freedoms

The constitutional guarantee for the right to equality before law for all citizens is also applicable to children. Article 15 (3), under which several acts have been passed from time to time to ensure children's protection, empowers the State to provide for special laws for children. The Fundamental Rights in the Constitution are available to all children with as much authority and accessibility as adults. The Judiciary has played an important role in enlarging the understanding and scope of rights for children in the country.

To begin with, the Directive Principles of State Policy were seen to have only directive and moral value. However, because of some very radical and powerful interpretations by the Supreme Court, many of these articles have now become

enforceable through legal actions brought before these courts. For instance, in the *Asiad Case*, the Supreme Court has held that the rights provided in Part IV of the Constitution can be read with the Fundamental Rights provided in Part III, thereby making them legally enforceable. In the now famous judgment in the *Mohini Jain Case*, reinforced by the *Unnikrishnan case*, the Supreme Court read Article 45, which provides for free and compulsory education upto the age of 14 years, along with Article 21. Article 21 was interpreted to mean that the right to life and liberty not only includes right to livelihood, but also the right to dignity which is not possible without education, thereby declaring the Right to Education as a fundamental right. (AIR 1992, S.C. 1858, and AIR1993, S.C.2178).

At the same time, there have been instances when the Court has taken a narrow view of the problem, thereby limiting the scope of the law in interpretation. An example of this is the *Salal Hydro Project case*, where although the Supreme Court had an opportunity to strongly prohibit child labour, it chose not to do so. Instead of interpreting the rights under the Constitution as a bundle of rights while examining the content of Article 24, banning employment of children below the age of 14 years in factories, mines and other hazardous occupations, it chose to view the article in isolation. Giving the argument of poverty, destitution and the prevailing socio-economic conditions in the country, it allowed for employment of children in the *Salal Project* as it was neither a mine nor a factory, thereby attributing a limited meaning to the word 'hazardous'. (1983 (2) Supreme Court Cases 181).

Because of the system of governance adopted by India, and the distribution of legislative powers under the three lists — Union, State and Concurrent — a number of matters concerning children, such as police, reformatories, borstal institutions, relief and the disabled, are subjects of List II or the State List. On the other hand matters such as criminal law and procedure, family law, civil procedure, vagrancy, economic and social planning, social security, welfare of labour, education etc. are part of List III or the Concurrent List (matters in which both Parliament and State Assemblies have the power to legislate). As such the states are largely responsible for the legal protections available to children and their enforcement.

Right to Nationality

Every child born in India or abroad acquires Indian citizenship if either of its parents is an Indian citizen. A minor child ceases to be an Indian citizen in case its parents have renounced Indian citizenship, but such a child may resume Indian citizenship within one year of his or her attaining 18 years of age by making a declaration to this effect. Children of non-Indians living in India do not automatically become Indian citizens. However, birth registration facilities are available to them as documentary proof of birth with details of name of parents, location of birth, time and date, etc. (Indian Citizenship Act 1986).

Under the Registration of Births and Deaths Act, 1969, registration of all births occurring in the country has been made compulsory and free of charge, if reported within a prescribed time limit, which varies from 14–21 days, depending upon the state rules. Despite the registration of births being

compulsory, and production of birth certificates becoming a prerequisite documentary proof in a number of instances such as school admissions, obtaining ration cards etc. the rate of birth registration continues to be very low. Several reasons, including lack of awareness due to illiteracy and high rate of home-based deliveries have been attributed to this. The absence of a birth certificate proves to be a major hindrance for many children in exercising their rights. It denies them their right to identity, nationality and justice. These include the right to gain admission into school, the right to be treated as a juvenile and not an adult in case of neglect or of conflict with the law, determination of the age of consent in the case of a working child or victim of sexual abuse, and in several other situations where there are age-specific special provisions for children.



Rights of Children from Ethnic, Religious or Linguistic Minority Groups

Constitutional Provisions

Right to Freedom of religion

Article 29: Protection of interests of minorities

Article 30: Right of minorities to establish and administer institutions

Right to Constitutional Remedies

Article 349: Special procedure for enactment of certain laws relating to religion

Special Directives

Article 350: Language to be used in representations for redress of grievances

Article 350a: Facilities for instruction in mother tongue at primary stage

Article 350 b: Special officer for linguistic minorities.

Article 351: Directive for development of the Hindi Language

The other laws are Protection of Civil Rights Act, 1955 and the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.

The rights of minority children to marriage, adoption and maintenance — all that falls into the realm of family law, depends on the religion of the parents or the family they marry into. While legislation in some cases does take care of the interests of the child, it is definitely more attuned to the rights of the parents over the child.

Right to be Born

The adverse sex ratio of our country is a reflection of the poor status of the girl child and violation of her right to be born. While on the one hand women must have reproductive rights and rights over their fertility and bodies, and be able to decide when they want to have babies, it is the selective decision taken by them and their families based on the prevailing attitude towards the girl child that is of deep concern. It was to prevent such selective foeticide, and allow all children equal rights to be born that the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was passed. However, as is obvious from the sex ratio in the present census, despite this Act, neither the State Governments nor the Central Government have taken appropriate steps to

control misuse of the sex selection procedure. This prompted the Centre for Enquiry into Health and Allied Themes (CEHAT), Mahila Utkarsh Mandal (MASUM) and Dr. Sabu M George to file a joint petition, following which the court passed an order on 4 May 2000 (W.P (C) No. 301 of 2000) directing the Central and State governments to undertake necessary action to implement the Act. The final decision on the case is awaited.

Right to Family Environment and Alternative Care

In the area of family law, the rights of the child within the family depend on the religion to which the parents belong or marry into. Broadly, family laws cover the rights of parents over custody and guardianship of children and the rights of children to maintenance and inheritance.

Legal protection has been provided to children under the Indian Penal Code (IPC), the Criminal Procedure Code (Cr.PC) and various other laws passed time to time. Clearly, although legislation in some cases does take care of the interests of the child and protects its rights within the family or with respect to the family, most of it provides for the rights of parents and guardians OVER the child rather than the other way round.

The Hindu Marriage Act, Hindu Minority and Guardianship Act and the Hindu Succession Act govern the rights of children born to Hindu parents. The customary Islamic Law or the Shariah governs the rights of Muslim children, while Christian personal laws govern the rights of Christian children. The Guardians and Wards Act will apply to all children under certain circumstances. It clearly lays down that the father's right is primary and no other person can be appointed guardian unless he is found 'unfit'. The Indian Divorce Act, Parsi Marriage and Divorce Act, the Special Marriage Act and personal laws, depending on their religion, govern the rights of children in case of a dispute between parents.

In recognition of the overwhelming patriarchal nature of our society, natural guardianship is given to the father while childcare responsibilities are delegated to the mother. In most communities children carry the father's name, and most documents continue to require the father's name as the guardian of the child, even when he/she may be living with the mother. This is not only unjust, but also insensitive to both mother and child, given the fact that one-third of all households in India are female-headed.

Mother can be the natural guardian of child even during father's lifetime

Subhash Lakhotia

WHETHER IT is for the purpose of income-tax or for the purposes of other matters for persons having minor children, a question arises as to who is the legal guardian. Generally speaking, most of us accept the fact that in respect of minor children so long as father is alive he is the legal guardian of the child. Only after demise of the father, the mother takes over as the legal guardian of the child.

This thinking is not correct specially because the Supreme Court of India in the case of *Gita Hariharan and another v. Reserve Bank of India and another* (1992) 4 SCC 103, held that the mother can be the natural guardian of the minor child even during the lifetime of the father.

This is in tune with the Hindu Minority and Guardianship Act, 1956 as also the Guardians and Wards Act, 1890 read together with the Constitution of India.

The brief facts in the above case were that the first petitioner was the wife of the deceased and second of her books and said to be a medical scientist. The second petitioner is a medical scientist is of India (first respondent) on December 10, 1984, for 9%. Relief sought in the name of 20,000.

They stated emphatically that both of them were the natural guardian of the child, i.e., the minor.

first petitioner, would act as the guardian of the minor for the purpose of investments made with the money held by their minor son. Accordingly in the form of application, the first petitioner signed as the guardian of the minor.

The first respondent replied to the petitioners asking them either to produce the application form signed by the father of the minor or a certificate of guardianship from mother.

That led to the filing of writ petition by the two petitioners with prayers to strike down section 6(a) of the Hindu Minority and Guardianship Act, 1956 (herein after referred to as 'the HMG Act') and section 19 (b) of the Guardians and Wards Act, 1890 (herein after referred to as 'the GW Act'), as violative of Articles 14 and 15 of the Constitution and to quash and set aside the decision of the first respondent refusing to accept the deposit from the petitioners and to issue a mandamus directing the acceptor of the same after declaring the first petitioner as the natural guardian of the minor.

In the counter-affidavit filed on behalf of the first respondent, it was stated that the father of the minor son was not the natural guardian of the minor son and the application was not rightly accepted by the court.

It is also stated that under section 6(a) of the HMG Act the father of a Hindu minor is the only natural guardian. Since challenge to the constitutionality of section 6 (a) of the HMG Act and section 19 (b) of the GW Act was common to both cases, the writ petitions were heard together.

The main contention of the senior counsel for the petitioners, is that the two sections, section 6(a) of the HMG Act and section 19 (b) of the GW Act are violative of the

section 6(a) of the HMG Act and section 19(b) of the GW Act are violative of the equality clause of the Constitution, in as much as the mother of the minor is relegated to an inferior position on ground of sex of the minor, is made cognisable only 'after' the father.

However, according to the counsel both these sections must be struck down as they are unconstitutional. When the matter came up before the Hon'ble judges of the Supreme Court, it was opened by them first in section 4(c) of the HMG Act as any of the guardians mentioned in section 6 of the HMG Act.

The term 'guardian' is defined in Section 4(b) of the HMG Act as a person having the care of the person of a minor or of his property or of both, his person and property and includes a natural guardian among others.

Thus it is seen that the definition of 'guardian' and 'natural guardian' do not make any discrimination against mother and she being one of the guardians mentioned in section 6 would undoubtedly be a natural guardian as defined in section 4(c).

The only provision to which objection is taken is found in section 6 (a) which reads: 'The father, and after him, the mother'. That an impression that the mother can be considered to be a natural guardian of the minor only after the lifetime of the father. In fact that appears to be the basis of the stand taken by the Reserve Bank of India.

It is not in dispute and is otherwise well-settled also that the welfare of the minor is the widest view is the paramount consideration and even during the lifetime of the

father, if necessary, he can be replaced by the mother or any other suitable person by an order of court where to do so would be in the interest of the welfare of the minor.

Hon'ble judges of the Supreme Court proceeded the question that the correct way of word 'after' in the section mean only 'after the lifetime'.

If this question is answered in the affirmative, the section has to be struck down as unconstitutional as it undoubtedly violates gender equality, one of the basic principles of our Constitution.

The HMG Act came into force in 1956. It is ten years after the Constitution. Did parliament intend to transgress the constitutional limits or ignore the fundamental rights guaranteed by the Constitution which essentially prohibits discrimination on grounds of sex. The judges opted on.

In conclusion, the judges while giving the decision stated that they were conscious of the fact that till now many transactions may have been invalidated on the ground that the mother is not a natural guardian, where permitted to be rectified.

This judgement, it was clarified, will operate prospectively and will not enable anyone to question any decision already pronounced, on the basis of this judgement.

However, in view of very exhaustive discussion on the point by taking into account all the relevant rules and regulations of the law concerning guardianship of the minor, the Supreme Court came to the conclusion that mother can be the natural guardian of a minor child even during the lifetime of the father.

The judgement in *Geetha Hariharan and Another vs Reserve Bank of India* ((1999) 2 SSC 228) and *Vandana Shiva vs J. Bandopadhyaya and Another* (236 ITR 380) declared that the mother was as much the child's natural guardian as the father. This judgement brings family reality into consonance with requirements of the CRC. Indeed in a country where one third of the households are female-headed, it is critical that the mother be recognised as guardian of the child and all official documents also ask for the mother's name to determine identity rather than continue only with the father's name!

Under Muslim law, the father is the sole guardian of the child, although the mother has the prime custody of the child up to a certain age. According to Shia law, the mother's right to custody of the child terminates when the child is 2 years (or the child is weaned), while in Hanafi law this right is extended till the age of seven. However, in both streams of Muslim law, the mother has the right to the custody of a minor girl till she reaches puberty.

Right of Children Born of 'Illegal Marriages'

One of the biggest evidences that family law is much more oriented to adults than to children is the categorisation of children as 'legitimate' and 'illegitimate' depending on the status of the marriage or relationship of the parents. A child

born out of wedlock or of a void or illegal marriage is considered 'illegitimate'. All laws make a distinction between 'legitimate child' and 'illegitimate child'. Parsi, Muslim and Christian children, if illegitimate, are not entitled to any inheritance rights from their father.

In the case of Hindu children, if the child is born of a bigamous marriage or a void marriage, he or she has the right to inherit the father's property, without, however, any right over the property of paternal relatives. In case there has been no ceremony of marriage whatsoever, the child has no right even over the father's property. Thus Hindu law categorises, and discriminates between, two kinds of 'illegitimacy'. While according to the Hindu Minority and Guardianship,

Student humiliated for not naming her father on form

Sridhar Kumaraswami
New Delhi, June 28

WHAT'S IN a name? Plenty. A teenaged girl has alleged that an employee of Hindu College humiliated her yesterday because she didn't want to name her estranged father on her application form. History (honours) applicant Megha said she had been cleared for admission. The man accepting forms at a counter insisted that she fill in her father's name. Embarrassed, Megha explained she had never named her father on her forms since childhood. The insensitive boor at the counter was unmoved. "If he is dead, why don't you prefix his name with 'the late so-and-so'?"

The man's action of insisting on the father's name is clearly violative of the Supreme Court order in the *Geetha Hariharan* case that ruled a child's mother is as much a natural guardian as his or her father. Megha's parents have been divorced for the last nine years and she therefore always wrote only her mother's name on applications.

Megha said she received a bigger shock from college principal Dr Kavita Sharma. "The principal seemed very sympathetic initially and cajoled me into revealing my father's name. She then wrote the name on the form without my knowledge," the student said, adding that she felt betrayed.

Megha has since secured admission in Sri Venkateswara College without any hassles. Principal Sharma described the charges of "betrayal of trust" as baseless. "I was not sure whether Delhi University rules required the father's name on the form. So, I told the student that I would be writing her father's name," said Dr Sharma. "I also urged her to write a complaint to the DU Grievance Committee," she added. She said she had privately ticked off the rude employee.

Prof A.K. Sinha, till recently DU's Dean of Students Welfare, said it is not mandatory for applicants to identify both their parents in application forms. "The mother's name alone is perfectly alright," he stressed.

CHILDREN TREATED AS ANCILLARY...

'Under all matrimonial statutes, the children are treated as part of ancillary proceedings...The children are not considered independent parties to the proceedings.' (DWCD, 1997). Any order regarding custody, education, maintenance or any other matter can be made only when a petition is filed in the court, and if the petition is dismissed no order can be passed by the court.

Act, 1956, the natural guardian of a boy and an unmarried girl is the father, and after him the mother, in the case of the 'illegitimate child' the mother is the natural guardian and after her, the father.

Thus whatever the law, children pay for the decisions taken by the parents and are denied inheritance rights. What is worse is that a child born of rape is stigmatised and treated as 'illegitimate', not only by society, but by law as well.

Right to Alternative Care

The right to alternative care, for children who have no parents or whose parents are unable to provide the care and protection needed, is governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 and the adoption law, which is determined by the religion of the adopting parents.

Though it is widely recognised that non-custodial remedies for alternative care must be explored and custodial solutions must be the last resort, in practice that is not the case. In 1997, in its report to the Committee on the Rights of the Child the government admitted that assistance goes to residential institutions and that more observation homes are set up each year. Even children of single or destitute parents, who could otherwise be supported through other methods, are admitted to these institutions.

Hindu parents wanting to adopt can do so under the Hindu Adoption and Maintenance Act, 1956. This Act is also applicable to Jains, Buddhists and Sikhs. The personal laws of the other religions, viz. Muslims, Parsis, and Jews, do not allow for adoption. If they wish to take a child into their family, they can do so under the Guardian and Wards Act, 1890. Unlike the Hindu Adoption and Maintenance Act, 1956, this law does not provide the child the same legal status as a biological child born in the family. The legal position of the child is that of a ward and the adults that of guardians. This is unfortunate because there are so many persons belonging to these religions that want to adopt children and are unable to do so. Consequently, all those young children who could have found a home within the country are put up for inter-country adoption.

In a pathbreaking order, Justice F I Rebello of the Bombay High Court held that High Courts have the powers under Article 225 (in matters of protection of minors and children) to give children and minors up for adoption, even if there are no legislations for adoption in some personal laws. (See section on Adoption).

Even as it exists for Hindus, the law has serious flaws. In allowing only married men to adopt, it discriminates against married women. In fact, a Hindu woman, when married to a non-Hindu, is no longer eligible to adopt, even if she has not changed her religion. If a person changes his religion, he not only loses his right to adopt, but his own child can be placed on adoption by the spouse, with or without his consent.

Only Hindus, Jains, Buddhists and Sikhs can adopt children. The personal laws of other religions — Muslims, Parsis, and Jews, do not allow for adoption



In other ways too the Hindu Adoption and Maintenance Act is not child-focussed. For instance it prohibits a person with a son, grandson or great grandson from adopting a boy. It also prohibits the adoption of a girl if the parents have a daughter or a granddaughter living with them. Perhaps such a clause was included to prevent discrimination against a child in case of the presence of a biological child of the same sex. In the case of siblings, as per a Supreme Court judgement, they are rendered ineligible for adoption by the same parents due to the contradiction between the judgement and the law. This clearly goes against modern theories on adoption, which emphasise that families with biological children have been found highly suitable for adoption, especially in case of children with special needs.

Provisions for inter-country adoption have been made to facilitate giving of children in adoption to foreign parents and this is regulated by guidelines issued by the Ministry of Welfare in pursuance of the directions given by the Supreme Court. The Central Adoption Resource Agency (CARA) and state level adoption cells have been created to monitor all adoptions inter-country as well as intra-country.

Minor status no ground for marriage annulment

MUMBAI: In a significant ruling, the Mumbai High Court has held that a marriage solemnised under the Hindu Marriage Act, 1955, cannot be declared null and void on the ground that the partners were minors at the time of entering into wedlock.

Justice D G Deshpande, in a recent verdict, said that Section V were not met.

Section 11 did not include in its scope condition three of Section V as the cause giving reason for a marriage to be declared null and void. The judge ruled and struck down the findings of a lower court which had declared a wedlock null and void.

Child Marriage

There is legal recognition of the fact that children must not be married before they are physically and mentally ready for it. The Child Marriage Restraint Act, 1929 prescribes a minimum age of 21 years for males and 18 years for females. This law is applicable to all Indians irrespective of religion. As the subtitle of the Act suggests, it is merely a law to prevent the solemnisation of child marriages, but does not address the situation of a child who has been married off before the law could prevent it. It does little to protect children who have been married off, sometimes even before they can stand on their own feet.

Under the Act, although the guardians of the children are liable to punishment if they marry off their children/wards before the permissible age, the marriage remains legal and binding. Any man who marries a minor girl as well as persons performing the marriage ceremony are liable to be punished.

No woman can be punished under this law. Both the Hindu Marriage Act and the Muslim Personal Law allow girls to repudiate their marriage at puberty.

The Hindu Marriage Act gives an option to a girl to opt out if her marriage was performed when she was below 15 years, and this must be done before she turns 18. A Hindu girl may do so even if her marriage has been consummated. This law however discriminates against the boy child, who is as much a victim of the system of child marriage, because he does not have the option of repudiating the marriage. Under Muslim Law a guardian can validly marry off the child,

15,000 child marriages held in Chhattisgarh

Sravani Sarkar
Raipur, May 17

DESPITE PERSISTENT efforts by the government, more than 15,000 child marriages were solemnised within less than a month in six districts of Chhattisgarh, a voluntary organisation has claimed.

The marriages were held between Ramnavami (April 21) and the Akshay Tritiya Festival (May 15), the Forum for Fact Finding, Documentation and Advocacy (FFDA) has said. The figures are based on village-to-village



A 16-yr-old boy and a minor girl wait to get married at a mass-marriage ceremony in Indore.

While the Child Marriage Restraint Act prohibits marriages below the age of consent, child marriages are valid under all personal laws except in the case of Parsis and those married under Special Marriage Act.

although the child has the right to repudiate it on puberty. Needless to say, given the discriminated status of women in society, in practice it is highly unlikely that this will happen. Their ability to know the law and exercise this right by taking a stand against their guardians is highly improbable. As for Christian law, marriage below the age of consent is valid, provided it is with the consent of the guardian.

Child Abuse within the Family

Inadequate as they may be, there are still some laws that address sexual offences against children committed by outsiders or non-family members. But there is very little protection available against violence by family members. Nor is there any law against incest.

Right to Development

Education

Article 45 of the Constitution promises, 'The State shall endeavour to provide, within a period of 10 years from commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years.' After a delay of almost four decades, the government made a half-hearted attempt to fulfil this commitment by passing the 93rd Constitution Amendment Bill (86th Amendment to the Constitution) making education a fundamental right for all children in the age group of 6 to 14 years 'in such manner as the State may, by law, determine'. This means that children of the critical 0–6 age group have been left out. All that the Amendment promises is that 'The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years'.

But what is even more contentious is the fact that the Amendment has imposed a Fundamental Duty, 51A, and added a clause (k) to it which places the onus upon the '...parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years'. In doing so the State is abdicating its responsibility for the provision of free and compulsory, quality education that must be accessible and appropriate, both socially as well as physically. In effect it is penalising the poor parents twice — for being poor and for their inability to send the child to school, the causes for which may be beyond their control. Lack of quality, appropriate and accessible education is one of the major reasons for children dropping out. The other reason of course is the need for children to look after younger siblings. In the absence of alternative childcare facilities for children that have been deliberately kept out in the amendment, how can it be expected that parents will be able to 'provide opportunities'?



In 1986 the government had announced the National Policy on Education, which was revised in 1992. In pursuance of its policy, the government has launched a number of schemes such as Operation Black Board, District Primary Education Programme, Sarva Shiksha Abhiyan, Education Guarantee Scheme and Alternative and Innovative Education, Mid-day Meal Scheme, Lok Jumbish, Shiksha Karmi and Janshala.

To address Early Childhood Care and Education (ECCE), which has been given priority in the National Policy on Education, the government has launched several programmes and schemes, the most important being the Integrated Childhood Development Scheme. The labour laws include provisions for childcare or crèches for workers, but most of them are applicable to the organised sector such as factories, mines and plantations. As regards crèches for the unorganised categories, such a provision can be found only in some legislations, such as the Contract Labour Act (1970), the Inter-State Migrant Labour Act (1980), and the Beedi and Cigar Workers Act (1966). This means that the vast majority of children of workers who belong to the ever burgeoning unorganised or informal sector have been ignored.

According to the report of the Department of Women and Child Development, '...The corporate sector does not recognise the childcare needs of the father. In fact, this provision discourages employers from employing women. On the other hand, there is an under-utilisation of the existing crèches because fathers who need it for their children cannot use it.' (DWCD, Country Report, 1997).

In the absence of any legal commitment to childcare after the 86th Amendment to the Constitution, the fear that the State may not feel as motivated to ensure its provision for all children in the age group of 0 to 6 years seems completely justified.

Beating and abuse, physical as well as mental torture faced by the students in schools is one of the reasons for the high dropout rate. It goes with the culture of our country wherein there is a power relationship between the adult and the child, and the use of force against the child is part of this relationship. It is well established that corporal punishment is detrimental to the child's growth and development and is in violation of its rights. There

are several instances of physical and mental damage to children as a result of the punishment given. Yet there is no comprehensive national law banning it. Several states have even enacted laws dealing with it. Moreover the National Education Policy, 1992 clearly states that corporal punishment should be firmly excluded from the education system. Despite that, however, there are several cases that have been registered against teachers in schools for use of violence.

In 2000, in a petition filed by the Parents Forum for Meaningful Education, the Delhi High Court, invoking the National Policy on Education and the Convention on the Rights of the Child, rejected Delhi Government's contention that some degree of corporal punishment was necessary to discipline the students, as had been laid down in the Delhi Education Act, 1973. In effect the court banned corporal punishments in Delhi schools.

Delhi schoolkids to be spared the rod

HT Correspondent
New Delhi, December 1

SPARE THE rod and spoil the child. Even in this, the 21st, century, the medieval truism still has many champions among school teachers, school administrators and even parents. But the Delhi High Court today may have forced them to rethink.

In a landmark judgement, the Delhi High Court struck down the provision for corporal punishment provided under the Delhi School Education Act. The court held that the provision violated the constitutional right guaranteeing equality and protection of life and personal liberty.

The ruling came in the wake of a petition filed by the Parents Forum For Meaningful Education.

A division bench of Justice Anil Dev Singh and Justice M.K. Sharma, in their 25-page judgement, also struck down other provisions in the Act that run contrary to the National Policy on Education adopted by the Centre in 1992.

The national policy, in tune with the International Convention on Children, has adopted a child-centred approach, where corporal punishment has no place in the list of acceptable discipline.

a signatory to the Convention, is obliged to protect the child from physical or mental violence or injury while the child is in the care of any person, maybe educational institution, parents or legal guardian," the bench held.

The court, while rejecting the Delhi Government's contention that retaining the provision was necessary to discipline students, said: "We cannot agree. We have chartered a different course and in doing so we have been guided by the Constitution."

The Act provides for awarding corporal punishment to a student for certain acts defined under it, besides his expulsion and rustication if he is above 14. (The Act, however, bars physically weak children from being punished physically).

The Act provides for up to ten cane strokes on the palms of a student. The punishment has to be noted in his or her conduct register.

On the use of physical force against children by teachers, the court said: "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 and to be respected for responsible life," the bench said.



Illustration: Aya Prasad

Health

The Constitution of India, in the Directive Principles of State Policy, lays down that the State shall regard raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties. (Article 39 (e) and (f) and Article 47). Although when interpreted in a holistic manner it is an integral part of the Right to Life (Article 21); the right to health by itself is not a fundamental right of all citizens.

There is no law addressing the issue of public health in general, although there is a National Policy on Health (2002). Several committees such as the Bhore Committee (1946) and the National Development Council Committee (1993) have recommended strategies for improving the status of health of the people. At this point it is interesting to note that there is no specific section in the National Health Policy that deals with children's health. Their concerns are part of the generic approach taken by the policy.

The National Policy for Children (1974) spells out the constitutional commitments of the State in the following manner: 'It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth.'

The Government of India has announced its National Health Policy 2002. The policy does not address children's health needs specifically. Their health concerns have been addressed as part of the overall guidelines or part of the section dealing with women's health — yet another example of the lack of child focus in our planning and implementation.

The coercive laws based on the population policies are having a negative impact on children. Since adults will now not be able to stand for elections in some of the states, they are choosing to give away their children in adoption or disown them. The withdrawal of facilities after the second child is bound to have an impact on the facilities that the girl child in the family will have. Once again a case of children being victimised for decisions that adults take!

Hidden dangers of two-child policy
A humane population stabilisation policy needs to be worked out, says Usha Rai



It's a shame that the National Commission on Population that was supposed to give fresh impetus and energy to the population stabilisation efforts of the country, has set the clock back by trying to push for a two-child policy. Who in the commission is responsible for raising the ghost of the emergency is not clear, but it has caused great concern to all those who were looking for a people-centred movement for population stabilisation. The steep fall in the ratio of females to males in the 0-4 age group (945 to 927 from 1991 to 2001) had already set alarm bells ringing now if a two-child policy is adopted female foeticide would go up further. In fact, some states too have been resorting to a two-child policy and both Department of Family Welfare and the UNFPA have been working with NGOs to get states to rethink their population policies. Despite the Central Government's clear directive to states that it does not favour incentives or coercion in any form for population stabilisation, recently the Rajasthan government announced that from June this year, government jobs would not be given to persons having over 2 children and those in Government already would be denied promotion for 2 years if they have more than 2 children. The policy for all sections of its community was fortunately dropped after NGOs and others took it up with the Government, but not before it created a scare among the Muslims that the policy was directed against them. The social dimensions of a two-child policy are enormous. Policy-makers seem to have forgotten what happened in China when it introduced its one-child policy? Baby girls were ruthlessly killed. With all the new technologies available in India, female foeticide is already high in India. According to a UNESCO report 13 million female infants/foetuses are done away with every year. The political impact of the two-child policy can already be seen in 4 states. A third child is a disqualification for contesting elections to panchayats and municipal bodies in Andhra Pradesh, Haryana, Rajasthan, Orissa, since 1994-95. In MP the two-child norm became operational from January 26, 2001, and the first casualty was Mrs. Sashi Yadav, sarpanch of Kanavai panchayat, who was ousted after she delivered a third child last year. Ironically, her successor was a woman with 6 children who could not be debarred because all her children were born before the rule came into force. of the community but the two-child clause has caused a host of problems for women and men. Induced abortions have gone up across class and caste lines. In India women, particularly those in rural areas, do not have complete right over their bodies and elected leaders are asking their wives to abort the third child so that they can continue in office. This clause is a face for the elected representative, though the first wife and kids, if lucky, may continue to get monetary support. There have even been instances of wives being abandoned on the pretext that the child they are carrying was not that of the elected representative. In some areas families who have been in the political arena for many years are asking their mothers and sisters to abort the third child. Between February and November 2000, 2 people were disqualified, including 1 woman. And 3 panchs in Bhiwani district of Haryana have lost their post for having over 2 children. Quite recently, the Supreme Court struck down Haryana's two-child norm. This should have cautioned other states — but obviously they are not listening. Andhra Pradesh, which is trying to emulate Kerala and Tamil Nadu in its demographic goals, is doing out incentives in a big way. At the community level, villages achieving 6 per cent couple protection, are eligible for loans and grants under different schemes. At an individual level, land, houses and loans are given on a priority basis to those who adopt permanent methods — tubectomies and vasectomies. On World Population Day the State gives Rs. 10,000 to each of three couples in the district who get operated after having 2 girls just child and those who opt for vasectomy after 2 or less children. Leave travel concession and other benefits are given only to those who adopt family planning. Service providers too are given gold medals for high achievement. The stress on sterilisations and in-cessant sterilisation drives, and

'The task of providing health care to ensure holistic development of over 300 million children in (0-14 years) in India, where one-third of them live in conditions of abject poverty and neglect is an enormous challenge. A child is exposed to many types of deprivations since the stage of conception. Wide disparity between rich and the poor, between urban and rural settings, gender discrimination, and illiteracy among parents are factors impinging on the child's survival, growth and development.'

Department of Women and Child Development, 1997.

'While crimes against children are increasing, criminal law has not been suitably updated to face such challenges and there are many areas where such change is required.'

Child and Law in India, Indian Council for Child Welfare Tamil Nadu, 1998.

Children in Need of Protection Child and the Criminal Law

The Indian Penal Code of 1860 defines various categories of offences and punishment for children. It also contains a chapter on general exceptions, and the only section in the Code that mentions children is the clause that states that an act of offence committed by a child below seven is not an offence (S.82). An act committed by a child above the age of seven, but below twelve, may constitute an offence if committed by a child with sufficient maturity to understand and judge the nature and consequences of its conduct when committing the act. A child accused of such an offence is dealt with under the recently amended Juvenile Justice Act, 2000, which has raised the age of the 'child' to 18 years. Meanwhile the Code of Criminal Procedure, 1973 lays down that a child can neither be summoned to a police station, nor be detained in a police station or prison.

While there are specific provisions dealing with children accused of a criminal act, there are no specific legal provisions for dealing with children who are victims of crimes except kidnapping and procurement (Section 359, 361, 363, 366 (A and B) and rape of women and children in custody (Section 376-C). The Act also creates a special offence in the case of kidnapping of any child below the age of 10 years for the purpose of taking any movable property from its person (Section 369).

In all other cases, children are treated at par with adults. Hence there are no special provisions for dealing with child rape or other forms of violence. However, consent cannot be a defence in the case of children below the age of 16 years. Marital rape is recognised only if the child is below 15 years. There are no special provisions for addressing sexual violence against boys except under Section 377, which deals with homosexuality, anal sex, etc. and is termed as 'unnatural offences'.

Children may be called in to give evidence under the Indian Evidence Act, 1872 since there is no minimum age stipulated. The courts have held that a child of tender years cannot take the oath, but this does not preclude the child from giving evidence. If the child is able to understand the question and make a statement, the evidence is recorded. Children are generally called as witnesses only in criminal cases where they may be witnesses or victims, whereas the law exempts them from civil liability. Where the child is incapable of giving evidence, the courts can act on testimony of adults, viz. parents, relatives or someone who can speak on behalf of the child.

For a child to give evidence in a regular court can be a traumatic experience. Unfortunately, except when the child is a victim of rape, there is no provision for a child to give evidence or make a testimony in camera.

Panel to protect rights of children on the anvil

By Mahendra Ved
Times News Network

NEW DELHI: After over three years of deliberations, a National Commission for Children is finally taking shape. Envisaged along the lines of the National Human Rights Commission (NHRC), it would be set up by an Act of Parliament. The Bill might be brought up during this session.

A draft Bill was finalised on Thursday, incorporating suggestions of the Union law ministry. An official said the legislation had received clearance at the political level. The commission

would monitor and evaluate the status of safeguards provided to children and advise the government from time to time, he added.

The Bill is being pursued by Sumitra Mahajan, minister of state in charge of the department of women and child welfare, who says it is "a necessity for the overall development of our future citizenry". Mooted by HRD minister Murlu Manohar Joshi in 1998, the NCC is envisaged as an umbrella organisation to go into all aspects of development and problems concerning children. It will be a statutory body that will take a holistic view of the issues relating to children.

The NCC will also undertake evaluation of the existing laws for children and their implementation. It will review and recommend revision of existing laws so they are in harmony with the National Policy for Children and the Convention on the Rights of the Child (CRC).

Monitoring of all sectoral policies, welfare programmes, interventions and recommending best practices will be another task of the commission. It will also receive and pursue petitions from child victims. Studying living conditions of inmates in rehabilitation and juvenile homes will also come under the NCC's ambit.

Working Children in Situations of Exploitation

The Constitution contains provisions for protection of children from work, which is beyond their capacity and/or involves long hours of work interfering with their normal growth — education, recreation, rest and overall physical and mental development. The provisions relating to age of admission to employment and regulation of working hours form a part of the relevant labour and industrial laws such as the Mines Act, 1952, the Plantations Act, 1951, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the Merchant Shipping Act, 1958.

The Children (Pledging of Labour) Act, 1933 was enacted before independence and continues to exist in the statute books, as does the problem of pledging of children for labour. However, no prosecution is known to have been made using this law. The punishments and penalties under this law are outdated and toothless. It does not provide for imprisonment, and only imposes a fine for the heinous act of pledging a child, that too a sum ranging between a ridiculous Rs.50 and Rs.200. The enactment of the Bonded Labour System (Abolition) Act in 1976, however, provided some teeth to the legal provisions dealing with pledging of children for labour. Section 3 of this Act has overriding effect over other enactments on the subject and the penalties imposed are more rigorous.

Thereafter, in 1986, the Child Labour Prohibition and Regulation Act was enacted to specifically address the situation of children in labour. However, as has been detailed later in the chapter on child labour, this law is inadequate both in its understanding and the framework that it provides for dealing with the problem of child labour. By distinguishing between hazardous and non-hazardous forms of labour, and identifying certain processes and occupations from which children are prohibited from working, it leaves out a large range of activities that children are engaged in and are exploited and abused. The large-scale exploitation and abuse of children employed in domestic work and hotels are cases in point.

In fact the anomaly exists in the Convention on the Rights of the Child too. While Article 32(1) of the Convention states that children must be protected from economic exploitation, clause 2 of the same article requires States Parties to provide for appropriate regulation of hours and conditions of employment. Not only that, it also requires States Parties to provide for a minimum age for admission to employment, ignoring the very objective of the Convention to recognise, promote and protect the rights of all persons below 18 years of age.

In the context of children who are victims of economic exploitation, it is important to reflect on the ILO Convention 182 which seeks to place a ban on children in 'worst forms of labour' to include children in prostitution. This protocol needs careful examination. Like the Child labour Act it is making a distinction between labour that is hazardous and non-hazardous. Indeed, what is even more worrying is the inclusion of children trafficked and forced into 'prostitution' as they most often are, as a form of work or labour. In fact, by calling it work there is a degree of legitimacy and legality being accorded to the criminal act of pushing children into prostitution!



The formulation of the National Child Labour Policy, 1987, the setting up of a National Authority for Elimination of Child Labour in 1994 and the International Programme on Elimination of Child Labour in partnership with the ILO are some of the measures taken by the government in this regard. Some significant judgements by the Supreme Court, such as those in the case of M.C. Mehta vs State of Tamil Nadu (10 Dec, 96) and M.C. Mehta vs Union of India and Others (18 Dec, 96), have forced the government to undertake pro-active steps in this regard. In the former the Supreme Court reiterated its decision that education be free and compulsory up to the age of 14 years, and directed the employer employing children in contravention of the law to deposit Rs.20,000 per child in the 'Child Labour Rehabilitation cum Welfare Fund'. Further, it directed that in those cases where providing employment to an adult in place of the child is not possible, the appropriate government should deposit Rs.5000 for each child employed in hazardous employment. This penalty would be used towards building a corpus for the welfare of the child. In the latter case the Court ruled that an employer found employing child labour must pay compensation as assessed by the Labour Commissioner, Delhi.

Trafficked Children

A large number of children are trafficked for a range of purposes including labour, marriage, entertainment, begging, drug-peddling and prostitution. However, the law against trafficking, viz. the Immoral Traffic (Prevention) Act, 1956 (ITPA) limits itself to trafficking for prostitution. It does not deal with all forms of trafficking and therefore is unable to protect victims of other forms of trafficking.

The ITPA defines a child as a person who has not completed 16 years, and a minor as one who is above 16 years but not yet 18. The Act defines prostitution as sexual exploitation or abuse of persons for commercial purposes and the term prostitute is defined accordingly. The Act seeks to punish brothel owners and those who seek to live off the earnings of prostitutes. It punishes persons for procuring, inducing or taking a minor child for prostitution. An enhanced punishment is provided in the form of imprisonment ranging from 7 to 14 years, extended to life imprisonment if the offence is committed in relation to a child

(Section 5 (i & ii)). Such a provision has also been made in case of a child or a minor who is detained in premises for the purpose of prostitution. In the case of children rescued using this Act, the Juvenile Justice Act, 2000 will apply.



Street Children

Children who run away from home or have been abandoned by their parents live on the streets. Several others live at home or have familial contact, but spend their time earning off the streets. Often, while referring to street children, people mix these categories. The children who have run away from

home or have been pushed on to the streets by circumstances see the streets as their home. They may have some family ties, but these are infrequent and inadequate. There are some others who have been abandoned or have got lost on the streets, i.e. are missing children, and have lost all contact with their families. All these are children OF the streets, and the children who may be living at home but spend most of the time on the streets, or have familial contact, are children ON the street. While both categories of children are vulnerable, the second category has the protection of a family or a home to go back to. Street children are those who live and earn on the streets. The provisions of the Juvenile Justice Act, 2000 are applicable to street children who fall into the category of neglected or socially maladjusted children as per the law. The government has recognised street children as a category needing special attention. The National Policy for children 1974 as well as the National Plan of Action, 1992 addressed the issue of street children through an Integrated Programme for Street Children launched in 1992. The programme aims to prevent destitution of children and facilitate their withdrawal from the streets. However, as it stands, the solutions visualised are mainly custodial in nature or undertaken in partnership with NGOs.

Children in Emergency Situations

India faces a natural disaster such as floods, earthquakes, and cyclones almost every other year. There is ongoing conflict — ethnic, religious and caste — and insurgency movements in different parts of the country. There is no overall policy or plan to deal with children in such situations. The responses are therefore most often knee-jerk and unplanned, as also not the most appropriate or need based. The amended Juvenile Justice (Care and Protection) Act, 2000 now includes a child 'who is a victim of any armed conflict, civil commotion or natural calamity' in its definition of a 'child in need of care and protection' (Section 2 d (ix)).

Need for an integrated disaster mitigation mechanism

Md Sabir Nishat

Through Science and Technology have made great strides in the 21st century, man continues to struggle with the forces of nature. The North-east region in general and the State in particular like that of other parts of the world are highly susceptible to natural disasters. Assam and the North-east due to its unique geo-physical setting are highly vulnerable to natural disasters like earthquakes, floods, storms and droughts. The State has experienced major and moderate earthquakes in the recent past. Apart from earthquakes, Assam is a flood-prone State. The Brahmaputra and the Barak become rivers of sorrow for the State during the monsoons. The losses in terms of human lives, crops, animal stock and properties every year are enormous. The State also faces natural drought in some parts. Such natural disasters aggravate the economic condition of the State.

Keeping in view the vulnerability of the region in general and the State in particular, disaster management needs to be bolstered and strengthened to

mitigate the sufferings of the people and to reduce the loss of life and property. There is no ready-made solution to disaster problems. But it is through an integrated and pragmatic approach to disaster management the extent of loss in terms of life and property can be minimized.

Apart from natural calamities, increasing human interference with the environment has also brought about an ecological imbalance. Today population explosion, lack of planning in human settlements, lopsided development projects have all contributed no less to make certain areas more vulnerable to natural disasters.

Ever increasing population has put tremendous strain on the economy as well as on the environment. High concentration of people in an area, more particularly in a danger zone, increases the risk of being hit hard by natural hazards. Added to this is the encroachment into highly exposed regions such as flood plains, hilly areas and forest fire zones.

Yet another matter of serious concern is global warming. The mean global temperature has been

rising since the beginning of industrialization. The high accumulation of trace gases in the atmosphere is a matter of grave concern. As a result, climate change is taking place today.

To cope up and manage the situation arising out of natural calamities, a comprehensive and integrated disaster mitigation mechanism is the need of the hour. However, Government's response to mitigate disaster can be effective only with a well organized administrative machinery, strict pursuance of relief manuals at district level, pre-determined allocation of duties and recognized public-private partnerships. While our Government is prepared to face such natural disasters, there is still a lot to be done and the Central Government should come out with liberal hands to help the State whenever necessary.

As Assam falls in a highly sensitive seismic zone, a proper support system for providing quick and effective actions in the event of a major earthquake hitting the State needs to be built up. In order to pace the way for an effective decision support system there is a need for damage assessment for emergency operation centres,

preparation of multi-hazard micro-zoning maps, and backup communications system.

To mitigate the impact of natural disasters, community preparedness is also necessary. Instant public response to warning and other preparedness measures like evacuation can greatly reduce the extent of loss in terms of casualty. It is again this backdrop, mass awareness programmes must be taken up to educate people to meet any eventuality. Moreover, special training must be imparted to the persons in the administrative machinery to increase their capabilities in rescue and relief operations.

Disaster prevention, mitigation, preparedness and relief can go a long way in reducing the loss of life, sufferings and economic losses. A comprehensive approach leading to reducing damage and increasing resilience to hazards is the need of the hour. In this context, it must be admitted that the Government of India has initiated a number of programmes like hazard mapping and vulnerability assessment of buildings, strengthening of Information Technology, monitoring and impact assessment of natural hazards like flood,

drought and cyclone to fulfil the objectives stated in the International Decade For natural Disaster Reduction (IDNDR). Among the recent initiatives taken up by the Centre for disaster mitigation in India include the constitution of a high powered committee to look into the issue of disaster management planning at national, State and district levels, a national committee on disaster management under the chairmanship of the Prime Minister, a National Centre for Disaster Management (NCDM) at the initiative of the Indian Institute of Public Administration (IIPA) and training centres for natural disaster reduction within the existing training institutes at the State-level.

A project on strengthening disaster management capacity was initiated with the assistance of UNDP in 1999. Meanwhile, a programme on enhancing emergency response has been started though in a small way to improve the emergency response mechanism in the wake of natural disasters like earthquake. This regional programme needs to be converted into a national one to build up adequate personnel to meet any emergency situation

effectively.

Based on its vast experience, Indian Institute of Public Administration (IIPA) quite rightly felt the need for disaster mitigation efforts at national level way back in 1993. It is due to the IIPA's initiative the National Centre for Disaster Management (NCDM) was set up by the Ministry of Agriculture, Government of India in 1995. The Centre, set up at the IIPA, is organizing various training, research and case studies related to disaster management. It has been playing an active role in observing the National Day for Disaster Reduction.

As the number of natural disasters is taking place with chilling regularity, disaster preparedness as well as post disaster management is the crying need of the hour to lessen the extent of physical, social and economic losses.

Natural disaster mitigation is a Herculean and gigantic task, such as, a multi-pronged mitigation approach involving the Central State Governments, the NGOs, agencies such as law enforcing services etc. can only reduce the impact of and minimise the loss of lives and properties.

THE 'ILLEGAL' CHILD!

There are many situations in which children find themselves to be declared non-persons by the law (as it stands in India) and therefore suffer severe deprivations of basic human rights.

1. Children Born 'outside' Marriage:

Children born to mothers who have not been 'married' legally to their husbands are not entitled in law to inherit the property of the father. The Hindu Marriage Act 1955 (S.16) only recognises those children who have been born to parents whose marriage has been performed according to the recognised modes of marriage but is void only because an earlier valid marriage still subsists. In other words, children born to a man cohabiting with a mistress are 'illegal' and not entitled to maintenance, inheritance etc. The child therefore gets labelled out of rights for no voluntary act of the child. Some courts have tried taking a positive approach by declaring that long cohabitation of a man and a woman leads to a presumption of marriage. However, these pronouncements are few and far between, inconsistent and leave the law in a nebulous state since the written law (the statute) does not yet recognise these concepts. The following questions need to be addressed:

- How does it comport with the right of human dignity to be born 'illegal', having done nothing to earn the label?
- What is the position vis-à-vis the children of single mothers, surrogate mothers? Further interesting questions may arise in the context of artificial insemination — both where the identity of the donor is known and unknown. How does this affect the right of the child to know the donor, to be recognised as the child of that donor, etc?
- What is the position in relation to the personal laws of Muslims, Christians, Parsis and Jews? What are the extant customary Tribal laws in this regard?
- Does the child have an option (particularly in contexts like S.2 (Explanation of the Hindu Marriage Act, 1955) not to have a religion and what is the law in such a context? For instance, what would be the position vis-à-vis an orphan child?

2. Other States of 'Illegality'

The Child Marriage Restraint Act punishes those who perform child marriages. Under Section 11 of the Hindu Marriage Act, 1955, the marriage of a groom under the age of 21 and a bride under 18 is void. The child spouse is therefore in that capacity an 'illegal' person although such spouse would be in law bound to discharge obligations, for instance, in the context of maintenance, and restitution of conjugal rights. In this context, the anomaly in S.375 (Exception) read with S.376 (1) and 376A may be noticed. Where the wife is below 12, the punishment for rape by her husband is 7 years, and between 12 and 15 it gets reduced to 2 years. Where the wife is between 15 and 18, and therefore still a child, forcible sexual intercourse by her husband is not rape at all. Thus, the illegal spouse suffers further deprivations under the criminal law.

The child-mother cannot by herself invoke the provisions of the Medical Termination of Pregnancy Act. Thus, as an 'illegal' mother, she is deprived of her right to health and her right of choice of motherhood. It would be interesting to examine the rights and obligations of the 'illegal' child-husband and child-father.

- A child worker is illegal under a host of labour enactments and a domestic child worker is not even acknowledged by the law. Thus, the illegal child worker is deprived of several rights and benefits available to recognised workers — health and safety, minimum wages, leave, sickness benefits, PF, Gratuity, security of tenure, retirement benefits. For instance, the child cannot receive payment into his own account that is not operated by someone else.
- In this context, a child artist/professional/sportsperson cannot negotiate, in law, by herself the terms of engagement etc.
- Children born to mothers in jails and in brothels stay with their mothers and slip into illegality in terms of the JJ Act. Children living in slums, children exploited for begging, for petty crimes, also lead 'illegal' lives. What consequence does this have on their right to basic human rights?
- The rights of street children, who are under the JJ Act, either neglected or in conflict with the law, to the following gets severely circumscribed and in fact denied on account of the law treating them as such:
 - Shelter
 - Education
 - Health
 - Food (cannot hold a ration card)
 - Insurance

3. Contractual Capacity of Children:

As a sequester, a child can be a wife, a mother, a sex worker, a labourer, a professional, an artist, a religious head, and so on but cannot by oneself:

- enter into a contract
- open a bank account
- invoke any of the processes of the law (this includes complaining against commission of offences including child sexual abuse, petitioning court for the enforcement of rights, claiming compensation for accident injury, work injury, applying for legal aid and so on — this can cover a wide range).
- write a will
- enter into a lease agreement

While it may be argued that the above disabilities attach to every child, it is undeniable that the 'illegal child' suffers them to an even greater extent. In fact, the focus must be on the extent of this extra degree of disability that the child suffers on account of being 'illegal'.

This is not exhaustive of the topics/areas of study concerning the 'illegal child'. There may be several other relevant dimensions — caste, religion — which are acknowledged in the law and would therefore have a bearing on the rights of the 'illegal child'.

*S.Muralidhar
Advocate*

The Differently-abled Child

Persons with disability are amongst the most marginalised sections of society. That they face unequal opportunities for survival and development is by now fairly well established. In many cases they do not enjoy personal or economic security, are denied access to health care, education and all the basic needs necessary for their growth as children. A disabled girl child is doubly discriminated — by her gender and her disability. The Directive Principles of State Policy recognise the obligation of the State to provide assistance in the event of sickness and disablement. The National Policy on Children, 1974 calls for provision of special treatment, education and rehabilitation of all children suffering from all kinds of disabilities. The National Policy for Education, 1986 stresses on the need for integrated education and the National Policy on Health, 2002, lays emphasis on care and rehabilitation of disabled persons. However, it was only as late as 1995 that a legal step to prevent discrimination against the disabled persons was recognised and taken with the enactment of the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995.

As per this Act, the term disability means blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness. It addresses preventive treatment as well as rehabilitative aspects of disability. The government is required to take appropriate steps to prevent the occurrence of disabilities such as screening children at least once a year for the purpose of identifying 'at risk' cases and take measures for pre-natal and post-natal care of the mother and child. This Act also provides for the government and local authorities to ensure that every child with disability has access to free education till the child attains the age of 18 years. It requires the promotion of integration of students with disabilities in normal schools, the establishment of special schools by the government as well as the private sector for those needing special attention and education, and the equipment of these schools with facilities for vocational training, non-formal training and imparting education through open schools/universities, prepare comprehensive education schemes including transport, supply of books etc. Under the Act, a Chief Commissioner and Commissioners for Persons with Disabilities have been appointed by the Central and State Governments.

As with all laws, the challenge now lies with its implementation and putting the philosophy of equal opportunities to the differently abled in practice.

Children and Substance Abuse

Children are increasingly falling prey to substance abuse — both tobacco and drugs. Traffickers, to peddle drugs, are also using them. Street and working children, children from dysfunctional families are particularly vulnerable. As per the Juvenile Justice Act 2000, any person giving a juvenile or a child 'intoxicating liquor in a public place or any narcotic or psychotropic substances

Mentally ill have rights, says NHRC report

Times News Network

NEW DELHI: In 1999, the NHRC had brought out a report on the state of mental hospitals in the country in association with the National Institute of Mental Health and Neuro Sciences (NIMHANS). Titled 'Quality Assurance in Mental Health' and based on the survey of 37 government mental hospitals, the report had made series of wide-ranging recommendations on the basic requirements for providing quality care in such institutions.

The report mentioned 10 rights of the mentally ill, including the right to be treated humanely and with respect, personal liberty, bodily integrity, privacy, appropriate treatment and rehabilitation, protection from cruelty and involuntary servitude, protection against exploitation and the right to refuse treatment.

The report had suggested that each mental hospital should have

an out-patient service, preferably in a separate block. Services of clinical psychologists and psychiatric social workers should also be available in the out-patient department (OPD), all forms of modern treatment be made available, including essential drugs for one month, psychoeducation and counselling at individual, family and group levels, psychotherapy and behaviour therapy and modified Electro Convulsive Therapy (ECT). Emphasis was laid on improving laboratory facilities so that, in addition to routine blood and urine examination, serum lithium and screening for VDRL, hepatitis B and HIV can be done. Other facilities like X-ray, ECG and EEG should also be available.

For casualty and emergency services, the report recommended there should be a minimum of five to 10 beds in the emergency ward.



except upon the order of a duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which extends to three years and shall be liable to fine'. (Section.25)

Since the government has, both nationally and internationally, announced the setting up of the Children's Commission, there is going to be no change in the plan. What one can do in this situation is to seek a body that does not become yet another boneless institutional structure.

Like the Children's Commission, a Children's Charter and Policy are also on the anvil. The draft Charter actually takes us back in time instead of taking us forward as a mark of progress. A child rights perspective is completely lacking in the draft Policy and the Charter. We are yet to get over our tendencies to be welfaristic in addressing issues concerning women and children. (See Appendix 3 and 4).

CONCLUSION

An analysis of the legislative framework or the existing legal regime for children in the country shows the absence of a 'first call' for the child. Instead of law being viewed as an instrument to change the 'reality' of children's lives, it is the economic, cultural and social realities that seem to determine the legal understanding and framework. Why else would we continue to have laws that cannot protect children who have been married before they could make a choice and are below the legal permissible age determined by that very law? Or, have laws that cannot protect children from all kinds of economic exploitation and distinguishes between hazardous and non-hazardous occupations? Or, allow a child to be termed legitimate or illegitimate? By our inability to define the 'child' the child's fate continues to be determined by the particular legal provision applicable at that moment of time. Our legal understanding continues to be determined by the adult point of view and understanding and not that of the child's. In fact the debate in the country and the instant negative or sceptical reaction that word 'child rights' elicits is an indication of the mindset that one must confront when trying to ensure that children's rights are human rights, and establishing they are integral to the society in which they live and not mere extensions of the adults in it.

Children's body to be made effective: Govt

HT Correspondent
New Delhi, June 15

IF THE government can be taken at its own word, the National Commission for Children (NCC), which should be finalised shortly, will be endowed with "all the safeguards and provisions to make it an effective body".

The Department of Women and Child Development (Human Resource Development Ministry) said the NCC will try to ensure that no child remains illiterate, sleeps hungry and shelterless.

Considering that India carries the burden of the largest child population in the world, one can gauge the enormity of the job in hand.

No wonder then, that India would be inviting special attention during the Second World Summit for Children, scheduled to be held in New York in Sept.

The summit will also mark the end of the first decade of global efforts to improve the lot of children, initiated at the first World Summit in 1990.

The earlier summit led to the establishment of the Child Rights Convention (CRC), to which India became a signatory in 1992.

The Child Rights Convention laid down the economic, social and cultural (ESC) rights of children. Each signatory country has to ensure that these rights are made enforceable within its jurisdiction.

A decade later, as each signatory country is preparing to give an account of how it has taken care of its children, India presents a mixed picture of achievements lost in the enormity of its problems.

The government is happy that the National Charter for Children and the NCC are now within the realm of reality.

The NCC will be headed by either a sitting judge of the SC or a serving secretary to the government and will be empowered to take cognizance of offences, summon witnesses, investigate and pass orders either *suo motu* or on the receipt of complaints.

APPENDIX 1

INDIA'S COMMITMENT TO CHILDREN *International Commitments*

- Universal Children's Day, 1957
- UN Declaration on the Rights of the Child, 1959
- International Year of the Child, 1979
- UN Convention on the Rights of the Child, 1989 (Ratified by India in 1992)
- World Conference on Education for All, 1990
- SAARC Decade of the Girl Child 1991–2000
- The Global Conference on Water and Sanitation, 1990
- World fit for Children, 2002
- SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

National Commitments

Constitutional Provisions

- | | |
|----------------|---|
| Article 15 | ...not discriminate against any citizen...(3) nothing in this article shall prevent the state from making special provision for women and children. |
| Article 21 | ...no person shall be deprived of his life and liberty... |
| Article 23 | Traffic in human beings and begging and other similar forms of forced labour are prohibited... |
| Article 24 | No child below the age of fourteen years shall be employed to work...in any hazardous employment. |
| Article 39(e) | ... the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. |
| Article 39 (f) | ... 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 against moral and material abandonment. |
| Article 42 | ...for securing just and humane conditions of work and maternity relief. |
| Article 45 | ... free and compulsory education for all children until they complete the age of fourteen years. |
| Article 46 | ...promote ... educational...interests of the weaker sections of the peopleprotect them from social injustice and all forms of exploitation. |
| Article 47 | ...raise the level of nutrition and standard of living of its people and the improvement of public health.... |

Laws

1890	Guardians and Wards Act
1929	Child Marriage Restraint Act (amended in 1979)
1948	Factories Act (amended in 1949, 1950 and 1954)
1956	Hindu Adoption and Maintenance Act
1957	Immoral Traffic (Prevention) Act (amended in 1986)
1958	Probation of Offenders Act
1960	Orphanages and Other Charitable Homes (Supervision and Control) Act
1986	Child Labour (Prohibition and Regulation) Act
1992	Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act
1994	Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act
1996	Persons with Disabilities (Equal Protection of Rights and Full Participation) Act
2000	Juvenile Justice (Care and Protection of Children) Act

Policies

1974	National Policy for Children
1986	National Policy on Education
1987	National Policy on Child Labour
1993	National Nutrition Policy
2002	National Health Policy

Strategic Programmes

* National Plan of Action for the SAARC Decade of the Girl Child (1999–2000), 1992

APPENDIX 2

DRAFT BILL ON NATIONAL COMMISSION FOR CHILDREN, POLICY AND CHARTER: SOME CONCERNS

Draft Bill on National Commission for Children

1. The Commission must have its basis in the Constitution of India to ensure the necessary statutory status and powers to it. The Commission must have statutory powers to investigate violations, take legal action, issue reports, be consulted by government and other bodies, contribute an independent view in development of child impact assessments and be consulted over reporting to the CRC Committee.
2. The aims and objectives of such a body must necessarily include — influencing policy-makers and practitioners to take greater account of human rights of children; promoting respect for the views of children; raising awareness of child rights among children and adults; and, ensuring that children have effective means of redress when their rights are violated.
3. While India is legally bound by the Convention on the Rights of the Child, there must be a national mandate for children and the proposed Children's Commission. What will be the mandate for the proposed Children's Commission? There is no uniformity in the national laws relating to children or for that matter various policy commitments contained in the National Education Policy, the National Health Policy, the National Nutrition Policy, the National Child Labour Policy, the National Plan of Action etc.
4. As with the Policy and Charter, the 'Child/Children' must be clearly defined. Any new law must necessarily follow the framework of the CRC wherein the child has been defined as persons below the age of 18 years.
5. Transparency must be built into the draft bill. Going public, holding briefings and organising forums for public participation must be a clearly stated mandate for the Children's Commission.
6. The Commission needs to be accountable to the children for whom it was established by publishing reports that they can understand and encouraging their involvement in monitoring and evaluating their functions, and being open to public scrutiny. There needs to be mechanisms built in that will ensure the participation/involvement and accessibility of/for children.
7. How the Commission proposes to address age specific needs of children should be clearly highlighted.
8. The Commission must be allowed to INVESTIGATE and INTERVENE and visits for investigation WITHOUT intimation.

9. It must have wide powers to perform such other functions as it may consider necessary for the promotion and PROTECTION of Child rights.
10. The Commission should be able to utilise the services of any reliable agency without always with the concurrence of the Central Government or the State Government. The need perhaps is to ensure that the Commission works in co-ordination and partnership with the government. The very foundation of the Commission should in fact lay down the need for collaboration and partnership.
11. What happens if a matter happens to be subjudice in the court must be made clear. In other words what will be the powers of the Commission on a matter that is subjudice needs to be specified at the very outset.
12. The Children's commission must have statutory powers for prosecution.
13. It must be ensured that the reports of the Commission are treated as PRIMARY EVIDENCE in matters pending in the courts.
14. Provision for an advisory committee drawn from persons experienced in dealing with/working on children's issues would enrich the Commission.
15. It should be mandatory to ensure a certain percentage of representation by Women in the Commission.
16. The term of office of chairperson and members of both the proposed National Children's Commission and the State Commissions must be reduced to three years for the purpose of ensuring efficacy.

Draft National Policy for Children and Children's Charter

The draft document lacks a stated purpose, makes no assessment of the situation and does not clearly elucidate how this multi-sectoral national policy is to be implemented.

1. The purpose of the National Policy and Charter needs to be stated at the outset. In doing so it must state what this charter proposes that is beyond the Constitution and the Convention of the Rights of the Child that India has ratified.
2. It must also address in both its purpose and content the gaps that lie in policy commitment and action.
3. The scope of this policy must be clearly stated. It must state whether this policy will define all future action/agenda for the children of India.
4. In doing so it cannot reduce the agenda that it has committed to by ratifying the CRC. Neither can it ignore the progressive discourse that has taken place on the issue of child rights over the last decade. As it stands by addressing only some of the rights identified in the CRC, the policy and charter is reducing the scope of the agenda for children in the future. For example there is no mention of Right to Participation. Does it mean that India does not believe in the Right of Participation for Children?

5. The Policy and Charter does not address the entire section on General Measures of Implementation proposed by the CRC and agreed upon by the ratifying countries. How will the multi-sectoral nature of the policy be implemented and what will be the roles and responsibilities of the various Departments and the proposed National Commission for Children? What will be the resource input in implementing programmes for children? These questions need to pointedly addressed.
6. 'Who is a Child' must be clearly defined. The Government itself has acknowledged in its last country report to the CRC Committee that the multiple definition of the child under different laws has been creating problems. Having ratified the CRC it is obligatory to ensure that all laws and policies formulated by the government are in conjunction with the articles of the Convention. The CRC committee too has recommended that in its concluding observations.
7. While the Policy/Charter talks of 'removing the structural causes related to all issues affecting children' — it does not identify these causes and/or mechanisms/measures required to 'remove' these 'structural causes'.
8. The commitment to the child's right to survival is an age-old commitment, reiterated in various policy documents and forums. While the Policy/Charter does talk about this right in terms of the commitment to undertake all possible measures to ensure and realise it, it forgets that the targeted PDS policy adopted by India in 1997 has thrown millions of people out of the food security net, thereby affecting the lives of our children.
9. The draft document makes a commitment to undertake measures to address the problems of infanticide and foeticide, especially of female child and all other emerging manifestations that deprive the girl child of her rights to survival. It also commits to protecting children from neglect, maltreatment, injury, trafficking, sexual and physical abuse etc. However, time and again CBOs and NGOs have reiterated that these commitments cannot be met without ensuring compulsory registration of births, compulsory registration of marriages and adequate housing to name a few. The draft Policy/Charter must reflect its commitment to these issues specifically, which is presently missing in the draft.
10. When we have a large buffer stock of food grains, will the proposed Policy/Charter really be able to ensure children their 'right to nutrition' by making a mere provision for supplementary nutrition for children from families below the poverty line? In an inegalitarian society like ours, supplementary nutrition is merely a welfaristic measure and only widens the gap between the rich and the poor. The document must actually lay down a commitment to work towards equal distribution of food stock if it truly wants to follow a rights-based approach.
11. There is no mention in the draft Policy/Charter document of children affected by armed conflict, natural disaster and riots, and of refugee children, while the government, in its very own documents, recognises these categories of children as children in difficult circumstances and in need of special protection.

12. On the one hand the policy states that the State shall move towards a total ban on all forms of labour. However, at the same time it also states that the 'State shall provide protection from economic exploitation and from performing tasks that are hazardous to their well-being and ensure appropriate regulation of conditions of work in occupations and processes where children perform work of non-hazardous nature...' There is no definition of 'hazardous' provided by the policy. It has by now been amply proved that the very basis of dividing occupations into hazardous and non-hazardous is fallacious by its very construct. These divisions are on the basis of adult labour and cannot be applicable for children as any work that deprives children of their childhood rights is inherently hazardous. Any policy that will determine the agenda for the future must reflect this vision.
13. The 'right to education' contained in the draft Policy/Charter lacks a holistic approach in as much as it ignores the need for equal opportunity to education and the corresponding fundamental right to equality and equal opportunity enshrined in Articles 14 and 15 of the Constitution of India. It also completely ignores the need for ensuring quality education for all without discrimination on grounds of ethnicity, religious affiliation, gender and physical ability. The absence of a child rights approach is once again visible in the document's welfaristic approach to education when it stresses on the usual incentives for the disadvantaged social groups and non-formal education for the children of the poor.
14. The proposed policy once again reflects a limited approach when instead of stating that education shall be provided for 'holistic' development, it states that 'education and skills will be provided to adolescent children so as to equip them to become economically productive citizens...'
15. Both the policy and the charter do not clearly distinguish between the needs and interests of children according to their age group. The age-group distinction amongst children and recognition of the age-specific needs and interests is crucial in designing any policy aimed at ensuring child rights. Clearly, what may be specifically required for children in the 0-6 years age group would be different from what would be required for the 6-14 year olds or for adolescents. Surely, equipping adolescents to become economically productive citizens is not the present need of this group of children and may not be their present interest either.
16. It is high time the document clearly laid out its commitment to work in co-ordination with other Departments and Ministries of the Government of India and convergence of schemes in both letter and spirit. It is important to do so if one has to address the rights contained in the document. For example, only such co-ordination can help ensure that we not have a targeted PDS policy that will hamper the government's commitment to human rights and to children in particular.

17. Though the draft Policy/Charter recognises and commits itself to ensuring the 'right to protection of the girl child' in particular, gender-equity is missing in every other section of the draft Policy/Charter. As the SAARC Decade of the Girl Child failed to meet its goals, the new Policy/Charter must lay special emphasis on gender equity and gender justice.
18. Child participation cannot be ensured in true spirit without recognising and distinguishing between the age-specific rights of children. The policy and the charter must clearly include children's right to participation and should also state that it will ensure effective participation of children in the different age groups in both policy-making and planning.
19. What is the linkage between the policy, the charter and the 10th Five Year Plan? Will the policy define the agenda for the plan?

COMMENTS ON THE APPROACH PAPER TO THE TENTH FIVE-YEAR PLAN DOCUMENT

There are more than 375 million children in India, the largest number for any country in the world. As a nation we are committed to ensure their development and well-being. Therefore, any plan or programme that the government plans must necessarily have a child rights perspective to it in order to address the needs and concerns of nearly one-fourth of our country's population.

We have studied the Approach paper to the tenth five-year plan in some detail to try and understand how child-centred the plan is and how it has dealt with the needs and concerns of children. This has been done in the light of our national and international commitments. We understand that this is the approach paper and can have a limited scope, but is, nonetheless a reflection of the government's priorities and concerns. We do hope what is missing in the approach paper will be dealt with adequately in the Final Plan document.

Children's concerns have been dealt with Section 3 (Social Infrastructure) of the approach paper under the following heads:

1. *Education (Paras 3.23-3.27):*

- It is heartening to see that the Government plans to universalise 'primary education' by 2007. However, there are some points of concern. Although there is an emphasis on achievement of the goal of universalisation, it is clearly for universalisation of primary education limited only to the 6-14 age group. This is in contravention of the constitutional provision for education for all UPTO the age of 14 years (Para 3.24). The concluding observations made on India's report by the Committee on the Rights of the Child has recommended that the 'age for defining a Child' be made consistent with the Convention which defines children as persons below 18 years of age.
- The approach paper lays stress on 'vocationalisation of the curriculum so that there is no dysfunction between educational system and the workplace'. Clearly, elimination of child labour is not the priority. In fact child labour has not found a mention at all. Instead what is being promoted is non-formal and alternative education for 'out of school children in the most backward areas and for unreached segments of the populations in response to local needs and demands articulated at the grass-roots level'. (Para 3.24). Once again, in contravention of universalisation of elementary education and a common school system, a parallel system of education is being promoted, which will only deepen the social and economic chasm between the children.
- Access to quality and free education are inadequately dealt with as the document continues to promote teacher-pupil ratio of 1:40 while Yashpal Committee clearly recommended 1:30 in 1993. (Para 3.24)

- On free education it talks of free textbooks only and that too only for SC&ST children and girls (Para 3.24) while the constitutional amendment being drafted is for free and compulsory education for all children and that would have to include textbooks and uniforms and any other educational aids.
- It recognises absenteeism amongst teachers. But, instead of correctional measures ensuring their regular attendance and presence in the classroom, it talks of their replacement by para-teachers who will be specially trained. Clearly, a large chunk of the already limited education budgets will go towards creating parallel teaching systems. (Para 3.26)
- It is clearly stated that Universities must supplement resources from the government to meet costs and that there is a need to encourage private universities and substantial hike in University fees. In effect, Higher Education will no longer be state supported as far as possible and also inaccessible to those who cannot 'afford it'. (Para 3.27) Even while it is subsidised in the present, only the most privileged make it to that level. With it becoming private and more expensive, even fewer children will be able to access higher education.

2. Health (Paras 3.28-3.32)

- Clearly the document has moved away from the government's original commitments to free and quality health care. Free health care services will now be available to only those below poverty line, and based on "assessment of need and not ability to pay". This will leave a large section of the population without access to adequate health care, giving access to only 26% of the population.

In fact the very concept of below poverty line is fallacious. The identification of persons on the basis of a narrow poverty line in a population that is predominantly outside the formal sector is problematic. For instance, where income fluctuates from day to day, as it does for a vast majority of the Indian population, a static (one-line) poverty line is an inappropriate indicator of vulnerability. Another important aspect of income targeting in India is that the official line used as cut off is at an absolutely low level, corresponding to the expenditure required for purchasing a minimum of calories. It is in no way an indicator of purchasing power to provide for a minimum decent standard of living.

- The document recognises that health care has become expensive and therefore encourages private health insurance companies to come in a big way.

3. Nutrition (Paras 3.33-3.35)

The Plan recognises that inspite of 50 million tonnes of food grains in the FCI godowns, more than half of the children in the 1-5 years in rural areas are under-nourished, with girl children suffering even severe malnutrition. Clearly, the high malnourishment is not due to unavailability of food stocks but due to its inequitable distribution. Therefore much more emphasis needs to be laid on equitable distribution of food, and food security measures. This becomes much more significant in the light of government's decision to introduce the

Targeted PDS policy in 1997, wherein households demarcated on the basis of income criterion into Below Poverty Line (BPL), and Above Poverty Line (APL) will be treated differently in terms of quantities and prices. This has led to the exclusion of millions of people from the food security net that they had, placing them into the risk of under-nourishment.

General Comments

- The child rights/child-centred perspective needs to be incorporated into the planning process from the very beginning, just as mainstreaming of gender perspective has now come to be accepted in planning.
- There is clearly a move towards privatisation and limiting access of a large number of persons from accessing social services. Placing the responsibility of planning, supervision and management of programmes under local bodies, without giving them the necessary statutory and financial powers is impractical. This is certainly not the kind of decentralisation that can work.
- There is no recognition of the other problems that the children face such as child labour, trafficking, increasing violence in the wake of liberalisation, children affected by conflict, natural calamities and other emergencies, street children etc. and what the government plans to do about it. These need special attention so that resource allocations are made to address them.
- The government has set up a working group on child development. It has developed a draft paper. That document lacks a rights and focus and development approach. It is concentrates on ICDS and nutrition and even while it speaks of convergence between departments and ministries, it fails to draw the linkages with the groups and categories of children dealt with by them. For example, it fails to make the linkages between ECCE and child labour or child development and child protection.
- There are a number of laws pertaining to child rights. While policies find a place in the planning processes, implementation of the laws seldom finds mention. As a result implementation of the laws remain inadequate.
- The government is planning a children's commission and a children's charter. This however has not found mention in the approach document.
- The government had submitted its report to the Committee on Rights of the Child. The committee in its concluding observations had made several recommendations. It would be useful to review these suggestions and take them into account for planning the current 5-year plan.

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HEALTH



SECTION 2

HEALTH

Healthy children represent a healthy nation. The health of children in India as is true of any country in the world, is closely and integrally linked to several factors from geographical location, climate, the socio-cultural practices and attitudes, to economic changes that are taking place in the country. All these impact on the state of health of children and the nature of services available to them. Gender attitudes continues to be an important determining factor in both access and nature of health care provided to girl children.

Indeed like all social sector policies, the health policies or programmes too are an important reflection of the political attitude and will of the State, and how it treats its citizens. In analysing the health status of children, it becomes imperative to examine both the situation that exists and the causal factors for the current situation.

While in the globalising world, the rich, the upper middle and even to some extent the middle class, are gaining access to more and more specialised health care, the poor and the marginalised are losing what limited access they had. With the incomes of the poor falling, and with more and more of the health services getting privatised, the poor today are caught in the vicious cycle of poverty, deprivation, infection and disease. Just as they bear the burden of our economic adjustment policies, the poor and their children bear the disease burden of the country.

Therefore, any analysis of children's health in India must be undertaken in the backdrop of three very important issues, which determine both national policy as well as community and family behaviour, availability and accessibility (economic, physical and social) to health service:

- Globalisation and liberalisation that has led to increasing privatisation of all social services including health making it more and more unaffordable for the poor. This influences health policy and determines availability of health services and their nature. In fact privatisation of health services is being touted as the solution for quality health care, particularly at the village level. The Prime Minister has called upon private companies in India, both local and foreign, to adopt, health facilities.
- Environmental degradation in the wake of urbanisation, industrialisation and 'development', indiscriminate use of natural resources, changing pattern of agriculture which may be water and chemical intensive, higher levels of water and air pollution.
- Gender attitudes in society discriminate against the girl child right from birth and survival to access to health care throughout her life. It has a bearing on the attitude to the pregnant and lactating mother, affecting the health of the unborn or the newborn child. It has been found that in most paediatric units of hospitals throughout the country there is an excess number of boys in comparison to girls seeking medical care. Many parents seek modern health care for their boys earlier than for their girls, resulting in decreased survival rate of the girl child.

The health of the children in India is determined by its economic and social sector policies. It is dependent on the levels of food security, the extent of environment degradation, the monsoon — its timeliness or its delay and the resultant situation of drought or famine. It is determined by the extent of national debt, the amount spent on servicing it, the nature of the cuts in fiscal deficit, the health and the education budget, the levels of privatisation of basic services. It is also determined by the nature of the parents' livelihood or the nature of work that the children themselves do, the hours of work and rest, the hazardous nature of work and the remuneration received. The availability of health care services and their cost, the schemes for the 'deprived', the sense of justice and the vision of the policy-makers are all influencing factors. The nature of health care, access and quality as also the disease burden depends on the geographical region, whether rural or urban, social status — caste, class, tribal or scheduled caste and gender discrimination. From public distribution system food entitlements, price of basic food, to international trade regimes WTO and IMF and World Bank initiated Structural Adjustment Programs — all of them affect the availability or non-availability of food, presence and absence of starvation deaths, the health of the parents and health of the little children. Indeed, the health status of India's children cannot be examined in exclusion to any of the above.

Children's health is usually subsumed in the government's population control and family planning efforts. Family Planning and immunisation programme were amongst the earliest of health programmes initiated in the 1960s. During this time sterilisation remained the focus of the National Family Planning Programme. In 1976, the sterilization drive was at its peak. In 1979, the Family Planning Programme was renamed as Family Welfare Programme and initiatives were taken to improve health and nutritional status of women and children through programmes such as Vitamin A Programme to combat nutritional blindness, Anaemia Prophylaxis Programme to reduce anaemia and related ill health and food supplementation to pregnant and lactating women and children below 5 years through ICDS. The National Health Policy of 1983 laid stress on maternal and child health (MCH). The MCH programme of the 80s renamed as the Child Survival and Safe Motherhood Programme (CSSM) was initiated in 1992, with a distinct child health care component, aiming at reduction in infant mortality and child morbidity and mortality through greater focus on child health and nutrition. As reproductive health care became the focus post ICPD (International Conference on Population and Development, Cairo, 1994), CSSM was brought under the umbrella of the present Reproductive and Child Health (RCH) programme of the Ministry of Health and Family Welfare with certain new components such as Reproductive Tract Infections (RTI), Sexually Transmitted Infections (STI), HIV/ AIDS, adolescent health and contraception with target free approach.

With inputs from the HAQ Editorial Team

- 70 out of every 1,000 children born do not live to see their first birthday. A decrease of only 1% since 1990
- Almost 95 out of every 1000 children die before the age of 5. This is 15 children less than in 1990
- 46.7% of the children in India are underweight, more than 4.8% less than the figure for 1990
- About 22.7 % children weigh below 2.5 kg down from 30% ten years ago
- 265 cases of polio in the year 2000. Substantially lower than the 10,408 cases of 1990.

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, disease burden and 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.' (Planning Commission, GOI). According to Planning Commission (2002), the primary source of data on morbidity has to be medical records maintained by medical institutions and public health agencies, which are practically non-existent in India. The limited data that is available relates to small urban pockets or to some specific health initiatives. Since most of the data collection on morbidity relies on recall of sample households — 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.

THE HEALTH CARE SYSTEM

The 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. The government itself admits that the mere availability of health centres does not always lead to better utilisation. 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.

A National Health Policy (NHP) was last formulated in 1983, and since then there have been marked changes in the determinant factors relating to the health sector. Some of the policy initiatives outlined in the NHP (1983) have yielded results, while, in several other areas, the outcome has not been as expected. It is against this backdrop that the National Health Policy (NHP 2002) was formulated.

It is interesting to note that there is no separate section addressing children's health needs specifically, although, there is one for women. And yet, children constitute 40 per cent of India's population.



TRAGEDY: A man with the body of his three-year-old son at the B.C. Roy Hospital in Kolkata on Monday

3 more kids die, probe indicts hospital official

HT Correspondent
Kolkata, September 4

Infant dies after being treated by witch doctor

Times News Network

AHMEDABAD: The inhuman practise of branding ailing children in Kutch claimed yet another life as 13-month-old Dinesh Bharwad of Adhoi succumbed to acute infection on the burnt wounds and untreated pneumonia on Thursday.

Dinesh had developed early symptoms of pneumonia — cough, fever and breathlessness — a week ago. But blinded by superstition, his parents, like many others in rural Kutch, chose to get him branded with red-hot iron instead of taking him to a doctor. "The poor child was burnt on both his hands, wrists, chest and abdomen and the wounds were badly infected," said a local health officer.

Branding, or quacks, is widespread in Kutch and other areas of Gujarat. Infants are marked with hot iron or even cure them of fever, pneumonia and other ailments.

As is the practise, yet another case of medical negligence compounded by ignorance has come to light. A doctor and let the wife of a prominent nursing home doctor, the witch doctor, owned by none other than the Delhi's Health Minister, Dr A K Walia, refused to

in have been reported dead at hospital since Tuesday night. The traumatised city, three premier Nil Ratan Sircar and Hospital as well.

Department team, set up to the children's hospital, sub-planned hospital superintendent report gave a clean chit to hospital, but blamed Mandal on badly.

ly on Wednesday — were derintendent S.K. Rudra as children die at the hospital and ruled out a link with the Roy Hospital.

at the B.C. Roy Hospital Bengal's only referral hospital Sunday. The hospital refused to remain tightlipped and to stop the press from entering.

Thursday, Monday admitted to lack of in the hospital, refused to Wednesday's deaths and provide any information.

ddhadeb Bhattacharjee, ence on the issue to admit Roy Hospital.



SILENT MARCH: Children protesting against the state over the deaths of kids in a Kolkata hospital.

Nine kids die for want of oxygen in Kolkata hospital

HT Correspondent
Kolkata, September 4

NINE CHILDREN died due to shortage of oxygen cylinders at West Bengal's only referral centre for children, the B.C. Roy Memorial Children's Hospital, on Monday.

The patients' kin allege that lack of oxygen cylinders, saline bottles and proper medical care were responsible for the deaths.

State's Director of Health Services Prabhakar Chatterjee, however, said only six children had died.

The average mortality rate in the hospital was five-six a day and "this is normal for a big hospital", he said.

However, hospital superintendent Dr. Anup Mandal confirmed nine deaths and admitted that the hospital was unable to procure enough oxygen cylinders for the children.

Thirty-one children died at the hospital during the last week. In August, more than 200 children died, which the health department and the hospital authorities claim to be "normal".

After Monday's deaths creat-

HORROR TALE

Death count: Nine on Monday, according to the hospital superintendent. Over the past one week, 31 children have died

What went wrong?

• Shortage of oxygen cylinders

• Shortage of beds. The paediatrics department has 250 beds, but 302 children were crammed in the ward.

• Shortage of staff. One nurse was looking after 40 patients, when she should have been caring after five

What were the patients suffering from?

Bronchopneumonia, birth asphyxia, septicæmia, meningococcal infection

"On Sunday there were no doctors around to check on the children. There were no oxygen cylinders or saline facilities," said Rabin Karmakar, father of a patient.

Five children, two of them

died on Monday suffered from respiratory problems.

The wards, meanwhile, were overcrowded. As many three children share a bed, some of the wards. Along with the children, their mothers occupy the same beds.

Dr. Mandal admits infrastructural support is inadequate. "There are 250 beds, present 302 patients are admitted," said Mandal. The hospital is short of beds, staff and equipment, he acknowledged. "The nurse-patient ratio should ideally be 1:5, but we have one nurse attending 40 children. We need more doctors too".

Meanwhile, Chief Minister Buddhadeb Bhattacharjee said he would not comment on the issue before seeing the report. "I have heard about the deaths but neither the Health Secretary nor Director of Health Services was available to the information. I have tried to contact them," he said.

Tripinamol Congress Mamata Banerjee visited the hospital in the evening threatened to take them to task over it.

"The Left Front has ruined every-

Hospital shuts door on sexually assaulted minor

Vinay Menon
New Delhi, April 28

some medical attention for the intolerable pain she was suffering. Being a child she could not express clearly where it was hurting. All she could say was, "Dard ho raha hai" (It is really hurting), said a social worker who accompanied the girl to the nursing home.

But the doctor, without finding out the facts of the case, merely said, "If it is a case of rape, take the girl to a government hospital." Said the social worker who approached the

priority over everything else. Incidentally, the Health Minister has not been actively involved in the day-to-day functioning of the hospital since he planned full-time into the political arena.

The seven-year-old girl had been brutally sodomised on April 26 by an unemployed youth named Chander who lived next door. Hailing from a poor family — her father is a cobbler staying in a slum cluster in Shakarpari — the girl's mother initially tried to hush up the matter.

Inquiry into infant deaths ordered

STATESMAN NEWS SERVICE

CHENNAI, Feb. 2. — The Tamil Nadu government today order the Madurai district collector to investigate a complaint that 350 infants had died in a medical research conducted by an eye hospital in collaboration with an American university in Natham and Kariyapatti villages.

The AIADMK member, Mr Vishwanathan, in the Assembly yesterday alleged that during a research programme, infants below six months of age were administered vitamin A drops to increase their immunity level.

Mr Vishwanathan said, adding that their parents were asked to record the occurrence of fever, vomiting and even deaths.

Mr Vishwanathan claimed that the eye hospital had taken Rs 11 crore from the American university for the programme. He also demanded an inquiry into the matter.

The Puthiya Tamizhagam leader, Dr K Krishnasamy, wondered how such research was conducted on human beings before it was tried out on animals. He pointed out that vitamin A drops were administered only to infants above six

administer the drops to the infants.

The state education minister and House leader, Mr K Anbazhagan said that he had received reports that no deaths had occurred.

The research was conducted on the recommendations of the WHO in aid of Unicef. The Medical Ethics Committee had permitted it on condition that the parent consent should be obtained for the experiment. The committee also wanted the children be kept under observation for the next six months.

Mr Anbazhagan said according to the report of the inquiry a high-level medical

States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to health care services.

Article 24, UN Convention on Rights of the Child.

According to the NHP (2002), the public health investment in the country over the years has been comparatively low, and as a percentage of GDP has declined from 1.3 per cent in 1990 to 0.9 per cent in 1999. The aggregate expenditure in the Health sector is 5.2 per cent of the GDP. Out of this, about 17 per cent of the aggregate expenditure is public health spending, the balance being out-of-pocket expenditure. The central budgetary allocation for health over this period, as a percentage of the total Central Budget, has been stagnant at 1.3 per cent, while that in the States has declined from 7.0 per cent to 5.5 per cent. The current annual per capita public health expenditure in the country is no more than Rs. 200. Given these statistics, it is no surprise that the reach and quality of public health services has been below the desirable standard. Under the constitutional structure, public health is the responsibility of the States. In this framework, it has been the expectation that the principal contribution for the funding of public health services will be from the resources of the States, with some supplementary input from Central resources. In this backdrop, the contribution of Central resources to the overall public health funding has been limited to about 15 per cent. According to the NHP, the fiscal resources of the State Governments are known to be very inelastic. This is reflected in the declining percentage of State resources allocated to the health sector out of the State Budget. If the decentralised public health services in the country are to improve significantly, there is a need for the injection of substantial resources into the health sector from the Central Government Budget. 'This approach is a necessity — despite the formal Constitutional provision in regard to public health — if the State public health services, which are a major component of the initiatives in the social sector, are not to become entirely moribund'. (NHP, 2002) The NHP (2002) has been formulated taking into consideration these ground realities in regard to the availability of resources.

Many of the health programmes are dependent on World Bank loans e.g. TB (DOTS), Malaria, RCH, Blindness Control, HIV/AIDS etc. The need for comprehensiveness and integration for optimisation of resources has been expressed in the National Health Policy earlier and now as well as in the Planning Commission's Tenth Five Year Plan document. The National Health Policy also expresses the same concern about the globalisation process. An analysis undertaken by HAQ: Centre for Child Rights shows that an average of 50.7 per cent of the expenditure on health in the Union Budget came from external aid. In 1998 this had gone up to 79 per cent. (HAQ: Centre for Child Rights, 2001).

The NFHS-2 survey has revealed that most households in India (65 per cent) go to private hospitals/clinics or doctors for treatment when a family member is ill. Only 29 per cent normally use the public medical sector. Even among poor households, only 34 per cent normally use the public medical sector when members become ill. (As stated in India's First Periodic Report on the CRC, 2001).

Although the private health care system in India has expanded, it has not taken on the responsibility for long-term investment in public health especially of the preventive kind. It is more interested in expanding in the curative field only as that yields the quickest and highest profits. This means while the government complains of being constrained by the lack of funds and has to even withdraw from vital programmes such as prevention of spread of diseases like TB, malaria, the private sector too turns away from it as it is non-remunerative. (Pande, September 21, 2002, Dreze and Sen, 2002). The logic of those encouraging the growth of private sector is that, since such huge percentage of the population goes in for unsubsidised private health care, they can afford it. Where then is the need to invest in subsidising and supporting government hospitals that are badly run, they ask.

Given the conditions of government health care system, the poor under duress are forced to go to the private health care system. They have no choice but to incur heavy expenditure even take high interest loans. Indeed, with the increasing medical care costs, and increase in drug prices, medical care has emerged as the second commonest cause of rural indebtedness. The alternative choice is to bear the disease burden and death. Does that mean that they can 'afford' private health care? While the health burden is higher on the poor and so also the mortality rates, in terms of health-seeking behaviour and hospitalisation, it is the reverse. This leaves the poorer sections of society extremely vulnerable, more so the women and girls who are attended to last in the family in the face of scarcity.

In a question raised by a Member of Parliament, Mr. P Prabahakar Reddy, the then Union Minister for Health and Family Welfare, Dr. C.P. Thakur admitted that private expenditure in health is 82% which is relatively high compared to other countries.

(NCAS, 2002).

The 1990s has been a decade when thousands of Indians have lost their livelihoods due to the closure of small-scale sector units in the wake of liberalisation, privatisation and globalisation. Collapse of subsistent agriculture due to drought, monsoon failure, shift to capital intensive agriculture, increasing indebtedness for pesticides, fertilisers and seeds, is a reality of their lives. A large number of farmers have been reported to have committed suicide in Karnataka, Punjab, Maharashtra. (Shiva, 2000). With the loss of livelihoods and no purchasing power combined with the higher cost of food, the number of starvation deaths and underweight babies will undoubtedly increase.

In terms of the available health services for children in the public health sector, the focus of Maternal and Child Health or Child Survival and Safe Motherhood Programmes or of those addressing the reproductive health of the mother with some concerns of children's health on interventions exclusively for children is unfortunately very limited. These interventions include:

- Universal Immunisation (with polio eradication having been undertaken in a massive way since the mid-90s)
- Oral Rehydration Therapy (ORT)
- National Prophylaxis Programme against Nutritional Blindness due to Vitamin A Deficiency
- Prophylactic Schemes Against Nutritional Anaemia among pregnant women and children
- Diarrhoeal Disease Control Programme
- Acute Respiratory Infections Prevention and Management Programme
- Promotion of safe delivery by trained traditional birth attendants (TBAs)
- Training of traditional birth attendants (TBAs)
- Promotion of spacing between children through family planning measures
- Promotion of exclusive breastfeeding for children up to the age of 4-6 months

Indian Health Care system reflects a caste and class bias. As a result Dalits and adivasis do not get adequate public health care facilities. According to A. Raja, Minister of State for Health, there are only 21,429 Sub-Centres, 3540 Primary Health Centres and 588 Community Health Centres functioning in tribal areas across the country.

Source: Un-starred Question No. 3530 dated 29 April raised by MM Agarwal (2002).

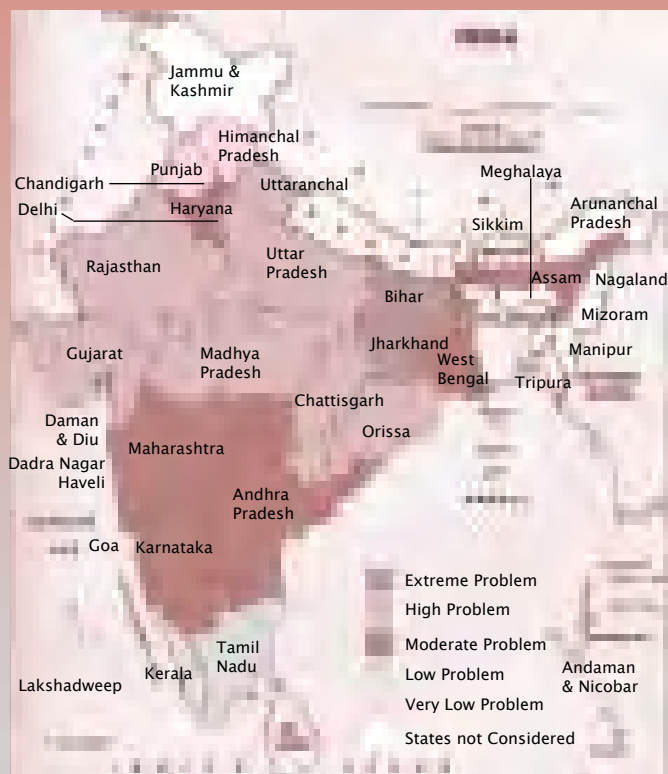
Health and Poverty

'There was no food so I dug out roots and survived on them for three or four days and then I fell ill,' says a child in Baran, Rajasthan. Eighteen persons including eleven children have died of starvation in the wake of one of the worst droughts in Rajasthan with 60 per cent deficit rainfall. Many are reduced to eating rotis made of grass seeds, which leads to severe malnourishment (NDTV News, 22 October, 2002).

In December 2000, the Union Minister for Consumer Affairs and Public Distribution wrote to all chief ministers admitting that five crore people are victims of starvation. A few days later the Chief Minister of Rajasthan complained to him that he had heard that lakhs of tonnes of food grains were lying in the godowns of FCI and that there was a proposal to dump it in the sea, to make storage for the next crop. (Gonsalves, 2002).

The relationship between health and poverty or health and development is complex, multifaceted and multidirectional. Poverty in its various dimensions could be a manifestation, as well as a determinant of an individual's health. It has, in its basic form of food deprivation, a direct bearing on the morbidity and longevity of people. Growing food insecurity is manifested in high malnutrition rates affecting physical and mental development of children and even starvation deaths. Data on wasting and stunting as well as other nutritional deficiencies disorders such as those related to vitamin A deficiency (nutritional blindness), iron deficiency (anaemia), iodine deficiency (goitre) or other micronutrient deficiencies capture some of these aspects of poverty-health linkages. High child mortality on account of supervening infections, particularly diarrhoea and respiratory infections, are fairly widespread among children deprived of these basic amenities of life. (Planning Commission, March 2002).

Figure 1
FOOD INSECURITY



Credit: World Food Programme, United Nations

Figure 2
FOOD ACCESS



Credit: World Food Programme, United Nations

DEAD AND DYING OF STARVATION

Hindustan Times dated 16 Apr 2001, reported deaths of 8000 children in Nasik, Revenue Division, the health department recorded 3429, 3090, 3341 deaths in the Division in 1995-99, 99-2000, 2000-2001 respectively. The Study undertaken by The Tribal Research and Training Institute, Pune, on malnutrition related deaths in Nandurbar Dist., Maharashtra in 0-6 age group in 24 villages of 3 blocks showed that 158 children had died in 143 families.

Dr. Rani and Dr. Abhay Bang of Society for Action and Research in Community Health (SEARCH), an NGO in Maharashtra, reported the high neonatal mortality in Gadricholi district with a large tribal population, and suppression of these facts by local authority resulting in discrepancies in figures provided by SEARCH and the local health authorities. Investigation proved the validity of the SEARCH stand.

Cause of death reported by mothers was poor nutrition in 71.5% deaths. Malnutrition was verified in the siblings of the deceased in 76.5% children of which 41% were suffering from severe malnutrition, 78% of the families had food deficit of 6 months or more. Other factors included poverty and unemployment in a highly exploitative social structure, 50% rent for tilling tenanted land, male illiteracy being 82.5% and female illiteracy 94.4%. These factors clearly show why the children died and why this will continue to be repeated unless the multiple determinants of health are addressed and interventions, that are required, are made.

Bhatia A, Combat Law, Aug-Sept, 2002.



These commonly seen childhood infections often exacerbate malnourishment and in turn, the prevalence of undernourishment reinforces the consequences of such infections. At the same time micronutrients cannot replace food. Healthy children need adequate food with supplements of micronutrients to protect them against disease.

Attainments on other dimensions of human development and economic well-being reinforce the transition towards better health. Enhanced purchasing power through a more equitable distribution of employment opportunities and resources can help bring about nutritional adequacy and food security for the poor. This has to be coupled with provision of safe drinking water, sanitation, and shelter and life-support services.

Recognising the link between health and poverty, the 1995 World Health Report, Bridging the Gap included a new category in its International Classification of Diseases Z59.5, which stands for extreme poverty. The report said that there was an increase in the disparity between rich and poor nations and rich and poor within the nations. There was an increase in extreme poverty and in the diseases of extreme poverty. (WHO, 1995).

The Human Development Report, 2000 stated that the International Trade Regimes are unjust and have their worst impact on the poor. These laws also have increased the technological and economic gaps between the rich and poor nations. (UNDP, 2002). The health of the children specially the children of the poor and the marginalised, single mothers, tribals, migrants, slum dwellers is poor and it is definitely getting worse as basic needs are denied and disease burden increases. The vicious cycle of disease, deprivation, malnutrition and infection is well-known. Yet, the negative impact of structural adjustment programmes has become evident with incomes of the poor falling because the burden of these policies falls disproportionately on the poor.

In 1988, in the case of Kishan Patnaik, when starvation deaths in Orissa were brought to the notice of the Apex Court, it accepted the assurances of the Government of Orissa that the situation will be looked into and hoped that starvation deaths would cease. Ten years later, another petition was filed detailing deaths. In 2001, when Kavita Srivastava of People's Union for Civil Liberties (PUC), Rajasthan filed a petition, little had changed. (Ibid 2000). Even as we write this, various parties are blaming each other for the plight of the children reported dead due to starvation, with no one claiming responsibility.

The NHRC medical team investigating starvation deaths in Orissa pointed out:

- continued absence of any kind of health care facilities
- those that existed did not function properly
- precipitating deaths due to diseases that are not generally life threatening

The report confirmed the presence of 'back breaking poverty' with large number of families below the poverty line with no purchasing power even to buy food from the PDS being forced to eat things that cannot be considered as food e.g. mango kernel.

Table 1
WHAT AILS OUR CHILDREN?
Major Indicators of Health

Indicator	1990	2000
Infant Mortality Rate <i>Probability of dying between birth and exactly one year of age, per 1,000 live births.</i>	80	70
Under-5 Mortality Rate <i>Probability of dying between birth and exactly five years of age, per 1,000 live births.</i>	109	94.9
Maternal Mortality Ratio <i>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.</i>	437	540
Use of Safe Drinking Water <i>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.</i>	68.2%	77.9%
Use of Sanitary Means of Excreta Disposal <i>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.</i>	30%	36%
Antenatal Care <i>Proportion of women aged 15-49 attended at least once during pregnancy by skilled health personnel.</i>	62.3%	65.1%
Childbirth Care <i>Proportion of births attended by skilled health personnel.</i>	34.2%	41.7%

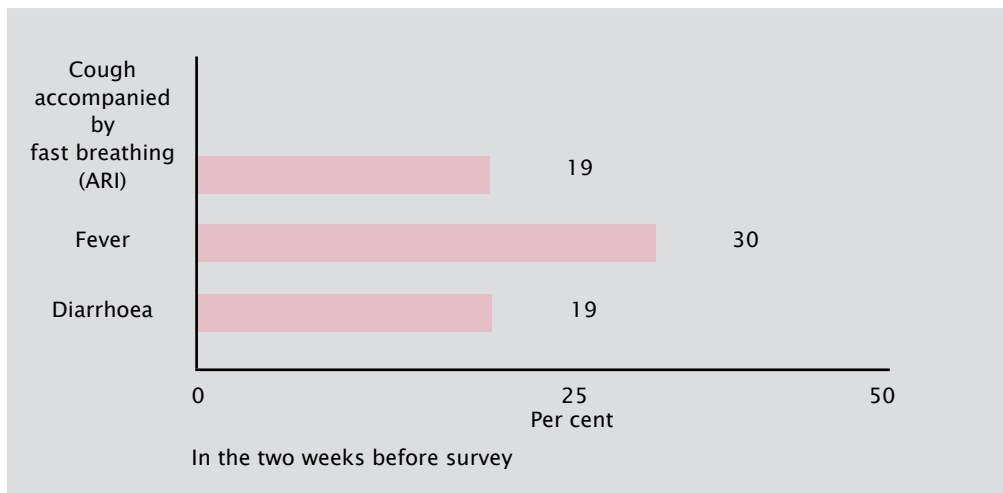
Indicator	1990	2000
Children Protected against Neonatal Tetanus <i>Proportion of one-year-old children protected against neonatal tetanus through immunisation of their mother.</i>	61.9%	67.0%
ORT Use <i>Proportion of children 0-59 months of age who had diarrhoea in the last two weeks who were treated with oral re-hydration salts or an appropriate household solution (ORT).</i>	38.8%	47.7%
Home Management of Diarrhoea <i>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.</i>	Data not collected	35.5%
Care Sought for Acute Respiratory Infections <i>Proportion of children 0-59 months of age, who had ARI in the last two weeks and were taken to an appropriate health provider.</i>	66%	64.0%
Dracunculiasis Cases <i>Annual number of cases of dracunculiasis (guinea worm) in the total population.</i>	47.98%	0%
Underweight Prevalence <i>Proportion of under-5s who fall below minus 2 and below minus 3 standard deviations from median weight for age of NCHS/WHO reference population.</i>	53.4%	47.0%
Stunting Prevalence <i>Proportion of under-5s who fall below minus 2 and below minus 3 standard deviations from median height for age of NCHS/WHO.</i>	52.0%	45.5%

Indicator	1990	2000
Birthweight below 2.5 kg <i>Proportion of live births that weigh below 2,500 grams.</i>	30.0%	22.7%
Children Receiving Vitamin A Supplements <i>Proportion of children 6-59 months of age who have received a high dose of vitamin A supplement in the last 6 months.</i>	Data not collected	32%
Exclusive Breastfeeding Rate <i>Proportion of infants less than 4 months (120 days) of age who are exclusively breastfed.</i>	51.0%	55.2%
Polio Cases <i>Annual number of cases of polio.</i>	10,408	265
Neonatal Tetanus Cases <i>Annual number of cases of neonatal tetanus.</i>	9,357	2,197
Measles Cases <i>Annual number of cases of measles in children under five years of age.</i>	89,612	25,259
DPT Immunisation Coverage <i>Proportion of one year old children immunised against diptheria, pertussis and tetanus (DPT).</i>	52%	55.1%
Measles Immunisation Coverage <i>Proportion of one-year-old children immunised against measles.</i>	42%	50.7%
Tuberculosis Immunisation Coverage <i>Proportion of one-year-old children immunised against tuberculosis.</i>	62.2%	67.5%

Indicator	1990	2000
Wasting Prevalence <i>Proportion of under-5s who fall below minus 2 and below minus 3 standard deviations from median weight for height of NCHS/WHO reference population.</i>	17.5%	15.5%
Total Child Disability Rate <i>Proportion of children aged less than 15 years with some reported physical or mental disability.</i>	5%	Information will be collected in forthcoming Census
Under-5 Mortality Rate; Female/Male <i>Probability of dying between birth and exactly five years of age, per 1000 live births — disaggregated by gender.</i>	122.4	105.2
Underweight Prevalence: Female/Male <i>Proportion of under-5s who fall below minus 2 standard deviations from median weight for age of NCHS/WHO reference population — disaggregated by gender.</i>	53.4%	48.9%
Iodised Salt Consumption <i>Proportion of households consuming adequately iodised salt.</i>	Data not collected	49.3%
Goitre in School Children <i>Proportion of children aged 6-11 years with any size of goitre (palpable and visible combined).</i>	28.4%	21.1%
Timely Complementary Feeding Rate <i>Proportion of infants 6-9 months (180 to 299 days) of age who are receiving breast milk & complementary food.</i>	31.4%	33.5%
Polio Immunisation Coverage <i>Proportion of one-year-old children immunised against poliomyelitis.</i>	53%	62.8%

Source: Department of Women and Child Development, GOI, 2002.

Figure 3
CHILDREN UNDER THREE YEARS WHO EXPERIENCED
SYMPTOMS OF ARI, FEVER, DIARRHOEA



Source: NFHS-2, 1998-99

Illness is common among children

- Nearly one-fifth of children had symptoms of acute respiratory infection (ARI) in the two weeks before the survey. A similar proportion had diarrhoea during this period. ARI, primarily pneumonia, is a leading cause of childhood deaths throughout the world.
- More than 60 per cent of children who had ARI and diarrhoea were taken to a health facility or provider for treatment (not shown).

DIABETES THE 'SILENT KILLER' STALKING OUR CHILDREN



Shantala Shamarao

She was diabetes four years ago, when in class three. Poor control over sugar levels meant frequent hospitalisation. 'I used to take a lot of sweets on the sly,' grins the girl whose dream is to become a doctor.



Narasimha Murthy

The 14-year-old has been living with diabetes for the last six years but dealing with the social stigma is proving more difficult. 'Classmates taunt me saying "sugar, sugar" when I am around and they avoid me.'



Pushpalatha

'I don't want to go to school,' she says. Her teacher thrashes her almost daily because she grabs her lunch box soon after reaching class. Excessive hunger and thirst characterise many of the Type 1 diabetics.

Diabetes, the silent killer, has become a pandemic in the country. Now it is stalking our children. Diabetes is on an increase in India, about 3.7 crore people suffer from the disease. Juvenile diabetes is a more serious problem. Many of them are not aware that they are suffering from the disease, and this is the worst part of it. Normally the disease is diagnosed very late. Children are taken for tests only when other complications appear. Lack of awareness among parents and teachers makes the situation worse.

The Times of India,
 28 March, 2001

The Week,
 17 November, 2002

Mortality

Under-5 mortality among children reflects not merely the death rate among children, but also the quality of life. It reflects income, education, nutrition, morbidity, environmental sanitation, availability of primary health care and the status of women. In 1960, the under-5 mortality in India was 236 per 1000 live births, which declined to 177 in 1980 and to 109 in 1993 and to 94.9 in 2000 with Infant Mortality Rate (IMR) being 67.6.

Regional differences are tremendous not just for infant mortality but also for under-5 mortality and neonatal mortality. Also whereas in Bihar the under-5 mortality rate is as high 137.6, it is just 18.8 in Kerala. Orissa's neonatal mortality is 64.7 per cent and Kerala's 15.5 per cent. 40-70 per cent of the under-5 mortality includes infant mortality. Even though there has been a decrease in IMR and under-5 mortality, there is better progress reflected in the decline in neonatal mortality and stillbirths. Neonatal mortality contributed to 63.71 per cent of all infant deaths in 1993. In India, out of the 25 million annual birth of children, 2.7 million die before completing the age of 5. And reflecting the wisdom of unequal development is the fact that 50 per cent deaths of children are in the four poorest states: Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh. These states also have high birth rates, contributing 47 per cent of the children born every year. (UNICEF, 1995). The health statistics for SC/ST children are amongst the worst. It is a frightening 84.2 per thousand among the Scheduled Tribe Children (Prabhu, 2002).

Check neo-natal deaths in North-east: Minister

HT Correspondent
Guwahati, January 11

UNION HEALTH Minister CP Thakur has asked governments in the North-east to check the increasing number of deaths of newborns in the region. In a meeting with health ministers, officials and MPs from the north eastern States including Sikkim, Thakur said the infant mortality rate in the region was higher than the national average of seventy per thousand. Most deaths occur at the neo-natal stage.

"There's an urgent need to monitor the health of pregnant women and adolescent girls to be married, particularly those below the poverty line," he said. Except in Mizoram and Tripura, only 10 per cent of the women in the region get proper antenatal care. "Safe, hygienic delivery

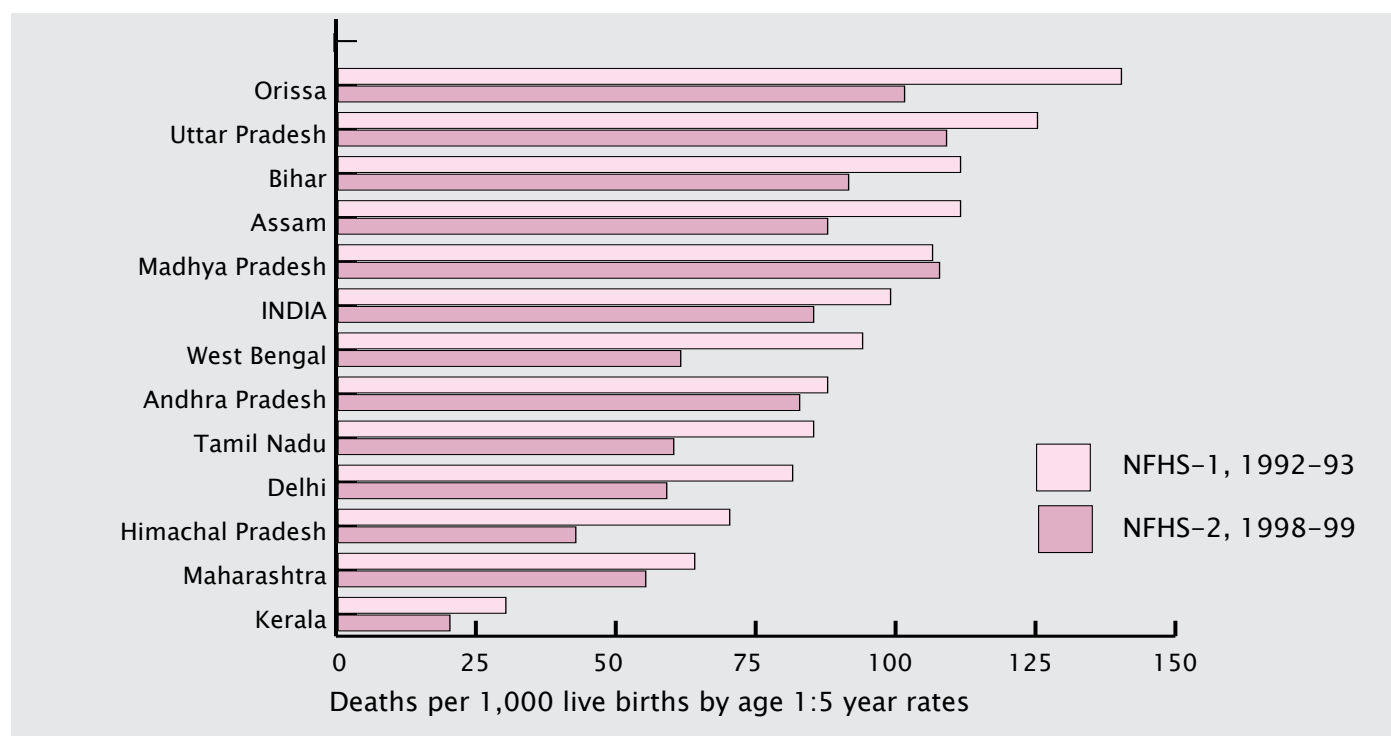
and anaemia need more attention, as there is a shortage of drugs and vaccines."

Thakur said in case of AIDS, the scene was disturbing in Manipur, Nagaland and Mizoram. Most AIDS cases were due to drug abuse, he said and stressed on the need to check smuggling of drugs from Myanmar.

Malaria too demands attention in the region, he said. The North-east contributes to 10 to 12 per cent of the total malaria cases in India with Mizoram contributing to the maximum number of deaths, Thakur said. "This, India Programme being wholly sponsored by the Centre in the region."

The Minister sought an intensified surveillance system in the highly endemic areas to check further outbreak of the disease.

Figure 4
INFANT MORTALITY RATES, SELECTED STATES



Source: NFHS-1, 1992-93, NFHS-2, 1998-99

Table 2
INFANT AND CHILD MORTALITY BY STATE

Neonatal, post-neonatal, infant, child, and under-5 mortality
rates for the five-year period preceding the survey by state,
India, 1998-99

State	Neonatal mortality (NN)	Post-neonatal mortality ¹ (PNN)	Infant mortality (${}_1q_0$)	Child mortality (${}_4q_1$)	Under-5 mortality (${}_5q_0$)
India	43.4	24.2	67.6	29.3	94.9
North					
Delhi	29.5	17.4	46.8	9.0	55.4
Haryana	34.9	21.9	56.8	21.2	76.8
Himachal Pradesh	22.1	12.3	34.4	8.3	42.4
Jammu & Kashmir	40.3	24.7	65.0	16.1	80.1
Punjab	34.3	22.8	57.1	15.9	72.1
Rajasthan	49.5	30.9	80.4	37.6	114.9
Central					
Madhya Pradesh	54.9	31.2	86.1	56.4	137.6
Uttar Pradesh	53.6	33.1	86.7	39.2	122.5
East					
Bihar	46.5	26.4	72.9	34.7	105.1
Orissa	48.6	32.3	81.0	25.5	104.4
West Bengal	31.9	16.8	48.7	19.9	67.6
Northeast					
Arunachal Pradesh	41.8	21.3	63.1	37.4	98.1
Assam	44.6	24.9	69.5	21.4	89.5
Manipur	18.6	18.4	37.0	19.9	56.1
Meghalaya	50.7	38.3	89.0	36.2	122.0
Mizoram	18.8	18.2	37.0	18.4	54.7
Nagaland	20.1	22.0	42.1	22.7	63.8
Sikkim	26.3	17.6	43.9	28.4	71.0
West					
Goa	31.2	5.5	36.7	10.5	46.8
Gujarat	39.6	23.0	62.6	24.0	85.1
Maharashtra	32.0	11.7	43.7	15.0	58.1
South					
Andhra Pradesh	43.8	22.1	65.8	21.0	85.5
Karnataka	37.1	14.4	51.5	19.3	69.8
Kerala	13.8	2.5	16.3	2.6	18.8
Tamil Nadu	34.8	13.3	48.2	15.9	63.3

¹Computed as the difference between the infant and neonatal mortality rates.

Note: The new States of Uttaranchal, Chattisgarh and Jharkhand are not computed separately, they are included in their erstwhile state.

Source: NFHS-2, 1998-99.

Major causes of early death are diseases that are particular to infancy such as premature birth, respiratory infection, malnutrition, diarrhoea, fever and measles.

While there has been an overall decrease in infant mortality rate and under-5 mortality rate over the past decades, this decrease has not been uniform over different states nor has it been significant. It has either plateaued or in pockets actually started showing an increase. Indian National Sample Registration scheme has shown not just stagnation in the decline in infant mortality rates (IMR) in different states, but a definite increase in them. In some major states of India such as Kerala, Karnataka, Gujarat, Maharashtra, Andhra Pradesh, Punjab as well as Madhya Pradesh, Orissa and Assam, the IMR in 1998 had risen above the levels recorded in 1996 and 1997. (Quadeer et al eds. 2001).

Malnutrition

Many of the Indian states have high child malnutrition. In 1998–99, 47 per cent of children under-3 were moderately or severely underweight. More than 50 per cent of such children were malnourished (underweight) in Maharashtra, Rajasthan, Uttar Pradesh, Bihar, Orissa and Madhya Pradesh. On the other hand less than 25 per cent of children under three years were malnourished in Arunachal Pradesh, Nagaland

- Infants are more likely to survive past their first birthday today than in the early 1990s. Childhood mortality rates are used for monitoring and evaluating population and health programmes and policies. Also, these rates are an important element of the quality of life.
- The mortality declines in urban and rural areas are similar. Efforts to improve child survival in both urban and rural areas have met with some success.
- Although mortality is declining, 1 in 15 children still die before age one. Child survival programs need to be intensified to achieve further reductions in mortality.
- While for developed nations, death rate stands at 6–10 per thousand live births, it is as high as 16 per thousand in Kerala — the most literate state in the country.

and Sikkim. The Government accepts that progress in terms of reducing child malnutrition has been extremely slow. Between 1992–93 and 1998–99, child malnutrition came down by only 6 percentage points. In Orissa and Rajasthan child malnutrition seems to have worsened between 1992–93 and 1998–99. These are also states where children have been reported to die because of starvation leading to malnutrition.

A major cause of such high rates of child malnutrition is the birth of low weight babies. Birth weights of less than 2,500 grams are very closely associated with poor growth not just in infancy but through childhood. According to estimates, 20–30 per cent of all babies are born low birth weight representing an intergenerational transfer of malnutrition. One of the major factors affecting birth of healthy babies is of course the health status of the mother or maternal health.

Table 3
REDUCTION IN CHILD MALNUTRITION
1992-93 to 1998-99

Percentage who are moderately and severely malnourished

State	1992-93	1998-99	Difference in % points
Punjab	46	29	17.2
Arunachal Pradesh	40	24	15.4
Assam	50	36	14.4
Kerala	48	37	11.5
Andhra Pradesh	49	38	11.4
Karnataka	54	44	10.4
Bihar	63	54	8.2
West Bengal	57	49	8.1
Meghalaya	46	38	7.6
Uttar Pradesh	59	52	7.3
Delhi	42	35	6.9
Goa	35	29	6.4
Gujarat	50	45	5.0
Maharashtra	54	50	4.6
Nagaland	29	24	4.6
Himachal Pradesh	47	44	3.4
Haryana	38	35	3.3
Manipur	30	28	2.6
Madhya Pradesh	57	55	2.3
Tamil Nadu	29	27	1.6
Mizoram	28	28	0.4
Orissa	53	54	-1.1
Rajasthan	42	51	-9.0
INDIA	53	47	6.4

*Source: NFHS-1, 1992-93
NFHS-2, 1998-99*

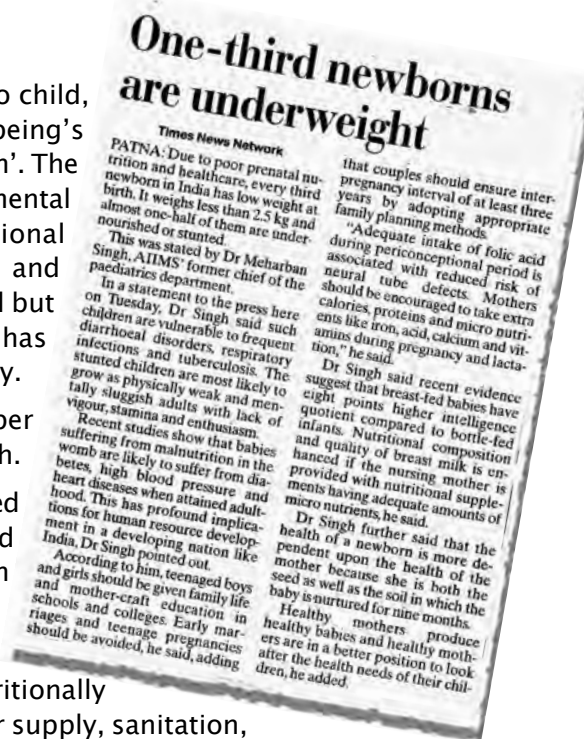
The 1974 World Food Conference resolved that by 1984 'no child, woman or man should go to bed hungry and no human being's physical or mental potential should be stunted by malnutrition'. The World Food Summit in Rome in 1998 recognised, 'the fundamental right of every human to be free from hunger'. The National Nutrition Policy formulated by the Department of Women and Child Development and Human Resource Development is all but forgotten. It is a pity that the National Health Policy 2002 has not paid more attention to food security and health security.

The proportion of low birth weight babies varies from 16 per cent in Kerala to 30 per cent in Rajasthan and Uttar Pradesh.

The National Nutrition Monitoring Board (NNMB 2002) has noted the inadequacy of food and cereal intake. There is widespread 'Hidden Hunger', or inadequate total caloric intake which dropped from 2311 in 1983 to 2249 in 1999–2000, a decline of 72 calories per head.

Children require availability of adequate food that is nutritionally balanced and a conducive environment with protected water supply, sanitation, hygiene and waste disposal. These will need to be done as public health measures. If this is not attempted the disease burden and related curative expenditure will be enormous which is beyond the reach of the poor and middle class population. Children with growth retardation due to severe under nutrition do not get the required growth velocity during adolescence, which is usually a period of rapid growth. They grow up to be adults with Body Mass Index¹ of less than 18.5 indicating chronic energy deficiency (CED).

The increased pharmaceuticalisation of nutrition as nutraceuticals and commercial commodified solutions has led to a failure in addressing the food and nutrition issue as aggressively as required. This is most evident from the silence of the medical and health organisations where starvation deaths are concerned.



CURRENT NUTRITION STATUS REVEALS THAT

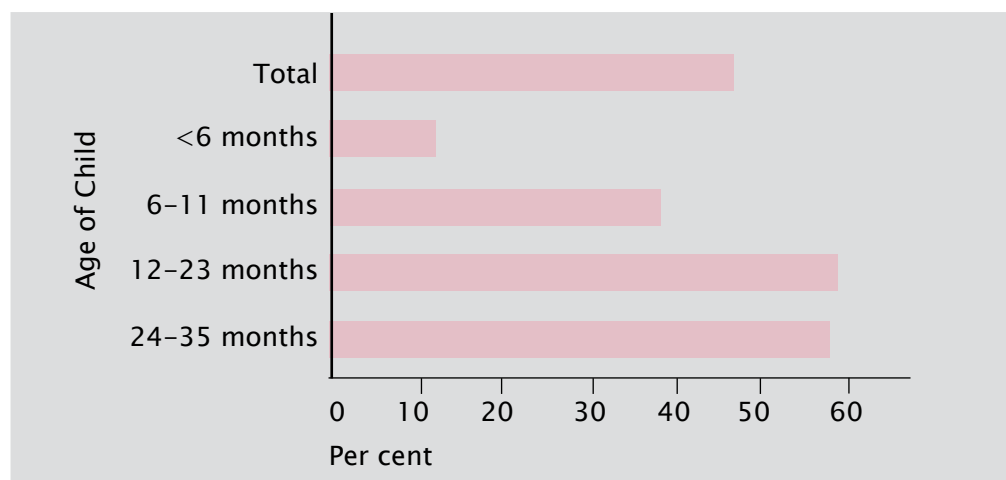
- 47.7% households have caloric inadequacy
- 19.8% households have protein inadequacy
- 19.5% have both caloric and protein inadequacy
- 4.2% of children are stunted based on height for age
- 53% Underweight based on weight for age
- Underweight and stunting are both more in rural children
- 40% of adult males and 41% of the females have Body Mass Index¹ below the value of 18.5
- Based on Body Mass Index calculate for children
- 52% children are stunted
- 53% children under-5 are moderate or severe underweight
- 70% children are anaemic

¹ Body Mass Index is Kg X square of height. Figure below 18.5N and indicates chronic energy deficit.

Nearly half of our children are undernourished

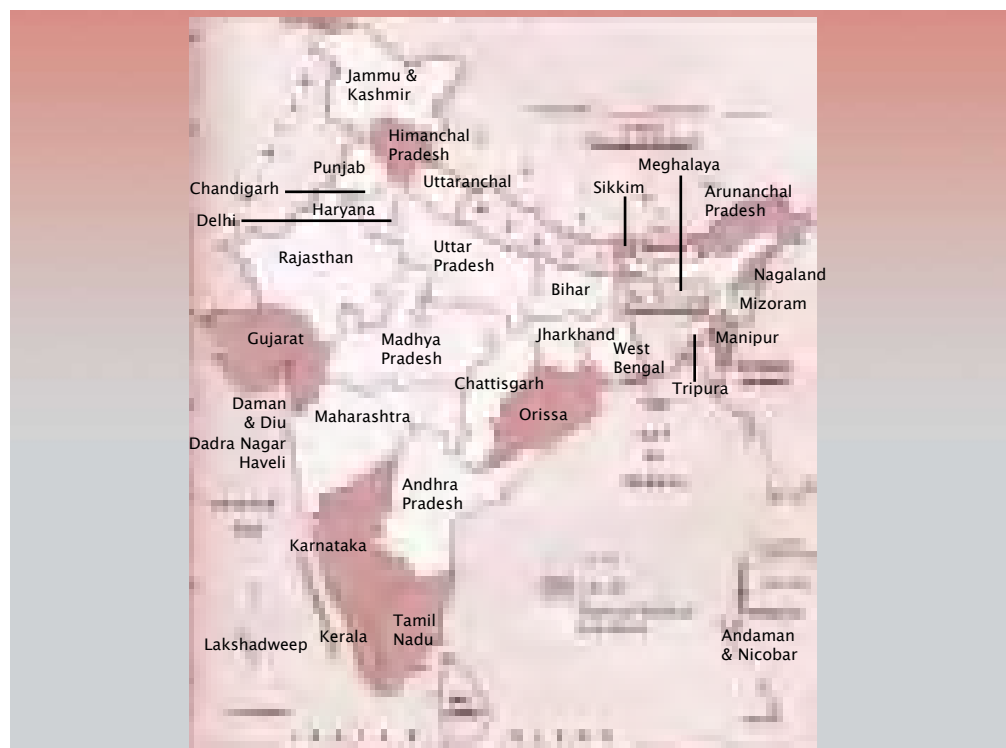
- Almost half of children under three years of age are underweight, a measure of short and long-term under-nutrition. A similar percentage are undernourished to the extent that their growth has been stunted (46 per cent, not shown).
- Under-nutrition is most serious among children ages 12 to 35 months.

Figure 5
CHILDREN UNDER THREE YEARS WHO ARE UNDERWEIGHT



Source: NFHS-2

Figure 6
PROPORTION OF LOW WEIGHTS



Source : MICS 2000

Breastfeeding Practices

It has been well understood by now that under nourishment of children can be linked to breastfeeding practices. Breastfeeding fortunately has been a norm in India. Efforts to promote commercial milk substitutes was resisted by consumer groups and doctors who recognised the nutritive value of mothers' milk and also understood the emotional contribution of breastfeeding in promoting the mother-child bond necessary for healthy growth. They also stressed on the implications of promoting a milk substitute in the backdrop of poor socio-economic conditions, the high risk of infection and the long-term costs that would have to be incurred for preparing infant formula. A higher incidence of malnutrition and diarrhoea is noted among bottle-fed babies. Babies who lose their mothers have a more difficult time in surviving as a percentage, to that of babies who lose their fathers.

The baby food marketing began with warning against diseases, and suggested that tinned milk was the safer, healthier option. This unethical marketing practice was banned in 1986, and succeeded because of its rigorous implementation by paediatricians, consumer and health rights groups. However, breastfeeding remains a problem for working women. Although laws for maternity benefits and provision for crèches at the workplace ensuring 'a mother's right to work and a worker's right to motherhood and time to enable breastfeeding' was formulated, their implementation remains patchy and weak. This in turn has an impact on the health of children. The Indian child also falls victim to the high rates of maternal mortality and morbidity, which denies them of mother's milk.

Recommended breastfeeding practices not widely followed

- To help prevent under-nutrition, infants should be given breast milk exclusively until six months of age. On an average, fewer than 60 per cent of infants under six months are exclusively breastfed.
- The percentage exclusively breastfed varies widely from less than 20 per cent in Himachal Pradesh, Sikkim, Meghalaya, and Delhi to 75 per cent in Andhra Pradesh (not shown).
- Breastfeeding immediately after birth has important benefits for both mother and child. Few children, however, are put to the breast immediately after birth. Additionally, only 37 per cent gave the first breast milk (colostrum) to the child, a recommended practice because it provides the child with natural immunity.

Poor Maternal Health

The abysmal state of the health of India's children reflects the neglect of their mothers. It shows the failure to provide them with basic needs of food, security, shelter, education and health care. Related to women's position in a patriarchal society is the whole cycle of lower nutritional status (36 per cent of Indian women have Body Mass Index of less than 18kg/m indicating high level of nutritional deficiency) and health and educational status of girls, early marriage, early motherhood, multiple pregnancies, closer spacing of children. Because of the heavy workload that women carry and the persistent anti-female biases in society,

States where fewer than half of children 0-3 months are exclusively breastfed

55%	India
40-49%	West Bengal, Tamil Nadu, Haryana, Nagaland, Assam, Jammu and Kashmir, Mizoram
20-39%	Maharashtra, Punjab, Arunachal Pradesh
<20%	Himachal Pradesh, Sikkim, Meghalaya, Delhi

NFHS-2. 1998-99

pregnant women rarely get the necessary attention, care, diet (75 per cent of pregnant women are anaemic), or rest, affecting the nutritional and health status of the children they give birth to. Low birth weight babies (a third of the babies are low birth weight babies (LBW).), malnutrition among children, anaemia and even infant mortality are the impacts on children. Unsafe delivery, attended by untrained birth attendants, puts the lives of both mother and child at risk.

Care for girls and women during pregnancy and lactation, their physical health and nutritional status, autonomy and respect in the family and considerations of work load and time, birth spacing and delayed age of birth, equal access to education are essential for ensuring maternal and child health. These are all actions that need to be taken within the family and is also dependent on changing social attitudes and care practices. It requires both State intervention as well as community participation.

Anaemia

Anaemia is a serious concern for children because it can result in impaired cognitive performance, behavioural and motor development. It increases morbidity. It is matter of concern that 74 per cent of the children between 6–35 months are anaemic in India. About 51 per cent in this age group are

ANAEMIA AMONG CHILDREN

80%	Haryana, Rajasthan, Bihar, Punjab
70–79%	West Bengal, Sikkim, Maharashtra, Madhya Pradesh, Gujarat, Uttar Pradesh, Orissa, Andhra Pradesh, Jammu and Kashmir, Karnataka
74%	INDIA
60–69%	Himachal Pradesh, Delhi, Tamil Nadu, Meghalaya, Assam
50–59%	Mizoram, Arunachal Pradesh, Goa
40–49%	Manipur, Kerala, Nagaland

Causes of Iron deficiency - Anaemia:

- Inadequate body store of iron to start with
- Inadequate iron in the food
- Poor absorption due to diarrhoeal diseases
- Intestinal helminthiasis specially hookworm

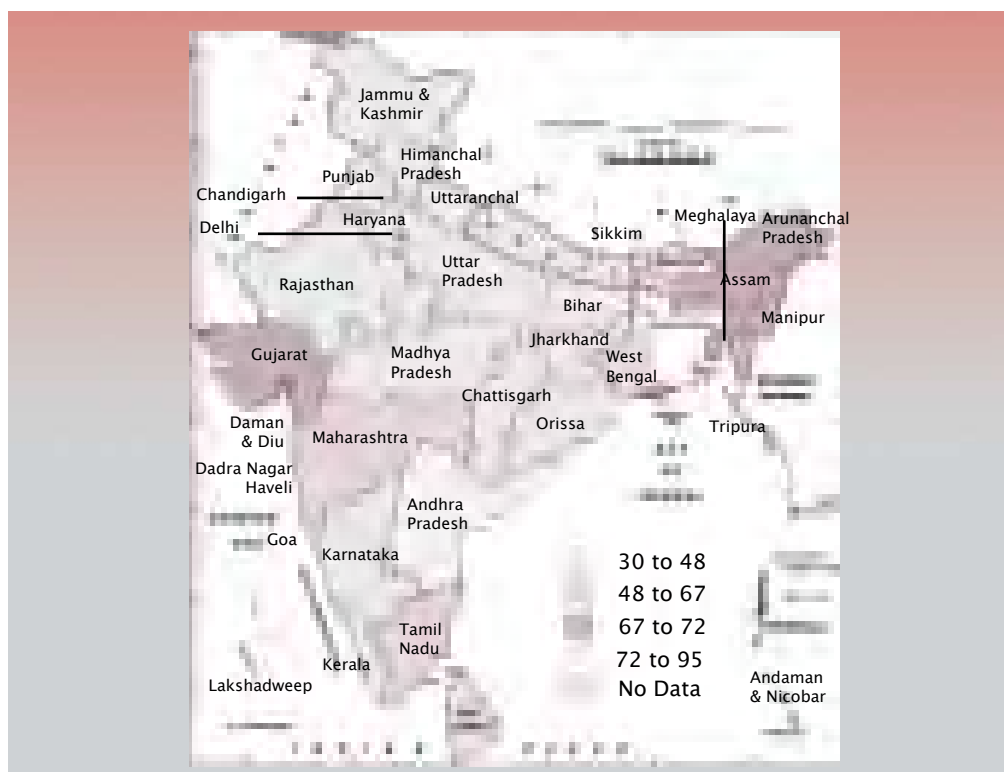
Consequences of Anaemia:

- Maternal mortality risk
- Foetal growth retardation
- Pre-natal and peri-natal mortality
- Child growth failure
- Poor physical and mental development
- Increased morbidity
- Lowered physical activity
- Lowered production 24
- 12% of disease burden in 5–14 year old children is due to helminthiasis

NFHS-2, 1998-99.

moderately or severely anaemic, although there are regional variations. The proportion of anaemic children in this age group varies from less than 25 per cent in Kerala, Manipur, Mizoram and Nagaland to 80 per cent in Rajasthan. It is indeed interesting as well as a matter of concern to find that the proportion of anaemia in the children in economically better off states of Punjab and Haryana is also a high 80 per cent. A huge 70 per cent of the children under-5 suffer from iron deficiency anaemia. Programmes for the supply of Iron and Folic acid to pregnant women and children was initiated in the Fourth Five Year Plan through MCH programmes and health sub-centres. A greater emphasis on this has been given in the CSSM and RCH.

Figure 7
ANAEMIA IN PRE-SCHOOL CHILDREN*



*Hb level less than 11 g / dl

Source : Prepared by S. Sehadri, 1995. Based on secondary data for the Task Force on Micronutrient Malnutrition Control GOI

Micronutrient Deficiency

For growth, body also needs micronutrients Iron, Iodine, Vitamin A being the most important besides Folic acid, Vitamin. B, Ascorbic Acid, and minerals example Zinc, Manganese, Calcium, small amounts of these are 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 brings illness due to vulnerability to infection and even death.

Vitamin A Deficiency

Till a decade ago 40,000 children were estimated to go blind because of Vitamin A deficiency. This has decreased significantly. The Prophylaxis against Blindness due to Vitamin A Deficiency Programme was initiated in the Fourth Five Year Plan with supply of Vitamin A, (20,000 International Unit (IU)) to pre-school children once every 6 months. This was extended to children in the age group 9 months to 3 years with one dose of 100,000 IU only at 9 months with measles vaccination and 200,000 IU annually up to 4 doses. Currently Vitamin A is given as part of the RCH programme and house-to-house campaigns. Indeed, not even killer diseases like malaria receive such attention.

Vitamin drops send children to hospital

By Shankadeep Choudhury
Times News Network

GUWAHATI: What could be the consequence of a modification of a plastic spoon to a measuring cup in a Unicef-supplied bottle of concentrated Vitamin A solution?

Well, the death of a two-year-old and more than 2,500 affected children all over Assam, it seems. Scared parents, who swear never to go for any government-sponsored health programme again and an agitated crowd stoning a doctor's residence in a district headquarter township. Angry parents are agitated with the authorities. Kasturi Barua, a faculty member with the Assam Institute of Management (AIM), said, "I don't know which organisation is to be

blamed. But then, I know for sure that children are not guinea pigs." Director of Assam's health service, Dr B C Koo, suspected: "We have every reason to feel that the Vitamin A dose turned lethal because the children were fed more than the prescribed dosage of 1 ml for a one-year-old and 2 ml for those above one year."

Made of shark and cod liver oil and meant to prevent blindness apart from building up the general resistance and growth of a child, this Pulse Vitamin A programme had a target of 31,39,000 children between the ages of one and five all over the state.

"However, during the third phase of the programme carried out on November 11, the drops were administered not with the usual spoon, but with a new plastic measuring cup. Chances of

overdose is less with the spoon, but I believe in some places, 2.5 ml and above doses were given to the children with the plastic measure," Koo regretted. The health director confirmed that as per initial reports, the third round of this Unicef-Assam government Pulse Vitamin A programme, which concluded on November 11, had a 90 per cent success, triggering all the more panic amongst scared parents.

"The fear psychosis is massive. Thousands of people had rushed desperately with their children to the nearest primary health centres and civil hospitals all over the state, once news of the drug affecting children spread. However, most of them went back after either being reassured, treated or in an improved condition."

Probe ordered: Page 9

Although night blindness, Keratomalacia, is more rare now, 20-30% pre-school children still have Vitamin A deficiency, which may lead to night blindness and a higher predisposition to infection. Recently, what made news however was the effects of Vitamin A overdose. This causes concern about the appropriateness and effectiveness of the intervention.

Iodine Deficiency

Iodine deficiency is the single most important and preventable cause of mental retardation worldwide. Iodine deficiency can lead to miscarriages, brain disorders, cretinism, and retarded psychomotor development. Researchers estimate that about one-fifth of pregnant women in India are at risk of giving birth to children who will not reach their physical and mental potential because of maternal iodine deficiency (Vir, 1995). Children in only one-half of households use salt that is adequately fortified with iodine. About four out of ten households in rural areas use adequately iodised salt. Only 35 per cent of poor households use adequately iodised salt. To prevent iodine deficiency, the minimum iodine content of salt should be 15 parts per million. As with all indicators in India, use of iodised salt too varies dramatically by state. While fewer than 30 per cent of households in Tamil Nadu and Andhra Pradesh use adequately iodised salt, by contrast, more than 90 per cent of households use adequately iodised salt in Mizoram and Himachal Pradesh and fewer than half of households use adequately iodised salt in the southern region. The use of adequately iodised salt is uniformly high throughout the north-eastern region (not shown). In five out of seven north-eastern states, more than 75 per cent of households use adequately iodised salt.

It must be remembered that iodine deficiency is a phenomenon peculiar to certain regions of the country, particularly the hills and the Terai regions like Betia, Champaran etc. It is not a problem found along the coasts because of the climate and the food habits. It is in this light that the government's programme on universal iodisation must be examined. In fact people in some of the southern parts of India are known to be hypersensitive to iodine supplement.

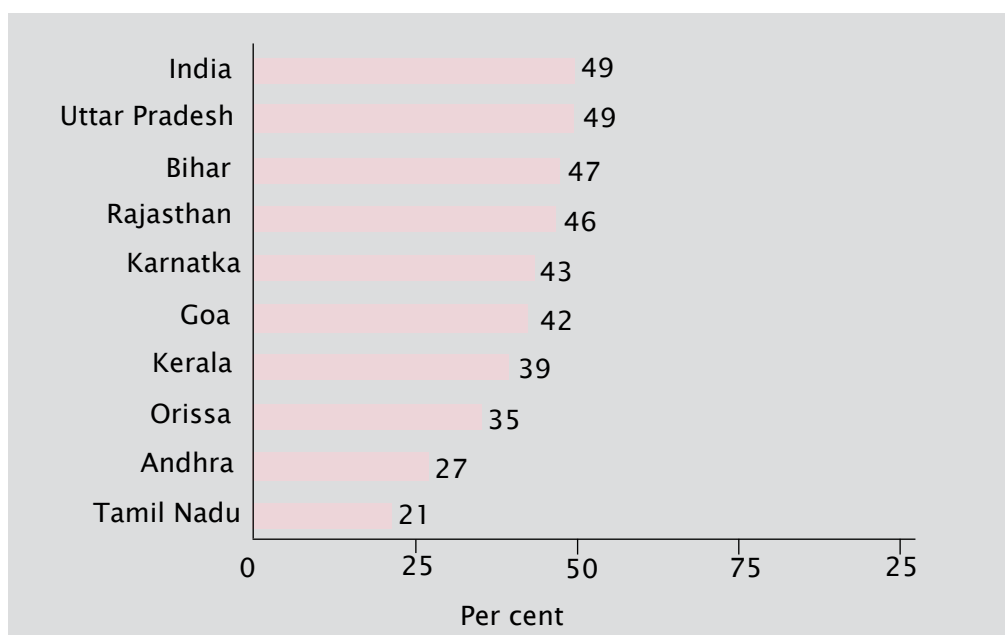
In November 2001, in Assam 12 children died during the Vitamin A drive where it was being given in a campaign mode by going house to house. On investigation a few facts came up. Firstly, there was no Vitamin A deficiency present in the area, secondly, although there was enough natural sources of Vitamin A the range of vegetables and fruits were not being promoted as sources. Workers and volunteers trained to use spoons as a measure were suddenly given cups and could have led to this overdosing. Also, the associated vomiting and dehydration was probably not dealt with adequately.

Figure 8
HOUSEHOLDS USING ADEQUATELY IODISED SALT



Source: NFHS-2, 1998-99

Figure 9
STATES WHERE FEWER THAN HALF OF HOUSEHOLDS USE
ADEQUATELY IODIZED SALT



Source: NFHS-2, 1998-99

The only people who stand to gain by universal iodisation are the salt manufacturers who get a subsidy to produce iodised salt, but as with all programmes, those poor and their children who need it most are unable to access it, because they have to still buy it at market rates.

Acute Respiratory Infections (ARI)

Acute respiratory infections are the leading cause of child mortality in the country. It accounts for 30 per cent of all under-5 deaths. With the rise in pollution levels in the cities, more and more children in them are diagnosed as having respiratory infections. In Delhi, doctors believe that one in every five children suffer from respiratory tract infections. Lower respiratory tract infections like pneumonia require antibiotics. For example, under the ARI Control Programme, health workers have been imparted training in ARI management and Cotrimoxazole is distributed through health outlets. The government estimates that two-thirds of children with symptoms of ARI are taken to a health facility.

Water-Borne Diseases

There is a close link between access to safe drinking water, health and nutritional status of children. Contaminated water results in diarrhoea, cholera, typhoid, para-typhoid, helminthiasis, hepatitis A or E, amoebiasis that may result in hepatic amoebiasis as a complication.

In India, diarrhoea continues to be a major killer. It is the second most important cause of death, accounting for about 20 per cent of all under-5 deaths. (DWCD, 2002). Some 600,000 Indian children die of dehydration caused by diarrhoea every year — the largest number of such deaths in the world. Acute gastroenteritis and diarrhoea, which has cholera-like symptoms, unless quickly and appropriately managed, can lead to severe dehydration and death. The government's Oral Dehydration Therapy Programme through distribution of Oral Rehydration Salts campaign in the 1970s and 80s did bring down diarrhoea deaths. Home based ORS and cereal based ORS were actively promoted amongst the health workers, anganwadis, as part of school health, child to child programmes (Shiva, 1985). Indeed, ORS has been identified as the greatest medical revolution of the twentieth century. Traditional drinks of coconut water, buttermilk, rice kanji, jeera or saunf (aniseed) water provide rehydration, electrolytes and the last two also provide relief from abdominal colic.

However the incidence of diarrhoea still continues to be unacceptably high. This is because the supply of cheap ORS packets by UNICEF does not reach all the children because of inaccessibility, due to lack of roads long distances and adequate transport in the country. Commercial ORS packets of 1 litre cost between Rs. 8 and Rs. 14 and are unaffordable by the poor. Indeed the growing commercialisation of ORS has become a matter of grave concern. This is particularly tragic knowing that public health systems are near collapse, and that 80 per cent of medical practitioners continue to prescribe irrational, sometimes potentially hazardous, anti-diarrhoeal medicines rather than ORS. Streptomycin combinations given for diarrhoea were banned following a legal challenge of its rationality by consumer health and drug activists in the Supreme Court by filing a Public Interest Litigation;

One child dies of dehydration in India every minute: WHO

'We also have to change mindsets,' admitted Gautam Basu, Joint Secretary Ministry of Health, while pointing out that most doctors tended to prescribe expensive antibiotics that did more harm than ORS.

Vishnu Makhijan
Asian News Service

however they continue to be prescribed. Use of Streptomycin combinations with Chloramphenicol and Gut Paralysers such as loperamide and diphenoxylate, in children, can even be fatal. David Werner seriously questioned the move towards increasing dependence on commercial ORS packets and David Sanders in their extremely well argued experience based 'Questioning the Solution' on politics of ORS. (Werner and Sanders, 1996). What is needed is consistent education of mothers and the community on the need for ORS and how to make it.



Environmental Degradation and Child Health

Environmental degradation affects the health of women and children much more than that of others. At the same time social environment is as important for children as the physical environment. Increasing deforestation, use of pesticides for agriculture, commercial conversion of agricultural land, shift in subsistence food production to cash crop production, changing pattern of irrigation, taking over of lands for developmental projects — have all had an impact on the health of children.

Deforestation or denial of access to forests has also meant denial of minor forest products, which were traditional sources of micronutrients. It also means that women spent many more hours in search of water, fuel and fodder. This has an impact in a number of ways. It tells on the women's own health during and after pregnancy, thereby affecting the health of the unborn child, as well as the child when born, especially since the time for childcare is reduced. Older girls are forced to drop out of school for ensuring sibling care, perpetuating the cycle of lack of education and ill health.

As has been poignantly pointed out by Dréze and Sen (2002), in districts such as Kalahandi in Orissa, the collapse of the environment base, especially forests, has undermined people's traditional livelihood. So when places like Kalahandi make headlines for extreme cases of starvation (if not famine) there is a much larger story behind the headlines, in which environmental degradation plays a major role as a causal antecedent chronic to hunger and deprivation.

Air and water pollution are major cases of increase in the incidence of disease and illness. Growing industrialisation and uncontrolled flow of effluents into water sources have led to an increase in the diseases, as has the increasing use

'Even a lungful of pesticide would not kill us. Our daily intake of poison through water is much more than that,' says Kuthupayayi of Kainakkari Panchayat, Chambakkulam Block. Kainakkari with over 6000 households and 30,000 people does not have even one public tap to supply safe water. Although the state government had commissioned a huge overhead tank in 1989, the tank has not seen a drop of water since it was built.

M. Suchitra and MP Basheer, *Down to Earth*, 2002.

'India's environmental record has many alarming features. Even if we leave out the contribution that India increasingly makes to global atmospheric damage (this is still comparatively small, but can expand rapidly through the growing consumption level of a large population), the local environment shows many signs of being under stress, and in some cases, thoroughly ravaged. This applies to the air we breathe in Indian cities (and often even in small towns), water that people are forced to drink in the absence of any alternative, the barrenness of vegetation and the decimation of plants that impoverish rural life, and a variety of other phenomena. Environmental decline can be a major shrinkage of social opportunities, no matter how these opportunities may be enhanced in other ways...'

Dréze and Sen, 2002.

of pesticides and insecticides in agriculture and farming. More and more children are falling prey to water-borne diseases, as it becomes a precious resource. As we have seen, contaminated water results in diarrhoea, cholera, typhoid, para-typhoid, helminthiasis, hepatitis A or E and amoebiasis. Acute gastroenteritis and diarrhoea can also cause severe dehydration and eventual death unless quickly and appropriately managed.

Asthma is a chronic respiratory disease, which affects around 5–10 per cent of children. This is a chronic inflammatory airway disease that is characterised by hyper responsiveness of the airways to a variety of stimuli, which is reversible either spontaneously or with treatment. It may manifest at any age. It knows no age, gender or socio-economic barriers.

Increasing use of chemical based fertilizers and pesticides, many of which are hepatotoxic (liver damaging) or hurt the kidneys, are known to cause teratogenic effect on the unborn baby. Other pesticides act as hormonal disruptive chemicals or hormone blockers and interfere with the immune system. Growing children are very vulnerable to them, and can develop reproductive disorders, changes in behaviour, immune dysfunctions and even cancer. When some children in Karnataka developed Handigodu syndrome, crippling inability to walk, it was blamed on high pesticide consumption. Higher incidence of congenital malformation and spontaneous abortion has been observed in areas with higher use of pesticides. Yet, many hazardous pesticides continue to be marketed or used without caution. Sprayed food and fruits are eaten. Colouring agents, food preservatives, others, e.g., Monosodium Glutamate are known to cause food allergies. Aerial spraying of pesticides on coconut plantations in Kerala has been related to growing deformation and crippling among children.

Children from areas where radioactive Uranium is mined, like Jadugoda in Jharkhand, are known to have higher congenital abnormalities. Women are prone to miscarriage, childlessness and cancer (The Week, Sept. 2, 2001).

The major sources of lead poisoning are automobile fuel, food can soldering, lead based paint, leaded cooking utensils and drinking water systems. Pre-school children are considered to be at high risk because they can absorb lead more easily than adults and it affects their nervous system. The Indian Prime Minister, in a message at an International Conference on Lead Poisoning Prevention and Treatment, in Bangalore in 1999, said that lead poisoning was slowly emerging as a deadly scourge in India and that the government had initiated steps to eliminate this by making lead free petrol mandatory for use by automobiles. (DWCD, 2001).

Fluorosis resulting in yellowing teeth, followed by neurological disorders, paraplegia, even quadriplegia has been seen along the fluorotic belt spreading from Punjab to Rajasthan. This is increasing because of higher fluoride content in subsoil water as more and more of it is being pumped up for irrigation. Andhra Pradesh is another state that is seriously affected. It goes without saying it is the poor and the malnourished who are more vulnerable.

Fifteen children have died aged between a day and five years, in the last three days at the Burdhan Medical College Hospital, West Bengal. They suffered from encephalitis, respiratory trouble, malnutrition and meningo-encephalitis. Few died within hours of admission. Authorities claim that all the children were brought in a very critical state and death was not due to negligence. 'Children are normally brought here when they are far gone, and there is not much a doctor can do. We are short of doctors and space,' says the principal of the college. The patients' kin on the other hand alleged that the hospital superintendent chases them out whenever they approach him with a complaint.

Hindustan Times, October 22, 2002.

an outbreak of Falciparum Malaria in Assam. Again many of the victims were women and children. (Shiva and Sengupta, 1999). It has killed many children in Orissa, Bihar, Chattisgarh and Jharkhand Betul district saw many malaria deaths as did Shaheed hospital built by Shankar Guha Niyogi and the Chhatisgarh Mukti Morcha in Dallirajhara in Chattisgarh. Most of these areas have one thing in common — they are poor, backward and remote, many of them tribal. An estimated 1000 deaths took place in the Mewat region of Haryana in 1996 due to Falciparum Malaria and during the same period when hundreds of hectares of agricultural fields lay inundated. This was the same period, which saw several deaths due to dengue haemorrhagic fever, another mosquito borne disease, in Delhi. Most of the deaths due to Japanese encephalitis are in children. In an outbreak in Patna most had been found to be poor children residing in the slums.

Tuberculosis

In India particularly, tuberculosis is a disease of the poorest of the poor, but even in them it causes only a small proportion of their burden of morbidity. The great problem is to reach those infected. Of every thousand Indians, seven children and about twenty adults have active tuberculosis, and five of these adults are sputum positive. Only about half the 9 million in the community at any one time are ever diagnosed, and of these only about 13 per cent complete their treatment, so there is a huge pool of infectious cases, half a million of whom die each year. Tuberculosis is different in children. It involves lymph nodes and many organs as in Miliary Tuberculosis, instead of being the predominantly respiratory disease that it usually is in adults. Fortunately, it readily responds to treatment — if it is diagnosed early enough and treated for long enough! This is also the problem. Unfortunately, tuberculosis causes such non-specific symptoms and signs, and the bacilli are seldom isolated, therefore diagnosis is difficult. Even if diagnosed, paediatric dosages are really not known to many doctors (trained and untrained), and children are known to be subjected to overdose resulting in damage of liver and kidneys. Three lakh children drop out of school after contracting Tuberculosis (Prabhu, 2002). Fortunately, the incidence of tuberculosis among children reporting to the hospital is slowly decreasing, probably largely due to improved coverage with BCG vaccination. However, in a household where an adult family member may be affected, preventive measures need to be ensured so that children and others in the family are not infected.

HIV/ AIDS

Alvin's mother, Nisha, got HIV from her husband and passed the virus on to her son. Doctors say mother-to-child transmissions are increasing as infection rates rise among Indian women. 'My little child has seen nothing of this world, but he has endured pain ever since birth,' says Nisha. Since her husband's death, she has worked at odd jobs at an AIDS clinic to survive. But she worries for Alvin's future.

The total HIV-infected Indian population is estimated at just under 4 million. Although infection rates in India are a fraction of those in Africa, health officials worry that the disease can still have a grave effect on the nation's future.

Thousands of children in India have no other choice but to live on the streets. Some have been abandoned by parents who are too sick or poor to care for them. Many are victims of beatings or sexual abuse, and have run away from home. Typically, they end up in the train stations and are soon sucked into local gangs. They survive by scavenging for food in trash bins. Some find work in the dangerous rag-picking trade. It is a constant struggle to find a safe place to sleep where older boys and men will not prey upon them. Both sexual abuse and drug use are rampant. In their day-to-day struggle to survive, these street children are unaware of the dangers of AIDS.

Children of prostitutes are also at high risk group. It is estimated that 60 per cent of the prostitutes in Mumbai are already infected. Their children grow up in the middle of the sex trade and are often victims of violence and rape themselves, leading a stigmatised existence, being barred from 'society'. Many of them turn to begging or theft. By the time they reach puberty, social workers say, these children will also end up in the sex trade — either as prostitutes, pimps, or drug pushers — unless outside intervention frees them from the cycle of poverty, violence, and disease.

There have been instances of HIV transmission in children, especially girls due to physical abuse. A counsellor working with care homes set up for HIV infected children said, 'Though the infection is very difficult to manage in children, the risk is even greater with children who have been physically abused.' (Srivastava, The Times of India, 4 June, 2001).

The most outrageous dangers are the invisibility of children in HIV/AIDS pandemic. Whatever information is collected is not disaggregated to show the disease's effect on children. This makes it more difficult to identify those whose rights are most at risk and protect them from further harm.

Facilities for testing and counselling continue to be inadequate and attitudes of service providers and caregivers negative. The major focus of existing work on prevention of HIV in children is on school-going children. The responses to prevent the spread of infection in out-of-school children are isolated interventions by some NGOs. The existing responses are geared towards provision of information about infection, modes of spread and how to prevent the infection. It was clear from the research undertaken by Save The Children – UK in India that information alone does not always lead to adoption of safer behaviour. There is a need for existing interventions to understand both the circumstances and the contexts in which behaviours take place. The

'I think we are in for a very bleak future. Maybe quite a great destruction in the lives of people in the government, in all walks of life — in the existence of the country itself.'

Dr. Chinkolal Thangsing, who cares for children with AIDS

Estimated number of HIV cases in India

Adult (5–49 years)	3,800,000
Women (15–49 years)	1,500,000
Children	170,000
Total	3,970,000

Source: UNAIDS Global HIV/AIDS Report

HIV/AIDS AND CHILDREN

HIV is continuing to spread in leaps and bounds across the globe since its first detection in 1981. The initial sufferers were adults. But, in a few years, the epidemic was felt in children. It is estimated that 34.7 million children under the age of 15 in 34 countries have lost their mother, father or both parents to HIV/AIDS and other cause of death.

As with all data on health, there are no official figures available on the number of children infected and affected by AIDS in India. According to some estimates the number of children in the 0–14 year age group form around 3.68% of all children with AIDS. This with a denominator of 3.97 million infected (NACO, 2002) would mean around 146,000 infected children. This is in addition, to the large number of orphans and street children of non-HIV causes.

The impact of HIV on children is two-fold. The first category being those who are infected and destined to die and the second is that of children who have any/both parents infected living or dead. Both the situations are disastrous. In the case of children who are already infected, there is a sense of hopelessness and people think that there is no use taking care of a child who is destined to die soon. 50 % of the mother to child infected children die within the first year of age and most of the rest die by the 5th year. In those cases where the parents are sick, they are unable to take proper care of their children. In such cases, the uninfected child who has a potential to grow into a healthy human being is left with an uncertain future. HIV is a chronic disease lasting for several years, many a times 10 years or more. With the earning member getting sick and money spent on his care, the children are neglected. They do not get proper nutrition and psychological environment to grow healthy. In some case, the child is looked after by grandparents, who themselves need support for their survival. In many cases, there is nobody to look after the children. This is the worst scenario especially in a situation where there are no security nets available.

The solutions are not easy. Some agencies have established care homes for these children and are doing excellent work. It has been found that good care has delayed death beyond the 5th birthday in many children. The children look as healthy as the uninfected. They are being provided education in schools with other children. The children are also winning prizes in different competitions that they can now participate in. And who knows, in a few years there would be some medicine that can kill HIV.

Such homes are effective but expensive to run. They cannot match the enormity of the problem, neither can institutionalisation be the ideal solution always. Every child, irrespective of HIV infection has a right to grow into a healthy adult, free from stigmatisation and discrimination. The State and the community must provide support to all children. Some relative or friend of the affected family should come forward and take care of such a child. There must be agencies available to guide the caretaker. A population of 1 billion can surely look after 1 million HIV infected and affected children!

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programmes on AIDS are targeted and isolated and very few efforts are made to link work on prevention of HIV/AIDS with developmental programmes on poverty, gender, education and access to health care (Rajkumar, 2000). There are several very good initiatives undertaken by NGOs who run homes for children with HIV/AIDS. Others are involved in education, awareness or community based interventions.

Orphaned children of HIV infected parents or children who are infected themselves, have to cope with both negative social responses as well as the health problems that may go with the disease. However, like all other health information, the impact of HIV/AIDS on children has not been documented. This is critical for gaining a better understanding of how to deal with infected children or orphaned children of infected parents. Awareness and attitudinal change, along with health and quality care services are critical. Equally essential is the linkages with other developmental programmes.

The image conjured up in the westernised elite urban mind of India when discussing 'mental health' is not that of the stereotypical lunatic being treated in a gloomy asylum but that of contented individuals having the time to pursue yoga, meditation and indulge in a week long art of living crash course. Mentally healthy children therefore are not just children not in asylums but are children living productive lives to their fullest potential.²

As far back as in 1948, the noted Indian psychiatrist, Govindaswamy said that the field of mental health in India encompassed three objectives: restoration of the health of the mentally ill, protection of those susceptible to becoming mentally ill, promotion of positive mental health.³ Each of these three objectives is relevant while examining the issue of mental health of the children in India.

The spectrum of childhood psychiatric disorders encompasses benign bowel and bladder control problems, eating and sleeping disorders, behavioural and emotional problems, mental retardation, learning disorders and pervasive developmental disorders. Giel et al, in a 1980 WHO study reported that 12–29% of children attending a primary health care facility in India had identifiable psychiatric disorders of which 80–90% are consistently missed. Other studies have reported a very wide range of prevalence of childhood psychiatric disorders, ranging from 3% to as high as 54% (the latter for some neurotic disorders).⁴ There is unfortunately no way to accurately study the epidemiology of most of these disorders in India. The absence of such data itself provides insight into the problems surrounding the diagnosis and treatment of mental health disorders of children in India.

Traditionally the treatment of mental health relied heavily on the family structure. The advent of western medicine, shifted the focus to institutional care. Institutional care due to its inherent nature was heavily stigmatised and hence avoided as far as possible. The shift from 'mental hospitals' to psychiatric units in general hospitals in the late 70s is considered a turning point in making treatment of mental health issues more socially acceptable. The National Mental Health Programme 'encouraged application of mental health knowledge in general health care' and in 'social development'. The District Mental Health Programme that was formulated in the last decade required provision of 'services for early detection and treatment of mental illness in the community itself with OPD and indoor treatment'. Yet medical undergraduates, attend totally only two weeks of psychiatry posting during their training, and postgraduates in paediatrics, psychiatry, psychology and preventive medicine do not have mandatory training exclusively in child psychiatry. There is thus a lack of skilled personnel.

Where provision of mental health facilities are concerned, the National Human Rights Commission report 2000, concluded that '*8% of the hospitals attending*

²The 1948 WHO definition clearly states that health is not defined by merely the absence of disease and infirmity.

³Quoted in R.Srinivasa Murthy, Community Mental Health in India, 'Mental Health in India 1950–2000, PAMH – Bangalore.

⁴Data presented by Drs LP Shah and Renu Sheth at NIMHANS: Development of Child and Adolescent Mental Health in India: The Last 40 Years.

the mentally ill retained jail like structures...and that deficiencies indicated that the rights of the mentally ill are grossly violated in these hospitals.'

Given the lack of infrastructure for attending to the mentally ill, and given the even greater absence of specialised care for mentally ill children in the country, it is no surprise that mechanisms to ascertain even the burden of disease are not in place. This lack of access to mental health care, either due to lack of skilled personnel or due to social reservation, compounded with lack of adequate treatment facilities paints a dismal picture.

Children constitute 40% of India's population. Of the 400 million children, about one-fourth do not attend school. Working children raise their own set of mental health issues, independent of psychiatric disorders. It is this vulnerable group that is susceptible to mental health problems including depression, anxiety, developmental impediments and behavioural problems. Many of these children live on the fringes of society, sleeping on the streets of big cities or toiling in secluded workshops. Separation from family and deprivation from childhood study and play activities, severely impede the developmental process. Substance abuse and violence are additional problems in these children. These circumstances demand special and urgent attention. But while even basic mental health facilities continue to be inaccessible to the large majority of the Indian population, the protection of mental health in marginalised children remains unachievable.

The promotion of positive mental health in the children of India would entail the tackling of issues that damage it. Saraswathi points out that while in the West Developmental Psychiatry is synonymous with Human Development Studies, in India psychiatrists have failed to give due recognition to Human Development.⁵ An interdisciplinary understanding encompassing Sociology, Social Work, Anthropology, Education, Psychology and Psychiatry is the need of the hour in India, where mental health is married to the social and developmental changes occurring in the country. Harding finds the need to demand pro-active measures to combat economic and political forces incompatible with human rights and antinomic to health.⁶

While thrust is laid over the coming years in increasing access to mental health facilities in the country and training more personnel, it is imperative to realise that the promotion of mental health among the children of India (to enable them to live their lives productively to their fullest potential), will require more engagement, greater commitment and concerted action by various professions to facilitate the better realisation of human rights and to improve the human development indices in India.

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⁵ T.S.Saraswathi, Towards Interdisciplinary Linkages: Some Reflections in Mental Health in India 1995–2000.

⁶ Timothy W. Harding Mental Health and Human Rights in Mental health in India.

Immunisation

The vaccination of children against six preventable diseases (TB, diphtheria, pertussis, tetanus, poliomyelitis and measles) has been a cornerstone of child health care system in India. According to NFHS-2, 42 per cent of children aged 12–23 months are fully vaccinated and 14 per cent have not received any vaccination. The percentage of children who are fully vaccinated ranges from 11 per cent in Bihar to 98 per cent in Tamil Nadu. Among other larger states, Assam (17 per cent), Rajasthan (17 per cent), Uttar Pradesh (21 per cent) and Madhya Pradesh (22 per cent) have a much lower percentage than the national average of 42 per cent. These states account for 40 per cent of the total population of the country!

The public sector is still the primary provider of childhood vaccination in India. According to NFHS-2, 82 per cent of all vaccinated children have received it from a public medical health source and 13 per cent received them from private medical sources. There is a distinct relationship to be found between vaccination coverage and mother's education. Only 28 per cent of the children of illiterate mothers were fully vaccinated, as compared to 73 per cent in the case of mothers who have completed at least high school. Children of more educated mothers with higher standards of living were found to be more likely to receive vaccinations from private practitioners.

Occupational Health Hazards of Children

India has the highest number of working children in the world. Apart from being economically exploited and denied their basic rights to childhood and education, these children develop health problems that are clearly linked to their status as child labour. Apart from the physical and sexual abuse that they may be facing in the workplace, the nature of the work they perform too has long-term health consequences. Working for long hours stunts mental and physical growth, deforms the body. Poor nutrition, cuts and burns skin infections are common for children whose work involves fire and heating such as in domestic work, dhabas, bangle or glass work, brass work etc. Children employed in mechanic shops deal with oils and chemicals, heavy automobile parts. Meera Deewan's film on children in Firozabad — 'Who's Children', documents children working in bangle factories who are exposed to a stuffy atmosphere and high temperature making them susceptible to burns, bronchitis, tuberculosis.



There are thousands of children involved in brick kilns, stone quarries, stone crushers, coal mines, breaking stones, lifting heavy buckets at construction sites. They suffer for silicosis, pneumoconiosis, backache, cervical spondylosis, and crush injuries and tuberculosis. Children as bidi workers inhale tobacco damaging their lungs. As carpet weavers' children sit in squatting position straining their backs and their eyes, developing bony lesions and deformities. These are merely a few examples. Child labour is child exploitation perpetuated by society, depriving children their right to childhood, to education, adequate food and health care. They are overworked, underpaid, perpetuating intergenerational destructive cycle of repetitive impoverishment and ill-health. (DWCD, 1995). Linked to each occupation or process is an illness that they contract.

CONCLUSION

Children are the heritage of this nation. In the era of predatory profit maximisation in a globalising world whether it is in the exploitation of natural resources, or in providing health care, education or food — children are the worst sufferers. Not only are the determinants of health eroded or denied to many underprivileged children, they are now faced with a much more violent, environmentally and socially degraded world, with shrinking resources and opportunities.

There is need for holistic and sustainable health interventions, which provide access to quality and affordable health care, and policies and programmes address gender concerns so that the girl child is protected and cared for. Clearly unless there are adequate resources, which are optimally used, health needs of our children cannot be met and they will continue to be denied a healthy and happy childhood.

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EDUCATION



SECTION 3

EDUCATION

Scene I: Location — a remote village in the forests in Mirzapur District of Uttar Pradesh, very close to the Madhya Pradesh border. The government schoolteacher is the local landowner and muscle man. He lives in the only whitewashed, pucca house in the village. He comes to class or chooses not to as he wills, and no one dare question. After all most of the villagers work on his land! Yet in this very village, a very poor farmer was willing to donate a piece of his land for the construction of a school so that the children of his village could have access to education.

Scene II: A village in Madhya Pradesh. A team of school inspectors are on a sudden visit. A young man with very long cane is trying to control a rather large class. Who are you? he is asked. 'Sir, I am a Pay Teacher.' What is that, the team asks. 'Sir there are two teachers in this school. They are both busy. They pay me to take their classes.'

In the capital city of Delhi, in one of the biggest resettlement colonies of Jahangirpuri, one of the primary school teachers calculated that since her recruitment about a year ago, taking into account the school holidays she has been able to teach the children barely for three months, having been conscripted for census data collection and electoral survey. Officials in personal interviews admit that the Directorate of Education, Delhi Government, runs 1,190 schools in 639 buildings. 33 of the schools are run in temporary structures and tents and 100 others are in poor condition. Girl students often leave the school in the middle of the day because there are no toilets. And this is the situation in the capital city.

Corporal punishment is seen as 'integral' to good and effective teaching, the only way to reprimand or discipline an erring child. So children are beaten till they fall, tufts of hair are pulled out, teeth get broken, all in the name of discipline. Needless to say children hate to go to school.

Socio-economic status determines the access to schools. Scheduled caste children continue to be discriminated. Many continue to be denied admission, if admitted — not allowed to sit with the rest of the class, drink water from the same tap, and are made to mop and clean the school premises. Lower enrolment and higher dropout rates continue to plague girls. In spite of widespread recognition for special attention to education for the disabled child and integrated education, wherein disabled children can be mainstreamed into regular schools, they continue to be discriminated, and at best ignored.

The history of education in India is one of unfulfilled commitment from the time that the Constitution promised to provide education for all in the following ten years. That target has been extended time and again. Several expert committees and commissions have been constituted, but the dream of appropriate, accessible and free education remains a chimera. Now more than ever before, education has become enmeshed in controversy the inadequacy of infrastructure and finance, the new curriculum framework, the stress on non-formal and parallel systems of education — have become subjects of intense debate across the country. Indeed, like all other social commitments, education too is a reflection of a government's political commitment and the nature of education it offers reflects its political ideology.

This section is divided into two parts. Part I deals with the statistical details, while Part II is a commentary on the situation of education in the country in the wake of globalisation.

November 28, 2001 was the day that decided the fate of millions of children of our country. The Lok Sabha passed the 93rd Amendment Bill¹ (now the 86th Constitutional Amendment), making Education a Fundamental Right for 6 to 14 year-olds. Over 10,000 parents from various corners of the country and several child rights activists and academics, who had gathered at the Ramlila Grounds in Delhi that day seeking universalisation of elementary education, felt completely cheated. The Bill forgot children in the 0–6 year age group and made it compulsory on the parents to provide educational opportunities for their children, failing which they can even be penalised.

But the saga of education in the country, along with the saga of disappointments began long before this. In 1944, the Sergeant Committee appointed to forecast how long it would take India to achieve universal primary education, estimated 40 years at that 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 achieve the goal of ‘free and compulsory education for all children until they complete the age of fourteen’ by 1960 (Article 45, Directive Principles of State Policy). Since then our governments have given themselves many more of such deadlines. To add to this, every time the government sets up a committee or commission to look into the situation of education, the new committee overlooks or negates the recommendations of the previous one and lays down a new set of recommendations, only to be put aside by the next one.

India today is the largest democracy in the world. It is also the largest illiterate democracy in the world. According to World Education Report 1998 and Demographic Yearbook 1995, United Nations, New York and as reported by Directorate of Adult Education in their literacy facts at a glance, slightly less than one-third of the world’s non-literates aged 15 years and above are in India. We have sent satellites into space; have the best missiles and fighter planes, produce some of the best professionals in every field, and yet the bulk of our young children remain unlettered and disempowered — for knowledge is power and education definitely paves the path to empowerment, social, economic and political.



¹The Constitution (93rd Amendment) Bill, 2001, although passed by both the houses of the Parliament, awaits the President's assent. In a statement issued on August 8, 2002, the Human Resource Development Ministry stated that the Bill, after having been passed by the Rajya Sabha, had been sent back to the Lok Sabha for the acceptance of amendments of a technical nature. This has been discussed in detail in Part II.

WHAT DO THE STATISTICS REVEAL?

The Government of India produces education statistics every year to throw light on the status of elementary education in the country. However, it is important to situate these statistics in the context of policy changes and programmatic developments that take place in the field of education.

As we closely look at the education statistics available, the inadequacy of statistical information becomes yet another area of concern.

Enrolment into Schools

Enrolment statistics found in the government records are in terms of actual number of children (boys and girls) enrolled at the different stages of education and Gross Enrolment Ratios (GER).

Although there has been a steady increase in enrolment over the years, about 40 per cent boys and over 50 per cent girls still remain unenrolled in the primary stage itself. In the subsequent stages, enrolment is even lower. Only 24 per cent boys and 16 per cent girls get enrolled into the elementary school system leaving 60 per cent of the children in the 11-14 year age group out of the school system.

The Gross Enrolment Ratios tell yet another tale. GERs for the age group 6-11 years, 11-14 years and 6-14 years are presented in Table 2.

Elementary education goal remains elusive

In primary and upper primary levels, many kids fail to compete

Apratim Mukarji
New Delhi, August 8

Why girls drop out of school

By Mahendra Ved
TIMES NEWS NETWORK

New Delhi: A home truth hit the planners of the country recently. To ensure that girls continue with their education beyond the primary level, a toilet is a must for all schools.

"Lavatory is more important than laboratory," the Planning Commission concluded while determining the 10th plan allocations in the field of education. The issue is being considered a "basic human right".

back-to-basics approach in the field of human resource development.

While not ignoring the requirements in other areas of HRD, the plan body has set "a sustainable threshold level of 75 per cent literacy by the year 2005".

"The education of girls is now considered as a basic human rights issue and is a pre-requisite for well-being, social justice and economic growth," says the draft 10th plan document in its preface to HRD allocations.

Another major measure to curb the drop-out

at all levels. While most recent surveys indicate that nearly 70 per cent of the 6-14 years age

group is out of school, the

and learning materials, the quality of implementation of the OB is unsatisfactory.

Single teacher schools and single

Discrimination holding back Dalit schoolchildren, says report

Times News Network

NEW DELHI: Discrimination continues to obstruct the access of Dalit children to schooling as well as to receive the quality of education they deserve. Therefore, progress of schooling among Dalit children between the age of five and 14 has been relatively poor compared to the general population. This is one of the facts that have been highlighted in the "India Education Report 1999" brought out by the National Institute of Educational Planning (NIEPA), New Delhi, on Monday.

The report takes up issues concerning basic edu-

The chapter on education of Dalit children, by Geetha B Nambisan and Mona Sedwal, highlights the discrimination that Dalits, in general, and their children, in particular, are subjected to. "Teachers refuse to touch SC children, these children are also special targets of verbal abuse and physical punishment by teachers," says the report.

According to the report, school attendance in rural areas in 1993-94 was 64.3 per cent for Dalit boys, compared to 74.9 per cent among boys from other social groups. In urban areas, Dalit boys have higher attendance rates (77.5), but the lag in enrolment rates vis-a-vis other boys continues to be around 10 percentage points. Dalits lagged behind

ment of children. Instead, hot cooked meals with proper delivery systems are clearly preferable.

The Non Formal Education scheme has been found to be suffering from weaknesses and needs

the general population by as much as 15 percentage points in literacy. Barely 24 per cent of Dalit women were literate, according to the 1991 Census. In case of tribal children, the literacy data from 1971 to 1991 show that the literacy rate for Scheduled Tribes (STs) has gone up from a lowly 11.3 per cent in 1971 to 29.5 per cent in 1991. The number of ST literates has increased, but the gap between the ST and the non-ST population — from 22.5 to 33.05 per cent between 1971 and 1991. Though states like Mizoram, Nagaland and Meghalaya — all with high tribal population — have done exceedingly well, in other states like Madhya Pradesh, Orissa, Rajasthan and Andhra Pradesh tribal literacy is very low.

Table 1
SEX-WISE ENROLMENT BY STAGES/CLASSES SINCE 1951

(In million)

YEAR	Primary			Middle / Upper Primary			Sec./Hr. Sec.		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
1950-51	13.8	5.4	19.2	2.6	0.5	3.1	1.3	0.2	1.5
1955-56	17.1	7.5	24.6	3.8	1.0	4.8	2.2	0.4	2.6
1960-61	23.6	11.4	35.0	5.1	1.6	6.7	2.7	0.7	3.4
1965-66	32.2	18.3	50.5	7.7	2.8	10.5	4.4	1.3	5.7
1970-71	35.7	21.3	57.0	9.4	3.9	13.3	5.7	1.9	7.6
1975-76	40.6	25.0	65.6	11.0	5.0	16.0	6.5	2.4	8.9
1980-81	45.3	28.5	73.8	13.9	6.8	20.7	7.6	3.4	11.0
1985-86	52.2	35.2	87.4	17.7	9.6	27.1	11.5	5.0	16.5
1990-91	57.0	40.4	97.4	21.5	12.5	34.0	12.8	6.3	19.1
1991-92	58.6	42.3	100.9	22.0	13.6	35.6	13.5	6.9	20.4
1992-93	57.9	41.7	99.6	21.2	12.9	34.1	13.6	6.9	20.5
1993-94	55.1	41.9	97.0	20.6	13.5	34.1	13.2	7.5	20.7
1994-95*	62.3	46.8	109.1	24.5	15.8	40.3	16.0	8.4	24.4
1995-96*	62.4	47.4	109.8	25.0	16.0	41.0	16.1	8.8	24.9
1996-97*	62.5	47.9	110.4	24.7	16.3	41.0	17.2	9.8	27.0
1997-98*	61.2	47.5	108.7	23.7	15.8	39.5	17.08	10.5	27.24
1998-99*	62.7	48.3	111.0	24.0	16.3	40.3	17.3	10.5	27.8
1999-2000*	64.1	49.5	114.0	25.1	17.0	42.1	17.2	11.0	28.2

* Provisional figures (rounded up to first decimal digit)

Source: Annual Reports, 1999-2000 and 2000-2001, Department of Education, Ministry of Human Resource Development, Government of India. www.education.nic.in

Table 2
GROSS ENROLMENT RATIOS SINCE 1951

Year	Boys			Girls			Total		
	I-V	VI-VIII	I-VIII	I-V	VI-VIII	I-VIII	I-V	VI-VIII	I-VIII
1950-51	60.6	20.6	46.4	24.8	4.6	17.7	42.6	12.7	32.1
1960-61	82.6	33.2	65.2	41.4	11.3	30.9	62.4	22.5	48.7
1970-71	95.5	46.5	75.5	60.5	20.8	44.4	78.6	33.4	61.9
1980-81	95.8	54.3	82.2	64.1	28.6	52.1	80.5	41.9	67.5
1990-91	114.0	76.6	100.0	85.5	47.0	70.8	100.1	62.1	86.0
1991-92	112.8	75.1	101.2	86.9	49.6	73.2	100.2	61.35	87.7
1992-93	95.0	72.5	87.7	73.5	48.9	65.7	84.6	67.5	77.2
1993-94	90.0	62.1	80.2	73.1	45.4	63.7	81.9	54.2	72.3
1994-95 *	114.8	79.0	101.8	92.6	55.0	78.8	104.0	67.2	90.7
1995-96 *	114.5	79.5	101.8	93.3	55.0	79.3	104.3	67.6	90.9
1996-97 *	98.7	70.9	88.9	81.9	52.8	71.8	90.6	62.4	80.7
1997-98 *	97.7	66.5	86.4	81.2	49.5	70.0	89.7	58.5	78.6
1998-99*	100.9	65.3	NR	82.85	49.1	NR	92.1	57.16	NR
1999-2000*	104.1	67.2	NR	85.02	49.07	NR	94.1	58.1	NR

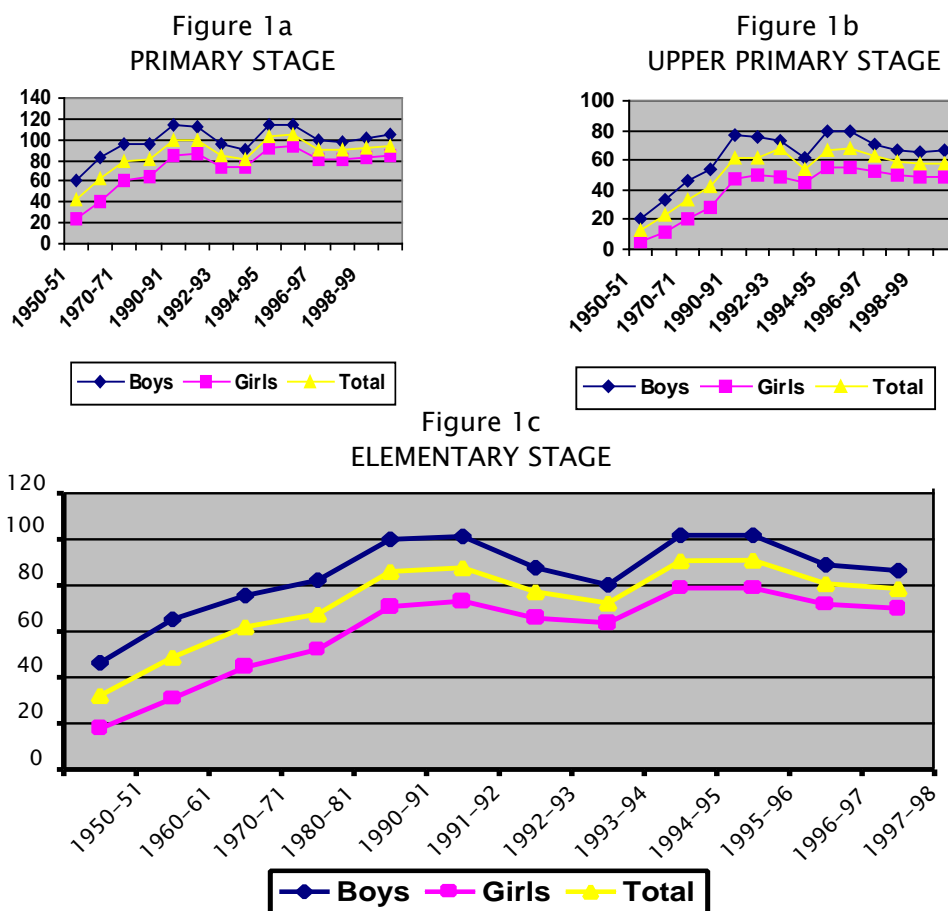
* Provisional figures (rounded up to first decimal digit), NR – Not Reported

Source: Annual Reports, 1999-2000 and 2000-2001, Department of Education, Ministry of Human Resource Development, Government of India. www.education.nic.in

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 percentage 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 GERs 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 (NERs) would certainly be a better measure and would also reveal a more accurate picture. Unfortunately the government has stopped presenting NERs in its reports.

A graphic representation of the GERs at primary, upper primary and the elementary stage in totality highlights the rise and fall in the GERs more elaborately.

Figure 1
GROSS ENROLMENT RATIOS



Source: Annual Report, 1999-2000, Department of Education, MHRD. pp 177-178
Annual Report, 2000-2001, Department of Education, MHRD. pp 223-224
www.education.nic.in

Clearly there is a rise in the GERs in the period immediately following the National Education Policy of 1986, then in 1994 and 1995 — the years when DPEP was implemented and again in 1998 and 1999. This is the period following the submission of India's First Country Report to the UN Committee on the Rights of the Child and also corresponds to the rapid implementation of schemes such as the Educational Guarantee Scheme as well as the period that marked the onset of the Sarva Shiksha Abhiyan (Education for All campaign). Indeed the implication of the rise and fall in the GERs and the corresponding developments in the elementary education scenario point to the fact that it is only in the first few years of implementation of any new programme that a positive change is visible. As this positive change is not sustained for long, one cannot but question the validity of the new programmes and schemes that come into existence as well as the political commitment to education that results in implementation of such programmes. Even if one does not interpret the rise and fall in GERs in these terms, there certainly is something wrong somewhere if we are unable to sustain a high GER.

Children who get enrolled need not necessarily continue to be in the education system to complete elementary education. These children are called dropouts.

Rate of Dropout

Rate of dropout has been defined as percentage of the number of children dropping out of the school educational system in a particular year to total enrolment in that year. There are a number of methods for estimating these rates. The results arrived at by conventional method have been indicated below in Table 3.

Table 3
DROPOUT RATES AT PRIMARY & ELEMENTARY STAGES

	1960-61	1970-71	1980-81	1990-91	1992-93	1997-98*	1998-99*	1999-00*
Classes I-V								
Boys	61.7	64.5	56.2	40.1	43.83	38.23	38.62	38.67
Girls	70.9	70.9	62.5	46.0	46.67	41.34	41.22	42.28
Total	64.9	67.0	58.7	42.6	45.01	39.58	39.74	40.25
Classes I-VIII								
Boys	75.0	74.6	68.0	59.1	58.23	50.72	54.40	51.96
Girls	85.0	83.4	79.4	65.1	65.21	58.61	60.09	58.00
Total	78.3	77.9	72.7	60.9	61.10	54.14	56.82	54.53

* Provisional

Source: *Annual Report, 1999-2000, Department of Education, MHRD. pp 177-178*
Annual Report, 2000-2001, Department of Education, MHRD. pp 223-224
www.education.nic.in

Children can be out of school because of many reasons. There are 3 categories that have been identified in the phenomenon of dropouts:

Stay outs — where schools are not accessible

Pull outs — mostly girls who are pulled out because of economic or socio-cultural reasons.

Push outs — the school pushes them out even though they have time to attend school. This can be due to many reasons:

- The daily schedule of the school is not through a centralised decision-making process and therefore not suitable for children
- Children may not understand language used in the school
- The curriculum and textbooks are not relevant in the local context and hence makes no sense to the child
- Teachers if not qualified and dedicated are not able to motivate child retention in school

There can be other reasons for children not to be in school — nothing happens in school, beating, scolding, education not being really free, disabled children, too old for the school. One of the most important factors is that children are into labour — either at home or in the labour market.

Indeed the dropout rates are even more worrying. Of the 64.1 per cent boys who enrolled at the primary stage in 1999–2000, almost 39 per cent dropped out before completing class five. This is even higher among girls. Of the 49.5 per cent girls enrolled, about 42.3 per cent dropped out at the primary stage.

The dropout rates rise as we begin to move on to the elementary stage. Of course, the dropout rate at these stages is higher among girls.

‘At the same time, it must be recognised that poor enrolments and large dropout rates among girl children are not a result of social, economic and cultural factors alone, but are also the product of the policy and its priorities. For example, it is policy, which determines the nature of the available educational facilities, their coverage and quality. This in the above context can either accentuate existing problems of girls’ education or facilitate their participation.’

Report of the Committee for Review of National Policy on Education 1986, Final Report, 26 December, 1990.

GENDER AND CASTE INEQUITY IN ENROLMENT AND DROPOUT RATES*

At the beginning of the previous decade of the nineties, it was estimated that nearly half of the children in the age-group of 6–14 years and two-thirds of the girls were essentially out-of-school. This was despite the false impression given by the Gross Enrolment Ratios for the primary stage being as high as 100 per cent, as reported by the Ministry of Human Resource Development in its Annual Reports for 1990–91 and 1991–92. Even these exaggerated claims failed to hide the wide gender disparity, as will be seen by the following comparison of the GERs of 1993–94 and 1999–2000.

The much wider gender disparities in the GERs of the Scheduled Caste (SC) and Scheduled Tribe (ST) categories point to the dual inequality faced by girls belonging to the marginalised communities on account of both gender and social position.

*The section on ‘The most apparent and irrefutable dimensions of Gender and Caste inequity in elementary education’ is adapted from an unpublished paper written on ‘Gender and Caste Inequity in Enrolment and Dropout Rates’, by Prof. Anil Sadgopal, of the Nehru Memorial Museum and Library, 2002.

This is despite the Constitution of India prohibiting discrimination on grounds of religion, race, caste, sex or place (Article 15) and committing itself to providing equal opportunities for all.

Table 4
GENDER AND CASTE DISPARITY IN GROSS ENROLMENT RATIOS
AT PRIMARY AND UPPER PRIMARY STAGE

Year	Category	Primary		Upper Primary	
		Boys	Girls	Boys	Girls
1993-94	All	115.3	92.9	79.3	55.2
	SC	123.3	91.2	74.2	45.0
	ST	123.9	88.8	60.2	34.9
1999-2000	All	104.1	85.2	67.2	49.7
	SC	103.6	80.5	73.6	50.3
	ST	112.7	82.7	70.8	44.8

*Source: Annual Reports, 1996-97, 1999-2000 and 2000-2001, Department of Education, MHRD
State-wise Information on Education of Scheduled Castes and Scheduled Tribes, 1985,
Ministry Of Education , Programme of Action, 1992, Department of Education, MHRD.*

The dropout rates available for 1993-94 further highlight the gender and caste imbalance in elementary education, which is far greater in the case of children belonging to the Scheduled Tribes. As compared to the GER and dropout rates among girls from other communities, there are fewer ST girls enrolled at the Upper Primary stage and more dropping out at this stage.

Table 5
GENDER AND CASTE DISPARITY IN DROPOUT RATES AT PRIMARY
AND ELEMENTARY STAGE

Year	Category	Primary		Upper Primary	
		Boys	Girls	Boys	Girls
1993-94	All	35.05	38.57	49.95	56.78
	SC	45.93	53.74	64.29	73.10
	ST	61.86	66.98	77.42	82.67
1999-2000	All	38.67	42.28	51.96	58.00
	SC	NR	NR	NR	NR
	ST	NR	NR	NR	NR

NR- Not Reported

*Source: Annual Reports, 1994-95, 1999-2000 and 2000-2001,
Department of Education, MHRD.*

Article 29(ii) of the Constitution provides that 'no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them'. Special care of the economic and educational interests of the underprivileged sections, particularly, the Scheduled Castes and Scheduled Tribes is laid down as an obligation of the State under Article 46.

In general, it may be noted that the dropout rates for the SC and ST categories in 1993–94 were significantly higher than the combined category. During that year, 73 per cent of the SC girl students discontinued their education before Class VIII and of the ST girls, 83 per cent dropped out before Class VIII. In fact the Government of India has now stopped reporting the dropout rates for these deprived but politically critical categories.

Further evidence of persistence of gender and caste inequity in education is revealed by the low levels of female participation at various stages of education.

The situation as it exists raises serious questions as to whether the education system in our country is *accessible, adequate, appropriate and affordable* for all children?

Table 6
GIRLS ENROLLED AT VARIOUS STAGES OF EDUCATION AS
PERCENTAGE OF TOTAL NUMBER OF CHILDREN ENROLLED
AT EACH STAGE

Year	Category	Primary	Upper Primary	Sec./Hr. Sec.
1999–2000	All	43.6	40.4	39.0
	SC	42.2	38.4	36.6
	ST	42.4	37.9	35.1

Source: Annual Report, 2000–2001, Department of Education, MHRD.

Accessibility, Adequacy and Appropriateness of our Education System

Lack of access to education remains one of the higher child rights violations and also an area of gender and caste discrimination.

Access to schools is an issue of both physical as well as social accessibility often in the far-flung areas of the country, especially in the forest, hilly or tribal areas, where there are no schools for miles, thereby making it impossible for children to go to school.

In a country with its caste and class biases, access to school also has social discriminations.

While dealing with access to schools one has to address the adequacy aspect of our education system and also delve into how appropriate this system is not just to get more and more children into school but also to be able to retain them. To find detailed government data on



Students outside the MCD Primary School at Jheel Kuranja.

Row over land threatens school children's future

HT Correspondent
New Delhi, February 23

ABOUT 250 poor children studying in a Municipal Corporation Primary School in Jheel Kuranja, Shahdara, will very soon have to stop going to school.

The school which has been running on a 1100 square yard premises since 1948 is on the verge of being taken over by some local persons who are claiming to be the owners of the land.

Both the Municipal Corporation of Delhi education department and the Delhi Development Authority, which owns the school land, have shown lack of interest in protecting the school and the future of its students.

Schoolteachers say that the closure of the school would effectively deprive the poor children studying here from getting basic education.

"Their parents are not interested in educating them, and had to be compelled by teachers to send their wards to school. If

the school is transferred, the parents would not be willing to send their children to a school located far away," a school teacher remarked.

According to local residents, the land in question was evacuee property, which was vested with the Ministry of Rehabilitation. The evacuee right of the property was surrendered to the DDA as per records.

Those claiming ownership over the land claim that they had let out the premises on lease to the Municipal Corporation of Delhi for Rs 50 in 1962, and, therefore, are entitled to take possession.

Land records, however, show that the school has been there since 1948. A schoolteacher, Joginder Kaur, confirmed this when she said that she had studied in the school between 1952 and 1959. "The school had been a middle school at the time. It became a primary school in 1960," she said.

A former schoolteacher, Madan Mohan Dhir, 70, confirmed that the school was run-

ning in the premises much before 1962. "I taught in this school from 1953 to 1959. The classrooms at the time had kuccha walls and 'chappur' for the roof," the former schoolmaster said.

Local residents said that education department officials had conspired with the 'land grabbers' by giving false statement in the trial court that the school land did not belong to the Government.

When contacted senior Municipal Corporation of Delhi officials said that they are trying to retrieve the situation by getting a favourable court order.

It is learnt that though the High Court recently gave a preliminary injunction in favour of the Municipal Corporation of Delhi by allowing it to amend the 'false statement' given in the trial court, the education department has not bothered to file the amendment application in the trial court so far.

As for the children studying in the primary school, they face an uncertain future.

THE 6TH ALL INDIA EDUCATION SURVEY, 1993

The following facts are revealed in the survey:

- 94% of rural population is served within 1.0 km by primary stage.
- 85% of rural population is served within 3.0 km by upper primary stage.
- Of the total 8,22,486 schools in the country, 5,70,455 and 1,62,805 are primary and upper primary schools respectively.
- Of the total 15,39,06,057 pupils enrolled in all the schools, 9,70,29,235 and 3,40,71,058 children are enrolled at primary (grades I–V) and upper primary (grades VI–VIII) stage respectively.
- Of the total 6,36,38,488 girls enrolled in all the schools, 4,18,81,186 and 1,34,98,850 girls are enrolled at primary and upper primary stages respectively.
- Of the total 41,97,555 teachers, 16,23,379 and 11,29,747 teachers are employed in primary and upper primary schools.
- 84% of the primary and 89 per cent of the upper primary schools have pucca and partly pucca buildings. 63.08% schools do not have adequate number of classrooms.

each of these aspects may not be possible, as only selective statistics are made available to the public eye or else the information is outdated. However, whatever is available from both formal and informal sources once again point to the abysmal state of affairs and shatter the dream of ensuring right to education for all children.

According to the Census 2001, there are over 350 million children in India up to the age of 14 years of which about 43 per cent are in the 6–14 year age-category. In the year 1998–99, for which most statistics are available, there would not have been much of a difference. In this year the number of pre-primary schools in the country was a little over 40,000, while there were about 6.3 lakh primary schools and 1.9 lakh upper primary schools. The problem of lack of adequate number of schools is acute at both pre-primary and post-primary stages. For the 3–5 year-olds, it is still a long way to go before pre-school becomes their fundamental right as the 93rd Amendment has completely ignored this age category. But for all those passing the primary stage, getting into a middle school will remain a dream till the government is able to establish adequate number of upper primary schools. As it is, children passing out of the non-formal systems of education find it difficult to get admission into formal schools at the upper primary stage. This is because most often they belong to the socially and economically underprivileged sections of the society and are labelled incompetent to cope with the syllabus in the formal schools or rather incompetent to meet the so-called 'standard of education' in the formal schools (which in itself is questionable). The other reason is because they are unable to produce official documents required for completing the admission formalities.

Yet another facet of adequacy is the lack of adequate number of classrooms. It is quite common to find two classes being held together. While one has always admired the teachers for managing two different sections simultaneously

in one place, at the end of the day one wonders what the students really learn. Nevertheless, whether it is a one-room school or a two- or four- or no-room school, as long as it is situated on a rented or leased property, as many government primary schools are, the destiny of children will rest on the availability of that space.

Availability of teachers to teach is also an area of concern for those who have been fighting for children's right to education. The concern here has not been just one of inadequate number of teachers but also inadequate number of qualified and trained teachers with high levels of motivation that would reduce teacher absenteeism and ensure quality education.

In India there are 6,41,695 primary schools and 82,273 secondary schools with an average of 128 and 349 students respectively. While the above table fails to provide statistics for middle level or upper primary stage schools, data on teacher-pupil ratio for 1997-98 shows one teacher for thirty-seven students at the upper primary stage.

Clearly, the average number of teachers is not as per the stipulated teacher and student ratio in primary schools. Ideally, there should be one primary school teacher for 30 students (as recommended by the Yashpal Committee, 1993). This means that there should be a provision of at least 4 teachers for 128 students in primary schools. However, the new Sarva Shiksha Abhiyan document (on which the government is relying heavily for ensuring children in the 6-14 year age group their newly acquired fundamental right to education) conveniently waters down the recommended teacher-pupil ratio to 1:40, implying 3 teachers for the 128 students in primary schools. In any case, the 1999-2000 data shows that there already are on an average 3 teachers for 128 children at the primary stage. The Sarva Shiksha Abhiyan document then actually takes off a great deal of responsibility from the government's shoulders. In fact, the document seems to have been designed keeping in mind the present financial constraints faced by the government and relieves it off its national and international obligations towards its children. Moreover, it also proposes to meet this 1:40 ratio through unqualified and untrained para-teachers — all in the name of generating teachers from within the community, even if it is at the cost of children's education, who have a right to quality education.

In many states like Andhra Pradesh, Bihar, Gujarat, Haryana, West Bengal, the teacher-student ratio reaches to more than 1:50. Staff absenteeism further adds to the problem of imparting quality education to children.

In the absence of a uniform structure of elementary education in the states, there are a number of states like Maharashtra where primary schools are only up to Class IV and Class V becomes part of the middle school, which may not necessarily be within the stipulated 1 km. distance. Then there are a number of schools that are not recognised but children in these schools do account for those enrolled. Prof. Anil Sadgopal shares his experience in Maharashtra and Assam to highlight some critical dimensions of access and adequacy in a piece written exclusively for this paper.

It is not only lack of teachers and schools but also lack of basic facilities that renders our education inadequate and incompetent.

Table 7
PRIMARY AND SECONDARY SCHOOLS AND AVERAGE
NUMBER OF STUDENT/TEACHERS (1999–2000)

States/UTs	Primary Schools			Secondary Schools		
	No. of Institutions	Average No. of Students	Average No. of Teachers	No. of Institutions	Average No. of Students	Average No. of Teachers
Andhra Pradesh	55398	115	2	9659	432	13
Arunachal Pradesh	1289	87	3	108	380	15
Assam	33236	99	3	3967	247	11
Bihar	53697	136	2	4146	412	9
Goa	1046	54	3	355	458	18
Gujarat	14789	120	2	4281	188	6
Haryana	10560	197	5	2826	262	10
Himachal Pradesh	10472	64	3	1040	243	9
Jammu & Kashmir	10483	63	2	1114	267	16
Karnataka	23690	82	3	8216	150	8
Kerala	6748	305	7	2596	634	35
Madhya Pradesh	91733	114	3	4585	226	6
Maharashtra	42108	138	4	11058	434	13
Manipur	2572	78	4	528	356	16
Meghalaya	4685	97	2	532	164	9
Mizoram	1226	102	4	352	69	8
Nagaland	1469	94	5	309	444	19
Orissa	42108	99	3	6094	189	8
Punjab	12996	145	4	2196	392	14
Rajasthan	34948	146	3	4124	309	12
Sikkim	501	124	7	77	431	20
Tamil Nadu	31052	140	4	4551	408	11
Tripura	2068	191	7	392	435	25
Uttar Pradesh	96964	138	3	3230	391	10
West Bengal	52385	154	3	5312	633	15
Andaman & Nicobar	198	89	4	42	417	21
Chandigarh	46	335	11	56	1079	50
Dadar & Nagar Haveli	138	76	2	14	97	4
Daman & Diu	53	333	7	20	172	13
Delhi	2676	487	13	364	819	29
Lakshwadeep	19	378	13	9	755	29
Pondicherry	346	173	6	120	539	18
India	641695	128	3	82273	349	12

Note: Jharkhand, Chattisgarh and Uttranchal are included in their erstwhile states.

Source: Selected Educational Statistics in India 1999-2000, as cited in Parliament Digest, NCAS, 2002.

Table 8
STUDENT-TEACHER RATIO

Year	Primary	Upper Primary	High / Hr. Secondary
1950-51	1:24	1:20	1:21
1960-61	1:36	1:31	1:25
1970-71	1:39	1:32	1:25
1980-81	1:38	1:33	1:27
1990-91	1:43	1:37	1:31
1995-96	1:47	1:38	1:33
1996-97	1:45	1:38	1:33
1997-98	1:42	1:37	1:31

Source: www.education.nic.in

OF FOUR-YEAR PRIMARY EDUCATION AND VENTURE SCHOOLS

In October 1997, we were driving along the top of the Valmiki Pathar, a remote mountainous terrain, in Satara District of Maharashtra. A small boy was lugging his heavy school bag up the steep slope. We stopped by and inquired where he was going. A Grade V student, he was going to his school. The nearest school with Grade V was 11 kms away from his village! We were puzzled. As per official policy and norms, a primary school (up to Grade V) must be within a kilometre from the child's habitation; a middle or upper primary school (Grades VI-VIII) must be within 3 kms of each habitation. Although in most parts of rural India, this norm was rarely maintained and there were tens of thousands of habitations without a primary school within reach. Availability of a middle school was far less. But what about the industrially advanced Maharashtra? Does it not provide a primary school within a kilometre of each habitation? Can the nearest primary school be 11 kms away from a village? The leader of the Valmiki Pathar Lokshala Field Lab* provided the explanation. In rural Maharashtra, all the primary schools under the Zila Parishad system end at Grade IV, instead of Grade V! Lakhs of rural children in the 11-12 year age group in the state have to walk several kilometres if they want to attend Grade V. Girls approaching puberty are the worst sufferers as parents do not dare to take the risk of them walking several kilometres through forested terrain. In contrast to most other parts of the country, these children are forced to give up their education after Grade IV, instead of Grade V. A few months later we met the State Education Secretary in Pune in a workshop and questioned her on this gross violation of the education policy. She was clueless.

We were in the Debitola Block of Dhubri District in Assam. The World Bank-sponsored District Primary Education Programme had been in operation for two years. We were in a single-teacher village school which had only a thatched roof and no walls. About fifty children huddled together on a kutchra floor in the tight space under the roof. The teacher informed us that the school was started fifteen years ago. The school had never received even a paisa from the State Government. Nor was the teacher ever paid any salary. Yet it was a recognised school. It was an unbelievable story. Again, the local leader of the Lokshala Field Lab* came to our rescue. He told us that this was a Venture School — a scheme started under the British Raj. A Venture School can be started by any person in an Assamese village as a personal initiative. In due course, the government may recognise its existence but that does not mean that the school will receive any aid or the teachers will be paid a salary. The teachers need neither have the minimum qualifications nor any training — an uncanny resemblance to the modern day para-teachers. Indeed, it is not even necessary that they teach at all! All what is required is that the attendance records are regularly sent to the government which will dutifully include them in the State educational statistics and claim swollen Gross Enrolment Ratios. But what is the motivation of the villagers to start these Venture Schools and run them for sometime as long as 10-15 years with no income? Philanthropy or love for children? Not in the least. Once on the government records, you can keep trying to obtain government aid, even if it takes years. If you can pull the right political strings, you might eventually succeed in winning the government aid and an 'assured' salary (though, given the empty state coffers, even the regularly appointed teachers in Assam are often not paid for years!). You can thus become a regular teacher even without the minimum qualifications or training. The villagers can't be blamed if they view Venture Schools as an employment insurance scheme.

*The Lokshala Field Lab is part of Bharat Jan Vigyan Jatha's Lokshala Programme for Universalisation of Elementary Education.

As highlighted in the Sixth All India Educational Survey, 60.5 per cent of primary schools do not have supply of chalks; blackboards are not available in 65 per cent primary schools, there are no mats in 35.2 per cent primary schools and no playground in more than 45 per cent schools. If basic facilities like drinking water and toilets are not available within the school premises how can we expect children to remain in school for more than 5 hours?

Even where facilities are available, students are denied access to them. Often things like chalks, especially if they are coloured chalks, dusters and mats are kept in the store and only see the light of the day when there is some inspection or when some visitors are expected. Most science kits and musical instruments given as part of the 'Operation Blackboard' scheme lie locked up for no reason whatsoever.

To add to this, children are not even allowed to use the toilets. Locked toilets are not an unusual sight in a government school even in cities like Delhi. Neither are cases of children being denied permission to use the toilet facility unheard of.

Where children belong to a lower caste or class, there is no end to such denial and violation of rights. 'India Education Report', a document released by the National Institute of Educational Planning and Administration (NIEPA) in February 2002, highlights the problems faced by the Dalits in the field of education. In the chapter on education of Dalit children the authors point out that 'teachers refuse to touch SC children, these children are also targets of verbal abuse and physical punishment by teachers'. (The Times of India, 28 February 2002).

Table 9
FACILITIES AND INCENTIVES AVAILABLE IN
PRIMARY AND UPPER PRIMARY SCHOOLS

Facility	Primary	Upper Primary
Supply of chalk	60.5%	75.02%
Blackboards	65%	83%
Availability of dusters	49.4%	65.1%
No mats	35.2%	30.1%
No furniture for teachers	47.0%	28.5%
No storing facility	27.9%	11.1%
Playground and sports facilities available in the country	53.9%	
Library facility	40.5%	60.0%
Drinking water	44.2%	63.5%
Urinals	18.9%	48.4%
Incentives		
Mid-day meal	13.9%	18.76%
Free uniform	29.3%	29.5%
Free textbooks	54.6%	52.6%
Medical facilities	43.7%	54.9%
Attendance scholarship for girls	14.0%	20.9%

Source: Sixth All India Educational Survey, 1998, pp187-192

The most crucial area of providing essential facilities for effective transaction of the curriculum in all schools / non-formal centres still appears to be a mirage. In brief, the efforts made so far are not enough for developing a national system of education as envisaged by the policy-makers.

Jain L.C., 2000.

The Affordability Question

Independent India had promised free and compulsory education to its children since the State took on the primary responsibility of ensuring education for all. But this did not happen. In fact what has happened is just the reverse.

From 1968 onwards, the goal has been to set apart 6 per cent of the national income for education. In 1990, the Ramamurti Committee had recommended the public investment on education to exceed 6 per cent of GNP. In 1997, the Saikia Committee calculated average expenditure per student in classes I–VIII to be Rs. 948.00 and recommended an additional investment of Rs. 40,000 crores in the next five years. The Tapas Majumdar Committee, 1999 estimated an additional requirement of Rs. 1,36,000 crores over a period of ten years ending 2007–2008. A set of recommendations one after the other and yet what we spend on elementary education today with many more children in the 6–14 years age group than there were in 1968 or in the nineties, is only 3.8 per cent of GDP. In that too our major programmes like the District Primary Education Programme (DPEP) are externally aided.

Educational strategies and programmes were evolved more on the basis of cost considerations than on the basis of educational considerations. Thus compulsory education was never seriously implemented because it was envisaged more as a cost saving mechanism than a desirable objective to be achieved.

Daswani, Varghese, Govinda, Citizens' Initiative on Primary Education, 1997.

DOES THIS REFLECT ON OUR EDUCATION SYSTEM?

As the pressure on students to do well mounts, so does the death toll. Statistics on students who fare badly in exams make for depressing reading. Data compiled by the National Crime Records Bureau for the year 2000 states that 2279 students ended their lives across the country because of failure in examinations, accounting for 2.1% of the total 1,10,587 suicide cases.

HOW SAFE ARE OUR SCHOOLS?

Four-year-old school girl beaten up by teacher. Her fault — she was playing outside while the teacher was holding a class in the building. (Hindustan Times, 14 September 2000).

15-year-old thrashed by vice principal for disobedience...had to be hospitalised... (Hindustan Times, 28 September 2001).

Fear of school has kept 10-year-old Hemant at home....he lost a tooth because of thrashing from his science teacher....for not completing his homework. (Hindustan Times, 26 July 2002).

Children in India continue to face physical and mental violence from their teachers. Most teachers feel that children, in order to be disciplined, need the fear of the stick. 'Spare the rod spoil the child' — a statement that stays in the psyche of most teachers. They are convinced about this as in their times children were routinely caned, made to stand on chairs and rapped on the knuckles.

Children are generally seen as not so mature and the assumption is that adults know best and thus must make decisions about children's lives. Though corporal punishment affects not all children but the fear of teacher and the stick is definitely a cause of many children leaving the school system.

The revised National Policy on Education (1992) states that 'corporal punishment should be firmly excluded from the education system' but no law or legal provision has been made to ban it. In 1999 the Delhi High Court admitted a petition for meaningful education challenging the practice of corporal punishment in schools. This followed statements by the Delhi Government in favour of retaining provisions in the Delhi Education Act, 1973, that provide for certain forms of punishment to students over 14 years of age. In December 2000, in response to a PIL, the Delhi High Court ruled that children have the right to education. Despite this ruling, the incidence of corporal punishment in schools continues.

On free education, the approach paper to the Tenth Five Year Plan talks of free textbooks only and that too for SC and ST children. It recognises absenteeism amongst teachers. But, instead of correctional measures ensuring their regular attendance and presence in the classroom, it talks of their replacement by para-teachers. Clearly, a large chunk of the already limited education budgets will go towards creating parallel teaching systems.

Once again it has been proved that promises are made only to be broken. There is no free education in this country and now, with the passing of the 93rd Amendment, the responsibility of ensuring educational opportunities for their children rests on the parents.

CONCLUSION

An illiterate and unenlightened mass is not just sufficient but also a necessary pre-condition to the existence and survival of the powerful. In the history of India dating back to the Brahmanical rule, education was a prerogative of the rich and powerful castes only. Much later, the English system of education brought in by the British further widened the gap between the haves and the have-nots. The British left the country leaving behind State funded education catering to the interests of the upper and middle classes of the Indian society. While independent India set itself a target of ten years to achieve the goal of universal elementary education for all children up to the age of 14 years, till date it has only been able to shift this deadline to ever after and has in fact created more than one form or system of education, catering to different economic classes. For instance there is State funded education (government and government aided schools), private education (private and public schools) and non-formal education (non-formal education centres).

What these various systems of education have to offer is yet another saga. A charge for education that is supposed to be 'free', a curriculum that the children fail to relate to, ill-equipped government schools, high rate of absenteeism amongst the government teachers are some of the facets of government school education in the country. On the other hand, the competitiveness to strive to be the best and the heavy school bag in the private schools kills the desire to learn and the creativity of many a child. The non-formal options have, in fact, failed to ensure a child's entry into the formal system of education. The situation of education system in India is marred by a system that perpetuates gender and caste bias and promotes only a certain kind of value-based education necessary to maintain the dominant patriarchal structure of society.

It is sheer lack of political will that has kept more than half of the country's children away from their basic right to education. And for those who do go to school, the education system seems completely indifferent to their needs and at times even hostile. As a matter of fact, Universalisation of Elementary Education, ensuring both access to and quality education for all children has never been a desirable objective to be achieved by the State.

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Politics of Education in the Age of Globalisation*

PART II

The educational debate I am going to refer to is probably as old as the advent of formal education in human civilisation. It is powerfully symbolised in the epic Mahabharata wherein Dronacharya, the great guru of the princes, made Eklavya, the tribal youth, lose his thumb when the latter mastered skills in archery on his own to rival the princes. During the second half of the previous century, the protagonists of the two opposite views had articulated their respective positions repeatedly from various academic and public fora. The Marxist perspective helped sharpen the debate as well as focus attention on the fundamental issues. I was personally made aware of the sharply contradictory, if not irreconcilable, positions in the debate as I was about to resign from my job in 1971 as a scientist in the Molecular Biology Unit of the Tata Institute of Fundamental Research, Mumbai. This was in the context of my projected move to Hoshangabad District, Madhya Pradesh, with the aim of setting up a rural education institution called Kishore Bharati. I also became conscious of the reflection of this debate in the political arena where the Marxists and the non-Marxists had for long strictly adhered to their ever-hardening and bitterly antagonistic stands.

The introductory brochure of Kishore Bharati (1971) talked about the need to experiment with the Gandhian ideas of Nai Taleem (Basic Education) i.e. integration of the 'world of knowledge' with the 'world of work', the latter referring to productive work relevant in a child's environment (Kishore Bharati, 1971). The basic premise of the proposition was that the Gandhian pattern of education will help catalyse social change, eventually leading to elimination of poverty, reduction in socio-economic disparities and finally creation of a more just society. Several people, especially the Marxist friends, questioned the premise itself. It was argued that, unless social change i.e. transformation of social structure takes place, education cannot be changed. After all, education, being controlled by the State, merely reflected the concerns of the ruling social forces and was inevitably designed to fulfil their vested interests. It was the State that determined the social and pedagogic character of education and not the other way around. It was difficult to refute the argument logically. Nor could any historical experience or evidence be cited in support of the basic premise on which Kishore Bharati was naively founded. The next two decades witnessed a whole range of educational interventions in Hoshangabad District, both within and outside the school system, which brought out the potential as well as the limitations of educational change.

The experience of the Hoshangabad Science Teaching Programme (HSTP) initially in sixteen (1972) and later in all of the 250 odd (1978) Government middle (i.e. upper primary) schools of Hoshangabad District, the productive work-based non-formal educational experiment with school dropouts in *Nai Taleem* framework (1973), the youth camps on developmental and health issues (1978), the educational initiative for the conscientisation of landless peasants and marginal farmers in the Paulo Freirian perspective (1980) or the reproductive health work aimed at women empowerment (1985), revealed the contours of how education interacts with various social forces. The experience showed that educational intervention partially and to be sure, only transiently, influences

* Revised and updated version of the Third Foundation Day Address delivered under the auspices of the Assam Higher Secondary Education Council, Guwahati, Assam, on June 1, 2000.



SOCIAL CHANGE, EDUCATION AND KNOWLEDGE CONTROL

In 1985, a Chinese delegation of three educationists led by someone equivalent to our Director, NCERT, visited India. During its tour of Madhya Pradesh, the delegation was sent on an official visit to see the Hoshangabad Science Teaching Programme (HSTP). On its return to Bhopal, the delegation shared its impressions at a meeting with the officials of the Directorate of Education, Madhya Pradesh. The Chinese were obviously impressed by what they saw — village children sitting in groups on katcha classroom floor and conducting scientific experiments with local inexpensive kit, recording their observations as young scientists in tattered notebooks, getting engaged in an in-depth discussion for a collective process of inquiry and finally drawing inferences and gaining a conceptual understanding of a natural phenomenon. The delegation members, however, had a discomfiting doubt. They observed that rural Hoshangabad was still dominated by feudal land relations and it was surprising that such a massive scientific exercise could be undertaken in such backward socio-cultural conditions. In contrast, the Chinese society had undergone a major social revolution, breaking away from its feudal past, leading to significant transformation of social structures. Yet, several attempts to introduce scientific ways of learning science in classrooms had been resisted both by the teachers and the educational bureaucracy alike. The delegation members were baffled. In this particular sense, social change in China did not adequately prepare ground for educational change, whereas in Hoshangabad, educational change had taken place without any obvious social change! This is a complex issue. One needs to be cautious in not being tempted to draw any oversimplified inferences. However, it might suffice to add in this context that the role and the character of subjective intervention in a given social reality (in this case, Friends Rural Centre Rasulia and Kishore Bharti, the two voluntary agencies, which pioneered HSTP) in initiating educational change needs to be holistically analysed and understood.

In 1982, a newly set up voluntary institution, called EKLAVYA, assumed the leadership of HSTP. By the end of the nineties, more than one lakh children in almost 1,000 government and private middle schools in 15 districts of Madhya Pradesh were learning science through experiments. HSTP's inquiry-oriented, experiment-based; environment-related and child-friendly pedagogy was not practised even in the elite metropolitan private schools of India. Ironically, in July 2002, the Congress-ruled State Government suddenly ordered closure of this 30-year old programme!

This happened in a state that had the largest chunk of the World Bank-sponsored District Primary Education Programme in the second half of the nineties and which had earned international laurels for having instituted the Education Guarantee Scheme, an euphemism for a parallel stream (parallel to mainstream of formal schools) of non-formal education centres meant exclusively for poor children in rural areas. The decision to close HSTP is indicative of the epistemological* challenge thrown by globalisation to the character of knowledge in the school system. The market forces are interested in promoting only literacy skills amongst the masses. These forces prefer to view even science merely as 'scientific literacy', as is already being done by various Government agencies concerned with the so-called promotion of science. Why 'waste' resources in promoting the method of science and scientific temper and enable children in less developed countries to learn to generate scientific knowledge, as was being attempted by HSTP? The more developed countries and their transnational corporations would rather sell scientific knowledge to poor countries. Hence it is not surprising that in a State where World Bank's investment in education is the largest in India and a parallel stream for poor children was preferred, a programme like HSTP was closed down or rather had to be closed down!

* Epistemology is a branch of philosophy that deals with the source, genesis, character and creation of knowledge.

the sensitive balance prevailing in the society. However, in the process, education is also impacted upon and is either modified or constrained by its interaction with social forces.

Gradually, a new perception was emerging. Neither of the two politically hardened positions referred to earlier, were tenable. To hold the view that educational change can by itself bring about social change amounted to ignoring both the role of various social forces and the hegemony of the powerful vested interests. At the same time, the view that social change must necessarily precede educational change essentially amounted to a self-defeating, if not also a pessimistic stand, which only justified inaction and, by implication, even maintenance of the status quo. Nor was the latter view in fact Marxist, though majority of its protagonists claimed to belong to the Marxist world-view. Indeed, the protagonists of this view ignored the dialectics, which must be operating between education and social reality — education impacting on social reality and vice versa.

One can cite many examples for illustrating the dialectical relationship that exists between education and social reality. For instance, consider the impact of the feminist movement and the slowly but steadily rising assertion of women in society in many parts of the world. This phenomenon persuaded the Indian policy-makers in 1986 to include a special section called 'Education for Women's Equality' in the National Policy on Education, though the policy perception on women's education suffered from several lacunae and internal contradictions (Sadgopal, 1988). In spite of this weakness in perception, the relatively enhanced stress on women's education in the 1986 Policy gradually built up pressure on both the society as well as the government during the nineties to at least design programmes which purportedly attempted to make education accessible to the girl child, transform the ethos of higher education institutions in favour of women and subject curriculum and textbooks to scrutiny from the standpoint of gender equity. Similarly, the rising Dalit assertion, especially in Maharashtra, persuaded the textbook writers to review their presentation of the role of Dalits in Indian history, re-construct Dr. Babasaheb Ambedkar's contribution to the making of contemporary India and to include selections from the Dalit literature in language texts. This change in textbooks is bound to have an impact on the distorted perception the children carry about the Dalits and their contribution to society.

GLOBALISATION AND THE OLD DEBATE

Normally speaking, one would tend to take a position that, in the face of the powerful forces of globalisation, there is no option for the educational system but to accept the situation as fait accompli. It is with this mindset that the policy-makers and the educational bureaucracy in India have unquestioningly accepted the hegemonic role of transnational corporate forces, the global market system and the powerful international organisations such as the Brettonwood institutions (World Bank and IMF) in directing the structure as well as the quality of education (and also health). The World Bank took a decisive step in this direction by organising the first World Conference on Education for All (popularly known as the Jomtien Conference) at Jomtien, Thailand, in March 1990. The

Jomtien Conference laid the groundwork for intervention by the international funding agencies in national educational structures and processes. By the time of the Jomtien Conference, the education policy (or policies) formulated by the successive Indian Governments since independence had failed in ensuring Universal Elementary Education as well as in transforming secondary and higher education to serve the goals of social development of the Indian people. Ironically, this collapse of the education policy and the continuing evidence of lack of political will on the part of the ruling Indian elite to rectify the situation provided the rationale for giving space for global intervention in Indian education. The Jomtien Conference proved to be a turning point in the history of education in India. The Government of India gave a hasty concurrence to the Jomtien Declaration (World Conference For Education For All, 1990), without even consulting the Parliament on its major Constitutional and policy implications. The Jomtien Conference marked the beginning of the phase of increasing abdication by the Indian State of its Constitutional obligation towards education of nation's children in favour of the forces of the global market. It also marked the beginning of the erosion of the role of the Parliament in policy formulation as well as of the Planning Commission and the Ministry of Human Resource Development in formulating the agenda of Indian education and its priorities. Taking an early cue from the Jomtien Declaration and foreseeing the political, historical and educational significance of this turning point, this author proposed to view the post-independence history of education in India in two separate phases for the purpose of analysis viz. *Post-Jomtien and Pre-Jomtien phases*. (GOI, 1994).

The New Economic Policy giving primacy to the market forces in national development and 'integrating' India into the global economic order was enunciated by the Government of India in July 1991. The stage for this declaration must have been in preparation for quite some time, probably since the mid-eighties, for it took the newly elected government of Prime Minister Shri Narasimha Rao less than a week to take this policy initiative. Along with this, however, another declaration made by the same government in July 1991 itself did not attract much notice. This was with regard to a decision of not giving effect to the major education policy changes recommended by the Acharya Ramamurti Committee (National Committee to Review the National Policy on Education-1986) for rectifying the elitist orientation of the 1986 policy and ensuring universal access to education of equitable quality. Obviously, such policy changes would not have resonated well with the New Economic Policy. The Parliament was, therefore, told that yet another committee (i.e. the CAGE Committee or what is now also known as the Janardan Reddy Committee) to purportedly look into the feasibility of the Acharya Ramamurti Committee recommendations was being constituted. Thus the government managed to avoid taking steps in fulfilment of the Constitutional directives and to keep doors open for international intervention in Indian education, especially in the area of school education. The political and economic framework for subjugation by the global forces in the educational sector emerged soon after the announcement of the New Economic Policy when the Indian Government was 'persuaded' by the IMF and the World Bank to accept the twin concepts of *Structural Adjustment and Social Safety Net* in planning and budgeting for

social sectors. There was no choice, the government told the people, justifying its apparent 'helplessness' since these were the pre-conditions set by the Brettonwood institutions for extending further loans. Plainly speaking, these twin concepts implied that the government would successively reduce public spending on social sectors such as health, education and social welfare i.e. Structural Adjustment. Recognising that such a reduction can lead to severe socio-political tensions, the IMF and World Bank 'offered' to create a Social Safety Net by extending loans for the social sector on certain terms and conditions.

No more shall the Ministry of Human Resource Development and Planning Commission play any critical role in determining the direction, content or resource allocations in education. Increasingly, the government will be willing to abdicate its Constitutional obligations in the area of education and let the market forces have an unbridled play (also known as 'free' play in the language of the globalised world). The social needs of various segments of society shall no more be the determining factors in educational decision-making. It can be easily established that, since the inception of the New Economic Policy in the early nineties, the National Policy on Education (1986, 1992) has progressively lost its pre-dominant status in directing education in response to national or social needs. The World Bank and the market forces have already been given so much of 'free' play that even the Parliament can be ignored while shifting the policy focus and educational priorities. This is what happened in World Bank's DPEP which shifted the policy focus from *eight years of elementary education to only five years of primary education and from ensuring three teachers per primary school under Operation Blackboard to multi-grade teaching*. Increasingly, educational decisions are being orchestrated either by the World Bank Headquarters in Washington DC or the corporate capitals of the northern hemisphere.

The East India Company along with its Macaulay is back, this time with a much more powerful and universal presence, than its early nineteenth century Calcutta-headquartered presence in the Indian sub-continent! To be sure, the 21st century 'East India Company', realising the risk of the still prevailing 'old-fashioned' patriotism reacting against its naked physical presence, has acquired highly subtle ways of intervention in the sub-continental affairs, using the ruling elite, academics and the teachers.

In this backdrop, let us re-examine the issue referred to in the preamble in the following terms:

Does globalisation imply that the very direction, structure and the quality of education will henceforth be determined by the corporate forces and the market system?

If one answers the above question in the affirmative, educationists as well as the policy-makers will then have no pro-active role in education. They will instead be left only with the role of docilely accepting and executing the dictates of globalisation. Our role would then be limited to fulfilling the aims of the global capital order viz. expanding the horizons of the market economy. The global economic order perceives a critical role for education in fulfilment of its aim. Accordingly, all aspects of education would have to be moulded to prepare a market-friendly, consumerist-cum-pro-hi-tech (esp. Information Technology) and competitive mindset amongst children. Each child will then have to be viewed as a significant 'resource' as well as a tool of the global capital, rather than as a human being with a fundamental right to education for



holistic development of one's inherent potential. It is a matter of the very philosophy and aim of education being challenged under globalisation.

Alternatively, we may prefer to assert that education does have a transformative role, as discussed in the Preamble, especially if it is designed to have a dialectical relationship with the forces of globalisation. For this, it will be necessary to reiterate that the primary role of education is to help build 'an enlightened and humane society', as elaborated in the Acharya Ramamurti Committee Report. The entire curriculum and pedagogy would have to be redesigned such that the children and youth learn to analyse, question and eventually challenge the apparent universal acceptance of the hegemony of the forces of globalisation in moulding society. Instead of being made to subjugate itself to the need (as well as greed) of the corporate forces to control the global resources, both natural and human, education will have to be consciously developed into a powerful tool of liberation of the mindset. The transformative role of education will remain incomplete if it is limited to merely challenging the hegemony of globalisation forces. It must also include the agenda of reconstruction of society (which in turn includes reconstruction of knowledge) in order to build up an alternative framework for greater equity, justice and peace in the post-globalisation world order.

The basic issue at stake in the old debate must be now becoming evident.

IDENTIFYING THE POST-JOMTIEN TRENDS

The Jomtien Conference was followed by the Education For All Conference in New Delhi (1993) of nine high-population countries of the world under the sponsorship of the World Bank. The nine countries included Bangladesh, Brazil, China, Egypt, India, Indonesia, Mexico, Nigeria and Pakistan. This conference set the framework for designing the internationally funded programmes in developing countries. Soon afterwards, the World Bank-sponsored District Primary Education Programme or DPEP (1994-95) was institutionalised in India, which spread to several states in phases within the next five years. For each new phase, the Union Government readily signed fresh MOUs, while the State Governments, irrespective of the ideology of the ruling party, jostled with each other to have their share in the cake of additional foreign loans or grants. No effort was made to subject DPEP to any public scrutiny, whether within or outside the Parliament and State legislatures. The MOUs have been treated as secret documents, as if they dealt with the military secrets, rather than with education of our children. Yet, it has been possible to decipher the basic trends that characterise the post-Jomtien phase of Indian education in the latter half of the previous decade. The following important trends may be listed:

- Dilution and trivialisation of the aims of education;
- Fragmentation or compartmentalisation of education;
- Alienation of knowledge from social ethos;
- Restriction of access through commercialisation, privatisation and competitive screening;
- Parallelisation or hierarchical layering of school systems;
- Institutionalisation of a set of evaluation parameters and an examination system that will ensure restriction of equitable access, pre-designed and sustained mediocrity and hierarchical layering of educational facilities for different socio-economic segments for preservation of status quo;

- Homogenisation of socio-cultural diversities through increasing centralisation.*

The most evident indicator of increasing dilution and/or trivialisation in the post-Jomtien phase is the almost complete absence of any reference to aims in the educational discourse today. Major changes in programme designs or curriculum are introduced without as much as even a reference to how these would affect our pursuit of basic aims of education. For instance, in spite of the unambiguous commitment implied in Article 45 of the Constitution to at least eight years of elementary education, it took no time for the DPEP to shift the focus to merely *five years of primary education*. This unabashed dilution of Constitutional obligation has not stopped. In the newly declared Sarva Shiksha Abhiyan, the Education Guarantee Scheme officially ‘guarantees’ merely *three years of primary education* (SIEMAT, Bihar, 2000). In the process, the significance of an integrated view of the eight-year curriculum carefully built up since the Wardha Conference (1937)[#] was also lost, without even a single eyebrow raised in the entire Ministry or the Parliament. Similarly, *literacy* has become synonymous with *education* during the past decade in public as well as the academic mind, though it is but merely one of the several indicators of the level or quality of educational achievement in a particular community or a population sub-set. It was this misleading perception that may have persuaded the Union Government in 1993 to declare that children in the 9–14 age group were permitted to enrol themselves in the adult literacy classes of the National Literacy Mission. Likewise, the World Bank trivialised the aim of educating the girl child by attempting to make it synonymous with fertility control, transaction of the population message and increase in women’s productive efficiency (World Bank, 1997). Even this trivialisation was accepted by the Indian policy-makers without murmur.

One may recall how the National Policy on Education (1986) made a commitment to provide at least two teachers per primary school in its much-hyped Operation Blackboard scheme. This commitment was raised to three teachers per primary school in 1992 in the revised National Policy on Education (1986). However, the DPEP could dare to ignore all such commitments made on the floor of the Parliament within the next 2–3 years by making *Multi-grade Teaching* one of its central themes. This meant that, contrary to the commitment made by the Parliament under the Operation Blackboard scheme, the DPEP would get away with by training only one teacher to handle five classes simultaneously. The DPEP strategy also managed to legitimise the unwillingness of the State to shift adequate resources to education of the poor children. The serious negative implications of such dilution and iniquitous measures in terms of the quality of education of the poor children seemed to bother no one at the helm of policy-making. An adult literacy class, a non-formal centre, the so-called ‘alternative’ school, a multi-grade class and now the Education Guarantee Scheme (wherein a para-teacher will be appointed), all have been accepted as adequate substitutes

*Instead of the conventional bureaucratic control, centralisation now is increasingly in the form of a more subtle control by global capital over even seemingly decentralized agencies viz. Block Resource Centres, Cluster Resource Centres and Gram Shiksha Samitis in DPEP (Prapanna, 1996)!

[#]Organised in 1937 under the leadership of Mahatma Gandhi at Wardha, Maharashtra, as part of the freedom movement to formulate a vision of education for post-independent India. A committee constituted under the chairpersonship of Dr. Zakir Hussain drafted a detailed plan of Nai Taleem (Basic Education), later also called the Wardha Scheme.

OF PARA-TEACHERS AND POSTMEN

The para-teacher scheme, already operating in several states, appoints *under-qualified, untrained and underpaid* (15 to 16 times less than the regular teacher) local youth as teachers on a contract basis. In the short period of last four years, almost 5 lakh para-teachers have been contracted. In contrast, the total number of regular school teachers appointed during the past 54 years is 40 lakh. Madhya Pradesh, a state leading in this farce, stopped all appointments of regular teachers a few years ago not just in primary schools but all the way up to the college level. What is worse is the likelihood of the government finding even these parallel streams as being too burdensome for the state and then replacing the para-teacher with a postman, as evident in the proposal in NCERT's National Curriculum Framework for School Education (November 2000) of introducing correspondence education for the 6–14 age group! While comparing the academic standards in the formal school system with alternative or correspondence education system, the same NCERT document (p. 23) has no qualms in admitting that 'the instructional materials and transactional strategies under the two systems have to be different'. Anything under the sun but a regular functioning school, as far as education of the poor children is concerned. This policy, initially institutionalised in the DPEP, has now been fully legitimised in the latest version of government programme called Sarva Shiksha Abhiyan through approval under the 10th Plan.

for school education, as long as it concerns the education of the poor. Needless to say, no policy-maker will ever be prepared to send her or his child to any of these parallel low-quality educational 'alternatives'!

The process of trivialisation in the post-Jomtien phase did not end with the measures, which amounted to mere dilution of educational aims. The trivialisation agenda went much further. Let us consider the nationwide centralised programme of introducing pre-determined competency-based Minimum Levels of Learning (MLL) framework in the schools (NCERT, 1991). This is aimed at equipping the primary school children with the so-called 'mastery level' achievements which will presumably enable them to function as 'socially useful and contributing adults'. This restricted (i.e. less than holistic) and compartmentalised view of education has been perceived by the policy-makers and international funding agencies in the nineties as being critical for the well-oiled operation of the globalised economy. The MLL framework is also suggestive of an 'Orwellian' basis for dividing the adolescent and youth, i.e. the 'product' of the educational system, in terms of their specific competencies, so that the emerging workforce can be 'rationally utilised' by the market-oriented economy. It is in this context that each child will be assessed as a resource and be assigned a price tag accordingly!

The second half of the previous decade has been witness to a rising tide in trivialisation of education, both at the level of school education and higher education. To be sure, this must be seen as a worldwide phenomenon but, in a developing country like India, it has the added dimension of being remotely shaped by alien powerful forces that regulate global economy. The World Bank and other international funding agencies are already well-entrenched here with increasing emphasis on programmes such as Education For All (EFA) and DPEP which are pushing the trivialisation process, structurally as well as pedagogically. The globalisation agenda of trivialising education may be seen as reshaping of

the colonial agenda. Such an inference is justified since the current focus is on extending the utilitarian framework of colonial education as a dominant trend of the future.

In this scenario, as was stated by the Lokshala document (Lokshala, 1995), one can envisage *‘a girl child engaged in child labour as having been Constitutionally educated if she can be enrolled in a non-formal stream for three years and then in National Literacy Mission’s adult literacy programme for the next two years, without even having stepped into the village school’* ! The policy of promoting the non-formal stream as an equivalent stream to school education for almost half of India’s children is part of the globalisation agenda of gradual withdrawal of the State from its Constitutional obligation of providing education of equitable quality to all children. It is also an evidence of State’s willingness to co-exist with child labour in the twenty first century while, at the same time, boasting of nuclear-cum-rocket capability and presumed global leadership in information technology!

There is yet another aspect of dilution of education which almost brutalises childhood. Of the three recognised domains of education — cognitive (concerned with knowing or perceiving), affective (concerned with emotions and values) and conative (concerned with psycho-motor skills) — the school’s concern is restricted almost entirely to the cognitive domain. While, in the cognitive domain, the mind is engaged with processing of knowledge, the affective domain is concerned with sensitisation of children and inculcation of values and the conative domain focuses on development of various psycho-motor skills. Education is holistic only when the three domains act in unison and in appropriate combination, in accordance with the characteristics of each child’s personality and inherent potential in the context of her socio-cultural milieu. The school curriculum, however, has essentially no space for affective and conative domains, which are marginalised into co-curricular or extra curricular activities. What is worse is that, of the entire cognitive domain, only a narrow slice viz. memorised information, dominates the curricular objectives. Other cognitive attributes such as comprehension, critical thinking, logic, analysis, concept formation, creativity or intuition are essentially ignored. Thus knowledge has become synonymous with mere bits of information, often unrelated with each other. It hardly matters whether the bits of information heaped on the school child can be put together to make some sense or not or whether these lead to any meaningful concept formation. No school can really dare to opt out of this fragmented and restrictive conception of education because its curriculum is pre-determined by the evaluation criteria characterising the Board examinations at the end of classes X and XII (some States have Board examinations even at the end of classes V and VIII!). This tragic state applies equally to government, private or the so-called ‘public’ schools since the examination system pre-determines essentially everything which happens inside the classroom, even at the pre-school stage.

The tendency to compartmentalise education into watertight compartments, instead of perceiving it holistically, is part of the colonial legacy. One begins by fragmenting knowledge into natural sciences, social sciences and the humanities and then each of these into a range of disciplines and sub-disciplines. You continue this process until you are left with only micro-specialities that lose all

meaning. The Gandhian philosophy of integrating the 'world of knowledge' with the 'world of work' may be envisaged as a challenge to the prevailing trend of dividing education into academic and vocational streams and alienating knowledge from the social ethos. The resistance to a holistic view of education was so strong at the time of independence that the new Indian Government rejected the Gandhian notion of wholesome education for all children. The Kothari Commission (1964–66) also failed to recommend the holistic view as the basis for curriculum re-construction at all levels. The compartmentalisation of knowledge remained essentially unchallenged. The attempt to bring the 'world of work' and social experience into the school curriculum was resisted even within the Kothari Commission. Out of this reluctance emerged the proposal to add 'work experience' as a separate subject in the schools as an embarrassing sop to the Gandhian idea. The proposal of 'work experience' effectively delinked knowledge and learning from productive work and social experience at the pedagogic level. There could have been probably no better way of destroying the Gandhian concept. In 1978, the Ishwarbhai Patel Committee Report put the final nail in the coffin of the Gandhian concept by proposing the mouthful of 'Socially Useful and Productive Work' (SUPW). To be sure, the students' assessment in SUPW would be entered in the last column of the mark sheet and not be considered when assessing the students for entry into higher education courses!

The afore-mentioned colonial agenda of fragmentation of knowledge in the education system provided a fertile ground to the similar agenda of globalisation which views education essentially from the utilitarian standpoint for promoting the global economic order. As was the case with the Macaulayan approach to education, globalisation also aims at using education as a tool for building up various skills and capacities that are useful to the global economy (recall competency-based approach of MLL). This implies an unambiguous denial of the holistic approach to building up an enlightened and humane society. In this paradigm, knowledge in science, social science and humanities would need to be divested of its philosophical, historical, ethical, socio-cultural and aesthetic roots. Given the pre-dominance of market forces in the globalised world, it can be predicted that only those courses, research programmes or training activities would receive financial support which have a saleable value in the global market. Any discipline, sub-discipline or even a set of ideas, which are not saleable, will gradually die, unless supported pro-actively by public funds as part of a conscious social policy. Interlinkage between knowledge (which is viewed as being synonymous with information in the globalised world) and its roots may not carry any price tag in the market economy. It has, however, critical significance for social re-construction and transformation. *In this sense, there is a fundamental conflict of epistemological nature between globalisation and social development.*

Alienation of knowledge from social ethos is a logical outcome of globalisation. The increasing preference for internet as source of 'knowledge' (read information) and its screening or filtration by corporate forces on the basis of marketability will lead to delinking of a large proportion of knowledge from its social ethos. The geo-cultural diversity will come to be largely ignored and

have little role to play in defining or qualifying knowledge. This trend will over a period of time establish the hegemony of only globally acceptable (i.e. marketable) parameters of what is worth knowing in the age of globalisation. Strangely enough, this hegemony provides a meeting ground between the 'free' market agenda of globalisation and the well-established centralising tendency of NCERT, at least in the short-term. This understanding must be at the basis of the declaration by NCERT in its National Curriculum Framework for School Education released as a Discussion Document in January 2000 to the effect that,

- a) detailed curricular guidelines and model syllabi for all stages of education would be developed by NCERT;
- b) exemplar instructional packages on several new and relatively unknown areas of knowledge should also be developed as a part of the front-line curricular materials; and
- c) A National Testing Service will be established by NCERT with the twin objectives of conducting surveys of educational attainment and assisting professional institutions in conducting entrance examinations and also assisting employing agencies in recruiting their employees (the Acharya Ramamurti Committee had earlier rejected the proposal to set up a National Testing Service on the ground that it will discriminate against the people living in the backward regions and hinder their social development).

In making these declarations, the NCERT has publicly admitted that the hegemony of the forces of globalisation is such that all other considerations will have to be set aside. For instance, NCERT had earlier stated in the same document that 'the plural nature of Indian society needs to be reflected in the pedagogical approaches' and 'there is a strong need for looking into the cultural context in which the child is placed'. The ultimate impact of globalisation on NCERT's decisions has turned NCERT's apparent appreciation of Indian plurality into a mere rhetoric!

As already emphasised in the earlier paragraphs, the increasing tendency of the State to abdicate its Constitutional obligation towards education of the poor, constitutes an important feature of globalisation. The rapid pace of privatisation in the school education sector, particularly during the nineties, is a direct consequence of the collapse of the official policy in the past five decades to maintain the quality of education in government schools. This collapse is reflected in the following policy dimensions:

- i) Highly bureaucratic and centralised management of the government schools continued as part of the colonial legacy despite policy statements in favour of decentralisation; the post-Jomtien intervention by World Bank's DPEP, has led to a quiet but unmistakable strengthening of the colonial legacy by gradual shift of control over decision-making from State capitals to Delhi and from Delhi to Washington DC!
- ii) Lack of community participation or control in school management; the rhetoric of community participation in DPEP is more in form (Village Education Committees and Block Resource Centres) than in content since the directives



continue to pour in plenty from higher echelons as before; in any case, even on paper, what is proposed to be devolved is not any power with regard to curriculum or pedagogy, but mere participation (in contrast to control or accountability) with regard to only management and, that too, in a superficial sense (it does not include any policy matters or financial decision-making).

- iii) Unwillingness to shift the necessary financial resources from other sectors to education by either reprioritising the national economy, changing the direction of development or even modifying education policy; the post-Jomtien phenomena of Structural Adjustment and Social Safety Net have in fact implied that there need be no change in national priorities, direction or policy measures since additional funds will flow comfortably (i.e. comforting to the ruling elite) into the school sector from external sources !
- iv) Irrelevant curriculum and unattractive teaching-learning process; this crucial aspect of education, inherited from the colonial past and continued faithfully since independence, is likely to become worse since the curriculum and pedagogy are going to be moulded by the needs of the global market, rather than the social priorities of the people.
- v) Discrimination on the basis of caste, religion, language, culture and gender as part of school's hidden but operative curriculum; the interaction between discrimination in education and market forces is a complex issue and requires a detailed treatment separately; to be sure, the present situation will change in a significant manner with predictable changes in the character of hegemonic forces (e.g. market-led homogenisation of cultural diversities, increasing hegemony of English as source of knowledge legitimised through Information Technology and the women being turned into a marketable commodity, thereby further strengthening the patriarchal stranglehold).
- vi) Lack of political commitment to establishing Common School System and Neighbourhood Schools in order to move towards equitable quality of education for all children; with rising market pressure for privatisation and commercialisation, the social objectives of the Common School System and Neighbourhood Schools will be further marginalised and are likely to become politically even more irrelevant than during the decades following its recommendation by the Kothari Commission (1964-66) or its resolution by the Parliament thrice in the National Policy on Education (1968, 1986 and 1992).

The last issue regarding the lack of Common School System can be identified as the single most critical factor responsible for the deteriorating quality of government schools and the consequent rapid pace of privatisation in the school sector. The problem has been made worse by the official policy of establishing parallel educational networks. For the better-off sections of society, this policy has led to the establishment of the Central and Navodaya School systems as well as several types of Model Schools within the government school network (e.g. Sarvodaya and Pratibha Vidyalayas of Delhi Administration). For the very poor, especially child workers, the parallellism is reflected in the form of non-formal centres, Alternative Schools, inclusion of 9-14 age group in NLM's adult literacy classes and Education Guarantee Scheme centres. Either way, this policy

EMPOWERING THE GOVERNMENT SCHOOLS*

The crisis was foreseen by the Kothari Education Commission (1964–66) which unequivocally recommended the Common School System with neighbourhood schools as the National System of Education for all children of India. What is a Common School System? The most important feature of a Common School System is equitable (not uniform) quality of education for all types of schools, be they private, private-aided or government. Six essential and non-negotiable attributes of equitable quality of education need to be specified: (i) minimum physical infrastructure, including library, teaching aids, playgrounds and many other features (e.g. early childhood care centres and pre-primary schools attached to primary/elementary schools); (ii) professional quality of teachers and teacher-student ratio; (iii) diversified and flexible curriculum to reflect the geo-cultural plurality of the country, while emphasising certain core curricular features of nationwide significance; (iv) pedagogy for holistic, child-friendly and liberative education; (v) apart from gender sensitivity, pedagogic and social empathy for the Dalits, tribals, cultural and ethnic minorities and the physically or mentally challenged children; and (vi) decentralised and community-controlled school system.

The Indian Parliament has expressed its unambiguous commitment to the Common School System thrice in its resolutions on the National Policy on Education respectively in 1968, 1986 and 1992. Yet, the concept could not be translated into practice because the political leadership and bureaucracy at all levels along with the intelligentsia found an escape route for their own children viz. the private school system. This shift in commitment from the government school system to the private school system implied an increasing loss of political, bureaucratic and social will to improve the Government schools. The present policy support to privatisation and commercialisation of education amounted to legitimisation of status quo of disparity, discontent and disempowerment of the vast majority of Indian people.

The Central Advisory Board on Education (CABE) appointed a Committee on Common School System in 1988. The CABE Committee proposed a ten-year phase-wise programme for reconstruction of the present school system into a Common School System. In 1990, the Acharya Ramamurti Committee, constituted to review the 1986 Policy, extended the CABE Committee proposals further. The chief features of a phase-wise reconstruction programme may be summarised as follows : (a) Highest political priority to improvement of both the access and the quality of the government and the private-aided schools; (b) Decentralisation of decision-making and management of schools through the Panchayati Raj framework and making the school entirely accountable to the community it serves; (c) Fulfilling the Constitutional obligation of a minimum of eight years of elementary education (instead of five or three years of primary education) under Article 45 to all children up to 14 years of age (including the early childhood care and pre-primary 0–6 age group); (d) Allocation of adequate financial resources, getting out of the 6 per cent of GNP trap; (e) A pedagogically and socially rational language policy for the medium of education (not instruction) common to all schools, so that language becomes a means of articulation, rather than imposition; (f) A carefully constructed programme of incentives, disincentives, persuasion and eventually legislation to gradually bring the private schools into the fold of the Common School System; incentives to private schools may include grants for children from low-income groups, computed at the rate of allocation per child in government schools, such that all children in the neighbourhood have access; disincentives may include gradual withdrawal of all hidden subsidies to private schools, like the cheap land, tax-free income and exemption from income tax on donations, teachers trained at public cost, etc.

The elite in India have always been dismissive of the concept of Common School System by mocking at it as being politically too radical and, therefore, infeasible. In contrast, the poor and the lower middle class have for long internalised the concept as the only means for their empowerment and social justice. It is an irony that such an equitable public school system has been prevalent in some form or the other in several European countries, USA and Canada. Indeed, this is the only historical option left for India for building a cohesive, secular and just society. The diversionary educational agenda including adult literacy, non-formal centres, alternative schools or Education Guarantee Scheme, will have to be given up. The agenda of 'Empowerment of Schools' for creation of a Common School System must receive topmost priority in national political agenda.

*The concept of 'Empowered School' for the Government school system was first developed by the Lokshala Programme for Universalisation of Elementary Education (1995) as conceived by Bharat Jan Vigyan Jatha. Published in Outlook, December 11, 2000.

diverts attention from the central political task of improving the quality of government schools in general on a priority basis (Sadgopal, 2000). It is this failure that not only encouraged privatisation but also provided the necessary rationale for intervention by the World Bank and other international funding agencies.

Commercialisation of higher and technical education has been promoted in the post-Jomtien phase under the false argument that resources need to be shifted from this sector to the school sector. It needs to be emphasised that *knowledge is produced and communicated in institutions of higher learning*. This holds true even for knowledge that is essential for improving the curriculum, pedagogy and the quality of teacher education programmes for the school sector. If public expenditure on higher education will be reduced, it will lead to the following anomalies:

- a) Only those disciplines or sub-disciplines will be allowed to survive that have a marketable value; the rest of the disciplines, irrespective of their socio-cultural or epistemological significance, will gradually wither away;
- b) The lower middle class and the weaker sections of society are likely to be deprived of this knowledge as well as participation in generating and reconstructing it; this will lead to further strengthening of elitist control over knowledge and its social application;
- c) The entire higher education system will become oriented to only utilitarian goals, while any knowledge that might lead towards social development or transformation will be marginalised.

The following futuristic description of higher education (Sadgopal, 2000) may be cited:

Year 2010. The ultramodern campus of the newly established 'Bill Clinton International University' near Delhi. Two women students meet. One calls out to the other, 'Come, let us go somewhere and relax.' The other student says, 'I have a packed day today. In the first period, there is Unilever practical in the Coca-Cola Physics Lab; in the second period, there is the Proctor & Gambles session on Western Dance Appreciation in the Pepsi Theatre; this will be followed by the Suzuki Lecture on Information Technology in the Microsoft Auditorium. And then the recess. Come, let us meet in the Kentucky Chicken Canteen in the Union Carbide Square.'

The above scenario may not be so remote as it might appear to some of you. The newly opened G.G.S. Indraprastha University in Delhi started five B.Ed. colleges in one lot last year. A seat in these colleges will cost Rs. 45,000 each. To counter any allegation of elitist orientation, half of the seats are termed 'Free Seats', costing 'merely' Rs. 12,000 each! Compare this with the fee of Rs. 2,500 per seat in the UGC — subsidised Central Institute of Education (CIE) of the University of Delhi, where a lower middle class or even a poor student can hope to obtain a B.Ed. degree with dignity and as a matter of right. But pressure is on for institutions such as CIE as well to change or else just be wiped out, as the UGC support to higher education is threatened to be drastically reduced, if not withdrawn all together. Such measures will clearly be in violation of the spirit of the Indian Constitution which emphasised

equity and social justice. This violation is only indicative of the greater dangers ahead. For instance, the Constitutional Review, already underway, can hardly be expected to resist the pressure of global market forces when the entire Indian polity has already begun to make major adjustments and even to succumb to these forces.

Contrary to the imperatives of the National Policy on Education (1986, 1992), government schools in crowded urban areas are being closed down on one pretext or another. The official strategy (or, is it policy?) is to let the quality of these government schools deteriorate over a period of a few years. The parents, including the poor parents, get the message and start shifting their children to nearby private schools or school-shops. When a majority of the children have 'dis-enrolled' and the school may have reached an unbelievable situation of having, may be, five children and three teachers, the government uses this as a rationale for closing down the schools. The official rationale prefers not to take into account the fact that half of the children in the city might be out-of-school and the private school shops (the so-called 'convent-style' schools) have mushroomed all around the government school wherefrom the children were forced to shift due to government's refusal to checkmate the decline in the quality of education. At this stage, a government report would point out that the situation needs to be rectified by rationalisation, which invariably meant closure of schools. A policy-maker committed to the Constitution would have instead interpreted rationalisation to imply a need to reverse the official strategy of letting the quality of education deteriorate in government schools. The prime urban property of these erstwhile government schools is then handed over to private Trusts or unashamedly even to commercial complexes. This phenomenon was first reported from Ahmedabad in 1998, followed by the closure of thirty schools in Indore in 1999 and transfer of several of these to commercial interests. Such reports are fast becoming a common feature from different parts of the country. This phenomenon underlines the rapidly developing alliance between the State and the forces of globalisation.

93rd AMENDMENT: FUNDAMENTAL DENIAL OF EDUCATION

The Constitution (93rd) Amendment Bill of 2001, claiming to make education a Fundamental Right, was pushed 'successfully' by the Union Government in the Lok Sabha's winter session (November 28, 2001) despite serious objections raised by several MPs, educationists and social activist organisations. The government, however, had made up its mind to extend the Structural Adjustment Programme of IMF and World Bank further into Indian education.

The Bill will end up withdrawing, rather than giving, Fundamental Right to education already provided by the

Elementary education goal remains elusive In primary and upper primary levels, many kids fail to compete

Apratim Mukarji
New Delhi, August 8

DESPITE AN unprecedented expansion of the school system since Independence, the goal of Universal Elementary Education (UEE) of satisfactory quality has eluded the country.

at all levels. While most recent surveys indicate that nearly 70 per cent children in the 6-14 years age group are attending schools, the painful fact is that while the net enrolment rate at the primary stage continues to be 70 per cent, it has dipped to a shockingly lower 40-50 per cent at the

and learning materials, the quality of implementation of the OR is unsatisfactory.

Single teacher schools and single room schools continue in large numbers.

The repair and maintenance of school buildings constructed under

ment of children. Instead, hot cooked meals with proper delivery systems are clearly preferable.

The Non Formal Education scheme has been found to be suffering from weaknesses and needs to be totally modified.

The improvement in learning



Supreme Court through its Unnikrishnan Judgement (Supreme Court, 1993) for the benefit of almost 37 crore children of India (16 crore in the 0–6 age group and 21 crore in 6–14 age group). The Unnikrishnan Judgement had clearly stated that Article 45 of Part IV (Directive Principles of State Policy) of the Constitution must be read in conjunction with Article 21 (Right to Life and Personal Liberty) of Part III relating to Fundamental Rights. By reading Article 45 in the context of Article 21, the Supreme Court made education a Fundamental Right for all children ‘until they complete the age of fourteen years’.

It is in this background that the 93rd Amendment Bill is viewed as an attempt by the government to rob the Indian children of what they had already received from the Supreme Court. The Bill restricts the Fundamental Right of the children in the

6–14 age group and thus 16 crore children in the 0–6 age group (including the disabled) lose the right given to them by the Supreme Court. The significance of early childhood care (which includes nutrition) and nursery and pre-school education for the children up to six years of age cannot be overemphasised as its criticality for child development (cognitive, emotional and physical) as well as the child’s readiness for elementary education is fully recognised by the National Policy on Education 1986 (NPE–1986). By withdrawing this right, the government is essentially discriminating between the rich and the poor since the former will be able to afford early childhood care and education for their children while the poor children will suffer throughout their education due to this handicap in early childhood. The parents of almost 8 crore children (half of the 0–6 age group) hardly manage to earn minimum wages which barely cover, by definition, the need for basic caloric requirement. Where is the scope in the minimum wages to provide for adequate security, nutrition and health care or to pay for nursery and pre-school education? The Bill in this sense legitimises the existing inequity and discrimination in early childhood for at least half of the children in the 0–6 age group which will debilitate them for the rest of their life.

In its lack of commitment to the children under six years of age, the Bill also reflects its inherent bias against the education of the girl child in the 6–14 age group as well. It is well established that a majority of the girls in the families dependent on daily wages are invariably required to take care of their younger siblings. The Acharya Ramamurti Committee (1990) had, therefore, vigorously advocated that a crèche and early childhood care programme must be attached to every primary school in India if the nation was serious about the education of the girl child in the 6–14 age group. The government of the former Prime Minister Shri Narasimha Rao, committed to the New Economic Policy, got cold feet and the CAFE Committee (1992) constituted by it later rejected the recommendation.

There is yet another issue about the age group from this standpoint. The three proposals by individual MPs placed in the Lok Sabha (November 2001) to amend the Bill had in effect demanded that the relevant age group be

expanded in scope to include the children in the 14–18 age group. It is being contended that education up to class VIII, as implied by Article 45, made sense when the Constitution was drafted. No more. Without a class X or XII certificate today, a young person stands little chance for either employment or for admission in professional courses. For the SCs and STs, too, the benefits of reservation become available only after class X or XII. It is further noted that India is a signatory to the UN Convention on the Rights of the Child, which defines a child as a person below 18 years of age. Hence the demand for making Fundamental Right to education available to all children below 18 years (including the disabled children who may be almost 10% of the total). This demand was not even referred to by the Minister of Human Resource Development in his Lok Sabha speech.

Apart from the age group, there are three other important issues raised by the 93rd Amendment Bill viz. equity and quality, parental compulsion and financial commitment. The Bill in fact makes a regressive reference to the issue of equity and quality. The new Article 21A promises the right to free and compulsory education for the 6–14 age group ‘in such manner as the State may, by law, determine’. The implications of attaching this qualification or conditionality (i.e. ‘in such manner as the State may, by law, determine’) to the provision of Fundamental Right to education can be understood only in the historical perspective of continuous dilution of policy commitment to the principle of education of equitable quality as reflected during the 15 years in instituting parallel layers of educational facilities.

A non-formal centre, an adult literacy class, the so-called ‘alternative’ school, a multigrade class, the Education Guarantee Scheme centre, replacing the regular teacher with a para-teacher and now the NCERT’s ‘innovation’ of replacing even the para-teacher with a postman — all have been accepted as ‘adequate’ substitutes for school education, as long as the substitute concerns the education of the poor. The twenty-first century has begun in India by heralding of the multilayered education system that will ensure maintenance of social hierarchy of class, caste, culture and gender. With this, a new Macaulayan principle of social designing is being established viz. parallel educational layers for different socio-cultural segments. By including a conditionality provision in Article 21A that lays, as shown earlier in this chapter through historical analysis, the foundation for inequity in education, the 93rd Amendment Bill has revealed the cynical mindset of the policy-makers towards the educational needs of the deprived sections of Indian society viz. Dalits, tribals, linguistic and cultural minorities, the disabled and, above all, the women.

The other issue relates to the proposal in the Bill to add a sub-clause (k) to Article 51A, thereby adding a Fundamental Duty for the parents with regard to education of their children in the 6–14 age group. Strangely enough, the sub-clause (k) makes it a Fundamental Duty of the parents not just to send their children to a school provided by the State but to ‘provide opportunities for education’ to their children. The courts will read this sub-clause as the very provision of school in itself being a Fundamental Duty of the parents, and not a compulsion on the State. This must have been the intention of the government

since CPI (M) MP Shri Samik Lahiri's amendment motion in Lok Sabha, rejected by the government, had proposed that the sub-clause (k) may instead expect the parents to 'inspire and encourage every child between the age of six and fourteen years to receive education'. The people, therefore, suspect that this sub-clause reflects the 'hidden agenda' of the government of preparing the ground for transferring, in a gradually incremental manner, its Constitutional obligation towards elementary education, to the parents. This must be in addition to the well-known agenda of creating a basis for the states to enact penal legislations for forcing the parents to send their children even to the cheap and low quality parallel streams of education (see Madhya Pradesh Shiksha Adhiniyam, 2002). What else can be the rationale for this sub-clause since even the poor parents are known to be keen to send their children to a properly functioning school in their neighbourhood where children can effectively learn? In such a favourable ambience for education, if created, neither a provision for Fundamental Duty nor for penal legislation is required (a penal legislation, on the contrary, is likely to be counter-productive for most of the parents). This shows that the government has no intention of providing a favourable ambience for education. After 54 years of the collapse of the education policy in fulfilling the Constitutional obligation under Article 45, the government has lost all moral ground for enacting either penal legislation or shifting even a part of the obligation to the parents. It is high time that the Constitution is amended to include the concept of compulsion on the State, rather than Fundamental Duty of the parents, for the purpose of ensuring Fundamental Right to education of equitable quality for all children below 18 years of age. Or would the children of India have to wait for another half a century for gaining this right?

We may now decipher the meaning of the Financial Memorandum attached to the 93rd Amendment Bill according to which an additional sum of Rs. 9,800 crores per year will be provided for the next ten years in order to implement the Bill. Since the Union Budget allocation for the current financial year for Elementary Education (i.e. for the 6-14 year age group) is Rs. 3,800 crores, the Bill actually provides for an additional allocation of only Rs. 6,000 crores per year which is merely 0.35 per cent of GDP. This is in contrast to the estimate made by the Tapas Majumdar Committee, constituted by the Central government, whose Report in 1999 stated that an additionality of about Rs. 14,000 crore per year on average will have to be spent for the next ten years in order to provide school education (not cheap and low quality parallel streams!) to half of the children in the 6-14 year age group who were then out-of-school. This additional investment works out to be 0.78 per cent of GDP — merely 78 additional paise out of every hundred rupees of the GDP. What the new Bill is willing to provide is less than half of what is required to be spent at the existing level of the quality of education. In contrast, in the Union Budget of the year 2002-03, an additional allocation of Rs. 728 crores has been made for elementary education, which amounts to an additionality of merely 0.04 per cent of GDP or just 4 paise out of every hundred rupees of the GDP! And this pittance is given after the Lok Sabha passed the Bill and the Rajya Sabha passed it a few weeks after the Union Budget was approved. Does one require any further evidence of the government's intention of pushing its agenda of cheap and low quality parallel streams for the poor children in the name of ensuring Fundamental Right? The Sarva Shiksha

Abhiyan (Government of India, 2000) has been designed to fulfil exactly this agenda.

The Tapas Majumdar Committee calculations did not take into account the cost of providing elementary education of equitable quality. Nor did it compute the cost of providing inclusive or integrated elementary education to the children with special needs. In this sense, this Committee's calculations are to be viewed as underestimates. Even for this underestimate, the government is dithering, which makes the entire exercise of Constitutional amendment a farce.

Since independence, the successive governments have refused to reprioritise the Indian economy to make the necessary investments in education. Instead of reaching the level of investment of 6 per cent of GDP by 1986, as advocated by the Kothari Commission, we were spending only 2.5 per cent by that year. Only half of this investment is in the elementary education sector, the remaining being for secondary, higher and technical sectors of education and some other special schemes. The investment in education rose to about 3.9 per cent of GDP by mid-nineties but fell down to 3.4 per cent by the end of the century. This means that an ever-widening cumulative gap of investment in education has been built up for more than three decades. It implies less than adequate classrooms, teaching aids, teachers' posts, and facilities for teacher training, libraries, laboratories, sports facilities etc. from 1966 to date. Apparently, what the Tapas Majumdar Committee recommended as an additional investment in elementary education sector for the next ten years is to fill up this cumulative gap. This must not be confused with the investment requirement of 6 per cent of GDP per year as a recurring expenditure. We must also note that the Kothari Commission did not make any estimates for two critical areas of education: (a) early childhood care and nursery or pre-school education and (b) inclusive or integrated education of children with special needs. These bitter truths mock at the reluctant additionality of Rs. 6,000 crore per year as provided in the 93rd Amendment Bill and the actual additional allocation of merely Rs. 728 crores in the Union Budget of the year 2002-03!

As far as the political parties (and many NGOs) are concerned, there is apparently an undeclared consensus among them on acceptance of the Structural Adjustment Programme imposed by IMF and World Bank on the Indian economy as part of the policy of globalisation. Admittedly, various parties may differ in terms of the degree of consensus (even the West Bengal Government has accepted World Bank's DPEP). This consensus extends to abdication, in an incremental manner, by the State of its Constitutional obligation for providing free education of equitable quality to all children. These ideas form the core of the statement given by the Minister of Human Resource Development while presenting the Bill. While acknowledging the criticality of early childhood care and pre-school education for the children upto six years of age, the minister is not willing to place this burden on the government. Yet he contradicts himself by assuring the Lok Sabha that this stage of child development shall receive government's full attention. As

Rs 900 cr to hasten free education drive

HT Correspondent
New Delhi, February 28

THE DEPARTMENT of Elementary Education will get Rs 900 crore more during 2002-03 to provide free and compulsory education for children of six to 14 years. The substantial increase takes the allocation for the department from Rs 4,900 crore to Rs 5,800 crore. The rise has been necessitated by the 93rd Constitutional amendment which has made education for 6-14 year age group children a fundamental right. There is a rise of more than 18 per cent in the plan allocation for elementary education.

and the cost

The women and child department also gets a big hike of 23 per cent and its allocation is Rs 2,500 crore. The government plans to institute at least 100 scholarships a year to be provided by the department of Science and Technology to women scientists and technologists.

The National Nutrition Mission will be activated to provide foodgrains at subsidised rates to adolescent girls and expectant and nursing mothers belonging to below poverty line families.

The allocation for the welfare of the poor, the Ministry of Social Justice and Empowerment has been raised from Rs 750 crore to Rs 970 crore. The outlay for rural welfare has been hiked

'Damned lies'

Rs 900 crore increase in elementary education allocation is absolutely inconsequential. These are lies, damned lies and statistics.

Why is the FM publicising the increase of Rs 900 cr when the financial management memo talks about Rs 9,800 cr and the Tapas Majumdar panel talks about Rs 14,000 cr. Professor Anil Sadgopal, Dept of Education, DU

Rs 150 crore — a 25 per cent rise. The National Institute of Siddha (Chennai) will get Rs 4 crore to start its facilities. Delhi will also get a national AIDS drug.

Specified anti-AIDS drugs would be exempted from excise duty. Customs duty on glucose, and test strips will be reduced from 25 per cent to 10 per cent.

'Schools not providing free education to poor students'

HT Correspondent
New Delhi, May 20

A PUBLIC interest litigation (PIL) has been filed in the High Court on the failure of all recognised and unaided schools of Delhi in providing 25 per cent concessional education to students of weaker sections. The DDA, MCD and the Delhi government have been made respondents in the petition.

The 25 per cent concessional/free education was an important part of the conditions under which land was

allotted to these schools on throwaway prices. There are more than 1,500 unaided recognised private schools in Delhi and more than 1,200 have been allotted public lands on throwaway prices," states the petition.

A list of schools and the rate at which land had been allotted to them has been submitted in the court. "All these schools are violating the conditions of land allotment as none is providing free education to the children of the poor," says counsel Ashok Aggarwal.

who has filed the petition for a group of lawyers called 'Social Jurist'.

The petition has demanded that the schools comply with the conditions of allotment in regard to providing free education to children from weaker sections of the society. It also demanded that the DDA, MCD and the Delhi government take action against the erring schools.

Further, the petitioner demanded that rules laying down provisions for admission to these schools be framed by the government.

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if to resolve this contradiction, the Minister invited 'all voluntary organisations and corporate houses' to help the government in this sector. This plea of the Minister is tailor-made to fit into the globalisation agenda of reducing the role of the State and increasing the role of the market and the private sector, leading eventually to commercialisation. This is where the government sees the role of NGOs. The State shall be happy to open its own coffers as well as to mediate the funds from UN and other international donor agencies for those NGOs who would agree to legitimise the government's pro-globalisation agenda. The 93rd Amendment Bill has been clearly designed in response to the dictates of the Structural Adjustment Programme, rather than to fulfil the commitments made in the Constitution.

Deconstructing Policy Statements

We have already referred to the phenomenon of ignoring geo-cultural diversities while maintaining the rhetoric of commitment to Indian plurality. The market economy demands that that multicultural, multilingual or multiethnic societies like India are homogenised so that the marketing of a product is facilitated. The greater the homogenisation (also read, standardisation), the greater will be the size of the market for a specific product. Although this immediate economic motivation is an adequate ground for pushing homogenisation, the long-term political gains in terms of hegemony of corporate powers over global natural and human resources also need to be kept in mind. Indeed, globalisation has the hidden agenda of minimising cultural diversity even across national boundaries. A document released by the International Bureau of Education this year declares that globalisation will lead to 'erosion of the power of nation-states', concomitant with the 'transfer of sovereignty' from governments to larger geo-political regional entities (e.g. ASEAN, CIS and European Union). The same document further recognises that the development of multinational corporations has contributed to 'dramatic increase in trans-border exchanges'. With the increasing dominance of Information and Communication Technology in the promotion of 'knowledge industry', one can easily see how the process of globalisation is leading towards irreversible homogenisation of plural cultures, ethnicities and languages with the objective of increasing the size of market and political hegemony of corporate powers. The inclusion of these concepts in an educational document (UNESCO and CBSE, 2000) shows that the international educational bureaucracy has readily accepted the ideological hegemony of globalisation and, that too, with an undercurrent of admiration !

Let us see how the Indian State is preparing itself to support the impetus given by globalisation to homogenisation of plurality. A reference was made in the previous Section to the strong centralising tendencies and the new proposals to this effect, as declared in the latest policy statement of the new Government in NCERT's National Curriculum Framework for School Education, January 2000 (NCERT). These tendencies are reflected in concrete measures relating to curriculum formation, textbook writing, preparation of learning packages, organisation of teacher education programmes and standardisation of evaluative criteria and testing services. Ironically, these tendencies contradict the rhetoric in the same document regarding the need for plural pedagogies. It is precisely for this reason that we

have to learn to deconstruct the policy statements and not be carried away by the rising decibel of rhetoric. Apart from centralisation of educational processes, the NCERT document cited above proposes to build up a value education framework with a clear Hindutva orientation for the entire country. The NCERT document is unambiguous in its preference for Hindutva orientation, patriarchal control and Bramhanical hegemony over Indian plurality with respect to value framework, cultural history and sources of knowledge. It ignores the historical contributions made by the Dalits, tribals, cultural minorities and a variety of other sub-altern groups in building up the sub-continental freedom struggle against British imperialism and the consequent composite culture of contemporary India. All of the frequent references in the document to cohesive society, national identity, national consciousness, Indian cultural heritage, India's contribution to world culture or indigenous knowledge have failed to hide the Hindutva, patriarchal and Bramhanical bias of the document.

While the NCERT document is replete with references to the educational philosophy and writings of Aurobindo, Rabindranath Tagore and Mahatma Gandhi, it finds nothing contradictory in regarding the human being as a 'positive asset and a precious resource'. This view echoes the conversion of the name of the Ministry of Education to the Ministry of Human Resource Development in 1985 by the Rajiv Gandhi Government in resonance with then emerging global economic order. Nor does the NCERT document hesitate to make the society dominated by Information and Communication Technology as being synonymous with 'learning society' or 'knowledge society'.

At this juncture, it may not be out of place to raise the question: What is the link between globalisation and fundamentalism? Fundamentalism would appear in different forms in different religious or cultural contexts, but the common thread in all kinds of fundamentalist ideologies has been an uncompromising and blind revivalist tendency. This tendency is then used to underline and strengthen a false consciousness of a narrow and exclusivist communal identity. In complex and plural societies like ours, Hindu fundamentalism (read, Hindutva of the present Indian polity) can coexist and flourish alongside with fundamentalist tendencies of other religions. In contrast, some of our neighbouring countries would exhibit monolithic fundamentalism. Irrespective of the specific religious or cultural context, fundamentalism and globalisation seem to form an undeclared alliance in spite of their contradictory frameworks and roots. While fundamentalism emerges out of an archaic, feudal and anti-scientific ideology, globalisation claims to represent the 'liberal and scientific framework', which underlines the latter's ideology of 'modernity'. Yet the two ideologies support each other in so far as fundamentalism can be used for stabilising and enlarging the market. This is reminder of the support extended by the British Raj to fundamentalist forces (Islamic as well as Hindu) in order to strengthen its colonial stranglehold. The alliance between the colonial and fundamentalist forces eventually led to fragmentation of the sub-continent into three nation-states. Similarly, while fundamentalism raises its ugly face in the present times, the forces of globalisation would prefer to look the other way, as long as the former is kept within bounds to



OVERBAKED, QUARTER-BAKED AND UNBAKED QUOTIENTS

A curriculum framework for inequity, social fragmentation and cultural hegemony

On November 14, 2000 (Children's Day), the Minister of Human Resource Development presented the revised version of the National Curriculum Framework for School Education to the nation. Authored by an NCERT group, the document raises more new and perplexing questions than it answers. It is true that the document is not termed a policy and is cautiously called a mere curriculum framework in order to obviate the need to seek the sanction of the Parliament which will be necessarily preceded by an uncomfortable and embarrassing national debate (remember the storm in October 1998 when the same minister tried to sneak in a new communalised educational agenda at the State Education Minister's Conference and was persuaded to backtrack!). This time, the attempt to achieve the same objective is not just well camouflaged but can be credited for being both tactful and suave. Yet, the new policy perspective reflecting the socio-cultural and political thinking of the dominant party in the Central Government is too evident to be hidden.

The rhetoric and the smokescreen needs to be deciphered. For this, we need to construct a framework which will be defined by at least the following three major Constitutional concerns :

- Universally accessible education of equitable quality for all children in order to build up a cohesive society and ensure Fundamental Rights;
- An ever-widening democratic space for the articulation and development of each community in the multi-lingual, multicultural and multiethnic Indian society; and
- A forward-looking educational system that will enable the unfolding of the holistic potential of each child (and not just those of the elite)

The NCERT document refers to the much debated concept of Minimum Levels of Learning (MLL) which was introduced by NCERT in 1990 on the basis of a report hastily prepared by a handful of officially chosen 'experts' (out of whom two or three have since disowned its main recommendations). The MLL has been mechanically imposed on the primary schools of the entire country despite its highly questionable philosophical and pedagogic basis. This imposition also ignored the rich diversity of the country, which we all continue to claim, must be the basis of planning curriculum and preparing textbooks.

Historians point to errors in new NCERT books

Govt to review text books

TIMES NEWS NETWORK
New Delhi: The Delhi state government has finally got down to examining the new history and Hindi books. And if the changes made are found to be innocuous, chief minister Sheila Dikshit said on Wednesday, the government may decide to continue with the old books.

The books in question are the history and Hindi books for classes 9 and 11. "We want to be doubly sure about what additions or subtractions have been made. It is already October and we don't want children to suffer," she said. The education director has been entrusted with the responsibility of examining the new books and examining the changes made. According to Delhi state education minister Rajkumar Chauhan, the matter is likely to be decided by Thursday.

While the government is clear about its plan of action in government schools, it is unsure about private schools. "Delhi does not have its own state board and a majority of the schools come under the Central Board of Secondary Education (CBSE), over which we have no authority. But we will try and speak to these schools about it," Dikshit added.

But CBSE officials are non-committal. However, a board source said: "The national curriculum framework is merely recommendatory in nature. Like other state boards, CBSE is under no obligation to follow it. It is possible that CBSE reviews its decision."

Several private schools such as St Thomas, Springdales, Birla Vidya Niketan and St Mary's have already taken a decision to continue with the old books. Many others are following a mix and match policy, keeping the old books as a base and adding bits of information from the new books.

Books for Class 6 and 9 were 1 by the National Institute for Educational Research and Training (NERT) after a protracted rivalry over saffronisation of the educational work, historians and teachers held a press conference on Friday to point out errors in the new books.

Despite the Supreme Court's clean chit to the NERT, they alleged that the books had a "lurking bias" leaning and did amount to reduction in curriculum load, despite criticism in the number of errors.

The books are badly written and the matter is not in chronological order," Springdales School (Pusa Road) principal Ameeta Wattal said. She added that a lot of information had been condensed into a few pages leading to an information overload.

Among those present at the press conference were historian Arjun Dev, Atma Sanatan Dharma college history teacher V M Jha, Springdales School (Dhaulaan) principal Jyoti Bose and history teachers.

According to historians, the list of "errors" goes on. "The Czars it would appear was the name of a dynasty, because the books states that of the family of Czars was swept away by a coup led by Lenin," Dev said.

Bose added that in the chapter on religions in the Class VI book — India and the World — there is no emphasis on peace, harmony, brotherhood. Instead, religions have just been mentioned under separate headings, Bose said. "An ultranationalist emphasis on nationalism and spiritualism has been thrust upon us without consultations," she said.

"There is a conscious effort to project the Harappan civilisation as Indian. One instance is of the female figure with vermillion in her hair," Springdales history teacher Shuchi Bajaj added. There is more to come. Jha alleged that the new books seemed to establish the historicity of Chanakya when this was doubtful.

Historians also pointed to references to Hinduism as being the eternal spiritual tradition of India.

The MLL experiment has never been scientifically evaluated. As if this was not enough, the new document now talks of measuring children in terms of their Intelligent Quotient (IQ), Emotional Quotient (EQ) and Spiritual Quotient (SQ). IQ is an overbaked concept which was introduced at the beginning of the 20th century in the West to presumably calibrate the intelligence levels of the children. The concept was part of the attempt by the western psychologists to provide a tool for categorising children. This was then used to claim that the low IQ levels are genetically pre-determined and the poor children have low IQ levels not because of the socio-cultural conditions but because of their genetics. Later, the IQ was also used to racially denigrate the blacks and all other non-white ethnic groups and further to claim that any public expenditure on their education would be a waste since nothing can be done to change their IQ levels. Such a distorted thinking has already been rejected by a majority of the academic community but continues to be used for racial and fascist politics.

As far as Emotional Quotient (EQ) is concerned, there has been only descriptive records of what can be termed as desirable emotional attributes. Even here, the cultural framework of EQ is hardly understood which would make such a concept totally inappropriate for a multicultural country like India. Given such a fluid basis of understanding, there is no question of having any scientific ground for talking of measuring the emotional attributes of children. Indeed, this concept can not be called as being even quarter-baked.

The Spiritual Quotient (SQ) has not even a fragment of descriptive research basis. There is no understanding, not even in a specified cultural milieu, of an acceptable definition of spiritual attributes. Why then the NCERT scholars have proposed the use of such overbaked, quarter-baked and unbaked concepts for evaluation of children? The only plausible answer will come from the understanding of a political agenda combining both globalisation and religious fundamentalism. It is only in this paradigm that education psychologists will be required to lend their services to calibrate, categorise, label and eventually marginalise the vast masses of the poor children so that a stable globalised market can be built up in India for the benefit of 15% of the nation's population. Fortunately, for the promoters of the joint agenda of globalisation and religious fundamentalism, 15% of India's population will provide a market as big in size as the entire Europe! Clearly, the NCERT document is the declaration of a new education policy for strengthening globalisation on the one hand and religious fundamentalism on the other.

Hindustan Times, November 18, 2000.

No Marks for Quality School Textbooks Fail the Grade

By Krishna Kumar

Three years ago, I sat in a Japanese classroom for half a day. Unlike American classrooms in Europe or North America, Japanese classrooms are sparsely furnished. The number of children in school units is not similar to Indian classrooms. In Japan, children are in a disciplined unit, and they generally sit in a disciplined row, and they generally sit in a disciplined row, and they generally sit in a disciplined row.

order was given in response to a public interest writ against the National Curriculum Framework (NCF). The main objection raised by the petitioners was that the NCF has been enforced without prior consultation with the Central Advisory Board of Education (CABE), as required by the 1989 National Policy on Education. The petition is still pending before the court.

In May, the education ministers of 16 states walked out of the NCERT's general meeting, protesting the fact that the NCF was never debated in that forum. They also demanded a meeting of CABE to be held immediately for a proper discussion of the NCF.

Heavier burden in store for school kids

Udayan Nambudiri
New Delhi, November 15

NO RELIEF is held out to schoolchildren in the new curriculum framework being developed by National Council of Educational Research and Training (NCERT). As national concerns — brought about by globalisation, socio-cultural crises, apathy to Indian traditions — mount, it translates into heavier school bags and more examinations for the school-goers.

NCERT director Dr J.S. Rajput says the new curriculum will have a strong cultural focus. There will be emphasis on personality development, vocational education, developing a composite culture and significant changes will be integrated in the methodologies so that education is not elitist and carries local relevance.

He agrees that school bags should be lighter. "A child should enjoy the process of acquiring knowledge," he says. But there is no articulation of how to go about

year curriculum replaces the present one, the school-going child will have to carry quite a few extra kilos of school load.

Probable additions to the new book list includes tomes on responsible consumerism, values and "population education" — a euphemism for sex education.

"We acknowledge children suffer stress and strain under the present system of examinations and evaluation," Dr Rajput says. Yet, again

New Curriculum Framework

there is no promise to do away with the regime. "An evaluation system should be developed in this country which does not put stress on the child."

For the school-goers, this means more deadlines and certainly more books to memorise for successful reproductions in examinations.

The five-member group of academicians entrusted with preparing a "discussion paper"

Coloured curriculum

By Romila Thapar



LET ME begin by asserting that those who do not understand the past, are doomed to repeat it. Invariably, we are unable to move forward into the future. We are faced today with the task of educational policy in the central government who seem not to understand the Indian past.

There is a constant harking back to the remote past, encapsulated in the phrase Vedic. Irrespective of its historical or civilisational value, it is a

vinced on the need to do away with the present system of 'cram-cram-cram'. In the name of "transformation" of the curriculum, there is only the recognition of an ever-expanding list of values that a child needs to imbibe in the process of growing up.

"The examination system cannot be dispensed with. Attempts will be made to lessen the burden on students so that parents don't need to engage private tutors for them," Dr Rajput said. The "unscientific curriculum" in teachers' training is, according to him, the reason why previous attempts at sweetening the syllabus pill for children were unsuccessful. "We must ensure that the teachers' training process is also modernised."

The "discussion paper" will be ready by the end of the month, the NCERT director said. It will be circulated among all concerned, including non-government organisations, parent-teacher associations and industry lobbies like FICCI and CII. It will also be translated into regional lan-

Knowledge cannot be reduced to a one-dimensional Vedic capsule

many people and resisted by others.

But what they do have in common, are the aspirations that result from education, relate to a point to the local conditions, and these would involve a degree of interest in regional concerns. The question is how best these can be introduced without denying the importance of national concerns — a matter of some sensitivity. Educational policy has to regional concerns, are recognised as an intrinsic part of them that are of national interest. This would ultimately be more visible in a top-down policy.

Educational policies in states that do not have a right government have a greater responsibility to defend secular education and the continuation of multi-state level where multiple cultures are visible, but would require considerable to be brought about in terms of a more appropriate educational facilities, to-up with the State prior to the NDA, these supporting secular education, the questioned. Education should not be made the scapegoat for dubious political manoeuvres.

We may well be taking a risk with the future of the next generation by giving them the type of schooling that will not equip them to handle the complexities of our times. These are serious matters that concern the future of an entire generation, and should be critically discussed and reviewed. But then the Indian middle-class is naturally concerned about what is taught to its children through schooling. All that matters is the number of marks and percentages.

The new policy, it is said, will reduce the number of marks and percentages. The number of marks and percentages will be reduced to 10% of the total marks. This is a very serious matter, and should be critically discussed and reviewed. But then the Indian middle-class is naturally concerned about what is taught to its children through schooling. All that matters is the number of marks and percentages.

politically stabilise the market in the long run. As globalisation fails to generate adequate employment, it is expected that there will be a rapid rise in socio-economic tensions, eventually leading to even political unrest. This is exactly what fundamentalism achieves by diverting attention of the masses from socio-economic issues to the perceived 'danger' to their religious identity. This should explain why the NCERT document attempts to use education to promote both the globalisation and fundamentalism simultaneously.

The Brettonwood institutions and the other international forces promoting globalisation have burnt their midnight oil before proposing that the phenomenon of 'erosion of the power of the nation-states' and 'transfer of sovereignty' from countries to multinational corporations will form the cutting edge of globalisation. However, the phenomenon has to be couched in a language that would be politically acceptable. The policy-makers, have, therefore, discovered that 'interdependence and interrelationships between peoples and cultures' is the major consequence of globalisation (UNESCO and CBSE, 2000). The International Commission on Education's Report (i.e. Delors Commission's Report) to UNESCO states that 'learning to live together' must be one of the pillars of globalised education. We must ask as to what is the real reason behind this sudden respect for 'learning to live together', while the same forces also recognise that globalisation is widening the gap between 'those who globalise and those who are globalised' (ibid). What is so new in this concept that, all of a sudden i.e. in the late nineties, an International Commission on Education, followed by a host of international agencies, has discovered in it guidelines of critical significance for remoulding the curriculum of all nations, especially the developing ones? The age-old Indian concept of Vasudhaiv Kutumbkum never seemed to excite the imagination of either the international or the Indian educational bureaucracy.

In the paradigm of globalisation, the universities are being perceived as 'knowledge producers' and the pupils as 'knowledge consumers' (ibid), thereby making knowledge a mere commodity in the globalised market and, more importantly, in globalised education. It is already envisaged that the task of producing and disseminating knowledge in the universities through Information Technology, the so-called 'knowledge industry', will be commercialised and handed over to the transnational corporations in the near future. In light of the known outcome of globalisation, the 'producer-consumer' paradigm of knowledge as referred to above will begin to define the hidden agenda of globalised education.

The Delors Commission's emphasis on 'learning to live together' and the producer-consumer paradigm of globalised education have provided the rationale to the International Bureau of Education, a UNESCO institute, to conclude that global attention must bear upon the curricular concerns of the member-States and that there is enough room for adaptation of educational content of various countries to the demands of globalisation. For this, international platforms will be justifiably built up for facilitating intervention in national education systems by regional and global corporate forces. And this challenge of globalisation is knocking right now at the doors of Indian education!

Transformative Education

Given this market-oriented relationship between the teacher and the students, there is hardly any space left in globalised education for liberative (or, for that matter, even the liberal) pedagogy. The liberative pedagogy, critical for social transformation, would provide ample space for the students to be actively engaged in reconstruction of knowledge and then, to begin with, in questioning the world around them and eventually in attempting to transform it. The transformative paradigm would resist all attempts to fragment or restrict the holistic vision of education dedicated to the creation of an enlightened and humane society. The resistance to fragmentation of the holistic vision of education would have to be reflected in various dimensions including the education system and its structural aspects, epistemological issues and pedagogic (in its widest meaning) concerns.

The whole point is to explore how, given the constraints imposed by the market forces, education can still be transformed to resist the ill-effects of globalisation, rather than accepting it as the unchallenged destiny of crores of our children. Let us, therefore, reformulate the central issues of the debate in the framework of a dialectical relationship between educational transformation and social change by posing the following questions:

- a) Depending upon what is feasible in the present national as well as the global situation, what role can education play in preparing the society to deal with the social, cultural and economic impacts of globalisation ?
- b) What conscious steps would we have to take in transforming the quality and direction of education for this purpose ?
- c) What implications does this view of the transformative role of education has for the following:
 - aims of education;
 - structure of the school (or higher education) system;
 - community's relationship with the school/university;
 - pedagogic relations between the teacher and the students;
 - role of children in reconstruction of knowledge; and
 - parameters of evaluation ?

Each one of the above issues would require a detailed scrutiny of the notion of knowledge inherent in the present curriculum and an inquiry into the transformation it would have to undergo in order to acquire the liberative character. This inquiry cannot be accommodated here and would have to await an independent treatment.

CONCLUSION

Globalisation : An Epistemological Challenge

These questions need to be explored in-depth in the context of globalisation. When we do this, it will become evident that basically it is the notion of knowledge itself that determines the social, structural and pedagogic character of education as well as its relationships with the society. It is this epistemological question which today's educationists and policy-makers have hesitated to seriously explore as yet. We need to recognise that the central thematic challenge of globalisation to the quality and direction of education is indeed epistemological. It is only by learning to deal with this epistemological challenge that we will also know how to transform the education system in its various critical dimensions in order to resist the powerful forces of globalisation. This will be our best bet for rejuvenating the freedom struggle to move towards an enlightened, just and humane society within India as well as globally.

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THE YOUNG CHILD



SECTION 4

THE YOUNG CHILD

Consider a child that has just been conceived. Now imagine that it is the fourth or the fifth pregnancy. The mother is tired, struggling to feed and educate the older children; the youngest is still partially dependent on breast milk. She works, and is unlikely to get much sympathy when she demands yet another maternity leave. She has no rights over her body, cannot demand the use of contraception, cannot choose to abort the foetus, and is too poor and ill to support another delivery.

The likelihood of a healthy birth is already diminished. Once the child is born, it is another burden on already stretched resources. The mother has to go back to work as quickly as possible. The baby is left in the care of older siblings who can barely take care of themselves. Even its parents will not be surprised — or shocked — if the child falls sick, and without much money for medical care, eventually dies. We already know that if the baby happens to be a girl, the chances of death are even higher. Certainly, much less would be spent on her if she were to fall sick.

How a child develops in the first three to six years lays the foundation for her/his capacity to think, learn and reason. It sets the stage for later success in school and the character of adolescence and adulthood. It is important to therefore recognise and protect every child's right to develop his or her full cognitive, emotional, social and physical potential.

Traditionally, childcare has always been seen as a responsibility of the parents and the family. The most widely accepted international instrument on child rights, the UN Convention on the Rights of the Child (CRC) also places this responsibility on the family. But at the same time it emphasises the role of the State in taking measures to support families that cannot afford to do so.

As of today, the need for comprehensive inputs into the early years of a child's life is recognised the world over. Different agencies refer to it differently. The World Bank calls it Early Childhood Development; UNESCO refers to it as Early Childhood Care and (initial) Education, and OECD as Early Childhood Education and Care. In India, it is commonly known as Early Childhood Care and Education (ECCE).

As ECCE does not neatly fall into any one sector, in the absence of systems in place, convergence of services may not be possible and there is always a danger of the responsibility passing from one Ministry to another. While the importance of ECCE is recognised and the term elaborately defined in the 1986 Education Policy, all ECCE programmes are planned and implemented by the Department of Women and Child Development and not the Department of Education. In any case, the Department of Education has clearly absolved itself from the responsibility of the 0–6 year-olds as the 86th Constitutional Amendment Bill passed in both the houses of the Parliament makes education a Fundamental Right only for children in the 6–14 years age group. The Health Ministry has never been involved in any ECCE programme even though it is responsible for all reproductive and child health schemes. While maternity benefits are integral to ECCE, the Ministry of Labour treats it merely as a labour welfare issue. Similarly, even though all the ECCE schemes and programmes in India cater to the needs of the poor children and their mothers, none of the poverty alleviation programmes of the Ministry of Rural Development see ECCE as an important poverty alleviation measure and therefore the necessity to link up with it.

In this chapter, an effort is thus made to highlight the grim reality of the young child, who gets to be treated as a national resource only when she/he becomes an adult.

The 0–6 years of a child’s life are critical — inputs in this period determine and shape its entire existence. It is with this understanding that the world over Early Childhood Care and Education (ECCE) has become an important concern for all those working with children. The Indian State is publicly committed to the young child through its Constitution, its national policies and its acceptance of International Conventions. This was discussed in detail in the section on the legal framework. In actual fact, the fate of the very young child in India is precarious for many and complex reasons — some rooted in the social fabric of the country and some emerging from the new economic and political trends.

‘Early Childhood Development programmes are about ensuring children grow up healthy, well nourished, protected from harm, with a sense of self-worth and identity, and enthusiasm and opportunities for learning. They are about children learning to think for themselves, communicate effectively, get on with others, and play an active role in their families. Early Childhood Development (ECD) programmes are about influencing the contexts in which children are growing up so that they are supportive of children’s overall development. By contexts we mean all the different environments, which impact on young children — families, communities, health centres, ECD centres, schools, district bodies, national policy. ECD programmes are about influencing these contexts and addressing the issues, which slow and damage children’s development. In other words, they are about children’s rights and the obligations of the state and of all adults to protect the individual child and create the conditions in which all children can develop their potential.’

Caroline Arnold, September 2002.

Care for every child

Children must get the best possible start in life. Their survival, protection, growth and development in good health and with proper nutrition are the essential foundation of human development. We will make concerted efforts to fight infectious diseases, tackle major causes of malnutrition and nurture children in a safe environment that enables them to be physically healthy, mentally alert, emotionally secure, socially competent and able to learn.

*‘A World Fit For Children’
UN General Assembly Special
Session Children, May 2002.*

CURRENT STATUS OF THE YOUNG CHILD

Defining ECCE in India is beset by problems; there being no one ‘young Indian child’ to describe. Factors like class, gender, caste and geography all impact his or her situation. An examination of the current status of the very young child is further complicated by the fact that it will be some time before the Census 2001 reveals its findings fully. However the preliminary findings that highlight the skewed under-6 sex ratio (927), with wide variations ranging from 1,058 in Kerala to 773 in Chandigarh, in favour of the male child are definitely shocking. This one fact is immediate and undeniable proof that gender continues to play an enormous role in child survival. (This had been discussed in detail by Satish Agnihotri in the Section on the Girl Child in India). NGO experience further supports these facts and provides the parameters by which this discrimination can be measured — sex selective abortion, differential duration of breastfeeding or mother’s time off work for care, less expenditure on health care and medicines, greater household responsibilities even for very young girls and widespread discrimination vis-à-vis education.

To understand the situation of Indian infants and the problems that beset them, we need to consider:

Maternal and Infant Mortality

On the whole, neonatal and infant mortality rates continue to be high (72 per 1000 live births — all-India average, Census 2001) and far above national targets. Regional variations continue to be sharp ranging from 98.1 in Orissa to 11.5 in Kerala. The rural-urban divide is also high: 46 in urban areas as compared to 78 in rural areas in 1997 (Department of Women and Child, Annual Report 2000–2001). The Maternal Mortality Rate too, causes anxiety (437 per thousand live births — higher than Pakistan at 340, and Thailand at 300 — UNFPA, 1999).

Immunisation

Data shows that despite a priority immunisation programme, coverage is inadequate. Only 42 per cent children of the age of 12–23 months have received all the recommended doses. 14 per cent children have not received any immunisation at all. Even the high profile campaign for polio eradication has been slow to show effect — 37 per cent children have not received all 3 doses of polio vaccine (National Family Health Survey (NFHS–2)).

Child Health

Even for those children that survive, one-third has low birthweight, only about half receive exclusive breastfeeding and about half are malnourished. Figures of anaemia are alarmingly high at 74 per cent (NFHS–2). Since one can safely assume that the statistics would not be evenly distributed over class differentials, the resulting picture of children of the underprivileged sections is extremely dismal and shows a very high prevalence of morbidity.

Socio-Economic Factors Affecting the Young Child

Till recently, issues concerning children seemed to come to the fore only as they entered school-going ages. Young and very young children were clubbed with their mothers. This practice (though understandably resented by women attempting to break out of the image of eternal motherhood) is not entirely misplaced — young children need to be breastfed by mothers and cared for by close family members (if possible). However, this positioning has become a convenient excuse for the State to not make requisite effort in facilitating their survival, growth and development by providing families, and women in particular, with the essential support as they grapple with multiple responsibilities and poverty.

The past decade has sharply escalated the number of women joining the workforce. The problems they face as workers, the circumstances in which they work affect their ability to care for their children. The breakdown of family support systems has inevitably accompanied development policies and has led to displacement of a large number of people and exposed children to neglect on a scale not experienced before.

Further, the policies of liberalisation, globalisation and privatisation have made even rural households increasingly dependent on cash and pushed many women to work for wages away from home. The Female Work Participation Rate, according to micro studies, varies from 47.5 per cent to 58.2 per cent (Jhabvala, 1995) shattering the myth of women being available for childcare.

It is inevitable then, that the circumstances in which young children are reared are deteriorating sharply. We cannot but appreciate the fact that the woman's role as 'worker and wage earner' has an intricate and important relationship with her role as a childcarer (the same would, of course, apply to men in a society with a less patriarchal approach to child care).

So, with 15 crore women in the unorganised sector, working without social security, including maternity entitlements (leave, cash support and childcare services), breastfeeding and the care of young children is severely compromised. A poor woman, who is often the only wage earner, especially a society where in one-third of all households are female-headed, scarcely has the choice to devote herself to the care of her children. There is practically no support available for rearing the young child.

Laws designed to help women workers are scarcely implemented, all loopholes are exploited by employers and the rules and norms for crèches are totally inadequate. The amount of relief offered to women for maternity is a pittance. As a result, the period of maternity and early child rearing remains one of utmost difficulty for women and children alike.

Trends in Policies (1990-2001)

The various socio-economic trends of recent years have had and continue to have a major impact upon the situation of young children.

On the one hand, women's needs as workers and mothers are being recognised and international organisations are pushing the Rights approach; on the other, national policy documents, under subservience to a market economy, are moving towards privatisation, state withdrawal from the social sector and the free play of market forces.

The International Labour Organisation (ILO) is urging ratification of the Maternity Protection Convention 2000, which enhances women workers' rights to leave, cash support, breastfeeding breaks. The WHO Resolution of April 2001, strongly recommends the adoption of exclusive breastfeeding for six months as essential for the protection and development of children.

LAWS AND SCHEMES THAT AFFECT WOMEN WORKERS

Central Laws for Pregnant and Lactating Mothers

Employees State Insurance Act	1948
Factory Act**	1948
Mines Act **	1950
Plantations Act**	1951
Maternity Benefits Act	1961
Beedi and Cigar Worker's Act**	1966
Contract Labour Act**	1970
Inter State Migrant Worker's Act**	1980
Infant Milk Substitutes Act	1992

** Provide for crèches at the workplace.

Schemes Affecting Lactating Women, and Children of 0-2 Years

NATIONAL LEVEL

Scheme of Assistance to Crèches for Working and Ailing Mothers	1974
Integrated Child Development Services	1974
Maternity Assistance Scheme	1995

STATE LEVEL

Employment Guarantee Scheme, Maharashtra	1974
Tamil Nadu Integrated Nutrition Project, Tamil Nadu	1980
Maternal Protection Scheme, Gujarat	1986
Muthulakshmi Reddy Childbirth Scheme, Tamil Nadu	1988
Scheme for Pregnant Agricultural Labourers, Andhra Pradesh	1990

Convention on the Rights of the Child (CRC), 1989

Articles 3, 6 and 18 of the Convention on the Rights of the Child require States 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 States 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.

On the other hand, the Draft National Health Policy, the Draft Charter and Policy for Children 2001, the 10th Plan Approach Paper, and the infamous 93rd Amendment (2001)* (now passed in Parliament as the 86th Amendment) of the Constitution sing another tune. Limiting State responsibility for social services, pleading meagre State resources, using slogans of community partnership, parent responsibility and privatisation in order to limit State responsibility, these documents clearly indicate the trend for the coming years where women and children are to be left to the mercies of the market with minimal state support.

Overall, there has also been a decline in budgets for child development. In a budget analysis, the authors of India's Children and the Union Budget point out 'While budgets may show an increase in quantitative term, these have to be matched with the status of the child in the country to establish their real "value". (HAQ: Centre for Child Rights 2001). The overall spending of the State on children, the authors continue, is only 1.2 per cent of the total union budget, 1998–99. 'For every Rs. 100 spent by the Union Government on the average, about Rs. 1.20 was spent on children.'

The dangerous policy of obtaining external loans for funding child development also causes alarm. Commitment of the State to child rights cannot be dependent on external loans. Health care schemes with selective objectives have been put in place on the basis of external funding. The campaign approach to specific diseases, whether it be Polio or AIDS seems to have replaced investment in proper staffing and equipping of the Primary Health Care structure.

Examination of the existing policies, laws and related schemes and programmes enables a better understanding of their situation.

The role of the State in providing ECCE was recognised in India way back in 1950, in the form of 'Directive Principles of State Policy' embedded in the Constitution of India. Unfortunately, while the Directive Principles are fundamental in the governance of the country, unlike the Fundamental Rights guaranteed by the Constitution, they are not justiciable i.e. the State cannot be sued in any court of law for not providing the health, care and education necessary for a child's development in the early years of her/his life.

According to the National Education Policy (1986) ECCE refers to the activities, which foster and promote the all-round balanced development of the child in the age group of 0–6 years in all dimensions — physical, mental, social, emotional and moral. Given this understanding, what is significant to ECCE is the approach to the activities undertaken to ensure such all-round balanced development.

Clearly, ECCE is of immense significance within the context of child health, education, women's rights (as women are generally considered to be the nurturers and caregivers) and, if one may add, poverty alleviation (as it is the children of the poor who suffer the most). The efforts towards ECCE must therefore be guided by a comprehensive and holistic approach that not only takes cognisance of both the child and the caregiver, but also seeks convergence of services relating to health, education, water and sanitation, women's rights, poverty alleviation, etc.

* Now the 86th Amendment Bill

Policies

Health and Population

The Health Policy has been notable for its non-existence till a recent draft was put out by the Health Ministry. It would be enough to say that this policy does not carry a section on either the health of women or the child. It is as though the Health Ministry has nothing to do with the health of children at all!

The Population Policy, however, is most concerned about the health of children since that is seen as a major strategy to stabilise population growth. It is important to mention that the main measure for implementation that has been derived from the policy — by inference — is not a child health initiative, but the highly obnoxious and dangerous ‘two child norm’, measure that is gaining increasing popularity in State Population Policies. Not only does it violate every international agreement on ‘population’ that promises to steer clear of disincentives, it clearly violates the rights of the third and subsequently born child. To make things worse, in a country where male preference prevails, it has a real and potential impact upon the already deteriorating and alarming sex ratios. Furthermore, there is no evidence whatsoever to suggest that it works in any way to stabilise population while there is much evidence to suggest that general investments in health and education as made by states like Kerala, Tamil Nadu and Karnataka do. According to the population projection by the Technical Group on Population Policies, the total fertility rate in Kerala is 1.8, Tamil Nadu 2 and Karnataka 2.5, in contrast to Bihar, Madhya Pradesh, Orissa and Rajasthan with the TFR greater than or equal to 3 and going up to 4.8. Obvious gaps in services contributing to unmet needs for contraception to the tune of 17 per cent (NFHS-2) need to be covered as a first step rather than embarking upon such obviously anti-child and anti-woman measures.

In pursuance of the ‘two child norm’ policy, State laws which bar the holding of elective office in local self-government and Panchayati Raj institutions by persons having more than two children are already in place in Andhra Pradesh, Maharashtra, Punjab, Haryana, Madhya Pradesh and Uttar Pradesh; while Gujarat and Rajasthan are in the process of implementing this. Central Government Rules restrict maternity benefits to the first two children and so do Maternity Benefit Schemes at Central and State levels. Incentives and disincentives, including crucial denial of ration cards, gas connections and the rest have firmly been put in place by administrative order in Madhya Pradesh and Maharashtra. Nothing is being done to restrain the States from such measures that directly affect children, their right to survival and care, not to mention the implications these laws and directives have on encouraging sex-selective abortion and the resultant adverse sex ratios.

Education

Though the National Education Policy, 1986, seemed to thoroughly support and show an understanding of ECCE as a vital period of brain growth, learning and development, when it came to giving it teeth through the 93rd Amendment (now the 86th Amendment), the government simply deleted the under-6s during the conversion of Article 45 (which promised free and compulsory education to all children up to 14 years) to a fundamental right. It also ignored the fact that this right had already been conferred on all children up to the age of 14 years by the Unnikrishnan judgement of 1993.

In self-defence, the government has claimed that ECCE needs are being met through the ICDS; which is blatantly unfair, since the programme has a poor component of pre-school education and its outreach to the under-3s is notoriously limited. Day-care does not form a part of the design of the ICDS and consequently, children of the poor either accompany their mothers to the workplaces or the older children stay at home to look after the siblings. Moreover, the ICDS covers only 23.1 million children whereas the number of under-6s on poverty line amounts to 60 million.

Five-Year Plans

The current policy framework and its negative direction for children, the abandonment of policies for children, which found space in the 9th Five-Year Plan, needs to be noted. The 9th Plan made considerable strides in a forward-looking policy for women and children. Early childhood found important mention and day-care and crèches were accepted as part of the strategy both for empowering women and for human resource development. The document also laid stress on women in the informal sector and the need to examine legislation pertaining to them.

The 10th Plan Approach Paper however, positions itself completely in the era of globalisation, and has reversed this. Taking its cue from policies articulated by the World Bank and the International Monetary Fund (IMF), it places responsibility for childcare on families and communities. Day-care and crèches find no mention and the commitment to centrally sponsored schemes for children has given place to strategies of decentralisation. The planning process is a safeguard from the vagaries of changing political formations and is meant to reflect considered long-term strategies for development along with the commitment of national budgets. The absence of integrated objectives in the 10th Plan Approach Paper does not augur well for young children.

Other Government Initiatives

These include the setting up of a National Commission for Children and the Draft Charter and Policy for Children, 2001. There is a great concern amongst Child Rights activists and specialists that this is a hasty step. The Draft Charter and Policy lacks a holistic vision and is neither fully based on the Constitution's commitment to children nor to the CRC. Much work is still required for developing a comprehensive Child Rights Code, which can provide the frame of reference for the proposed National Commission for Children. In the absence of such a clearly formulated Code, the Commission for Children will become one more bureaucratic structure using up precious resources and follow the fate of the several National Commissions that already exist.



Laws

As far as forward-looking legislation is concerned, the Disability Act 1995 contains provisions for antenatal, prenatal and postnatal care. This still has to be translated into programmes and the Health Policy.

Other laws that have some bearing on ECCE services are the Maternity Benefits Act and labour laws that provide for Maternity Entitlements and Child Care Services for women workers. However, their coverage is limited and implementation even more so.

However, as has already been mentioned, the latest Amendment to the Constitution guaranteeing fundamental right to education leaves out this critical age group of under-6s, concentrating only on 6–14 years. The Directive Principles of State Policy, Article 45 now states, 'The State shall endeavour (emphasis added) to provide early childhood care and education for all children until they complete the age of six years.'

Related Schemes and Programmes

Maternity Benefits Schemes

The statutory maternity entitlements derived from the Maternity Benefits Act and the ESI Act are largely applicable only to the organised sector. However, a recent Supreme Court judgement (2000) has attempted to enlarge the scope of this act to muster role workers (Municipal Corporation of Delhi vs Female Workers, Muster Roll and Others, AIR 2000, Supreme Court, 1274).

Apart from this, State-level schemes exist in a number of states to provide a nominal cash relief to women in the status of maternity (like the Mutthulakshmi Reddy Scheme, Tamil Nadu). The cash amount varies from Rs.500 to Rs.2000. Often supplementary nutrition is also provided. However, experience shows that this cash, though welcome, rarely keep women at home longer than absolutely necessary from the point of view of her health and minimal child-care. 'The need to earn drives women back to work as early as ten days after delivery.' (R. Geetha, Nirman Mazdoor Panchayat Sangam).

Childcare Services

The statutory requirements of childcare services are derived from the labour legislations pertaining to factories, mines plantations, construction work and are rarely implemented. The Crèche Scheme for Working and Ailing Mothers (CSWB) provides a small safety net for some children. A recent evaluation of this scheme by the National Institute of Public Co-operation and Child Development (NIPCCD) concluded that it failed to reach infants and has functioned more as a balwadi programme for the 3–5 years age group. The National Crèche Fund, though set up later due to pressure from women's and child rights groups, is another on the same pattern and has the same flaws (see Appendix 1 for an evaluation of the scheme). The total coverage by the two schemes is a mere 15,000 crèches whereas the need is for 8 lakh crèches by the government's own admission.



ICDS Scheme (HRD Ministry)

The ICDS remains the mainstay of government programmes for ECCE. Launched in 1975, this scheme has had a modicum of 'success' in reaching out to about 23.1 million children and 4.9 million expectant and lactating women. ICDS covers 4383 blocks and is planned to cover 5171 blocks/urban areas by the end of the 9th Plan which would be 90 per cent coverage of blocks (Department of WCD, Annual Report, 2000–2001). Young children have benefited in that there has been some increase in prevalence of immunisation and some reduction in malnutrition and infant mortality. The ICDS is to be universalised during the 10th Five-Year Plan. This scheme also receives the bulk of the budget allocated for children under six (the allocation for 2000–2001 is Rs.1,050 crores).

The scheme is conveniently cited by the government as a justification to largely exclude the under-6s from other programmes such as the universalisation of elementary education. However, significant systemic and infrastructural inadequacies prevent this scheme from delivering the required results. These include poor outreach to the under-6s, low priority for pre-school education and lack of day-care services — thus excluding a large number of children whose mothers are daily wage earners, artisans and the like. The low status accorded to the Anganwadi worker, the workload she carries and the expectations placed on her are problems the State has failed to address. The implementation problems of ICDS are also well known and have emerged sharply in the CAG Report, 2000 (Appendix 2).

Though these inadequacies are fairly well understood and accepted, the government has not made any meaningful changes to the scheme and has been resting on its laurels for the last 26 years. The recommendations of the Working Group on Child Development include the suggestion to convert 50 per cent of Anganwadi Centres (AWCs) to AWCs-cum-crèches. This, if accepted, would be a major step towards increasing the effectivity of the scheme. However, there is still some hesitation in granting this programme the commitment it deserves by denying its administrators the status of 'workers' or paying them remuneration at par with pre-school teachers. The new initiatives taken by the department to improve ICDS are cosmetic but fail to address basic flaws. As is expected, all evaluations of the ICDS confirm that all the problems of the scheme are exaggerated in tribal and 'remote' areas.

Other Government Schemes

In response to the criticism that the ICDS intervention for malnutrition is flawed by the fact that its outreach to the under-3s is marginal (thus missing the critical stage when malnutrition sets in), the government introduced the Pradhan Mantri Gramodaya Yojna in 2000. In the absence of willingness to revamp the systemic flaws of ICDS, such schemes again merely tinker with the problem (Appendix 3).

Pre-School Services

Moving from Maternity Entitlements, breastfeeding protection, childcare services and the inadequacy of available laws and schemes, the next critical stage of early childhood, 3–6 years, requires focus. While the National Education Policy (NEP, 1986) has recognised the importance of early childhood 'enrolment, retention and learning outcome' as a vital period of human development, the

TYPICAL CHARACTERISTICS OF PRE-SCHOOL EDUCATION PROGRAMME OF ICDS

PROGRAMME SCHEDULE

Teacher shows initial interest in following the schedule but later does not go according to it.

TEACHING METHODS AND ACTIVITIES

Teacher uses either rote repetition or one way monologue to teach, and only one kind of development is addressed.

PLANNING BY THE TEACHER

Plans one activity a day and leaves children to do what they want, some activity involving rote repetition given.

ADULT-CHILD INTERACTION

Adult interacts with children only during teaching and only for the purpose of imparting education.

USE OF PLAY MATERIAL/ AIDS

Only standard charts or blackboards are used.

PEER INTERACTION

Peer interaction permitted during mealtimes and recess. No materials or activities provided that lead to increased peer interaction.

AGE-APPROPRIATE AC- TIVITIES

Same activities are planned for all age groups.

TEACHER SENSITIVITY

Interaction present generally pleasant.

State's response has confined itself to the provision of pre-school education through the ICDS and minor schemes like Early Childhood Education (ECE — which is now to be integrated with the ICDS).

The Department of Education takes cognisance of the child only when she reaches the age of six years and is put into a formal school. Pre-school services of the Department of Women and Child Development, are far and few. The all-India data presented by the report of the Ministry of Human Resource Development (MHRD), 1994 records that pre-primary facilities per lakh population is 1.89, which means that approximately 2 pre-schools exist per 8,500 children of the pre-school age. Of these, the government runs 41.87 per cent, 10.4 per cent by the local bodies and 47.63 per cent are private. The gap between the numbers of poor children and the available pre-school services of whatever quality is huge. For instance, the Municipal Corporation of Delhi runs a mere 836 pre-schools covering about 47,000 children. The number of children under six in Delhi is 19,23,995 (Census 2001).

In the interests of child development as a basic right, the State Policy needs to urgently review the situation of pre-school education.

AN ALTERNATIVE VISION FOR ECCE

Children, in particular the younger ones, are totally dependent on the adults. Policies and programmes have tended to ignore this simple truth and keep the two universes apart, leading to colossal wastage of funds (see CAG Report) and poor results. To achieve some impact, policies for children have to be necessarily located within comprehensive policies relating to their parents, especially women; their access to work, food and health care. This has hardly been attempted. The need of the hour is to remedy this approach and develop a comprehensive Child Rights Code, which is expressed through laws, programmes and allocations, across sectors — Health, Labour, Education and Women's Rights*. Anything short of this, will leave children not only where they are, but in the wake of the new economic policies, also push many more to the edge of malnutrition, stunting, illiteracy, trafficking and child labour which engulfs 50 per cent of our children.

It is our task, therefore, to attempt to provide a constructive alternative to existing policies and trends and spell out the ideal minimum requirement to safeguard and promote the protection, survival, development and participation of young children. While spelling out this ideal minimum, we draw attention to three components that have not received attention as Child Rights issues and need to be brought into the conceptual framework of a policy for children. These are: Sibling Care, Maternity Entitlements and recognition of the importance of the Childcare Worker.

The alternative vision and recommendations that follow have been constructed by members of FORCES and are based on a view from the people at ground level and from the analysis of the many holes in the policies and programmes, which allows millions of children to slip through the net.

*In an analysis of gender budgeting, Lahiri, Chakraborty and Bhattacharya advocate that mainstream expenditure must focus on elements that will be gender sensitive. At present, targeted expenditure for women is only in schemes and programmes under the Department of Women and Child Development. The provisions for women in composite need to be segregated.

Broad Recommendations

Formulation of a Comprehensive Child Rights Code

The first step is the formulation of a comprehensive Child Rights Code to replace the fragmented laws, policies and programmes that exist. As part of that code, a specific section on Maternity and Early Childhood Development must find its space as Early Childhood, relegated to the realm of the family and the mother, has been the least addressed up to now. The development needs of young children from birth to six years begin from the time the child is in the womb. They include the right to life, right to health and nutrition, right to a family, to love, security, protection and appropriate education. Some of these rights are directly applicable to the young child, while some others include the mother and family.

The specific recommendations on programmes and laws derive from this perspective and the gaps that have been identified.

Keeping both parents and children in mind, it is suggested that the basic components of an ECCE Code must include the following:

For Parents:

- Antenatal care including adequate nutrition, safe delivery (not necessarily institutional) and care of the newborn.
- Postnatal care including good quality information and services for family planning.
- Adequate Maternity Entitlement and wage security.
- Paternity leave.
- Day-care services for support.
- Information on ECCE.

For Children from Birth to Two Years:

- Presence of a sensitive and aware adult carer either at home, in informal care arrangements or through day-care services.
- Environment suitable for holistic development. Exclusive breastfeeding for 6 months, appropriate weaning.
- Adequate and appropriate (safe, fresh, culturally acceptable) nutrition.
- Good quality health services including immunisation.
- Understanding and support by extended family and community for role of parenting.

For Children from Three to Six years:

- Presence of a sensitive and aware adult caregiver either at home, in informal care arrangements or through day-care services.
- Adequate and appropriate (safe, fresh, culturally acceptable) nutrition.
- Non-formal, age appropriate, child-centred pre-school education in own language.
- Universal access to elementary school.
- After school day-care services (if required).
- Understanding and support by the extended family and community for role of parenting.

FORCES, Maternity and Child Care Code: Concept and Content.

Inter-Sectoral Planning

The inter-sectoral character of the rights and needs of the young child becomes abundantly clear from the above and can only be addressed through a systematic methodology of inter-sectoral planning for children. For example, breastfeeding rights and needs of the mother and child can only be addressed through appropriate social security arrangements, wage support, day-care facilities at the workplace and worker's rights. Likewise, the need for non-formal, age-appropriate pre-school education has to be rooted in a legal right to education which casts a responsibility on the State to provide universal pre-school services and, where required, after-school facilities like day-care for working mothers. The recent passage of the 93rd Amendment Bill, which excludes the under-6s from the Right to Education and limits the concept of education to mere formal schooling, is a sharp reminder of how segmented concepts persist and State actions fly in the face of Child Rights.

Programme Design in the Socio-Economic Context

Up to now, schemes have tended to take a myopic view of a stereotypical child and created fixed patterns which exclude the diversity and range of special needs and as a result, have failed to address them. It is crucial that the current socio-economic situation in which women and children exist be kept in focus to enable appropriate interventions. An overview of the categories of children and parents with special needs is given in Appendix 4, to indicate the range of programmes in different sectors that are required and the flexibility in design and management needed to ensure the realisation of Child Rights.

Finally, not only is a Maternity and Child Care Code envisaged to exist within the comprehensive policies relating to women's rights, labour rights, rights to health and education; it is also seen to exist within a comprehensive code laying out the rights of all children.

Closure of Gaps

Furthermore, a comprehensive Child Rights Code will need to close the gaps between ECCE needs and the existing provisions in law. A brief analysis of the needs and present provisions are given in Appendix 5.

State Responsibility for Basic Minimum Services

The State, even in the era of globalisation and market economy, *must make a firm commitment to the provision of Basic Minimum Services* for children. Attention is drawn to current attempts in the National documents (Draft National Policy and Charter for Children, 2001, 10th Plan Approach Paper, Constitution 93 Amendment Bill) to limit state responsibilities by reference to the limits of its 'economic capacity', the concept of 'the fundamental duties of parents' and Below Poverty Line (BPL) targeting (26 per cent of the population) for health care and food security. In a country of widespread poverty, all of the above have *adverse implications for the realisation of Child Rights* and especially for the young child, being the weakest and most vulnerable. It is strongly recommended that in their place, policy documents/



laws firmly take on board the provision of Minimum Basic Services of quality, including Childcare Services by the State and considerations of economic criteria and parent responsibility.

Establishment of Non-Negotiables for ECCE

Conceptually, a few fundamental principles need to be accepted as the foundation for a long-term planning for the survival, protection and development of the children of this country, particularly, the young child. These are:

- Maternity Entitlements to protect the mother's health, breastfeeding of infant (linked to prevention of malnutrition and promoting of well-being of the infant).
- Children Services (including day-care) for essential developmental care and release of girl child for schooling.
- Pre-school Education an essential requirement (especially for children of the poor and girls in particular) for the universalisation of elementary education.
- Minimum Basic Services of quality for all children including health care, safe water and sanitation.
- Food Security — Widening the scope and quality of the Public Distribution System.

Recommendations for Labour Laws

Fifteen crore women work in the unorganised sector and very little legislation are in place to protect their conditions of work, their maternity rights and other social security needs. There are six national laws covering mines, plantations, factories, construction workers, inter-state migrant workers and beedi workers that provide some legal entitlements to women for maternity or childcare (crèches) or both. Most of these are poorly implemented and do not cover the multitude of informal and casual occupations which poor women are engaged in. New laws, policies and programmes have to be made, the old ones amended and strengthened and state rules ruthlessly implemented to ensure maternity rights (especially for women in the unorganised sector) in both natal and post-natal stages, end sex determination tests, protect reproductive rights, provide day-care facilities for infants, make State programs for under-6s more effective, treat sibling care as child labour, and ensure ECCE as a Fundamental Right of every child.



CONCLUSION

Motherhood is considered by many to be the most important role of the Indian woman, an attitude totally internalised by women themselves leading to a hesitation in fighting for shared responsibility and support. However, the most cursory examination of the status of young children in India reveals a grim picture of mortality, morbidity and debility. Simultaneously, support by the State has been completely inadequate. The myth of the 'cared-for' Indian child maybe offset by the grim reality of statistics but finds great support in the continuing arguments used by policy-makers that mothers and families are well-placed to solve all the problems of young children and care for them in every way required.

Gender, class and caste politics impact the life of the young child as much as the life of any other individual. Issues such as lack of food security, unemployment, negative impact of globalisation and privatisation on women, labour, health and education and the environment are intimately related to the lives of the children. However, movements for equity in these areas also often suffer from a blind spot when it comes to the needs and rights of children and specially the invisible very young child. Parallel service providers such as NGOs similarly shy away from the expensive, complex and risky business of providing services to buttress the situation of childcare.

It is surely time to extricate the young child from his/her invisibility and give the political issues of his/her survival, protection, development and participation the priority they deserve, else the situation of ECCE, and therefore poverty prevention on the whole, is not likely to improve with the kind of urgency and impetus it clamours for.

APPENDIX 1

CRÈCHES FOR WORKING AND AILING MOTHERS' CHILDREN — AN EVALUATION

CRÈCHE SCHEME FAILS TO COVER INFANTS

A central government scheme (Crèches for Working and Ailing Mothers' Children) launched in 1975, to provide crèches for the children (0–5 years) of 'mainly, casual, migrant, agricultural and construction labour has failed to fulfil its purpose'. (A review of the scheme was entrusted to NIPCCD by the Dept. of Women and Child)

- Only 52 per cent working women have benefited by the scheme. The scheme has functioned more as a pre-school than as a crèche.
- Age-wise distribution of children according to enrolment figures:
0–1 years 7 per cent
3–5 years 56 per cent
- The attendance figures show an even lower proportion of young children: Average daily attendance was 75 per cent; of which, only 45 were 0–1 year old and 28% were 1–3 years of age.

ACTIVITIES: The major amount of time in the crèche is spent on pre-school activities. As many as 39 per cent of the crèche workers spent more than two hours on pre-school activities; other activities consumed less than one and a half hours.

FACILITIES: The average space per child in the crèches sampled was found to be 3–6 sq. ft per child — the urban crèches being the worst off; 73 per cent of the crèches had no toilets; 49 per cent had no minimum sleeping facilities, etc.

The scheme carries no provision of rent and therefore it is not surprising that minimum facilities and infrastructure are not to be found.

The most glaring lacuna was the low priority given to the remuneration for crèche workers. The scheme started with a paltry Rs 500/– for two workers, which was subsequently raised to Rs 800/for two. It does not need experts to point out that the essential component of a day-care programme is the presence of full-time, responsible childcare workers with understanding of the needs of young children. No full-time workers can be found at such a level where a day's casual labour would bring in more. It is not surprising therefore, that the programme slipped to functioning for a few hours a day — more as a balwadi — and therefore was not able to meet the needs of women who worked for long hours away from home.

Source: FORCES Gazette Vol. 12 January - April 1999.

APPENDIX 2

CAG REPORT, 2000 — PERFORMANCE OF CENTRALLY SPONSORED SCHEMES

'LOFTY OBJECTIVES LARGELY UNREALISED,' says CAG.

Voicing a warning for government, the CAG report says:

'Unless the government wakes up to the ground reality and takes effective remedial measures the situation of extremely poor quality of expenditure leading to low value for money, total absence of accountability and non-existent relationship between the input and the output is likely to continue in programmes run by the Union Government.'

Integrated Child Development Services Scheme (ICDS):

■ Shocking Data

There is a mass of data on ICDS — all very disturbing — in the CAG Report, 2000. A few issues and facts are given below as indicator of the findings:

■ Supplementary Nutrition — failure to procure resources

Many state governments did not provide adequate budget for supplementary nutrition. Therapeutic/weaning food for severely malnourished children had not been provided in 9 states. In 4 states cases of sub-standard and adulterated food were noticed.

■ World Bank Funding — unutilised money

Review of utilisation of World Bank funded projects showed that under the current project only 39% was utilised till March 1999 with only one-year left for utilisation of the remaining 61%.

■ Health Check-up and Referral Services — deficient

The implementation of the component of health check-up and referral services was found to be particularly deficient due to absence of baseline surveys for identification, incomplete/non-maintenance of concerned records/registers, lack of coordination with the State health department. In Delhi and seven other states, test checks revealed that either necessary records/cards for referral service were not maintained or information was not furnished or the cases were not referred to PHC due to non-availability of referral cards.

■ Medicine Kits

Failure in purchase and delivery.

■ Nutrition and Health Education — unutilised money and poor outreach

■ Personnel — shortfall and diversion

Despite the shortfall in personnel, ranging from 13 to 38% in the persons-in-position against sanctioned posts during 1992-99, cases of diversion of ICDS

staff to non-ICDS works and idle wages amounting to Rs.5.6 crore were noticed in 10 states.

Adolescent Girl Scheme — didn't take off

■ Supervisors — defaulters

In Delhi, test check of records revealed that during 1996–98, there were 29 to 196 Anganwadi centers where not a single visit was made by the supervisors during a month.

■ Grants — non-reconciliation of figures

■ Discrepancy — between the records of the Centre and that of the States

■ Identification of Beneficiaries — not done

No survey for identification of beneficiaries was conducted in Delhi and Maharashtra.

■ Food Testing — unsystematic

■ Weaning Food — not provided

No therapeutic food was given either to undernourished children or to babies needing weaning food in Delhi, Gujarat, Orissa, Rajasthan and other five states.

■ Immunisation — manipulation of data

■ Shortfall in Coverage — manipulation of data

■ Factually incorrect data

In Maharashtra, the target and achievement in urban areas were not available. However, test check of two projects of Aurangabad and Poona, for 1997–98, disclosed that 19,733 beneficiaries were immunised against 11,148 eligible beneficiaries which suggested that the data of beneficiaries immunised was not factually correct. The department stated that reasons of mis-reporting would be investigated.

■ Infructuous diversion of ICDS resources

In Delhi, test check of six projects revealed diversion of ICDS project vehicles to other purposes.

In Rajasthan, the supplementary nutrition was not provided for 61 days in 12 AWCs, for 100–200 days in 222 AWCs and for 201–299 days in 756 AWCs during 1992–99. Further, the interruption in feeding was noticed to the extent of 2 to 20 months in 77 AWCs of 18 projects during 1992–99.

■ Pre-school education — poor outreach and manipulation of records

Similarly in Maharashtra, test check of two projects revealed that the attendance of children was more than the population of the beneficiary children and in another five projects, attendance of children reported was more than the enrolment. These established that the performance records were manipulated.

These are only the few of the alarming findings in the CAG Report. Similar findings on the public distribution system and the National Programme of Nutritional Support to Primary Education are also reported.

Source: FORCES Gazette Vol. 17, November-March, 2001.

APPENDIX 3

PRADHAN MANTRI GRAMODAYA YOJNA

The Pradhan Mantri Gramodaya Yojana provides for allocations for specific Basic Minimum Services. Under this scheme, six areas have been chosen to receive funds under Basic Minimum Services Allocation. These are: rural roads, primary health, primary education, shelter, drinking water, and nutrition. The total allocation is 5,000 crores in the Annual Plan 2000–2001. Of this, 2,500 is for roads and the other 2,500 is to be split amongst the other five components which are to compulsorily receive 15% (i.e., 375 crores) and 625 crores is to be left to the State Government's discretion. Of the discretionary amount, the State Governments are advised to spend the maximum amount on nutrition.

Inadequacies of the Scheme

Government's rationale for focusing on the under-3s to tackle malnutrition seems to be well understood and the objectives of the programme have been clearly articulated. But, with its assumption that, 'the ICDS scheme has been recognised as the strongest and most viable vehicle for improving nutritional status', it puts paid to its chances of success and negates the entire analysis and evaluation of the ICDS experience over the last 25 years even as a 'feeding programme'.

The other misplaced assumption is that the supplementary food should be in the form of pre-packaged, powdered, and dried food to be transported from a central source.

Both these assumptions do much to go against the objectives of the scheme and need to be examined for their worth.

Source: FORCES Gazette, Vol.16, July-Oct 2000.

APPENDIX 4

CATEGORIES WITH SPECIAL NEEDS

1. Parents with Special Needs
 - Adoptive/ Foster Parents
 - Single Parents
 - Sex 'workers'
 - HIV affected
 - Women in prison
 - Labouring in unorganised sector
 - Migrant/Displaced
 - Victim of man-made/natural disasters
 - With disability
 - Victims of war/terrorism
 - Minorities/Dalits/Adivasis
2. Children with Special Needs
 - Children of women working in the unorganised sector
 - Girl children
 - Child labourers
 - Children of migrant/displaced families
 - Children of itinerant families
 - Street children
 - Children of single parents
 - Children with disability
 - Children within minority groups, Dalit and Adivasi children
 - Children of sexually exploited women
 - Children in prostitution
 - HIV-affected children
 - Children awaiting adoption in institutions
 - Adopted children
 - Children in orphanages
 - Children of women prisoners
 - Child victims of man-made/natural disasters
 - Child victims of war or terrorism
 - Child victims of abuse

APPENDIX 5

GAPS AND REQUIREMENTS

Period	Required Interventions	Present Status
Ante-natal	Right to choice (universal access to FP, including MTP)	Not fully available
	Protection of female foetus (Ban on selective abortion)	Pre-natal Diagnostic Technologies Act, 1994
	Right to nutrition (maternal nutrition and universal access to health services)	Cash support through maternal protection schemes in some States and nutritional support in some States
	Education for childcare	Access to health care inadequate. Not available
Childbirth	Safe childbirth (universal access to safe facilities)	Not fully achieved
0–2 years	Right to nutrition (Access to mother's milk exclusively for four months from child birth)	Infant Foods and Breast Milk Substitutes Act (1992)
	Comprehensive Maternity Protection Act, Fund or Scheme for all, especially to those working in the unorganized sector. Employer contribution may be required in the case of organized sector	Maternity Benefit Act and Employees State Insurance Act (1948) provide for only three months and are available only to women in the organized sector
	Age-appropriate for stimulation towards holistic development	Limited maternity entitlement in cash in some States and nutritional support in some states. Stress on holistic development by the ICDS scheme, however, inadequate
	Right to care and protection (Uniform adoption law and maternity entitlement for adoptive mother) Minimum standards of childcare in crèche/Day care center and institutional care homes	Hindu Adoption and Maintenance Act (1956) Guardians and Wards Act (1890) and Hindu Minority and Guardianship Act (1956). No entitlements for adoptive mothers

	<p>Lack of childcare services for agricultural workers and for regulations of foundling homes, orphanages and children's Homes</p> <p>Comprehensive Child Care Act Fund and scheme providing access to day-care for young children at location, timings and of nature and quality appropriate and convenient to mothers, especially for those in unorganized sector with new and flexible ways of acquiring financial contribution from employer/contractors of women in the unorganized sector</p>	<p>Several Acts (6) providing crèches for children below six mostly available only to women in the organized sector</p> <p>No provision for women in Govt. or public sector service, or for those working in tertiary sector or, under the Shops and Establishment Act</p>
3-5 years	<p>Right to care and protection and a comprehensive, age-appropriate Child Care Act, Fund or Scheme, as above, applicable to children upto the age of six</p> <p>Supplementary care and support, Right to education and holistic development. A Compulsory Child Development and Education Act to provide free and universal development education, appropriate to age</p> <p>Policy related to prevention and early detection of disability</p> <p>Regulating of all early childhood education which would ensure minimum standards in early childhood education</p>	<p>The ICDS and the Acts mentioned above all provide for children upto the age of six. The lacunae are similar</p> <p>Right to Education Bill 93rd Amendment, restricted to children aged 6-14</p> <p>Persons with Disability Act (1995) to be implemented</p> <p>No such comprehensive laws or rules. Some ad hoc rules passed in some States (Maharashtra and Delhi), some under consideration. Some court rulings with respect to admission tests</p>

Special needs	Rights of homeless, refugees ethnic groups, single parents, migrants, inerrant, nomads, riot-hit, pavement dwellers and those in illegal settlements to all the services and provisions	No special entitlement at present to ensure that such children are not deprived of their rights
	Special Facilities in response to needs of each group	

Source: Mina Swaminathan for FORCES National Seminar on Campaign for Maternity, Childcare and Development, 1999.

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THE DISABLED CHILD



SECTION 5

THE DISABLED CHILD

'Why does no one call me by my name, like they call all other children? Why am I always referred to as *LANGDA* (lame)?' Debu, a 10-year-old spastic child at a workshop facilitated by HAQ.

It is estimated that one of every 10 children is born with, or acquires some form of disability. Traditionally Indian society has treated its disabled with disdain, mirth, at best tolerance. Children with disability face discrimination from birth. Mental retardation and mental illness are of course relegated to the realm of 'madness' to be treated with even greater repugnance. This attitude is reflected even in colloquial adage. It is not uncommon to be taunted 'Are you blind?' if you miss something, or 'Are you lame?' if one expresses inability to get up at that moment. There are many more in a similar vein.

Children with disability suffer unequal opportunities for survival and development. Most do not enjoy personal or economic security, are denied access to health care, education and all the basic needs necessary for their growth. Mentally retarded children are known to have been imprisoned, chained, and denied all basic rights. So deep-seated is this prejudice that even the mother of a disabled child faces humiliation and indignity. One of the most important indications of how our country treats its disabled is their place in the education system. This insensitivity is also borne out by the lack of adequate facilities and services that would allow disabled persons to live a life of self-supported independence, with dignity.

In this negative environment lacking in support structures, a disabled person who is poor is faced with a double disadvantage — poverty as well as disability. In a patriarchal society like India, for a disabled girl child from a poor family this disadvantage stands trebled — by her poverty, her gender, and her disability. Needless to say when it comes to services, she gets the lowest priority.

Recognising the special needs of the differently-abled, in the Directive Principles of State Policy as laid down in the Constitution recognise the obligation of the State to provide assistance in the event of sickness and disablement. The National Policy on Children, 1974 calls for the provision of special treatment, education and rehabilitation of all children suffering from all kinds of disabilities, as does the National Policy on Education, 1986. According to the Convention on the Rights of the Child which India ratified in 1992, disabled children have the right to special care, education and training to help them enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible (Article 23). The National Policy on Health, 1993 emphasises the need for care and rehabilitation of the disabled. The National Plan of Action for Children, 1992 however affords only a passing mention to disability, including the concerns of disabled children in the larger category of Children in Especially Difficult Circumstances. Yet it was only in 1995 that a legal step to prevent discrimination against the disabled was recognised and taken with the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. And it was only in Census 2001, after a massive campaign, that disability was included as a category.

What is even more important is that disability is relegated to the realm of 'welfare' by large sections of the people. It has taken a long and hard struggle by all the disability rights activists to have their concerns recognised as 'rights'. As Javed Abidi, who is the Head of the National Centre for Promotion of Employment for Disabled People, Convenor of Disabled Rights Group and Chairperson of Disabled People's International South Asia, says, 'The biggest mistake our policy-makers and decision-makers have made is to have looked at disability as a welfare issue, whereas it was, it is and it should rightly be a development issue, a progress issue...' (*The Invisible Minority, Combat Law, June-July, 2002, The Times of India, 3 Dec. 1998*).

To be able to accord the disabled child its rightful place under the sun we need to change more than just laws and policies — we need to change the way we look, feel, think and deal with disability. What is needed is social concern and political will. What we must ensure is that Sonu is not confined to an airless room because he is mentally retarded, or Sajjo chained to a block of wood. And that Debu is recognised and addressed by name, not his disability.

Why are there so many negative statistics about disabled children? Why are disabled people the poorest of the poor in every country in the world? Why are 97 per cent of disabled children in developing countries without any form of rehabilitation and 98 per cent without any education? Why is it that disabled children suffer more violence and abuse than other children and are shut away in institutions, cupboards and sheds and are often starved to death?

And why is that these — and many other — horrifying but verifiable facts, are not being given the attention they deserve?

In most parts of India, irrespective of state, region or religion the disgrace of giving birth to a disabled child is unanimous. Despite modern, human rights attitudes, the idea that a disabled child is the result of the anger of gods, or ancestors, the embodiment of sin in the family or of sin itself, is widely prevalent. Endless research shows that parents of disabled children feel guilt and sometimes take the blame for the impairment on themselves. Families, communities and the medical profession often do not help to alleviate this guilt by their attitude to the baby and to the parents, calling the child a 'vegetable', 'useless', 'a burden'. Inevitably this stigma and guilt result in isolation or segregation of the disabled child. Disabled babies are left at the gates of cities, abandoned in institutions or left to live helplessly in the corner of the hut or room. Disabled girls fare still worse. What family resources there are, are not given to feeding them. Yet, they survive sometimes, despite the efforts of their families to starve them to death.

Sajjo, all of 12 yrs, in chains because she is mentally ill

HT Correspondent
New Delhi, June 22

CHAINED TO a block of wood that weighs nearly 20 kg, 12-year-old Sajjo spends her days in the shadow of social stigma. Bruises and deep gashes are common on her fragile form. Sajjo's fault? She is mentally challenged and is described as a "terror" by residents of Kali Kalyanpura.

Sajjo hits children, steals food and goods from shops. Her parents said she slipped out of the house one day. Neighbours told Sajjo's mother Sayra that she was seen boarding a bus.

"Finally, she was brought back by some people. They had seen her sing and dance and passengers reward her by throwing coins," recalled Sayra.

The incident spread around in Turkman Gate and she was branded as "pagal". People started throwing stones at her and would beat her up without provocation. Sajjo's parents were forced to chain her.

As she screamed and ripped her clothes apart, father Abdul Sattar and Sayra slipped a chain around her left foot. She was left on the rooftop. Her fits of rage continued. She would lie immobile for hours



Chained to misery

in the sun, despite all efforts to coax her to come inside the house.

Once, Abdul tried to pacify her and was pushed off the roof. He sustained minor injuries - one more tale was added to her horror story.

"On her birth, doctors said she had a weak brain," said Sayra. The parents refused to believe till the girl began to show signs of abnormality. She would scream and turn violent without provocation, even bang her head against the walls.

Abdul, an autorickshaw driver, sought medical advice even quacks - but Sajjo's condition didn't improve.

With the burden of

July 24, 2004

Radhika D Srivastava

NEW DELHI: All through her childhood and teens, Gudia never stepped outside her house. Never even saw sunlight. So when she stepped out for the first time on Saturday, it turned out to be a traumatic experience.

The light blinded her and she screamed. Somebody quickly covered her with blankets. The darkness was comforting. That's how she has lived, all hours of the day. The sun and its light may be normal for most people, but they are alien to 20-year-old Gudia.

Her screams were heard by onlookers. Suddenly, several pairs of eyes turned in her direction. And she cringed. Gudia is physically challenged and, thus, immobile. Which is why she was locked up by those who were supposed to have looked after her. No one knows when and how she became immobile. What is known though, is that Gudia lived in a one-room house in Punja Sharif, Kash-

Solitary confinement for 12-yr-old

By Radhika D Srivastava

NEW DELHI: For years 12-year-old Sonu has seen the world only through a one-square-foot hole in the wall of his room. He is never let out. His family and the neighbourhood view his forced confinement as an inevitability.

Nobody is actually bothered by Sonu's plight. The boy is not in a position to express himself. He is mentally challenged. And perhaps to save itself from embarrassment, his family has put him away in a small and isolated room specially built for him on the terrace of their house in Nehru Vi-

East Delhi.

Neighbours call him the "mad

One child yelled out for

and asked him to stick his

it of the hole. Sonu

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She never saw sunlight for 20 years

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So well had she been hidden all these years that even her closest neighbours did not know about her. But, on Saturday, she and her brothers were forced out of the house by the landlord, Rajiv Gulati who had come to get the premises vacated after winning a 16-year old court case. That's how her existence was known. "I had not known that the family had a girl. It was quite a shock when the girl was carried out," Gulati said.

The narrow lane of Punja Sharif bustled with onlookers as the word spread. Amidst the strewn belongings, the brothers sat on one side of the road. Between them lay a bundle as big as a sack of rice, wrapped in blankets. Everybody now knew the bundle was actually Gudia wrapped in blankets.

The brothers refused to answer any question, and allowed their sister to be photographed with great difficulty. Although 20 years old, Gudia appeared to be only 3-4 ft tall. She immediately blocked her nose with her



There is no doubt that in some cases, due to lack of money, families have to make difficult decisions and often sacrifice the lives or health of some of their children (mostly the girls) in order to keep the rest of the family active. But evidence increasingly shows that disabled children are being allowed to starve even when there is enough food to go around.

There are other situations where the mother of a disabled child is abandoned by the husband because he cannot tolerate the stigma attached to having a disabled child or is not prepared to take on the extra responsibility. In developing countries, this situation often forces the mother into either abandoning the child herself or becoming a beggar.

Even if the family keeps the child fed and loved, there is only a 2 per cent chance that they will receive rehabilitation and a very high chance that they will die of secondary medical problems.

When the disabled are treated as abnormal

BY SUDHA PASSI

New Delhi, Sept. 16: "The body perfect is wanted so much that the imperfect body becomes a liability that you got to pay for it in terms of compromises — which are not only demeaning but humiliating too," Dr Anita Ghai, speaks straight from her experience as an orthopaedically disabled, when she describes what 60 million disabled Indians experience when it comes to seeking a life partner to share one's joys and sorrows and fulfilment.

Notwithstanding the basic day to day problems, leave aside the danger of passing it on to the progeny, more often than not disabilities are matched one to one while fixing marriages, for the handicapped have no choice when it comes to living life on their own, notes Preeti Singh, a social activist

who is visually impaired. A handful of disabled individuals who have managed to break social shackles and forge successful relationships with healthy people, say active participation at home and integrated educational institutions would help a great deal in bringing about attitudinal change for their acceptability.

"No matter how educated you are, there's this apparent handicap that actually sends across a signal that the 'so called healthy' would be doing a favour if they were to strike a relationship with you," says Dr Ghai, a reader in psychology at the Jesus and Mary College. People can sympathise but not romanticise with a person with so apparent a disability as hers, says Dr Ghai. Both Ms Singh and Dr Ghai recall that responses to matrimonials were demeaning

to the point of leaving one hurt and scarred.

"Not only is one expected to settle for a person, less educated, or from a low income family the handicap just leaves the person speechless to ask for anything," says a 40-year old activist of the Disability Rights Group. The status, says Ms Singh, is so bad that blind and disabled "are not supposed to

— not fit" to get married in our country "and if it's a female the marginalisation is double, because you already have the gender handicap," notes Dr Ghai.

In such a scenario, marriages between people with similar disabilities could appear to be the best possible solution, says Mr Javed Abidi, also of DRG. While Mr Abidi cites instances when people with similar disabilities are leading a normal married life, Ms Singh says normal life between such indi-

viduals is a myth. "Whom would the husband and wife run to get a letter read just in case both were sightless? It would just destroy their privacy," she explains, citing the case of a couple suffering from muscular dystrophy (de-generation), staying in their respective parents' house as no one wants to take over the responsibility of looking after two individuals. The man, who is a government official, takes leave for holidays with the wife outside the city. They are then accompanied by an assistant.

The disabled have the same desires and feelings as other people and to be made to compromise for that disability is not a bargain they — at least the educated and economically independent among them — are willing to make. Ms Singh says parents have a great role to play in the upbringing of physically disabled children. (PTI)

SPOTLIGHT

the statistics in this respect would be more forthcoming, but this unfortunately is not the case.

ESTIMATES

One of the greatest problems faced while estimating anything in relation to disability in India is the fact that figures are hard to come by and where they do, they vary depending on the definitions, the source, the methodology and the scientific instruments used in identifying and measuring the degree of disability.

The current estimate is that 1 child in every 10 is either born with or acquires a physical, sensory or mental impairment by the first year of life. Based on this estimate, the world population of disabled children is placed around 140 million, of which 25 million live in India alone.

A survey of children (age 0–14 years) by the National Sample Survey Organisation (NSSO) in 1991 revealed that approximately 3 per cent of the children between 0–14 years of age have developmental delays associated with mental retardation. The prevalence rate for physical disability was observed to be significantly more amongst boys (22.77/1000) than girls (16.94/1000). This discrepancy in gender ratio raises the questions of whether there is under reporting of the girl child with disability for fear of the associated social stigma or of the more ominous one of infanticide. It is expected that the results of the Census 2001 where disability has been included as a separate question, will throw some more light on this matter.

Table 1
TYPES OF DISABILITY

Figures as per 1000

Age group	Visual		Hearing		Speech		Locomotor Retardation		Mental	
(Years)	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban	Rural	Urban
0-4	4	5	N.A.	N.A.	47	47	27	30	N.A.	N.A.
5-14	24	21	85	80	262	261	224	223	150	165

Source: Report No. 393, NSSO A Report on Disabled Persons 47th Round, July-December, 1991.

According to Child Relief and You (CRY), the figures on disabled are as follows:

- 3 per cent of India's children are estimated to be mentally challenged. Of these 15 million children are below the age of 10 years. 10 million are boys and 5 million are girls.
- 20 per cent of the disabled children are urban, 80 per cent are in the rural areas.
- 60 per cent are males and 40 per cent are females
- Twenty of every 1000 children in rural India are disabled, compared to 16 of 1000 urban children.

There are some inter and intra state variations. For example, estimates for the various types of physical disability (night blindness, impairments related to visual, auditory, vocal and locomotor systems) are low in Kerala and Gujarat among children in the 0-4 age group, but high in Bihar and West Bengal. In West Bengal, in the age group of 5-12 years, the prevalence is as high as 6,779 per 100,000, 4,670 in Himachal Pradesh and 4,519 in Tamil Nadu. (NCAER, 1999).

SERVICES

While the government plays an important role in making constitutional and legislation procedures, evolving schemes and national policies and providing resources it has not been able to deliver services and programmes on its own. The voluntary sector plays a dominant and important role in this scenario. Many voluntary organisations not only fill this gap but also act as pressure groups. Nonetheless, it would require the collective will of the voluntary organisations, the persons directly and indirectly affected by the condition and the political parties to ensure that the schemes and policies do not remain only on paper.



To help in this, the government runs an umbrella scheme to promote voluntary action for persons with disabilities. Under this, the NGOs are assisted in taking up a wide range of activities for persons with disabilities, covering prevention of disability, education, training and rehabilitation. In order to coordinate funding and direct application of technology, the government also runs a scheme called the Science and Technology Project in Mission Mode.

EFFECT ON ACTION

The stigmatising societal attitudes have had an impact on policies and legislation regarding education and employment opportunities. The life of a disabled person is so obviously one which is a burden to themselves, their families and the State that it is considered better if further investments on their future lives is not made.

One of the main arguments extended by governments, local authorities and other service providers for not ensuring implementation of comprehensive, non-discriminatory measures for disabled people is the cost factor.

One of the reasons for focussing on abstract notions of cost in relation to disabled people and for the stigmatising life-threatening attitudes is that disability is still seen as an individual characteristic and not as the social situation that it really is.

The medical, individual model of disability negates the realisation that it is the social situation imposed on an individual with an impairment or functional limitation, which is the disability; and that due to the barriers of environment and attitude, the society is not constructed to include disabled people and hence is not geared to make provisions for this diversity.

LEGISLATION

India's reaction to establishing legislation is second to none and in the disability sector it did not fail in instituting a comprehensive law — namely, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (PWD Act), which was enforced from February 2, 1996. This act was responsible for bringing about changes in the programmes for persons with disabilities in India. The act has 14 chapters covering seven disabilities, namely:

1. Blindness
2. Low vision
3. Post-leprosy cure
4. Hearing impairment
5. Locomotor disability
6. Mental retardation and
7. Mental illness

A cost analysis by WHO (1997) indicates that it is more expensive to set up separate institutions that cater to special segments of the population than it is to invest in their integration.

Building an institution costs in terms of sustainability and reaches out to a comparative handful of disabled people, who may remain economically passive recipients throughout their lives. Traditionally most of the money spent on disability services either goes into buildings or into paying the salaries of centralised, expensive professionals and administrators, rather than into local, rights-based initiatives.

The solution to this expenditure should not be to cut costs but to redirect the funding to initiatives that support disabled people's rights, lead to their integration in society and thereby contribute to society — enabling in the process the activation of positive attitudes.

Unfortunately, this categorisation leaves out significant groups of children with debilitating conditions like autism.

It was (and continues to be) envisaged that through this Act, the quality of life of persons with disabilities could be improved as it addresses key issues like education, literacy levels, employment, social security, assistive devices and barrier-free environment. But, the implementation leaves a lot to be desired.

In the recent past, however, there has been a concerted action in improving access, through the latest building bye-laws, which has made it mandatory for all new buildings including school buildings to follow the accessibility guidelines (standards for physical and sensory access — for those with mobility challenges, hearing and visual impairments). (See box on the guidelines). The passage of the Act has made possible a shift from the earlier concept of welfare of the persons with disabilities to equal participation and empowerment.

'In a country of vote bank politics, this silent minority has been systematically ignored... In fact till 1995 there was no law in India to protect the rights of the disabled people.'

*Javed Abidi, Disabled
Peopole's International South
Asia, The Times of India,
Dec.3, 1998.*

ACCESSIBILITY GUIDELINES

Modifications to the Unified Building Bye-laws, 1983, pertaining to the National Capital Territory of Delhi was set in motion in April 2002. These bye-laws are applicable to all new buildings, recreational areas and facilities used by the public. It does not apply to private domestic residence.

Salient features:

- Identifies disabilities to include physical impairments requiring the use of wheelchairs and other mobility aids and hearing and visual disabilities.
- Specifies that 'every building should have at least one access to main entrance/exit to the disabled which shall be indicated by proper signage. This entrance shall be approached through a proper ramp together with stepped entry'.
- Provides for parking of vehicles of disabled persons.
- Guiding floor materials with audible signals and Braille signage for the sight impaired.
- Specifies facilities such as approach to plinth level, corridor connecting the entrance/exit for the handicapped, stairways, lift, toilet and drinking water.
- Provision of an alternative to immediate evacuation of a building via staircases and/or lifts is the movement of persons with disability to safety areas within a building.

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

It is well-known that some persons with disabilities may need lifelong care of varying degrees, despite the best of training and rehabilitation efforts. Parents always have the big question in their mind, '*What will happen to our child after us?*'

The National Trust Act is an answer to this question. India is a country with close-knit families and the children (disabled or otherwise) are always with the families. Institutionalisation is not a common practice in the country. In fact the resurgence of an emphasis on the family in many western countries is not new to India. However with the current trend towards a shift from the joint family to nuclear ones, the fear of parents about the care of their dependent children after them has become a challenge and a nightmare.

The National Trust Act has made provisions for the appointment of guardians for those who apply and residential facilities by organisations that would have to maintain minimum standards prescribed by the trust in terms of space, staff, furniture, rehabilitation and medical facilities. Since it empowers the caregivers and also looks after the interests of the disabled child vis-à-vis the system, work in this area has gained tremendous momentum.

The establishment of the Rehabilitation Council of India (RCI), 1992, has been a major move by the Government of India for quality assurance in the education, training and management of persons with disabilities. The Council at its inception envisaged standardising the training of teachers in the field of special education. The drawback of this initiative lay in the Council seeking to register all services directed towards persons with disabilities; a move that has drawn flak from the sector. The disagreement rests on the knowledge that till date initiatives regarding education, training and provision of support systems for the disabled are carried out by the parents. Thus, at this point in time it would be premature to place any embargo on this work.

National Policy on Education (1986)

After Independence, an important turning point was the National Policy on Education (1986). This policy, for the first time, included a section on disabilities (Section 4.9). Briefly it includes:

- Inclusive education possibilities for children with mild disabilities in regular schools;
- Provision for the training and education of children with severe disabilities in special schools;
- Vocational training as being a part of the education for the disabled; and
- Reorientation of teachers training programmes to include education of disabled children.



Following the implementation of the policy by the Department of Education, the Ministry of Human Resource Development and the Integrated Education of the Disabled Persons (IEDP) gained momentum for financial support, free aids and appliances, transport allowance and other such facilities by law (Persons with Disability Act, 1995) admissible for disabled students integrated schools. However, most of these facilities are not availed of, due to a lack of awareness of the legal provisions and an inherent fear of discrimination on the part of the parents in seeking recourse to the law for the implementation of the policy.

GOVERNMENT SCHEMES

Central Level

In order to effectively deal with the multi-dimensional rehabilitation process, the government has set four national institutions in each major area of disability. These are: the National Institute for the Visually Handicapped, Dehradun; the National Institute for the Mentally Handicapped, Secunderabad; the National Institute for the Orthopaedically Handicapped, Calcutta and the National Institute for the Hearing Handicapped, Mumbai. Also, there are two other institutions, namely, the Institute for the Physically Handicapped, New Delhi and the National Institute of Rehabilitation, Training & Research, Cuttack, which provide services in different areas of disability. The clinical and rehabilitation units of these institutes serve as an in-house laboratory for the trainers as well as the trainees. They also offer a variety of training programmes, both short-term and long-term.

Rural Areas

The government also implements the District Rehabilitation Centre Scheme (DRCS). The scheme was initiated in 1985 to provide comprehensive services to the disabled in the rural areas and at present functions in ten states, providing a wide range of services from the prevention and the early detection of disability to medical and surgical intervention, training for the acquisition of skills through vocational training programmes and job placements. Along with these there are four Regional Rehabilitation Training Centres (RRTCs) at Chennai, Mumbai, Cuttack and Lucknow. The RRTCs facilitate and provide training and manpower development in the area of rehabilitation and particularly for human resource development for the DRCs.

District Centres

Another step towards reaching the villages is the establishment of District Centres in 107 districts in various states all over the country. These centres are designed to provide assessment, fitment and maintenance of aids, appliances and maintenance, and establish linkage with existing schools or establish new schools for education and training suitable for persons with disabilities, including mental retardation. Focus is also on the development of barrier-free environment. The government has also set up a scheme of five

Composite Regional Centres for persons with disabilities in the states of Uttar Pradesh, Madhya Pradesh, Himachal Pradesh, Assam, and Jammu & Kashmir with a proposed budget of Rs.16.89 crores to provide composite rehabilitation services in the field. The CRCs at Srinagar and Lucknow have been operational since 2000.

State Schemes

The National Programme for Rehabilitation of Persons with Disabilities (NPRPD) Scheme launched in 1999–2000 is being implemented as a State Sector scheme with funding from the Centre. The basic objective of the scheme is to create a service delivery system at the State/district/block/gram panchayat level so as to provide comprehensive community based rehabilitation services. There is a provision of two community-based rehabilitation workers at each *gram panchayat* and two multi-purpose rehabilitation workers at the block level.

Despite these elaborate schemes, the present infrastructure is not able to cater to the needs of persons with disabilities. Only a small proportion of persons with disabilities have so far been provided rehabilitation services.

Aids and Appliances

The outreach of the DRCs and the National Institutes is limited. In order to penetrate and provide rehabilitation services throughout the country, the government also runs schemes to assist NGOs for taking up programmes of providing services for persons with disabilities. For providing basic rehabilitation services more than 100 districts have been selected throughout the country to strengthen the present infrastructure and enhance its spread. More than 20 district centres have already started in Pilibhit, Koraput, Gwalior, Tuticorin and Visakhapatnam that provide rehabilitation services to children living in these areas.

The scheme for the Assistance to Disabled Persons for Purchase/Fitting of Aids & Appliances works to assist economically deprived disabled persons in procuring durable, sophisticated and scientifically manufactured modern standard aids and appliances which can promote their physical, social and psychological rehabilitation. In order to meet the large demand for assistive devices and also standardise the aids and appliances, the Artificial Limbs Manufacturing Corporation of India (ALIMCO) was set up at Kanpur to provide quality aids and appliances at reasonable prices. Its functions include manufacturing orthotic/prosthetic (physical mobility) rehabilitation aids, training of orthotic and prosthetic technicians and engineers and research and development in these fields.

Coverage in Reality

While these programmes are very well intentioned, most of them, invariably, remain notional in character. Their outreach and accessibility in remote and rural areas remain negligible. As a result, while comprehensive rehabilitation services are provided in few urban agglomerates, a large part of the country, especially the rural areas, remain unserved.



BENEFITS AND CONCESSIONS FOR PERSONS WITH DISABILITIES

The Central and State governments provide various benefits and concessions to persons with disabilities such as:

- Scholarship for education;
- Travel concession by bus and train along with escorts;
- Maintenance allowance;
- Free aids and appliances and assistive devices;
- Income tax deduction for parents of persons with mental retardation;
- Pension of the parent employed by the government extended to the child with intellectual disability throughout his life after the parents and;
- Financial support to non-government organisations providing services for persons with mental retardation.

Consequently, children with disabilities are amongst the most marginalised sections of society in our country. While in the last decade and a half, there has been a growing awareness and several significant achievements, both at the national and international levels, a large number of physically and mentally challenged persons live in alienation and isolation. *Only about 5 per cent of the persons with disabilities have been reached out by any kind of services.* What is even more disturbing is that even the scant services available are highly skewed in favour of a few large urban metropolises. However, most NGO efforts are restricted to urban agglomerates. The proportion of the urban and rural population is 25 per cent and 75 per cent respectively. The prevalence of disability is, thus, naturally, more in the rural areas. Further, most of the persons with disabilities belong to the economically lower brackets. They are doubly disadvantaged since they come from the poorer sections of the society while their cost of living is higher due to the additional cost of aids and appliances, need for modifications in their dwelling units and manpower support that they may need.

EDUCATION: THE KEY TO DEVELOPMENT

In a country like India where education levels even among the normal children are not flattering, it is not entirely unexpected that disabled children stand at an even greater disadvantage.

Special Schools

The child who cannot cope with the regular curriculum, attends special schools. There are over 1,100 special schools run by NGOs with government support. Many more are run by NGOs and private trusts.

According to the Sixth All India Educational Survey report, of the 6,461 towns and cities, only 334 or 5.1 per cent towns and cities have the facility of special schools catering to severe disabilities. In these towns, a total of 630 schools are actually functioning of which 97 admit only boys and 33 are for girls, and the rest admit both. Of these, some schools may be dedicated exclusively to a particular disability, while others cater to needs of children suffering from different types of disability.

The World Declaration on Education for All specifically mentioned children with special needs. But such children do not always need special institutions. The 1994 UNESCO meeting in Salamanca strongly recommended inclusive and flexible schooling as against the traditional and more static approach of separate schools. The meeting did not preclude special schools for those with complex problems. But it did call for equal educational opportunities and child-centred teaching.



A breakdown of these schools according to their specialisation shows that 215 are for the visually handicapped, 290 for hearing and speech impaired, 190 for orthopaedical problems, 173 schools admit those suffering from mental retardation and 60 from other locomotive disabilities. According to the survey findings (1999), 'There is a clear bias against separate special schools for girls as there are very few which are exclusively for them.'

The situation in the villages is even more dismal. Of the total 586,465 villages in the country, a mere 241 have facilities for special schools catering to all types of disabilities. Of these, 83 per cent schools are in the states of Andhra Pradesh, Bihar, Gujarat, Haryana, Kerala, Madhya Pradesh, Maharashtra, Orissa and the Union Territory of Andaman and Nicobar Islands. Of the total 272 available schools, 55 are for boys, 11 for girls and the rest are co-educational. In terms of their specialisation, 73 schools are for the visually handicapped, 128 for the speech and hearing impaired, 70 are for the mentally challenged and 25 cater to various handicaps.

Table 2
SCHOOLS WITH INTEGRATED PROGRAMME

Area	Primary	Upper Primary	Secondary and Higher Secondary	Total
Rural	6,986	2,688	1,738	11,412
Urban	1,796	1,521	1,565	4,882
Total	8,782	4,209	3,303	16,294

Source: Sixth Educational Survey, 1999.

Table 3
ENROLMENT OF DISABLED STUDENTS IN SCHOOLS

Location and level	Visual	Hearing	Orthopaedic	Mental Retardation	Others	Total
Primary level						
Rural	1,930	1,661	17,357	1,254	2,150	24,352
Urban	3,808	4,958	26,388	3,748	5,070	43,972
Secondary level						
Rural	1,258	797	8,316	436	1,067	11,874
Urban	2,598	2,282	14,390	1,279	2,783	23,334
Higher Secondary level						
Rural	718	413	8,056	202	1,868	11,257
Urban	2,227	1,205	14,616	673	2,981	21,702
Total	12,539	11,316	89,123	7,592	15,919	13,6491

Source: Sixth Educational Survey , 1999.

Integrated Education Programmes for the Disabled

A large number of children, especially those with mild and moderate handicaps can be educated in regular or mainstream schools, and under the universalisation of primary education it was envisaged that these children must be covered by these schools.

Table 4
AREA AND GENDER-WISE ENROLMENT OF
DISABLED STUDENTS IN SCHOOLS

Area	School/ Enrolment	Boys Only	Girls Only	Both Boys and Girls	Total
Rural	Number of Schools	55	11	206	272
	Enrolment*	2,764	441	6,638	9,843
Urban	Number of Schools	97			
	Enrolment*	4,223	1,775	31,421	37,419
Total	Number of Schools	152	44	706	902
	Enrolment*	6,987	2,216	38,059	47,262

*Includes enrolment of all the disabilities together.

Source: Sixth Educational Survey, 1999.

The coverage is indeed far from satisfactory and the figures when divided by gender indicate the tremendous double disadvantage that girls with disabilities face (Table 4). This scheme (Integrated Educational Program is also not very beneficial for those with intellectual impairment, as the academic integration of such children is not possible primarily due to the rigid nature of the system biased as it is towards academic achievement as a definition of education. It is believed that elementary school curricular modifications would help alleviate this skew.

Consider the following facts in the light of what is mentioned above:

1. School education is structured around a 10+2 system starting from Class 1. The student has to appear in all the subjects during these examinations.
2. Written tests and examinations either marked or graded and are based on a fixed syllabus for each school year.
3. The average class size ranges from 50–70 per classroom with one teacher.
4. A compulsory course of subjects including maths, science and two languages has to be studied till Class 10 after which there is a choice between the Arts, Science and Commerce streams. Marks required for entrance into the university are very high.
5. The National Open School, a parallel education system for disadvantaged groups allows more flexibility but is not recognised by all universities.



THE NEED OF THE HOUR

- (a) To view special schools as specialist centres for children whose disabilities are multiple and severe and who require additional therapy and counselling support, and as demonstration centres for professionals and others.
- (b) To modify training provision for initial and in-service training for teachers to include specific inputs on early intervention for learning difficulties and strategies to deal with pupil diversity, particularly in the context of the large class sizes.
- (c) To develop educational material that will benefit all children including those who have physical and/or communication difficulties.

Within this overall structure, there are wide variations with:

- different Boards of Education with their own rules and syllabi,
- different language of instruction differing from state to state,
- different types of institutions — government and private — each with their own teaching and learning environments.

At present, in most urban and rural areas in India, integration has been a disaster. It is successful only for that student with disability who is mobile, can communicate with functional speech and most importantly, able to cope with the academic syllabus. Integration is expensive; it entails allocation of human and material resources. Successful integration requires legislation that not only reflects good intentions but also enforces. Yet, the aim should be to continue to upgrade quality and demand adequate resources so that special schools can offer wide-ranging differentiated curricula and have the services of a multidisciplinary professional team of teachers, therapists and counsellors.

Linking Special and Mainstream Education

There is a need to extend joint participation in leisure and curricular activities such as dramatics, debates, dance and quiz programmes, clubs and holiday camps. And to support the educational system by providing assessment and guidance services for mainstream schools in relation to both non-disabled children who are underachieving and those who have specific motor, communication, behaviour or learning difficulties.

Teacher Training

A majority of the training programmes focus on a single disability. But a single disability teacher training programme is not economically viable since appointing special educators for small groups of 4 to 5 children with single disabilities would be very expensive. Hence, it is necessary to have a teacher training programme which enables the teacher to manage all disabilities. As the current trend in special education is integrated education and inclusive education, there is also a need for reorienting the general teacher training courses. The assumption among most professionals is that general teachers cannot be trained to meet the educational needs of children with disabilities. However, in order to provide training effectively to children with disabilities in different service programmes — single disability teachers, multi-disability teachers and regular teachers with special education skills would all be required. Consequently,

Educating children with special needs who may or may not benefit from regular school education calls for changes in curricula, classroom arrangements, provision of aids and appliances, additional finances and appropriate teacher preparation.

different types of teacher training programmes will need to be planned, with variations in content, process and duration.

The educational service provisions in India for persons with disabilities (at least on paper) are more or less similar to the global scenario. However, a majority of the services, including special schools, are concentrated in urban areas. There are more special schools for school-going children than vocational training centres or integrated schools.

As noted earlier, in National Policy for Education, children with mild mental retardation can be educated in regular schools with curriculum modification, while those who cannot cope with regular academic activity require special schools with functional academics. Those children with severe intellectual disabilities or those who live in such places with no access to schools require home bound programmes.

The Integrated Education for Disabled Children (IEDC) is a scheme implemented by the Ministry of Human Resource Development. The trained resource teachers support the regular class teachers so as to provide appropriate education to children with disabilities.

The National Open School (NOS) is a programme of open education, which includes children with intellectual impairment. Those with borderline intelligence can study at their own pace with a reduced curricular content. Vocation oriented education is also planned.

The District Primary Education Programme (DPEP) is another major step towards universalisation of primary education wherein the children with special needs are also included and a number of districts are implementing the programme. Inclusive education being the concept world over, the DPEP aims at including the children at primary level (up to class V) with suitable teacher preparation, infrastructural facilities and aids and appliances.

EMPOWERING PARENTS, EARLY INTERVENTION AND TRAINING AT HOME

Parents play a major role in reaching out to children with special needs especially when there is no access to schools for them. The intention is to reach the children at home for their special educational needs, if they cannot reach the schools. Parent-support groups in the metros and the Community-based Rehabilitation (CBR) do play an important role in this regard.

Appropriate stimulation in childhood ranks as one of the most important factors that influence childhood development. As a result, if a sensory perception is impaired, enhanced stimulation is required to compensate the handicap. However, what is frequently offered to the child with a disability is less stimulation rather than more. Hence any interruption of normal patterns of development in a child arising from disability is often more handicapping than the direct consequences of disability itself.

'State-run schools have no facilities for the disabled'

By Pradeep Rana
Times News Network

NEW DELHI: Where do the lakhs of physically challenged children in the Capital go to study? Nowhere, they just sit back at home as none of the schools here have the infrastructure or teachers to cater to their special needs.

There is not even a single specially trained teacher for them in any of the schools being run by the Municipal Corporation Delhi. The Delhi government-run schools have only seven special education teachers in its more than a thousand schools.

These startling revelations came during the recent hearing of a public interest litigation in the high court, highlighting the utter lack of teachers and infrastructure in State-run schools.

According to Delhi government's own admission in the court, 226 physically challenged children attend schools and there are just seven special education teachers posted at the 1,027 odd schools in different parts of the city.

Citing several demographic parameters, Ashok Agarwal, the counsel for the lawyers' group, Social Jurist, which filed the PIL, told the court that by conservative estimates there are at least three lakh children in the age group of 6 to 14 years with different types of disabilities.

Even after enacting the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act in 1995, the Delhi government has not taken any concrete steps to facilitate learning of the disabled children.

Section 26 of the Act expressly speaks of right of such disadvantaged children. "The appropriate governments and the local authorities shall ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years," the Act says.

The education department tried to explain the abysmally low attendance of disabled children in school by saying their education was actually the responsibility of special schools run by the social welfare department. But even in these special

schools the number of students do not exceed a few hundred.

The petitioner pointed this claim goes against the spirit of the Disabilities Act, which emphasises on the combined education of all children.

"The government and authorities should endeavour to promote the integration of students with disabilities in normal

Shortage of teachers

Times News Network

NEW DELHI: The shortage of special teachers is a part of the overall shortage of teachers in general in State-run schools.

The high court last week disposed of the PIL after the authorities assured that the new session will start with a zero-vacancy of teachers.

There are about 5,000 vacancies in the 1,120 Delhi government schools having 15 lakh students; 229 principals, 280 vice-principals, 790 PGTs, 1,889 TGTs, 470 assistant teachers, 149 for arts, 81 for home science, nine for physical training, 51 for music, 196 for yoga, 13 for craft, 260 lab assistants, 72 librarians and 183 for work training experience.

schools," the Act says.

The Act also speaks of free education of disabled children in public schools, whose recognition remains in the hands of government's education ministry. But disabled students in most of these schools have to pay, which violates the conditions of recognising public schools, Social Jurist alleged in the court.

"In Delhi alone there are about three lakh disabled children and less than two per cent of them go to school. One of the main reason is the non-availability of special teachers in schools," the petitioner told the court.

Another reason is the lack of special facilities like ramps and a variety of architectural barriers.

Obstetricians and paediatricians are now being sensitised to screen infants for detecting deviations in development. Training professionals and parents on simple early intervention techniques assists in reducing and/or arresting the severity of the condition.

Emotional Disturbances

This is one of the most neglected aspects at present; probably because it is not easily quantifiable. Moreover, it requires much more extra inputs from the caregivers. Work that is being carried out in this area is by individual NGOs at best. Services are usually located in special schools. Many NGOs conduct parent-training programmes to upgrade information on various aspects of child development. Child guidance clinics are mostly located in major government hospitals in metros and towns. Due to a large rush of patients, adequate time cannot be devoted to the counselling of individual problems. Thus parents are left largely to rely on their information base while rearing their disabled child. In the case of children with mental handicap, the problem is compounded and many go on to developing severe behavioural and emotional problems that are more a function of faulty parental discipline and an uncompromising environment rather than any inherent disorder. The flip side of this is that the observed maladaptive behaviour merely perpetuates the negative image that society has of disabled children.

There are a small percentage of children who have serious emotional disturbances manifested in distorted thinking, excessive anxiety, bizarre motor acts and abnormal mood swings. These disorders usually respond well to medication. The number of children with disabilities who suffer from severe emotional and psychiatric problems is not significantly more than the number of 'normal' children who do so.

Nutrition

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 environments. Studies in developing countries are complicated by widespread malnutrition among the general population and by a lack of appropriate means of assessing nutritional status. The United Nation guidelines (1986) for anthropometric assessment of nutritional status do not provide sufficient information to enable health workers to identify malnutrition among disabled children in the community.

A study conducted in India has shown that the presence of a disabled child in a family may further limit the economic activities of the family by preventing members from working outside the home.

During the past decade, greater attention has been paid to the causes and management of undernutrition in children with a disability. Undernutrition is a frequent problem in children with severe cerebral palsy (spastic quadriplegia), who often have significant impairment of their eating and swallowing



mechanisms. Because of their difficulties in eating and drinking, many such children can achieve an adequate nutritional status only with tube feeding.

The effect of undernutrition on physiologic and brain growth and on development is well recognised. Undernourished infants and children do not achieve normal length and weight for their ages. Furthermore, their neurological development is significantly impaired.

- Disabled children with feeding difficulties are at risk from undernutrition, especially where malnutrition is widespread.
- Stunting was significantly higher among disabled than non-disabled children, but wasting, undernutrition and anaemia were similar.
- Disability in the family is not associated with poor nutritional status of other family members.
- Health policy planners need to ensure programmes addressing the needs of vulnerable groups (for example disabled children) in the community.

Source: Indian Paediatrics, 2001.

Undernourished children generally feel miserable, whereas well-nourished children are more alert. Parents comment on how much calmer their child becomes after proper nourishment is restored. An additional benefit for caregivers is that the time previously spent feeding can be used for other important activities, such as stimulation, education and play.

The percentage of girls receiving education is only 38.34%. Education of the girl child is a low priority area for the majority of people in India. The disabled girl child thus gets the lowest priority in terms of any services.

GENDER ISSUES

While acknowledging that disability is not a health issue but a social issue, it is necessary to focus on the issue of the rights of the disabled and the gender dimension of disability greater attention in terms of research, action and policy. Such interventions are few and far between.

THE DISABLED GIRL CHILD

'It (disability) affects them (boys and girls) in almost identical fashions, but then it is a patriarchal society. The birth of sons is always celebrated; the birth of a girl is never celebrated. And the birth of a disabled girl — they say, 'a girl, and to top it off, disabled!' A disabled boy is still more acceptable than a disabled girl. If a poor family has a disabled son, they will do their best to give him a decent living. Whereas when it comes to girls, they say, 'Why should we do anything?'

There are no institutions as such in India. There are residential schools, mostly for visually impaired girls. [Otherwise] girls are with their families, but what happens is that they are left in a corner, not given enough food, and left to die. If the parents can afford only one education, they'd rather send the boy. Children are lineage capital for families. A boy, even if he's disabled. 'If we can find him a cure, or some kind of a job, one day he will be able to look after us.' That rule is not there for the girls.

I'm afraid that the disability movement is as patriarchal as any other cultural context, which is what I'm fighting. The problem is the disability movement is run by very elite middle class men. They're not sharing leadership with women. As a result, their concerns are more for things which affect them the most — for example, recently they asked for some concessions in the hotels. It's not our problem! Our problem is that our children are not getting education. We should be fighting for education.

In the dominant North Indian culture, we are allowed to interact with our male cousins, but not share a room with them at night. When I was young, I was never stopped. Later I grew up and I realised that they had desexualized me because of my disability.'

Excerpts from an interview with Dr. Anita Ghai, one of India's advocates for Rights of Disabled Women by Laura Hershey in Disability World. (A bimonthly web-zine of international disability news and views, Issue No. 8, May-June 2001)

The large-scale hysterectomies on mentally disabled women inmates of a state-run home in Shirur, Maharashtra, has given rise to a major debate about the right of the state over the bodies of adolescents girls under its custody. A public audit into the status and health of girls in state-run institutions (such as short-stay homes and shelters) is a demand that has to receive greater support and be built into a campaign.

SPORTS AND RECREATION

Children with disabilities are excluded from participation in most sports that require extensive physical coordination. In indoor games like chess (despite the lack of any data on the issue), there being hardly any citations of persons with disabilities competing in the global arena in such sports. For example, chess at the tournament level is also played blind! But how often does one hear of a visually handicapped person competing?

The Special Olympics, an international organisation is dedicated to empowering individuals with mental retardation to develop improved physical fitness and motor skills, greater self-confidence and a more positive self-image. It has about 1 million children (www.specialolympics.org) with mental handicap competing with each other in the physical arena. The movement has been active in India since 1985.

WHAT LIES AHEAD...

Since independence, India has made considerable progress in bringing quality in the lives of the children with disabilities, especially those with intellectual impairments. Families having persons with intellectual impairment are empowered to take decisions about the future of their wards, self advocacy measures are taken and independent living skills are imparted for these individuals by providing them with opportunities and training.

However, considering the size of the country with its geographic, socio-cultural, linguistic variations, a lot more is yet to be achieved:

- Reaching remote rural, tribal and hilly areas through educational and training programmes suitable to the respective region and ecology so that children with disabilities develop competencies to live independently in their environment.
- Translating the policies and training materials in Indian languages in print and non-print media.
- Updating professionals on current trends and developments by periodic in-service training programmes.
- Continuous research and development in all dimensions of impairments is of utmost importance for future development.
- Continuous efforts towards empowering parents and families on the management of their disabled wards/children would assist them in becoming informed consumers of services leading to the implementation of most government policies and programmes.

In short, the future needs to aim at zero reject in provision of suitable services for children of all age range and severity levels. There is an urgent need to carry out

a sustained awareness raising campaign and bring these issues into the collective consciousness of the people. It is believed that this denial of the right to life — to be born, to survive, to receive equal opportunities is at the root of society's neglect of disabled children.

The Convention on the Rights of the Child upholds the rights to life and development. The denial of these rights in the case of girls or street children, child prostitution and children workers is well-known and documented. The issue of child abuse is now becoming everyday news. These wrongs need the world's attention and something has to be done about them. But the world also needs to pay attention to the denial of life and development of disabled children.

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JUVENILE (IN)JUSTICE



SECTION 6

JUVENILE (IN)JUSTICE

In 1996 a young boy was hung from the ceiling by his feet and beaten to death in a Juvenile Home in Delhi. It opened up a can of worms. It once again revealed the violent and oppressive conditions in which children live in the juvenile homes. It is not surprising that ever so often children run away from them. It requires not more than one visit to any children's home to realise why no child wants to live there. Almost every instance of 'escape' is followed by 'stern' action against the concerned officials. Little thought is given to analysing why this happens or to building a sensitive, stimulating or caring environment. The result is even sterner measures of 'locking up' the children. These good and noble institutions, even those for the children in 'need of care and protection' are known as children's jails. In children's perceptions too, they are 'children's jail'. It goes without saying the 'correction' homes for those in conflict with law are of course perceived by every one as 'jails'. There continues to be a lack of transparency in running them despite provisions in law to allow social workers to visit the homes.

The concept 'Juvenile Justice' emerged from the need to have an alternative system for dealing with children through laws. Fairness and justice is the fundamental ideological premise of Juvenile Justice, ensuring that the mental and physical needs of children are taken into account when dealing with them. It was felt that the existing adult legal system was not equipped and sensitive to these special needs.

It was set up to ensure that children's liabilities were diminished and they be provided with protective and restorative measures, enabling their reintegration into society. Although originating from the Latin word 'juvenis' meaning young, the concept of juvenile justice has come to be associated synonymously with 'delinquency' and criminal offences rather than 'justice'. And that in a large measure also explains the ills of the system that have come to be associated with its penal and custodial character, rather than its protective and reformative one.

The first all India enactment on Juvenile Justice was in 1986 — the Juvenile Justice Act, 1986. Indeed to a large measure, the 1986 Act can be seen as a result of the tireless efforts made by among others, Sheela Barse, an activist and lawyer. This Act covered boys upto the age of 16 years and girls upto the age of 18 years. Although, historical in its enactment, it was not without major problems both in concept and in practicality.

It was in recognition of some of these gaps that the Ministry of Social Justice and Empowerment replaced it with the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force from the April 1, 2001. At present states are in the process of formulating rules. However, as with most laws in India, was drafted and enacted with very little consultation with child rights law practitioners and activists. Not surprising, as it is moving towards implementation, gaps in the law are becoming visible. Given the magnitude of the children who are affected by the juvenile justice system, it is imperative that they do not remain unseen and unattended to.

Under Section 82 of the Indian Penal Code the age of criminal responsibility is seven years. Therefore no child under seven years of age can be treated as a child in conflict with law. In the case of children in the age group of 7–12 years, it is necessary to determine whether the child is of sufficient maturity to judge the nature of consequences of the offence. Despite this stipulation, children under-7 are incarcerated as children in conflict with law.

Adoption is not recognised by the personal laws of either Christians or Muslims, whereas the Juvenile Justice Act 2000 makes no such exception. It is interesting to note that 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 Section 5 of the Hindu Adoption and Maintenance Act 1956 says adoptions made in contravention of that Act 'shall be void.'

Even for Hindus, Sections 11 (i) and (ii) state that only children of the opposite gender of biological children may be adopted. So more complications vis-à-vis the JJ Act 2000!!! There is no reference in either enactment to the other. The power of the Central Government under Section 70 'To remove difficulties' is really no help at all. Since this is too serious an anomaly to be let to the Central Government. Moreover, that power gets extinguished two years after the Juvenile Justice Act becomes operational.

Juvenile justice is the legal system that is meant to protect all young people. 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 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 judgmental one, 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.

Any analysis of the juvenile system in India is severely constrained by the poverty of relevant information on the situation of children in conflict with the law and children in need of care and protection. Here we will look at the state of vulnerable children and the state's response, whether legislative, executive and judicial, on the basis of the existing juvenile justice system in India.¹

CONTEXT OF VULNERABLE CHILDREN IN INDIA

The juvenile justice system is designed to address two categories of children, those in conflict with the law, and those in need of care and protection. A review of the situation reveals that the Indian law actually criminalises not just those in conflict with law, but even children who are in need of care and protection by bringing them in contact with the criminal justice system. Before we go deeper, we need to look at two issues:

- a) Magnitude and nature of the (in)justice.
- b) Forms of (in)justice

Any analysis of the juvenile system in the country is severely constrained by the poverty of relevant information on the situation of children in conflict with the law and children in need of care and protection in India.

¹The key sources are the Government of India website, www.nic.in, the GOI Publication, Crimes in India, UNICEF Studies on the implementation of the Juvenile Justice Act, 1986 in Maharashtra, Delhi, Madhya Pradesh and the rest.

MAGNITUDE AND NATURE OF (IN)JUSTICE

Juvenile justice system includes children who are begging, in prostitution, neglected children, abandoned children, abused children and street children, all of them with different needs and vulnerabilities. That's perhaps one of the widest range of deprived and marginalised children in the world. But the real magnitude is difficult to estimate in the absence of researched numbers and there is an urgent need for in-depth sectoral studies on this.

The largest group of marginalised children is that of the street children. A series of studies carried out in the early nineties in the larger cities show 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 5000 in Kanpur.² Are these absolute numbers static or is the Indian state's interventions resulting in a decrease? Micro studies show that the number is actually increasing as a result of urbanisation and increasing rural impoverishment. If we add other categories of marginalised children, the numbers will balloon.

Are these children protected? According to a National Institute of Social Defence Survey 1993–94, there were 1,096 children in need of care and protection admitted to institutions throughout India. Compared to the mammoth numbers of children within the jurisdiction of the system, these numbers within the juvenile justice institutions seem to represent a manageable face of the entire problem. But this is by no means a complete picture as the survey covered only 10 states.(NIPCCD,1996).

As for children in conflict with the law, once again we have no figures to indicate the actual numbers that could be affected right from the point of police harassment, extortion and illegal detention. We only have figures for the number of children against whom complaints are filed. The Government of India publication, Crimes in India, 1999 edition, reveals that 14,457 cases were filed against children. In 2002, this figure there has been a very insignificant decline of 36 cases (from 14,457 in 1999 to 14,421 in 2000).

The publication is revealing in terms of identifying the juvenile who typically falls within the system. It blandly observes: 'As expected, low income, education, poor economic set up is (sic) generally the main attributes for delinquent behaviour of the juveniles.' (NCRB,2001) An equally revealing fact is that property-related crimes is the single largest category of crime juveniles engage in.³ One can speculate that this is because one, it is the juvenile from the 'low-income background' who commits such crimes, and two, the enforcement mechanism does not treat crimes committed by the more affluent with the same degree of seriousness.⁴

A quick analysis of the socio-economic background of the so-called offender shows that it is usually the child from a lower-class background who is entrapped by juvenile justice procedures and institutions.

² These were studies sponsored by the National Labour Institute in the above-named cities.

³ Property crimes are 39.6 per cent of all offences committed by juveniles and amounts to the single largest head of crime. *ibid*.

⁴ For example the bail provisions with their surety and personal bond requirements are more likely to be used by the relatively 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. The BMW case where three youth driving a car ran over and killed a policeman and have escaped all legal liability indicates the way the criminal justice system can be manipulated.

FORMS OF (IN)JUSTICE

Ensuring justice to all juveniles or children through the justice system would actually mean a lot — assuring a minimum standard of living, health, social security and their participation in the functioning of the society as full members. This ability of meaningful participation is stifled in many ways, all of which perpetuate (in)justice in India. These can briefly be analysed as follows:

Role of Police

Police are an existential reality in the lives of a large majority of marginalised children. In a sense, they are central to the understanding of violation of children's basic rights and the juvenile justice system because of the nature of their interaction with children. The Human Rights Watch Report titled 'Killing of Street Children in India' documents the pervasive nature of police harassment in the lives of street children, which includes abuse, illegal detention and extortion.

POLICE HARASSMENT OF STREET CHILDREN

In the words of Anand, a 13-year old ragpicker who was picked up by the police: 'When we were inside the station, the police started to beat me with their lathis and fists, calling me a thief and asking me to tell them where the stolen articles were. I said I had no idea what they were talking about. The beating continued for some 20 or 30 minutes. Then I was put in the cell in the station reserved for criminals and left there for about two hours. At around 4.00 pm the police let me go, one of the constables grabbed me by the shirt, slapped me and told me to get out. No charges were filed and no cases were registered. It was the second time I've been detained without justification or explanation by the police.'

Human Rights Watch, 1997.

Custodial Institutions

Though the number of children in custodial institutions is only a small fraction of those within the juvenile justice system, the violations they suffer are perhaps the most brutal manifestations of the system itself. The impact of custodial institutions on children in terms of violation of their very basic rights needs to be analysed in far greater depth. But what is clear is that the present juvenile justice law and policy system has a negative impact on the child in the institution.

The UNICEF study in Madhya Pradesh described the situation in homes in the following manner: 'Premises of the children were found to be unsuitable for the inmates. There was a lot of congestion. The environment outside "Homes" was uncongenial. At one place there was a liquor shop, where drunkards thronged throughout the day, which is bound to have an unwholesome effect on the inmates when they come out of their home for playing. There was more emphasis on the custody of the juveniles so that they do not have any chance of escape. These good and noble institutions are known as children's jails. In children's perception too, they are "children's jails".' (Sahni, 1998).



RECORDING JUVENILE JUSTICE

Memories of 1999 take us to the case of 14-year-old Chenchu Hansda, booked for killing an Australian missionary in Orissa. The boy was part of a mob that attacked the missionary on the grounds that he was spreading Christianity in the region, leading to conversion of Hindus to Christianity. Such ethnic violence and rioting have become a common phenomenon today and it is not just one Chenchu but several Chenchus who fall prey to ethnic fundamentalism, which is actually perpetuated by adults. Indeed, Dara Singh, the leader of the group that attacked the missionary then was not arrested even days after the incident, while Chenchu and another young child were amongst the first lot of persons apprehended by the police. In fact 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's case was disposed off soon on grounds of the best interest of the child, but the disposal meant detention for fourteen years. On the other hand, the trial of Dara Singh, the prime accused, is still pending in the court.

It is not surprising then to find 917 children under the age of 18 years booked for rioting in the year 1999, 324 booked for murder or for that matter 17 boys as young as 7–12 year-olds booked for rape. In fact in 2000, even a girl in the 7–12 year age category has been booked for rape. A closer look at the crime records produced by the National Crime Records Bureau (NCRB) on juveniles apprehended under IPC and SLL (Special and Local Laws) for the years 1999 and 2000 tell a sordid tale (See Appendix 1).

The crime analysis provided by NCRB is only in terms of the increase or decrease in crime rate and incidence and areas showing high incidence/rate of crime. What it fails to provide is the explanation(s) to crime figures such as those relating to the 7–12-year-olds, especially the increase in involvement of boys in crimes like rioting, molestation, robbery, burglary, arson, causing hurt etc. or involvement of 7–12 year old girls in rape cases, rioting, cruelty to women by their husband or relatives and dowry death.

Secondly, in the 16–18 years age category we only find information about crimes committed by girls since the Juvenile Justice law as it existed in 1999 and 2000 did not cover boys in this age group. Even though the new law that came into force in April 2001, lays down a common age definition of a juvenile, it seems that we shall have to wait at least another two years to be able to get crime records for the year 2001–2002, as the latest that are available at government bookstalls are dated three years back i.e. 1999, while the 2000 records are currently in print according to NCRB.

Between 1999 and 2000, the involvement of girls in the 16–18 years age category in certain crimes has increased, especially SLL crimes such as immoral trafficking (79 in 1999 and 84 in 2000), indecent representation of women (0 in 1999 and 25 in 2000) and crimes under Registration and Foreigners Act (0 in 1999 and 14 in 2000), clearly indicating increase in sexual violence against women. Amongst the IPC crimes the records show involvement of 134 girls aged 16–18 years in theft in 1999 (the number increasing to 182 in 2000); 459 were involved in causing hurt in 1999 (461 in 2000); and so on.

The NCRB recognises that ‘the under-aged or juveniles are characterised by low level of maturity, both in physical and in mental capabilities which distinguishes them from adults’ and that ‘they are, therefore, highly vulnerable groups to fall prey to temptations, inducement and mechanisations by vested groups to embark on the path of criminality’, and at the same time it produces data on juveniles ‘apprehended’ or ‘arrested’, as if they were hardened criminals!

The total number of IPC cases registered against juveniles in 1999 was 8,888, which has gone up to 9,267. Cases of juvenile delinquency reported under SLL crimes were 5,569 in 1999 and have gone down to 5,154 in 2000. Altogether therefore, there were 14,457 cases of IPC and SLL crimes by juveniles reported to the police in the year 1999 and 14,421 in 2000. In 2000, these cases involved 17,982 children as against 18,460 children in 1999, who were arrested and sent to the Court (we assume it was the juvenile court). The status of these juveniles, based on NCRB records is as follows:

- Children sent home after advice or admonition — 8.97% (1999) and 14.56% (2000).
- Children released on probation — 32.86% (1999) and 28.38% (2000). In the year 1999, 87.34% of children released on probation were placed under the care of parent/guardian and 12.66% under the care of a fit institution. In 2000, this percentage was 60.57% and 39.48% respectively, indicating placement of more children in institutional care in 2000 as against 1999 and an unfortunate decline in providing children other forms of alternative care.
- Children sent to special homes — 6.94% (1999) and 10.37% (2000).
- Children dealt with fine — 4.51% (1999) and 3.39% (2000).
- Children acquitted or their case has been disposed off (reason not mentioned) — 18.19% (1999) and 6.29% (2000).
- Children still facing trial — 28.53% (1999) and 37.01% (2000).

Indeed there are no government records to tell us that over one lakh children (minor boys and girls) are languishing in adult jails in India, as reported by a UN survey, ‘Of Rights and Rites’, Hindustan Times, 15 May 2002.

Clearly, only very selected statistics are made available to the public and with that too one is just left to interpret how and why children get ‘arrested’ for crimes not likely to be committed by them, how many are able to secure a bail, how many juvenile courts exist to deal with children in conflict with law, and most importantly, what happens to the human rights of these children.

Bharti Ali

HAQ:Centre for Child Rights

Welfare board wants policeman sacked for torturing 11-year-old in custody

Incident took place two years ago, but SHO, ACP ignored the case and fi

By Bhadra Sinha

NEW DELHI: The Juvenile Welfare Board has ordered the dismissal of a constable who had tortured an 11-year-old boy in the Paharganj police station two years ago.

The bench comprising chairman B.L. Kantroo, Rameswar Goel, Anita Pandit and J.P. Tiwari also directed the delinquent constable, Kishan Kumar to pay Rs 25,000 to victim.

The bench also added the constable's inhuman behaviour and cruel actions was "indirectly supported by the ACP, as he instead of giving direction to register the case for immediate action, treated it prejudicial for the smooth functioning of the police station."

On the ACP's submission that the SHO had been

hanging him on a wooden rod down-headed and with tied hands in front of his father who was forced to watch his son crying and suffering with severe pain. Yet no FIR could be registered till date nor any action was taken against the constable till date," said the board members.

BARBARIC COP

● On September 26, 1998 a constable tied the hands of a 11-year-old child, hung him upside-down and beat him mercilessly in presence of his father.

● "It is a matter of utmost concern that a policeman savagely inflicted cruelty on a child of tender age by hanging him on a wooden rod down-headed and with tied hands in front of his father who was forced to watch his son crying and suffering with severe pain. Yet no FIR could be registered till date nor any action was taken against the constable till date," said the board members.

When the board sought Constable Bhuwan's hands

UP cops thrash 15-yr-old, Delhi Police say it's OK

By Gaurav Kala

NEW DELHI: A 15-year-old boy was dragged out of his east Delhi home, pulled inside an unmarked jeep by a bunch of goons and then mercilessly thrashed and threatened at gun point on Monday evening, just days before he was due to appear for his 10th standard CBSE examinations.

Shockingly, the "goons" responsible for this incident turned out to be Uttar Pradesh policemen! But what made the incident even more shocking was that the Delhi Police maintained there were no grounds to register a case against the high-handed UP policemen.

"At about 6:00 pm, while Sankalp, who is preparing for his X boards examinations, looking out of the window, saw a group of men, with around six plainclothesmen, pulled up and two men

Sankalp's father, Shiv Dutt Bhardwaj.

Thinking that the men wanted some directions, Sankalp went close to them. "Suddenly, the two men caught hold of my hand and dragged me inside the jeep. I screamed for help, but before any of my family members or neighbours could react, the men drove off," Sankalp, still visibly scared, recalled.

Bhardwaj, who has been teaching mathematics for over two decades on hearing his son's cries for help, ran out of the house. He caught up with it. The jeep did not have a registration plate. "We feared the worst. I almost fainted. We made a frantic call to the Kalyanpuri area police and told them that Sankalp was kidnapped."

and the men kept hitting me. One of them pulled out a gun and pressed it against my face and said that he was going to kill me. I was very scared. I thought they were going to kill me. I kept pleading with them, asking them what I had done," said Sankalp.

Soon after Bhardwaj's distress call, the police control room flashed the description of the kidnappers' vehicle to all their vehicles and police stations. About an hour later, a PCR vehicle spotted the jeep in which Sankalp was being kidnapped near Ashram cross in south Delhi and intercepted it.

It was only then that the "kidnappers" reportedly identified themselves.

informed and asked to come to the police station.

"When we got there we found that Sankalp had been badly beaten. We were furious with the men who had beaten him and demanded that the Kalyanpuri police register a case against them. We were told that a case would be registered once Sankalp was medically examined," said Bhardwaj.

But when he returned from the hospital after the medical examination, he found no trace of the UP policemen.

"We are very scared and angry. How could they let those people go? Just because they were policemen, they can do anything and get away with it?" said Bhardwaj.

Mathura. The UP police had come here after they were tipped off that Munish was living at his uncle's house.

"Though the UP police did not find Munish, they picked up Sankalp for questioning. They later even made an entry in their daily diary entry at the Kalyanpuri police station, the senior officer said.

But what Delhi police officials do not admit is that the UP cops while carrying out this operation, "It is mandatory for police forces of other states to inform the local police when they

"Something is dead in each of the city's remand homes. That dead thing is hope," goes a saying in concerned circles

improved the adding that hired for six case will

Abuse in 'children's jails'

12-year-old Habib, an unlicensed porter at Bangalore Central Railway Station, says: 'At the observation home, I was stripped. There was a guard with crippled hand. He told us to call him "Daddy". He made us face a pool of water, and then he told us to look at all the pictures of Nehru, Gandhi on the wall. While we were doing that, he would walk behind us and kick us into the pool of cold water to make us clean. Later he would just make us stand while he kicked us and we could not move. When "Daddy" was tired of beating us, he gave the younger boys to the older boys — they get the boys of their choice. The older boys are called monitors and they beat and molest the younger boys. I was in the remand home for about three months and then let go.'

Human Rights Watch, 1997.

Indeed, although designated as children's homes, these are like jails and the caretakers, instead of providing the care and affection, behave like 'jail wardens'. Is it any wonder that we frequently come across reports of children running away from this daily monotony of a jail-like existence punctuated only by instances of abuse!

Research carried out by the Centre for Child and the Law (CCL) corroborates these stories. CCL's interactions with children who have been discharged from State institutions, as part of their Participatory Action Research, indicate that children were often made to kneel on salt, roll chapattis the whole day, cut grass in the sun (even where there is no grass), beaten, kept back from school and locked in a room (Focus Group Discussion - 15 July, 2000). One of the girls recalled: 'My friend and I were put in the lockup because we were asked not to go to school but work in the superintendent's house...and we refused. We were there for a whole week and were locked up with girls/women who had committed crimes or were mentally ill.' (Focus Group Discussion 14 July, 2001).

'There is no administrative machinery to deal with case of physical assaults and sexual abuse suffered by inmates of these Homes. There are complaints of physical beating of the children by the caretakers, and sometimes by older boys. It has been reported that in some Homes complaints have been received in respect of sexual abuse but there are no guidelines laid down to deal with such cases, and consequently, these cases remain unattended, or no further action is taken by authorities. Child abuse within institutions must be immediately investigated. The severity of the abuse is irrelevant as it is the duty of the institution to safeguard and protect the child's welfare at all times. It does not matter whether the abuse occurred accidentally or that mitigating circumstances were present.'

Krist Pereira vs The State of Maharashtra, Criminal Writ Petition No.110 of 1996.

Table 1
STATE-WISE INSTITUTIONS ESTABLISHED DURING 1999-2000 UNDER JUVENILE JUSTICE ACT

State/UT	Juvenile Homes	Observation Homes	Special Homes	After Care Homes	Total	Total Capacity
Andhra Pradesh	5	10	2	1	18	615
Arunachal Pradesh	1	1			2	NA
Assam	6	7	1	1	15	NA
Bihar	8	10	5	2	25	NA
Goa	2	2	2		6	NA
Gujarat	5	25	2	14	46	NA
Haryana	2	3	1	1	7	375
Himachal Pradesh	1		1		2	50
Jammu and Kashmir	Act is not applicable					
Karnataka	24	20	1	5	50	2854
Kerala	6	12	2		20	800
Madhya Pradesh	4	23	3	2	32	550
Maharashtra	130	55	4	2	191	15061
Manipur	2	1	1		4	NA
Meghalaya		1			1	40
Mizoram	1				1	100
Nagaland		1	1		2	29
Orissa	2	12			14	NA
Punjab	2	7	2	2	13	405
Rajasthan	4	2	1		7	375
Sikkim	1				1	25
Tamil Nadu	17	14	3	3	37	NA
Tripura	2				2	25
Uttar Pradesh	10	59	1		70	NA
West Bengal	19	7	4	6	36	NA
Andaman and Nicobar	Information has not been received					
Chandigarh	1	1	1		3	30
Dadra and Nagar Haveli	No institution is established					
Delhi	10	3	1	2	16	1269
Daman and Diu	No institution is established					
Lakshadweep	No information received					
Pondicherry	1	1	1		3	160
TOTAL	266	277	40	41	624	22763

Source: National Institute of Social Defence, New Delhi

These stories are not exceptions but rather part of a pattern of violence within custodial institutions, the existence of which is only now being acknowledged. Apart from this, there is everyday violation of the basic rights of childhood, right from the need for rest and leisure to the right to freedom of expression and participation. Childhood within a custodial institution leaves deep mental scars as what is ordinarily available to children becomes scarce, right from human contact with other people to freedom of movement.

EXPERTS COMMITTEE TO EXAMINE THE CONDITIONS IN CHILDCARE INSTITUTIONS

The Mumbai High Court appointed an Experts Committee to examine the conditions in childcare institutions in different parts of Maharashtra. The Experts Committee visited 21 institutions and submitted reports to the court. These reports indicated the distressing and pathetic conditions prevailing in the institutions visited. The Mumbai High Court has constituted a permanent State Committee to monitor the functioning of childcare institutions and the juvenile justice system in Maharashtra. It stated:

‘After going through the reports, we are satisfied that the working of the Homes in the state is totally unsatisfactory. We are constrained to observe that the juveniles are housed in the Homes without any sense of improving their lot. The prevailing conditions disclose that the Homes only provide some shelter and nothing else. There is hardly any attempt to educate and rehabilitate juveniles by providing them proper schooling or modern vocational training. We feel that urgent steps are required to improve the condition of various Homes in the state. In the past also this Court has noted with anguish the pathetic conditions in the Homes and has issued directions from time to time...’

Maharukh Adenwala, 2000.

STATE’S RESPONSE

The State’s response can be gauged from the legislative, executive and judicial interventions in the situation of the marginalised child. If these conform to the international commitments undertaken by India, they would ideally ensure that the basic rights of the child are honoured by the juvenile justice system. The most important of these, which is legally binding, is the Convention on the Rights of the Child (CRC) ratified in 1992.

Legislative Interventions

The Union Parliament passed the first central legislation on Juvenile Justice in 1986, thereby providing a uniform law on Juvenile Justice for the entire country. Before this, states had their own legislations (called Children’s Acts) that widely varied in respect of treatment to juveniles. The law on juvenile justice provoked a lot of concern, in human rights circles, pertaining particularly to the way juveniles were treated in detention centres designated as special homes and juvenile homes.

Following closer international attention to the issue of juvenile justice in the late nineties, the issue moved to the centrestage even in domestic circles and a

Govt plans to amend Juvenile Justice Act

By Rakesh Bhatnagar
The Times of India News Service

NEW DELHI: Though the Union government plans to amend the Juvenile Justice Act 1986 to protect the interest of the child, it does not intend to redefine the term "juvenile" to remove the "confusion" over applicability of the legislation in the criminal trials.

Union Social Justice

nition of a delinquent juvenile for availing the provisions of the Act.

It asked who should be governed by the Act and whether a person who had committed an offence when he or she was a minor (up to 16 years for boy and 18 years for girl) would be entitled to the safeguards under the Act even though he or she had attained major...

Das was remanded to a juvenile home as he claimed to be below 16 years. However, a medical board

CONFUSION GALORE

Govt plans to amend the Juvenile Justice Act so that the child is treated differently.

of occurrence". Therefore, he was not required to be tried by a juvenile court. The high court upheld the order.

The Supreme Court dismissed Das' appeal. It said the age of an accused at the time of...

Juvenile age relaxation sparks debate

Meenal Dubey
New Delhi, April 16

THE EXTENSION of the age-limit of juveniles to 18 years following the new amendment of the Juvenile Justice Act has sparked off a debate. They contend that since most juveniles are easily released on bail, this might lead to further rise in the crime rate.

According to police figures, 50 cases involving juveniles were reported in 2000 as compared to 44 cases

in 1999. This year, in just three and half months, 35 cases have been reported from only one district, and the other eight districts are yet to compile their figures.

"The crime rate will certainly increase," said Joint Commissioner New Delhi district Amod Kanth. "But the age had to be increased for uniformity because as per the previous law, the age for juvenile girls was 18 years, and while that for boys 16 years."

However, legal experts air

contrary views. "It is paradoxical because in our law the same 18-year-old is deemed to have discretion to exercise his franchise," said VP Sharma, president, Tis Hazari Bar Association. Thanks to the new amendment, a juvenile might also believe that he is above the law. For instance, a minor who was drugged and molested by a juvenile in Janakpuri refuses to go to school ever since her assailant has been released on bail.

Eminent lawyer KTS Tul-

si said, "The JJ Act seeks to reform a juvenile and not have him exposed to criminal influences, and to be able to strike a balance between justice and reform."

"This is based on the assumption that juveniles are not hardened criminals and must be reformed. But the legal system has to evolve a system for protecting the victim too by ensuring that the accused is given psychiatric help and is not allowed to frighten the victim," he added.

(Concluded)

number of consultations were held both nationally and regionally.⁵ A growing focus combined with the pressure on the government to submit a Country Report to the Committee on the Rights of the Child outlining concrete achievements, finally inspired the Ministry for Social Justice and Empowerment to go in for a new law, the Juvenile Justice (Care and Protection of Children) Act, 2000.

The draft report indicates as much. The report notes: 'The Juvenile Justice (Care and Protection of Children) Act, 2000 does in fact lay down a uniform legal framework to deal with the problem of social maladjustment for the country as a whole... Incorporating into its fold not only some of the major provisions and clauses of the Indian Constitution and National Policy for Children but also universally agreed principles and standards for the protection of juveniles such as the UN Standard Minimum Rules for the administration of juvenile justice and the CRC as explicitly stated in the Act itself. (DWCD, GOI, 2001). Further the Preamble to the 2000 enactment also clearly indicates that the legislation is enacted bearing in mind the CRC, Beijing Rules, and UN Rules for Juveniles Deprived of their liberty and all other relevant international instruments.'⁶

Do our laws conform to these international standards? If it were so, then the pervasive violation documented above would be addressed at least through these laws. But the reality is that even today there are children aged 16-18 in adult jails, in violation of the 2000 Act, and in Beggars Homes (under state vagrancy statutes) throughout the country. This area needs to be studied more extensively to know how this entire group of children is being treated.

⁵ The National Consultation held by NIPCCD on 'The Juvenile Justice System and the Rights of the Child', 1999, the National Consultation held by CCL on 'better implementation of the juvenile justice system', 1999 and the National Consultation on Juvenile Justice held by CCL in 1999. There were also regional consultations held in Madras, Hyderabad and Patna. Apart from this UNICEF sponsored a number of studies on the implementation of the juvenile justice system in various states like Maharashtra, Madhya Pradesh, Delhi and Orissa. What was important about this developing body of research that it focused on the problems faced by children in the implementation of the present JJ Act very powerfully. The human rights violations, which occurred within the system, were put under the spotlight. However the empirical work had not yet stimulated critical thinking on the very conceptual frameworks of juvenile justice.

⁶ Juvenile Justice (Care and Protection of Children) Act, 2000.

A Critical Look at the 2000 Act

An examination of the Act shows that it was not based on any empathetic and systematic formulation of a policy regarding children in conflict with the law or children in need of care and protection. The ad hoc nature of a possible policy framework becomes clear if we look at it systematically with respect to two groups: a) children in conflict with law, and b) children in need of care and protection.

Points Applicable to Both these Groups Age

The earlier law defined juvenile as a child who had not completed the age of 16 in the case of boys, and 18 in the case of girls. The new Act does away with the gender discrimination, and defines a child as anyone under the age of 18, as per the CRC standard.

Separation of Two Groups

The old Act separated the two groups of children, with the Juvenile Welfare Board and the Juvenile Home meant for the neglected juvenile and the Juvenile Court and Special Home meant for the delinquent juvenile. But this was only a partial separation as pending inquiry, both groups were kept in an Observation Home together. Thus often children who had committed serious offences were kept in the same institution as children whose only crime was that they were neglected children. The new Act ensures a complete separation with the juveniles in conflict with the law kept in the observation home and the other children sent directly to the juvenile home. Still, there is no change in the custodial nature of the entire juvenile justice system as the law treats both categories by prescribing custodial care as the only option pending disposal and as one of the options post adjudication.

Role of the Police

A serious attempt at decriminalising the child in need of care and protection requires intervention at every level starting from the police. Police in India are trained to deal with criminal offences and are thus used to treating anybody 'apprehended' as one, irrespective of age or gender. The new Act continues to empower the police to come in contact with both categories of children, neglected and delinquent. In fact, the police have more power over the former as they are now empowered to inquire into the situation of the child (Sec 33). In effect, there is a deeper level of re-criminalisation of the apprehended child, rather than decriminalisation.

In a move to make the law more child-friendly, the Act envisages a shift in composition of the body to deal with both categories of children through the creation of a Special Juvenile Police Unit (SJPU). To upgrade the police treatment of juveniles/children, at least one police officer will be designated as 'Juvenile or Child Welfare Officer' in every police station.

HOW JUST IS JUVENILE JUSTICE?

Law with them, bad kids give cops the slip

Neeta Sharma
New Delhi, July 25

THE CITY police are at their wits' end trying to figure out how to handle a gang of burglars, the average age of whose members is between 6 and 12. They were arrested by the south-west district police on Wednesday.

In fact, one of them cannot even be arrested since he is just six, despite the accused having admitted to committing several burglaries.

The police officials contend that their hands are tied as the Juvenile Justice Act (JJA) states that no charges can be brought against anyone less than seven years of age.

The gang, which has been involved in several cases of burglary in Nalagarh and Kapashera areas, has a unique modus operandi. The tiny hands of children come in handy in gaining access to the house either through a small ventilator or through a narrow grill to open the latch.

"Even the police officials investigating the case would be foxed since the main door of the house was often found to be locked," said a senior police officer.

In one such case in Munirka DDA flats, the criminals had used a child to enter

Children in crime

Theft and burglary:	264
Murder:	9
Attempt to murder:	13
Kidnapping:	9
Molestation:	5

(No. of juvenile criminals arrested in 2000)

ter the house through a ventilator. The child after gaining access to the house opened the back door of the flat for his associates. Similar cases had come to light in Sarojini Nagar and Vinay Nagar areas.

The problem is not restricted to burglary cases only. The police found themselves completely helpless when a six-year-old boy committed a murder in Mayapuri area a few months ago. Earlier, the child had killed another boy. The police could not arrest the child, since he was less than seven.

Senior police officials agree that the JJA often acts as a major hindrance in checking crime. "Mostly kids are involved in cases of robbery or burglary. If they are above seven they are sent to a remand home. In most of the cases it is difficult to press charges against them," a police officer said.

Delhi Police get lessons from supercop Gill

HT Correspondent
New Delhi, July 25

K.P.S. GILL, the man who tamed insurgency in Punjab and helped control communal riots in Gujarat, was in the city on Thursday on invitation to give Delhi Police personnel lessons on how to tackle terrorism.

Gill and Police Commissioner R.S. Gupta are old colleagues. When Gill was DG Police in Punjab, Gupta was additional DG.

Sharing his experiences in handling terrorism, Gill said that the basic function of the police is to perform without waiting for instructions from the top.

"Officers get carried away by the perceptions of political masters. They read what they feel would please their political bosses and act accordingly. But this is not needed. One has to act according to the prevailing situation," Gill said.

Stressing ground-level policing, Gill said he had observed that even subordinate officers acted in a similar fashion to please their seniors.

Referring to Gujarat, he said the police were influenced by the prevailing atmosphere. "Initially the police there was indifferent to the communal tension. Lot of lives could have been saved if the police acted on time," he added.

Points Specific to Children in Conflict with the Law

Adjudicating Authority

The adjudicating authority has been re-designated as the Juvenile Justice Board, instead of the Juvenile Court, to remove the stigma associated with appearing before a court like adult criminals. The composition of the panel has remained almost unchanged. Under the old law the adjudicating authority was a Magistrate with a panel of two social workers to assist. The difference now is that one of the social workers must be a woman. Also, the magistrate must have special knowledge or training in child psychology or child welfare, and the social workers active experience in health, education or children's welfare activities of at least seven years. This is one of the more significant changes, as now the space exists for bringing about a change in the nature of the inquiry from intention to motive. The primary inquiry of whether the child did commit the offence as mandated by a magistrate's training could now be enhanced by a social worker's inquiry, which could focus in on why the child committed the offence, and how does one redress the same. This is an important step towards decriminalising the administration of juvenile justice, provided the rules work towards it.

Legal Protection

The protections under the old Act continue as follows:

- Whether the juvenile commits a bailable or non-bailable offence, the child shall be released on bail with or without surety. A juvenile can be detained only if there is reasonable ground for believing that the release is likely to bring him/her into association with any known criminal or expose him/her to moral, physical or psychological danger or that his/her release would defeat the ends of justice.
- Detention can only be in observation home and not in prison or police station. The bail provisions for young offenders are far more liberal than those applicable under the Criminal Procedure Code.
- The Board has the discretionary power to send the child home after admonition or advice, order the juvenile to perform community service, release the child on probation for good conduct, etc. The only controversial part is the Board's power to send the child to a special home for a minimum period of not less than two years for a child who is over 17 and less than 18 and for any other juvenile till he ceases to be one. There is a proviso under which the child could reduce the period of stay depending upon the nature of offence and circumstances. Still, this is a clear contravention of Article 37(b) of the CRC, which notes that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of the last resort and for the shortest appropriate period of time.
- The Act clearly prohibits sentencing a child to death or life imprisonment or committing to prison in default of payment of fine or furnishing of security.
- For a juvenile sentenced under the Act, there is a clear mandate that such a juvenile shall not suffer any disqualification attaching to a conviction of an offence under the law. Further, after a reasonable period of time the Board is enjoined to remove the records.
- The Act stipulates that there shall be no joint trial of a juvenile with a non-jvenile.



- The Act protects the privacy of the child by mandating that no report by newspaper etc. shall disclose the name, address or school or other particulars leading to the identification of the juvenile nor shall any picture be published.

Points Specific to Child in Need of Care and Protection

Expansion of Category

The category of children in need of care and protection has been expanded to include victims of armed conflict, natural calamity, civil commotion, and one is found vulnerable and likely to be inducted into drug abuse, etc. This expansion is questionable as the system still remains custodial in nature and just serves to bring more children within a criminal justice framework.

Custodial Framework

The framework of the law remains within the criminal justice system as police still has the power to contact a child and produce him before the Committee. Here too, their powers have been expanded: they have been empowered to hold an inquiry regarding the child. Further, if the child is sent to a Juvenile Home, then this reinforces the custodial nature of the institution. At such homes, the child is deprived of her or his liberty. In most states, if a child escapes, the official in charge is suspended forthwith, so the main objective of the personnel in the Homes is to ensure that the child does not escape, and they are often locked up and 'jailed' to this end. Little effort goes into making these places real 'homes' for children.

Restoration as an Option

It is here that the new Act makes an innovation. Restoration has been conceptualised as restoration to parents, adopted parents or foster parents (Sec 39). This being the crux, the law then outlines four options for children in juvenile homes and special homes which include adoption, foster care, sponsorship and after care. While the aim of minimising the stay of the child at such homes is laudable, restoration may not be the only solution. For example, in the case of sexual abuse, the solution will mean a return to the problem. It will be the same with children on the street or in prostitution. The other concern is that no safeguards have been built into the procedures regulating adoption and foster care in the Act, leaving it entirely to the discretion of states that have the power to decide the issues.



2000 Act in the Context of International Standards

In spite of changes and continuing protections, the law falls short of international obligations undertaken by the Indian State, both in treaties and declarations. In its preamble, the Act explicitly invokes three international obligations: the CRC, the UN Rules for Juveniles Deprived of their Liberty, 1985 and the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1990. But it neither incorporates nor complies with these standards.

Convention on the Rights of the Child, 1989

This is the most ratified human rights treaty in history.⁷ It is structured to encompass civil, political and socio-economic rights. State parties must undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the CRC, whereas the social, economic and cultural rights are subject to the principle of progressive realisation.⁸

Basic Principles underlying the Convention

The Committee on the Rights of the Child has identified four general principles referred to as the 'soul of the treaty'. These are essential to understanding the spirit of the convention and are in Article 2 (non-discrimination), Article 3 (best interest), Article 12 (right to participate) and Article 6 (right to life). The present law needs to be interpreted in the light of these.

Best Interest Principle

Historically, the best interest principle has always been at the heart of a protectionist approach. Decision-makers, right from judges to administrative authorities, have always determined the best interest of the child using their values and belief system. Therefore it has been controversial, especially when it comes to practices that enjoy cultural legitimacy such as inflicting corporal punishment on a child. The content of the best interest principle either depends on the belief systems of the society in which it is sought to be applied or can be understood in the light of what the child perceives to be in his or her best interest.⁹

One interesting attempt has been to reconcile two seemingly opposite principles — the right to participation and the best interest principle. Can the child determine her own best interest as opposed to having an adult standard imposed on her? John Ekeelar (1992–4) essays an imaginative attempt at interpreting best interest through the lens of participation. Best interest is determined by the child using the principle of dynamic self-determination. This would mean that the best interest principle must be read along with Article 12 (Right to Participation). This is particularly important in the case of children who are institutionalised as the very fact of institutionalisation is often justified by reference to the fact that institutionalisation is in the child's best interest.

Right to Participation

The child has the right to 'express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'. This is one of the central provisions in the CRC giving a new interpretation of children's rights. Historically, the stress of international child rights law has been on protection from abuse and neglect, homelessness, etc. The CRC first introduced the notion of the child as rights holder in her own right entitled to participate in decisions that affect her.

⁷ Apart from the United States and Somalia every other country in the world has ratified it.

⁸ Article 4.

⁹ The argument put forward is that to determine what the best interest is one needs to take into account the belief systems on what constitutes the best interest of the child as well as through allowing the child's deeper feelings as to what he or she wants to do with his or her life to play a role as to determining what is in his or her best interest.

This fundamental principle has completely been ignored in the 2000 Act. If an enactment were to implement Article 12, it would mean a radical overhaul of existing ways of interacting with children. At every stage in the interface between the child and the juvenile justice system, space should be created for expression of the child's opinion. So right from the point of 'arrest', to adjudication before the competent authority, assessment by the authority, placement to everyday living within the institutions, the child's opinion should not only be heard but also given due weight in accordance with her age and maturity.

Non-Discrimination

Article 2 mandates that 'State Parties shall respect and ensure the rights set forth in the present Convention without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.' This would strengthen the protection given under the Constitution¹⁰ as it includes other categories of prohibited discrimination such as discrimination on the basis of disability, property, birth, language, political or other opinion, colour etc. A non-discrimination clause of this nature is absent in the Act.

Right to Life

Article 6 mandates that 'Every child has the inherent right to life'. This principle has once again not been explicitly or implicitly invoked by the Act. This is an important principle for a custodial institution where quality of life both in terms of food, living conditions and additional services to meet needs of children with special needs are serious considerations.

Specific Protections in the CRC

Apart from these, Articles 37 and 40 are specifically aimed at protecting the rights of the child who come in conflict with the law. The principle that capital punishment and imprisonment cannot be imposed for offences committed by children¹¹ and the principle that every child deprived of liberty shall be separated from adults¹² have been incorporated in the Act.¹³ But the other principles have simply been ignored. They are:

- Article 37(a): 'No child shall be subject to torture or cruel, inhuman or degrading treatment.' This is a striking omission, as some international human rights groups have pointed out, since there are children subjected to torture, cruel, inhuman and degrading treatment. (Human Rights Watch.1997).
- Article 37(b): 'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of the last resort and for the shortest appropriate period of time.' The Act (2000) prescribes a minimum period of detention for those between 17 and 18 and detention till they reach the age

¹⁰ Article 14: 'The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India and Article 15 of the Constitution 'The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.'

¹¹ Article 37 (a)

¹² Article 37 (c)

¹³ Sec 16

of 18 for all others.¹⁴ Even children in need of care and protection are deprived of liberty and there is no maximum period of detention. Sec 33 provides that if the 'said child has no family or ostensible support, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of 18 years'. While there is a shift from the old Act insofar as it allows the child to remain in the home when there is no family or ostensible support or when no other suitable rehabilitation is possible, it still violates the clear mandate that for all children, (regardless of whether other options have been found for them) detention shall be used only as a measure of the last resort and for the shortest appropriate period of time. Instead, it legitimises detention till the age of 18, leaving it entirely in the hands of the Child Welfare Committee to decide the time of release.

■ Article 37(c): 'Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of a person of his or her age...' The law needs to not only incorporate the general principle, but also mandate how the child should be treated so as to safeguard his or her dignity and how his or her special needs should be catered to.

■ Article 37(c): 'The child shall have the right to maintain contact with his or her family through correspondence and visits save in exceptional circumstances.' This rule should have been mandatory but has been left to the discretion of the States leaving scope for enormous violation. For example, look at the Karnataka Rules (under the 1986 Act).

Rule 23(1): 'The parents and near relatives of the inmates shall be allowed to visit an inmate once a month or in special cases more frequently at the discretion of the Superintendent.'

Rule 23(2): 'The receipt of letter by the inmates of the institution shall not be restricted and they shall have freedom to write as many letters as they like at all reasonable times. However, the institution shall ensure that where parents, guardians or relatives are known at least one letter is written by the inmate every week for which postage shall be provided.'

Rule 23(3): 'The Superintendent may peruse any letter written by or to any inmate, and may having regard to the inmate's health or well-being, if he considers it necessary to refuse to deliver or issue the letter, destroy the same after recording his reasons in a book maintained for the purpose.'

Clearly, not only these rules restrict the family's access to the child but also violates the child's right to maintain contact, by even destroying correspondence. Thus these violates Article 37(c) as well as Article 16 which protects the child's right to privacy.¹⁵

■ Article 37(d): 'Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.' The broad-ranging nature of this provision, as well as the

¹⁴ Sec 15(g) of the JJ Act 2000

¹⁵ Article 16 notes 'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, or to unlawful attacks on his or her honour or reputation.'

seriousness with which it treats deprivation of liberty and the safeguards built in should be noted. Though the Act (2000) prescribes a maximum period of four months for the completion of inquiry,¹⁶ this mandate is often violated in practice.¹⁷

■ Article 40 obliges the state to incorporate basic safeguards for all those who come in contact with the criminal justice system.¹⁸ None of these safeguards have been explicitly incorporated into the Act, leaving it in the hands of the states, despite the fact that these do apply to the child as they form both part of the Criminal Procedure Code and the Constitution of India.^{19, 20} The States can do away with the protections guaranteed by the CrPC while making rules. The South African system, where the rights of children who come in conflict with the penal system form a part of both the Constitution as well as the proposed Juvenile Justice Bill, is a valuable lesson for us.²¹

■ Article 40(3): 'The establishment of a minimum age below which children shall be presumed not to have the capacity to violate the penal law.' This provision exists in the notion of *doli incapax* under Sec 82 of the Indian Penal Code (IPC): 'Nothing is an offence, which is done by a child under seven years of age.' Sec 83 mandates that nothing is an offence, which is done by a child above seven and below 12 as long as the child has not 'attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion'. If Article 40 (3) is read along with the principle of best interests of the child and the principle enunciated in the Beijing Rules,²² then not only should the minimum age have been fixed but it should have been fixed much higher than seven years.

■ Article 40(3)b: 'Whenever appropriate and desirable measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.' The constitution of a Juvenile Justice Board with two social workers having co-equal powers doesn't conform to this provision, as the Board would still inquire into the situation instead of diverting the child away from the system and completely avoiding the possibility of the child being stigmatised.

¹⁶ Sec 14 and Sec 33(2) of the JJ Act 2000.

¹⁷ Meehan, Abraham, 'A study of the Juvenile Justice System in Bangalore', on file with the CCL.

¹⁸ Article 40 (2)b Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proven guilty by law.
- (ii) To be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation or presentation of his or her defence.
- (iii) To have the matter determined without delay by a competent, independent and impartial authority...
- (iv) Not to be compelled to give testimony or confess guilt
- (v) If considered to have infringed the penal law, to have this decision ...by a higher competent body.
- (vi) To have the free assistance of an interpreter, if the child cannot understand or speak the language used.
- (vii) To have his or her privacy fully respected at all stages of the proceedings

¹⁹ See Article 20 and Article 22 of the Constitution and Sec 57 (prescribes maximum period of detention as 24 hours), Sec 304 (legal aid), Sec 318 (procedure when accused does not understand proceedings) of the CrPC

²⁰ Sec 14 of the JJ Act 2000.

²¹ South African Law Commission, Juvenile Justice, discussion paper 79, www.law.wits.ac.za

²² Rule 4.1 which notes, 'In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.'

■ Article 40(4): 'A variety of dispositions such as care, guidance and supervision orders...and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to the circumstances and to the offence.' Though Sec 15 of the Act 2000 does provide a variety of dispositional options, these do not operate within the CRC framework where detention is regarded as a deprivation of liberty. Instead, the discretion lies with the authority to decide on any of the dispositional options.

Clearly, the CRC has not been complied with, in terms of either general principles or specific protections given to children. It almost seems that the Act 2000 is a pre-CRC enactment in terms of its grasp (or lack of it) of CRC principles.

Beijing Rules (1985)

The JJ Act 1986 was enacted in pursuance of these Rules but failed to reflect their spirit. In 2000, the State had a chance to move from rhetoric to reality, but it was not taken.

The Beijing Rules were prior to the CRC. Therefore when the CRC came into force, some of the non-binding and recommendatory standard minimum rules were incorporated into it.²³ But some fundamental concepts of Beijing Rules, which would have served as useful guidelines for laws on juvenile justice, have still not been incorporated.

The guidelines lay out general principles and specific rules for investigation and prosecution, adjudication and disposition, non-institutional treatment and institutional treatment. We will go into two crucial concepts which underpin the Beijing Rules and which have been ignored in the Act.

Concept of Diversion

This works through Rule 11.²⁴ The fundamental premise behind 'diversion' is that if children are processed through the criminal justice system, it results in the stigma of criminality and amplifies criminality of the child. Hence any intervention must aim at minimising the contact with the criminal justice system.²⁵ Rule 11.2 empowers police, prosecution and other authorities to divert the child away from the system. But the Act 2000 does not permit formal diversion by police.

²³ Art37 and Article 40 incorporate many of the protections embodied in the Beijing Rules.

²⁴ 11.1 Consideration should be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings ...in accordance with the principles laid down in these rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes such as temporary supervision and guidance restitution and compensation of victims.

²⁵ Diversion as a concept has been operationalised in other jurisdictions like New Zealand, South Africa, UK and Australia. The earliest stage of diversion is by the police officer who delivers either a formal caution (in the police station in the presence of parents or guardians) or and informal caution (at the scene of the offence by the officer investigating the crime. The guidelines governing caution are either laid down in the statutory framework (South Africa) or are issued by the police (National Cautioning Guidelines, UK). After this, the prosecution and the magistrate are also empowered to divert the child.

Concept of Detention as a Serious Punishment

The philosophy underlying the rules is that detention is a serious punishment inflicted upon juveniles, and should therefore be imposed only as a measure of the last resort and for the shortest possible period of time.²⁶ This human rights philosophy does not find a place in the new Act, which doesn't structure authorities so as to ensure that deprivation of liberty is viewed as a serious infringement instead of necessary for the care of the child.

UN Rules for Juveniles

Deprived of their Liberty (JDL) (1990)

The JDL Rules are applicable to all under-18 persons deprived of their liberty but are recommendatory in nature. Thus they recognise that the philosophical notion of best interest cannot be interpreted to mean deprivation of liberty and in effect provide detailed and elaborate human rights standards both on arrest and within the institution²⁷ to be made available to juvenile justice personnel in their national languages.²⁸ They also mandate the State to incorporate the rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation in case of injuries inflicted on juveniles.²⁹

The JDL Rules are seriously violated both by the present law and the Karnataka Rules. To take a few examples:

■ When individuals enter the Juvenile home as per Rule 11(3) of the Karnataka Rules, the money, valuables and other articles found with him or on his person on search and inspection and taken possession shall be entered in the Register. But the JDL clearly notes, "The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and have adequate storage facilities for them should be fully recognised and totally respected."

■ In one of the most important areas of violation³⁰ — disciplinary proceedings — neither the Act nor the Karnataka Rules have anything to say. By contrast, JDL Rule 67 notes, 'All disciplinary measures constituting cruel, inhuman and degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment

²⁶ See Rule 17.1(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.

Rule 17.1(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences unless there is no other appropriate response.

Rule 19.1 The placement of a juvenile in an institution shall always be a disposition of the last resort and for the minimum unless there is no other appropriate response.

²⁷ The Rules are divided under the following heads (a) Fundamental perspective (b) Scope and application of the rules (c) Juveniles under arrest or awaiting trial (d) The management of juvenile facilities (e) Personal

²⁸ Rule 6.

²⁹ Rule 7.

³⁰ The Centre for Child and the Law's interactions with children who have been discharged from state institutions, as part of the Participatory Action Research amply indicate these abuses.

Focus Group Discussion – 15/07/2000 with children revealed that they were often made to kneel on salt, roll chapattis the whole day, cut grass in the sun (even where there is no grass), beating, kept back from school and locked in a room.

Focus Group Discussion – 14/01/01 – In a session of sharing, one of the girls recalled:

'My friend and I were put in the lock-up because we were asked not to go to school but work in the superintendent's house...and we refused. We were there for a whole week and were locked up with girls/women who had committed crimes or were mentally ill.'

that may compromise the physical or mental health of the juvenile concerned. The reduction in diet and the restriction or denial of contact with the family members should also be prohibited. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction.' Collective sanctions should be prohibited. Rule 70 notes, 'No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile shall be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority.'

Attempts to Remedy Some of the Defects in the Act 2000

After the Act was passed, activists working on the issue of juvenile justice were confronted with a dilemma. On the one hand legislation was thoroughly unsatisfactory and on the other hand how was one to pursue a constructive agenda? So the legislation was publicly exposed as being thoroughly inadequate in a consultation in New Delhi,³¹ while at the same time, efforts were made to remedy some of the defects in the statute through the process of rule-making. The Draft Rules prepared by the Centre for Child and the Law in collaboration with NGOs and the state governments, attempt to do away with the custodial rules and introduce human rights standards.

One hopes that the various state governments will at least notify rules, which are more child-friendly to provide some minimum normative framework for resolving issues from a child rights perspective.

31 juvenile home inmates flee

HT Correspondent
Bhopal, July 23

THIRTY-ONE inmates escaped from a juvenile home here on Tuesday morning after attacking the home's caretaker and guard. Twelve of them were later nabbed from the Habibganj railway station.

In this juvenile home, 'destitute' children are forced to stay with those who have committed heinous crimes such as rape, murder and dacoities. Some of the inmates are as young as three years.

According to the 'destitute' children, they had on Tuesday complained to the

warden about the inhuman conditions in the home.

"Last night, the caretaker and other staff members beat us with leather belts and said that if we complain again the punishment would be doubled," a destitute at the Jehangirabad police station said. "The criminals (inmates) took pity on us and asked us to run away," he added.

"At 6.30 a.m. when caretaker Ashok Raghuvanshi came to the room of Mangal, a murder-accused, the latter hit him with a gas cylinder. After he fell unconscious, they snatched the keys from the

guard," another destitute said.

At the juvenile home, the staff refused to talk about the allegations. They only said that Mangal and Raju, who had attacked the caretaker and the guard, were hardened criminals. "Because of lack of adequate security and manpower, the two used to bully the younger lot and misbehave with the staff here," a staffer said on condition of anonymity.

The police have registered cases, including one for attempt to murder, against the escapees and efforts are on to trace those still missing.

³¹ National Consultation on Justice for Children, 18th and 19th March 2001, New Delhi.

J'ACCUSE: INDIA'S JUVENILE JUSTICE LAW VIS-À-VIS OTHER COUNTRIES

Even though no country in the world can claim to have a perfect system for the administration of juvenile justice, matching India's record against other nations' holds up the mirror to a very inadequate system.

Legislation

The record on legislation is patchy throughout the world. The most comprehensive exercise undertaken in recent years is the South Africa Child Justice Bill. In both scope as well as the completeness of procedure this Bill sets a standard for all other countries to follow.

There are two crucial issues that need to be taken into consideration in assessing the value of a new legislation on the administration of juvenile justice in a country:

First, the conceptual framework, or how much of the values and of restorative justice, the best interests of the child and the participation of children are taken into account in the drafting of the document;

Second, the process through which the Bill is actually drafted — who is consulted, what sort of inputs are sought, how much attention is given to international good practices etc.

If the South Africa experience comes at the top end of the spectrum where both concept and processes are of the highest standing then India's experience must be ranked towards the bottom. This may sound a very harsh assessment of an exercise undertaken to help children but the fact remains that the Indian Act does not take key issues into account and is unable to help children who come into conflict with the law.

One of the main shortcomings relates to the Age of Criminal Responsibility (ACR). Setting a high age of criminal responsibility may not be a guarantee of better treatment of children but it does have the effect of forcing the State to look to alternatives to the formal criminal justice system. The CRC has consistently argued that the reasonable age of criminal responsibility should not be lower than 10 and preferably as high as possible.

A study by the Florence-based International Child Development Centre (ICDC) shows global variations in the ACR and points out that countries with a low age of criminal responsibility such as Scotland have highly developed systems for dealing with children outside of the formal criminal justice system. Another aspect of good practice followed internationally but absent in India is the abolition of status offences for the best interests of the child and to ensure that mechanisms other than the formal criminal justice system are used to deal with socio-economic issues such as homelessness, street living, etc. The South African Bill explicitly abolished status offences but the Indian Act does not.

Alternatives

The second way to assess how a juvenile justice system is performing is to look at the use of community-based conflict resolution and rehabilitation mechanisms. International good practice suggests that children should as far as possible be kept away from the formal criminal justice system. The deemed offences by children should be dealt with through community-based structures and diversion programmes as also the use of trained personnel in social work, counselling, mediation, etc.

Community-based rehabilitation involves at least one or a combination of the following:

- Use of traditional and informal systems where these exist and conform to human rights standards.
- Diversion programmes using social and community structures to help the child come to terms with the wrong done and provide a chance for healing and reconciliation.

Traditional and Informal Systems

The literature on this is both rich and complex, and the jury is still out on the viability of implementing such systems. They have many pluses, like ease of access, local languages, community involvement, simple procedures, giving the victim a voice, helping to reconcile, etc. The minuses are equally clear, including the fact that traditional structures are patriarchal, oppressive, gender-biased, punitive, dominated by elite groups, etc.

Though it is tough to recommend a single system, Indian traditions provide opportunity for further explorations of this area as a suitable means of providing good justice to children but only where such justice can conform to international law. For example, there has been such revival among Maoris in New Zealand and Native Indians in Canada and the USA. India could play a significant role in this debate but to date has not shown any awareness of the conceptual and practical issues involved.

Diversion Programmes

The administration of juvenile justice is weak with regard to the use of diversion programmes. This is a straightforward area of implementation in terms of accepted good practice and there are many examples. Diversion programmes are almost always based on restorative principles and often use some form of modified traditional practice. The New Zealand model of family group conferencing and victim-offender reconciliation programmes takes as its starting point the need for restoration and reconciliation rather than retribution. Resources have been invested to put in place structures involving social workers, mediators and counsellors as well as families and to bring victim and offender together in a programme designed to help the healing process.

The Ugandan Child Statute of 1996 lays great emphasis on diversion and empowers police to do so while providing the necessary powers for local council courts to listen to cases and deliver sentences ranging from compensation to admonishments etc. The pre-trial community service programmes in South Africa present another example of diversion, even while ensuring the offender makes some reparation to the community for the harm done by him/her.

Mediation programmes set up in the UK involve the police asking offenders if they would be willing to undergo a programme of mediation and on assent, turning the offender over to mediation clinics for follow-up of the case. Those involved in such work include trained mediators, social workers and the victim and the offender as well as, sometimes, a more extended group of people including family and friends.

Such diversion programmes require investments by the State in terms of resources, laws, training, and a change in approach and must take into account the fact that administration of juvenile justice is better served within the community and through the involvement of social welfare agencies.

Formal Justice System Reform

Even on this, international guidelines provide clear and comprehensive models. Training for the police, and for personnel working within the judicial system, establishment of juvenile courts, a range of alternative sentencing options and the use of custody as a measure of last resort are all important features of a well-functioning system. India's record in all these areas is patchy at best:

- No national programme for training police in child justice issues;
- Conditions in police cells are a matter of grave concern;
- Access to legal aid and lawyers is not always forthcoming;
- Detention on remand is a huge problem;
- Youth courts do not exist;
- There are few specially trained judicial personnel for dealing with children's cases;
- There is no range of non-custodial sentencing options in the law;
- Conditions in custody can be extremely harsh.

Children in Custody

India's record in terms of numbers of children actually sent to prison is much better than in many other countries around the world. It's much smaller than many, like the US, China, Russia and West European countries such as the UK etc. Of course the record of treatment in custody varies enormously from state to state and conditions in detention do not always meet international standards and guidelines.

A recent Supreme Court (SC) judgement has put the spotlight on the plight of children with mothers in prison. The judgement condemns the conditions in which such children are kept and asks that conditions be considerably improved and every effort be made to protect the best interests of the child. There is no easy solution to this debate. Children need to be with their mothers in the formative years, but a prison provides possibly the worst environment for them to be growing up in. Best practice in this field ranges widely from country to country; but the SC intervention brings the problem in India into the limelight. The best practice for India would be, as with all matters related to the administration of juvenile justice, to keep the best interests of the child first and foremost. This can be achieved by being flexible about the age at which the child can stay with the mother, ensuring proper conditions (including education) during stay, and allowing the child free access to relatives and friends in the outside world.

Nikhil Roy
Independent Consultant Specialising in Juvenile Justice

EXECUTIVE INTERVENTIONS

BUDGETARY ALLOCATIONS

By and large the child in difficult circumstances has been a neglected category with respect to budgetary support and allocation. Says a recent study by HAQ: Centre for Child Rights: 'Out of every 100 rupees spent in the Union Budget between 1990–91 to 1998–99, on an average as little as one paisa has been spent on programmes for children in difficult circumstances.' (HAQ, 2001).

To add insult to injury, even the limited amount finally available is underutilised. As the study notes, 'all the programmes and schemes addressing the needs of children in difficult circumstances are low-budgeted. Even then, one finds underutilisation of resources in all schemes in almost all the years. What actually reaches children with special needs is therefore questionable and a matter of serious concern.'³²

Apart from this underbudgeting and underspending, the 'average Union Budget expenditure on child labour constitutes 63.9 per cent of the total Union Budget spent on children in difficult circumstances'³³ Within the multiple limitations of underbudgeting, underspending and privileging of child labour, the State still has some schemes for other marginalised children.³⁴

CENTRAL GOVERNMENT SCHEMES

Scheme of Prevention and Control of Juvenile Social Maladjustment

To tackle the problem of social maladjustment among children, central assistance has been provided on a 50:50 basis since 1986–87 to States/Union territories to set up observation homes, juvenile homes, upgrading the existing institutions etc. The budgetary support for this scheme increased since 1998–99.³⁵ According to the Performance Budget of the Ministry of Social Justice and Empowerment, allocation under this scheme for 2000–01 was Rs.12.12 crore, against which the expenditure was Rs.10.50 crore. During 2001–02, this allocation fell to 11.25 crore, against which expenditure up to 31–12–2001 was Rs.7.37 crore. Allocation under this scheme for the financial year was raised to Rs.14.40 crore.

We do not have clear and comprehensive data even for the government-run institutions. While setting up of institutions is an important part of any intervention, since we have no policy statement dealing with children with special needs, debates on non-institutional vs institutional intervention are not even considered. Even if the institutions set up by the state end up having a negative impact on the rights of the child, the state actually sees setting up of institutions as the best way to deal with this category of children without even considering other options. As a result both non-institutional and post-institutional care has been neglected.

³² Ibid., p 16.

³³ Ibid., p 17

³⁴ Apart from the schemes described below the Government of India also offers three other schemes, viz Central Adoption and Resource Agency (CARA), Scheme for Assistance to Homes and Young Persons for promoting In-Country Adoption, and Services to children in need of care and protection.

³⁵ Ibid.

Introduction of Child Line Service

Child Line is a 24-hour emergency free phone outreach service committed to responding to children in need of care and protection. This programme has the potential of providing some kind of relief for marginalised children. It is a joint initiative of the Ministry of Social Justice and Empowerment, the National Institute of Social Defence and the Child Line Foundation. Started by the Child Line Foundation in Bombay it is being replicated across the country through several NGOs, with the support of several government departments and corporate groups.

QUALITY INSTITUTIONAL CARE AND ALTERNATIVES FOR CHILDREN

There are individuals and institutions working for the welfare and development of children who firmly believe that an institution should be the last option and all efforts must be made to help children grow in the natural family environment by offering adequate support and alternatives. To reiterate this belief, CRY along with its partner organisations have initiated a process for working towards ensuring better quality institutional care for children. This process is being supported by the Department of Women and Child Development, Maharashtra. Many organisations working on the issue of Institutional and Alternative Services to children are part of this group. CRY's partners include SAATHI and YUVA in Maharashtra, the Indian Council for Child Welfare in Tamil Nadu and Karnataka.

They hope to sensitise the Juvenile Justice functionaries and institutional personnel so that they are committed to quality care for children in institutions. They aim to prevent institutionalisation and move towards de-institutionalisation so that more and more children are rehabilitated through family-based alternatives. This group is working towards the development of strategies for promotion of alternatives like adoption, foster care, sponsorship and community-based programmes, initiating the process of generating baseline data on the number of children across benefiting from the institutional care programme through the government and NGO run institutions.

Integrated Programme for Street Children

Started in 1992, the basic aim of the programme is to prevent destitution of children and facilitate their withdrawal from a life on the streets.

One can well imagine the limited success of such schemes when there is no real understanding of the specifics affecting marginalised children. There is no planned programme for the training of juvenile magistrates who still adjudicate based on a criminal law mindset. Similarly the police also need to be systematically trained on the law pertaining to treatment of juveniles so that at least there is some improvement in the treatment of children by the police. Clearly, there needs to be greater policy clarity before interventions are planned.

Joint Management of JJ Institutions

The on-going economic liberalisation has finally started impacting the juvenile justice institutions as well. New managerial possibilities are being explored for running institutions. The Joint Management Model has been implemented in Andhra Pradesh where the state has introduced Home Committees with both state and NGO representatives to manage the Homes.³⁶ This model seems to have achieved the need for getting community participation without compromising on ultimate state responsibility for running the institution. In Delhi, Prayas Juvenile Aid Centre manages the Juvenile Observation Home.

Judicial Interventions

The judiciary has had a mixed record of protecting the rights of the juvenile. In the 1980s the Supreme Court intervened strongly to ensure that the Act 1986 was implemented. The SC response was initiated by a Public Interest Petition filed by Sheela Barse with respect to 1,400 children incarcerated illegally in various jails in the country. The Supreme Court directed all state governments and UTs to file responses on the number of children in juvenile homes and jails.³⁷ The complex court process, which included affidavits filed by various state governments with often incomplete and sometimes incompetent replies, forced the petitioner to ask for a withdrawal of the petition. This motion was however refused by the court. But this case was useful in drawing attention to the sorry state of juvenile justice. The more serious limitation, however, related to the inability of the public interest litigation process to ensure executive compliance with the extensive court orders. As seen in other PILs, notably the Narmada Bachao Andolan case, it is difficult to verify information on compliance provided by the government even if it is on oath.

In *Arnit Das vs State of Bihar*,³⁸ the Supreme Court literally took several steps backward. Disregarding a well-settled position that in deciding the age of the offender, the relevant date is not the date on which the juvenile appears before the court, but the date on which the offence is committed, the court held that the relevant date to determine whether Arnit Das was a juvenile or not was the date on which he appeared before the Court. The sheer danger of this approach lies in the fact that apart from being completely against the fundamental principles of the criminal law, it also ignores the Indian reality of delay in cases. Thus the case might appear for trial even years after the date of commission of offence and for reasons of the state's incompetence, consign the very concept of juvenile justice to the flames. (Pande, 2000).

Apart from the *Arnit Das* decision, there have been some regressive developments in some states too. In Karnataka a two-judge bench flagrantly disregarded the very letter and spirit of the Act 1986 by ruling that, 'though a submission was canvassed before us that he ought to have been tried by the Juvenile Court, we have overruled this submission in view of the clear provisions of Sec 27 CrPC which stipulates that in the case of an offence punishable with death or imprisonment for life it is the court of sessions which will exercise jurisdiction.'³⁹

³⁶ G.O. 2 March, 2001.

³⁷ *Sheela Barse vs Secretary, Children's Aid Society*, 1986(2) SCALE 1234 (2000)5 SCC 488

³⁹ *Krishna vs State of Karnataka*, ILR 2000 Karnataka series 2542.

Freedom at last

Official apathy has been the main reason for the appalling conditions and the inhuman treatment of the inmates at the remand home in Betageri, notes

SHYAM SUNDAR VATTAM

THE surprise visit by Karnataka Lokayukta Justice N Venkatachala to various government departments has kept the officialdom on tenter hooks. His visit to Gadag, Haveri and Dharwad districts has won the appreciation of the people as they feel that the lokayukta has been doing the work of the ministers.

During his visit to Gadag, he freed 14 children who were allegedly beaten up and locked in a godown of the Government Remand Home at Betageri. After a visit to the government hospital, the lokayukta paid a surprise visit to the Government Remand Home where the children were locked up in a godown. While he was inspecting the condition of

the remand home being run by the Department of Women and Child Welfare, he heard the cries of children from the godown. Immediately he rushed there to see children in the age group of 10-14 years locked inside a small room and they were peeping from a window seeking help. Seeing the condition of those kids, Justice Venkatachala asked the authorities to open the godown door. When the officials were hesitant he lost his temper and shouted at the officers present and directed them to free the kids. Out of the 14 children, three were juvenile offenders the rest were sent voluntarily by their parents in order to discipline them. As soon as the lock of the godown

was opened, the children surrounded the lokayukta and broke down while explaining their ordeal. They requested him with folded hands to release them immediately.

Visibly upset, Mr Venkatachala took the officials to task. He summoned the supervisor of the remand home and sought a reply for allegedly beating and locking up the children in the godown. When the officials reportedly tried to give evasive replies, the lokayukta asked the police to arrest an employee of the remand home on charges of torturing the children.

Later, Justice Venkatachala was horrified to see the unclean overhead water tank and asked the



Karnataka Lokayukta Justice N Venkatachala checking the injury marks on an inmate of the remand home

This ignores the fact that the JJ Act has exclusive jurisdiction over all children who commit offences, which cannot be ousted by the CrPC, a general legislation.⁴⁰

In Orissa, in a case of grave public importance involving the murder of the missionary Graham Staines and his two young children, one of the accused, a 13-year old was sentenced to 14 years in the Juvenile Home, Anugul. The judges' decision was based on a small loophole in the JJ Act, which does give the judge the power to take measures, which go beyond the scope of the orders in Sec 21 of the Act. However sentencing a child to a detention of 14 years violates the very intention of the JJ Act which is that however serious the crime, we need to treat children more humanely.

What is shocking here is that the judiciary has not internalised the idea of detention as a serious punishment. They noted, immersed in rhetoric: 'If the Hindu mythology is of any help in this case, this is the land where a dreaded dacoit, Ratnakara was transformed into a Saint Valmiki and as such, this court has faith and belief that the Superintendent, Juvenile Home Anugul will nurture and display to the world outside the gradual transformation of Chenchu Hansda to a Valmiki.' (State vs Chanchu alias Sudarshan Hansda).

What unites the last three decisions quoted above is that they might presage a trend in Indian juvenile justice administration, already a reality in the western countries, namely recriminalisation. When it comes to violent crime, societies seem a lot less willing to countenance a separate and less harsh justice system even if the accused happen to be children.



⁴⁰ Sec 5 of the said Act, 'Notwithstanding anything contained in the Code of Criminal Procedure Code..one or more juvenile courts, for exercising the power and discharging the duties conferred or imposed on such court in relation to delinquent juveniles under the Act.'

NON-GOVERNMENTAL INITIATIVES

Several NGOs are running programmes under the Juvenile Justice Act. These may include juvenile/children's homes, short-stay homes or even night shelters for street and working children. Innovative programmes, which provide educational, skill and vocational training, counselling and medical assistance, are also being undertaken by NGOs across the country.

According to the data provided by the National Institute of Social Defence, in the process of collating this information, there are about 2,185 NGO-run programmes for juveniles in India, which are supported by the government, Centre or State. Another 64 programmes are being run without any governmental support. NGOs are managing about 244 homes under the Juvenile Justice Act. Under other schemes, they are running 910 Homes.

CONCLUSION

Juvenile justice has become an issue of concern the world over, but this concern must translate into deliverables. Especially when we have rhetorical gestures like the JJ Act 2000. One must be more careful that the integration of child rights issues into the international human rights system, actually helps bring about real change as opposed to getting the government of the day accolades on the international stage.

APPENDIX 1

JUVENILES APPREHENDED UNDER IPC AND SLL CRIMES BY AGE-GROUP AND SEX DURING 1999 and 2000

A. IPC CRIMES																	
CRIME HEAD		7-12 YEARS				12-16 YEARS				16-18 YEARS Girls only		OVERALL AGE GROUPS				TOTAL	
		Boys		Girls		Boys		Girls				Boys		Girls			
	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	
Murder	47	23	6	3	200	212	19	32	52	47	247	235	77	82	324	317	
Attempt to commit murder																	
Culpable Homicide amounting to murder	27	19	4	1	150	169	12	6	43	29	177	188	59	36	236	224	
Rape																	
Kidnapping and abduction of women	8	2	0	0	11	22	1	1	4	2	19	24	5	3	24	27	
and girls	17	17	0	1	144	193	5	3	13	6	161	210	18	10	179	220	
Of others																	
Dacoity	2	2	1	0	38	69	4	6	43	17	40	71	48	23	88	94	
Preparation and assembly for Dacoity	1	2	1	0	22	43	3	4	42	12	23	45	46	16	69	61	
Robbery	0	0	0	0	16	26	1	2	1	5	17	26	2	7	19	33	
Burglary	3	3	0	0	29	40	0	0	0	0	32	43	0	0	32	43	
Theft																	
Auto theft	0	0	0	0	3	9	0	0	0	0	3	9	0	0	3	9	
Other theft	6	15	0	0	70	73	0	6	3	0	76	88	3	6	79	94	
Riots	325	337	10	9	1369	1361	28	17	20	45	1694	1698	58	71	1752	1769	
Criminal breach of trust	404	350	51	42	2001	2233	94	99	134	182	2405	2583	279	323	2684	2906	
Cheating	20	18	0	2	184	241	0	0	2	3	204	259	2	5	206	264	
Counterfeiting	380	332	50	40	1815	1992	93	99	132	179	2195	2324	275	318	2470	2642	
Arson	43	44	2	7	474	480	40	21	358	279	517	524	400	307	917	831	
Hurt																	
Dowry death	2	0	0	0	8	20	0	1	4	4	10	20	4	5	14	25	
Molestation	5	6	1	0	24	31	2	7	8	3	29	37	11	10	40	47	
Sexual harassment	0	0	0	0	2	3	3	0	2	0	2	3	5	0	7	3	
Cruelty by husband and relatives	5	7	0	0	38	22	2	3	3	1	43	29	5	4	48	33	
Importation of girls	135	182	30	25	1195	1164	109	115	459	461	1330	1346	598	601	1928	1947	
Other IPC crimes	2	0	1	0	21	12	15	9	33	72	23	12	49	81	72	93	
Total cognisable crime under IPC	9	19	0	0	115	145	0	1	3	6	124	164	3	7	127	171	

B. SLL CRIMES

CRIME HEAD	7-12 YEARS				12-16 YEARS				16-18 YEARS		OVERALL AGE GROUPS				TOTAL	
	Boys		Girls		Boys		Girls		Girls only		Boys		Girls		Boys & Girls	
	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000
Arms Act	1	3	0	0	37	32	0	0	6	1	38	35	6	1	44	36
NDPS	0	0	0	1	6	11	2	0	1	10	6	11	3	11	9	22
Gambling Act	2	14	0	0	139	195	0	0	0	0	141	209	0	0	141	209
Excise act	4	2	3	1	48	103	2	2	28	22	52	105	33	25	85	130
Prohibition Act	16	20	1	1	228	181	24	23	6930	418	244	201	718	442	962	643
Explosive and Substance Act	0	0	0	0	7	3	0	0	181	0	7	3	0	0	7	3
ITPA	0	0	0	0	0	1	6	1	79	84	0	1	187	85	187	86
Indian Railways Act	4	0	0	0	23	78	1	0	10	0	27	78	80	0	107	78
Registration and Foreigners Act	2	0	2	0	1	0	1	0	0	14	3	0	13	14	16	14
Protection of Civil Rights Act	0	0	0	0	1	0	0	0	12	5	1	0	0	5	1	5
Indian Passport Act	3	3	2	1	0	0	1	4	0	2	3	3	15	7	18	10
Essential Commodities Act	1	0	0	0	1	4	0	0	0	0	2	4	0	0	2	4
Terrorist and Disruptive Activities	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Antiquity and Art Treasure Activity	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dowry Prohibition Act	0	0	0	0	3	0	0	0	1	3	3	0	1	3	4	3
Child Marriage Restraint Act	0	0	0	0	0	0	0	0	1	5	0	0	1	5	1	5
Indecent Representation of woman Acts	0	0	0	0	0	0	2	0	0	25	0	0	2	25	2	25
Copy Rights Act	0	0	0	0	1	4	0	0	1	1	1	4	1	1	2	5
Sati Prevention Act	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SC/ST Prevention of Atrocities Act	1	0	1	0	9	22	0	0	7	9	10	22	8	9	18	31
Forest Act	0	0	0	0	36	2	37	0	44	0	36	2	81	0	117	2
Other SLL Crimes	2332	1800	222	31	1288	2183	235	42	789	575	3620	3983	1246	648	4866	4631
Total Cognisable Crimes under SLL	2366	1842	231	35	1828	2819	311	72	1853	1174	4194	4661	2395	1281	6589	5942
A + B (IPC+SLL Crimes)	3662	3136	377	156	9426	10718	885	671	4110	3301	13088	13854	5372	4128	18460	17982

Source: Crime in India, 1999-2000, NCRB

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Rape robs her of motherhood forever

From Usha Rai

women's organisation — Disha. When they visited her, Naina was suffering from high blood pressure and was in a bad state of mind.

that she became insane and the father committed suicide. The little girl, who was the butt of cruel jokes and taunts in the village, was now an ashram in Jaipur.

blood stained clothes. The villagers teachers and ru to the hospital After the inter NCW, the tea

The villagers teachers and ru to the hospital After the inter NCW, the tea

Sexually assaulted boy's parents in a dilemma

But we never could have imagined that our child would get this kind of attention," says his father.

"The past six days have been extremely traumatic for us. Our initial reaction had been to take care of our son and then seek justice. It is only now that the enormity of the fact that our child has been violated is sinking in," he says.

It is all the more difficult for him to cope since himself works for an NGO that fights children's rights. I had never imagined that someday I would be fighting a battle like this

for my own child," he says. His wife, a psychiatrist, is apparently coping better with the situation.

She is also helping their son recover from the trauma.

"But what is worse is that no one from the school has contacted us or spoken to us about the incident. We have to decide whether we want to send our son back to the same school. He has a very strong bond with the other children in his group. It will be a tough decision for us to decide on whether to send him back or change his school," he says.

Arrested teacher says he has been framed

TWENTY SIX year-old Manish Kumar was remanded on Thursday in judicial custody for 14 days.

Manish was arrested by the Delhi Police on Wednesday on charges of sodomising a 4-year-old student of his school.

Police said that Manish is claiming that he has been framed.

"Though he can't give any reason why anybody would want to falsely implicate him. He keeps talking about how much he loves children and how involved he was with them," said a senior police officer.

According to the police, Manish had completed his 10+2 from Patna and had joined Mirambika as a trainee teacher. Police said that he was getting a stipend of Rs 500 along with free boarding and lodging at the trainee teachers' hostel.

This was his last year in Delhi.

Minors' rape on the rise in Delhi

Neeta Sharma
Delhi, August 13

OF THE cases reported, the victims are minors. This year, out of the 233 rape cases registered in Delhi, 152 victims are below 18 years of age. And out of them, 25 are below seven years of age. A district-wise report revealed a high incidence of rape cases in resettlement colonies like Resettlement Puri, Shahdara, and Tughlakpur.

PLATFORM | M.I. Hussain Innocence at stake

Child abuse is an invisible menace. Recognising this crime and being aware of its consequences are the primary steps society must take towards repairing the damage caused to our young

CHILDHOOD IS a period of innocence and simplicity. The uninhibited laughter of a child can make the sternest person smile, his spontaneous tears can make the hardest heart melt. To violate this innocence seems too heinous a crime to contemplate — yet it is a scourge which society has to acknowledge. Of all the violations a child can suffer, sexual abuse is the worst.

Children are the most vulnerable members of our society. Contrary to popular belief, in most cases, the abuser is known to the child — a family friend, a sibling, a relative, a servant or a teacher. Child sexual abuse is most frequent within the family circle which includes fathers, brothers and uncles. It is unfortunate that the abuser usually violates a relationship of trust and takes advantage of his power and position. This abuse may continue over a long period of time because the abuser generally uses threat or emotional blackmail to ensure silence from the child.

Research has shown that although both men and women can sexually abuse a child, most abusers are male. An abuser may look and act normally. Therefore, the crime is even more difficult to detect. Children of both genders suffer abuse, but girls seem to be singled out more frequently and over longer periods. A shocking figure of two out of four girls and one out of six boys are victims of sexual abuse.

Given these horrifying statistics, how can an unwary guardian be alert to child abuse? Counsellors report that children are usually too scared to tell anyone that they have been abused. Life becomes bewildering as they try to cope with the trauma. Often, they are unable to express what has happened and adults do not comprehend what the child is telling them. However, there are some signs that should put a parent on alert.

Look for a deep sense of isolation and loneliness, resulting in depression, anxiety and withdrawal. External symptoms may be bed-wetting, falling in examinations or sudden use of sexual words, irritation in the throat, anal and genital areas and bladder infections or sexually transmitted infections.

The commonest escape route for a parent is denial, where a parent refuses to acknowledge or admit that this transgression is occurring and may even give a tacit compliance to it by her silence. In some cases a wife and mother will actually punish a child for daring to speak against a beloved husband or pampered son. She would do anything not to disturb her 'comfort zone'.

If every adult was to recognise the seriousness of sexual child abuse, the first step towards rehabilitating such children would begin. Prevention would be the natural corollary. A child who has been abused several times suffers from low self-esteem and a feeling of prom-

erlessness as she feels that she has somehow caused the abuse. The most common feeling is that of revulsion for oneself and the fear of rejection from loved ones. Such children feel that they are not worth loving and that 'god' is punishing them for something 'bad' they have done.

Tragically, this trauma continues to hurt them even in adulthood, leaving them powerless in decision-making. When nobody believes a child, she learns to hide feelings of pain, hurt and fear and may have problems expressing her feelings for the rest of her life. When a young child has suffered a serious violation of trust, she finds it difficult to trust anyone again. She withdraws. The loneliness and depression may result in suicide.

Recognising this crime and being aware of its consequences are the primary steps that society can take towards repairing the damage caused. A good rapport between parent and child, openness about sex, teaching a child about a 'good touch' and 'a bad touch' are important steps in the prevention of child abuse.

It is vital to remember that it is the adult abusing the child who is entirely responsible. Children almost never lie about being sexually abused.

If a child reports such a crime, an adult's first response is most important. Angry criticism is the worst response and will impair a parent's ability to repair the damage. Any suggestion that makes the child feel guilty will reinforce the guilt which the child already carries. Over-reacting is also to be avoided. Instead, believing and reassuring the child

that she has done no wrong will be the support the child so desperately needs. A doctor should be consulted to ensure that the child is not physically injured. A counsellor should also be consulted to begin the healing process.

Taking recourse to the law is often an extremely difficult and arduous task because of its in-built problems of a limited perspective and child-insensitive procedures. The law also makes convictions very difficult and makes the child relive the experience many times. However, we cannot reject the law. Rather, let us work to change it.

The law protects the child inasmuch as she has the right to privacy. Her name need not be made public or printed in the media and any adult can file the complaint in the police station on her behalf. The child has a right to be medically examined but the medical report is not critical for prosecution. Lastly, the child has the right to be in her home and be accompanied by her parent when being questioned by the police.

Let us no longer conveniently blind ourselves to this greatest scourge in our society. Let us save our children.

The writer is Principal, Delhi Public School, Mathura Road



PROTECTING HER FROM THE SCOURGE: Child at play

We should have acted sooner



THE GIRL CHILD



SECTION 7

THE GIRL CHILD

'Bringing up a girl child is like watering a neighbour's garden' is an old Indian saying. Indeed it captures the Indian mindset towards the female gender in the country. This has been demonstrated over and over again by the lower literacy rates, higher malnutrition, morbidity and mortality rates, eschewed sex ratio and the increasing violence against them. It is against this background that there continues to be a separate section dedicated to the girl child in India. Indeed, what is presented in this section is not new or novel. It is merely a reiteration and reinforcement of a situation that continues to prevail in spite of its recognition and acknowledgment by society and government.

Discrimination against the girl child begins even before she is born, and continues throughout her life.

In recognition of the less than equal status of girls in the country several interventions, governmental and non-governmental have been launched. Indeed, the SAARC countries declared the last decade as the decade of the girl child. Efforts have been made to address discrimination against girls from before they are born — and yet we are a long way off from ensuring that the girl child in India receives her due position in the family, in the community, in the society and in the country. The levels and nature of discrimination faced by her may differ — but it is there, all pervasive and deep-rooted.

This Section is divided into two parts. Part I presents a picture of the overall situation of the Indian girl child. Part II concentrates on the most alarming findings of the Census 2001 provisional results — the decline in the ratio of female to male children.

Gender discrimination is not peculiar to India — it exists in different forms and degrees in societies across the world. A study of the gender related statistics in the latest Human Development Report (HDR) (UNDP, 2002) shows this. In India too it varies in degree and manifestation. But almost universally, there is a greater threat to the girl child's right to survival, development, protection and participation. There is a belief that gender discrimination is a malaise in only certain communities and classes — it is restricted to the poor, conservative, illiterate and rural communities. The reality is, gender discrimination cuts across caste, class and community. Indeed as we will see in Part II of this section it is sometimes even more in urban phenomenon. In most families this bias exists — it is only a difference in degree and manifestation.

Clearly, the bias towards girls persists. The under-5 mortality rate is higher in girls than in boys and so also underweight prevalence is more in girls than in boys. Fewer girls are able to access education. Attendance of boys in school is greater than that of girls. Antenatal care is accessible to just 65 per cent of the

Table 1
INDICATORS FOR MONITORING PROGRESS

Indicator	Description	1990	2000
Under-5 mortality rate: female/male	Probability of dying between birth and exactly 5 years of age, per 1000 live births disaggregated by gender	122.4/115.4	105/97.9
Underweight prevalence: female/male	Proportion of under-5s who fall below minus 2 standard deviations from median weight for age of NCHS/WHO reference population disaggregated by gender	53.4 %/ 53.3 %	48.9 %/ 45.3 %
Antenatal care	Proportion of women aged 15-49 attended at least once during pregnancy by skilled health personnel	62.3 %	65.1 %
Anaemia	Proportion of women aged 15-49 years with haemoglobin levels below 12 grams /100ml blood for pregnant women	87.5 %	51.8 %
School Attendance, age 6-14	Percentage of girls of age group 6-14 who are attending school	59 %	74 %
School Attendance, age 6-14	Percentage of boys of age group 6-14 who are attending school	75.5 %	84 %
Persons completing grade 5	Proportion of persons aged 15-19 years who have completed grade 5 (female)	51 %	61 %
Persons completing grade 5	Proportion of persons aged 15-19 years who have completed grade 5 (male)	73 %	77 %

Source: India Report, UN General Assembly Special Session on Children, Department of Women and Child Development, Ministry of Human Resource Development, Government of India, May 2002.

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

Article 2 of the Convention on the Rights of the Child

Any distinction, exclusion or restriction made on the basis of sex, which has the purpose of or effect of denying equal exercise of human rights and fundamental freedom in all fields of human endeavour...

(Article 1, UN Convention for Elimination of Discrimination Against Women)

female population and more than 50 per cent of girls and women above 19 years suffer from anaemia reflecting the inadequate nutrition and health care she receives.

THE RIGHT TO BE BORN

In a patriarchal society such as India where the male child takes forward the family lineage, and looked upon for support and care in old age, sons are always preferred. A daughter, on the other hand, is considered a burden because she will go to another home and because dowry will have to be paid out at her wedding.

While discrimination may start at birth, a girl is killed within the first few hours of her life, in places where sex determination tests are available, her right to be born itself is threatened. Parents consciously opt not to have a female child. According to the National Crime Records Bureau (NCRB), the number of foeticide cases show a 56.8 per cent rise since 1995 it rose from 38 cases reported in 1995 to 88 in 2000. (NCRB, 2000).

Science had developed medical techniques to discover birth defects. Little was it known that these will increasingly be misused to determine the gender of the child before birth and go in for selective abortion in case the foetus is female. Although legally banned under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, several medical centres and clinics offer the facility purely for gender determination.

And it is a service determined by demand. A study conducted by a doctoral researcher Ritu Juneja in four metropolitan cities, revealed horrifyingly, that 85–90% of the women questioned felt that if facilities for sex determination were available, it would be unwise not to use it. For them it was an issue of practicality and not ethicality.

Of the 28 states for which crime records are available for the year 2000, Maharashtra and Madhya Pradesh are the most hostile to the girl child, accounting for the highest number of cases of foeticide and infanticide

- In 1984, 40,000 known cases of foeticide took place in Bombay
- It was estimated that there are 10,000 cases of female foeticide every year in Ahmedabad, Gujarat.
- An estimated 150 female infants are put to death each year in a cluster of 12 villages in Rajasthan. It is said that there are only 50 young girls in a population of 10,000 people.
- The primary health centre records reveal that 3,178 cases of infanticide took place in six districts of Tamil Nadu in 1995.
- 84 per cent of gynaecologists in Bombay admitted to performing sex-determination tests.
- In 1901, the number of females per thousand males was 972. In 2001, it had decreased to 933.
- The sex ratio of the child population in the age group 0–6 has reduced drastically from 976 in 1961, 945 in 1991 to 927 in 2001.

respectively. The five most notorious States in terms of number of cases of female foeticide are — Maharashtra, Madhya Pradesh, Haryana, Rajasthan and Andhra Pradesh. They account for 93.5 per cent of the total cases of female foeticide reported in the country in 2000. In the case of infanticides, the five states are — Madhya Pradesh, Maharashtra, Andhra Pradesh, Tamil Nadu and Punjab, accounting for 70.2 per cent of the total reported cases of infanticide. The table below presents a detailed picture.

REASONS THEY GIVE FOR CHOOSING FOETICIDE...

Beta to chahiye hi, ham uske liye char paanch betiyan kyo karein? (We want a son then why should we risk 4-5 daughters for that?)

If I had not tried for a son after 2 daughters, people would have said that she has not tried for a son.

Abhi test ka kharcha parega baad ka kharcha to bachega...(today we spend on the test and therefore save money later)

I have given an ultimatum to my in-laws that if they desired a grandson, they will have to allow me to go for a sex determination test.

Eliminating the girl child

By G Ravindran Nair

Bulk of half of the humanity in India comprising women bear the cross all through their life for no better reason than that they are women. Hundreds of parents belonging to middle class and upper middle class families try to get rid of girls even before they are born by resorting to modern, scientific sex determination tests and selective abortion in connivance with clinics eager to make a fast buck.

But many poor families in Tamil Nadu, Rajasthan and Bihar who cannot afford such expensive luxury as ultrasound machines or amniocentesis kill the female infants as soon as they are born. And girls who survive both foeticide and infanticide are in for the fiery ordeals that is their life.

They are given away in child marriages as in Rajasthan during the Akha Teej festival despite the Child Marriage Restraint Act.

The Census 2001 discovered a sharp fall in sex ratio. Will we ever wake up to our hypocrisy that we deny the girl child even the right to be born? And we lecture to the world on human rights?

The systematic killing of female infants reached media attention in the late 1980's with the rising incidence of female infanticide in certain parts of Tamil Nadu led by Usilampatti village. The parents who killed the babies complained that they dreaded the hefty dowry to pay for their girl's marriage if they allowed the girls to live!

On an average 105 female infants were killed every month in Dharmapuri

District in Tamil Nadu in 1997. The mind-boggling figure of 1260 deaths in Dharmapuri district alone in 1997 was furnished to the then Chairperson of the State Human Rights Commission, Justice Nainar Sundaram, by the Dharmapuri district office of the Directorate of Health services when the Commission made a tour of the District to study the problem.

A 1995 survey conducted by the health department estimated that 1,199 female infanticides had occurred in that district that year. The male-female ratio had also sharply declined in that district. It was just 942 females against the State ratio of 974 for 1000 males.

During his interaction with the officials, representatives of NGOs and the locals, the Chairman of the State Human Rights Commission discovered some of the reasons why the parents wanted to get rid of girls as soon as they are born: (a) the belief that the birth of a girl was problematic, involving enditure at every stage; (b) the odium attached to the family if a girl in that family remained unmarried and (c) abject poverty.

To root out the evil, the Commission suggested to the Government the creation of a separate directorate, institution of rewards for the informants of infanticide, deterrent punishment, mandatory police investigation into the death of every female infant, strict instructions to the village officer to report the cases of both birth and death of female infants, free education of girls up to the age of 14 and proper implementation of the

schemes for the protection of children.

Moved by the rising incidence of female infanticide in certain pockets of Tamil Nadu, the then Jayalalitha Government announced in 1993 two very significant schemes for the protection of the female child. One was the State adoption of the female babies discarded by parents, and the other was to render financial assistance to select parents in order to enable them to meet the cost of educating and marrying the girl. Under the cradle baby scheme, cradles were kept in public health centres (PHC), and a mother who did not want a female baby could leave her baby in the cradle and walk off.

No questions would be asked. Under the girl child protection scheme, select parents, meeting stringent conditions, were given a fixed deposit of Rs. 5,000. A periodic income from this was meant to help in meeting the costs of the girl's education. It also envisaged the payment of a lumpsum of Rs. 10,000 at the end of 20 years to help the girl either to pursue higher education or get married.

According to a social activist working in a district where female infanticide is rife, the root cause of the evil dowry: It is just to avoid the dowry problem that the parents decide to kill a female infant. He regrets both the Government schemes failed to address the core problem of dowry. It is in the socially or economically mobile middle class, especially the Vellala goundars and, in rural areas, that the practice is more dominant.

And, it is among them that dowry is a major problem. The very poor have no dowry system and female infanticide is very rare.

PLATFORM Kusum

Life in the womb

Does the unborn child have legal rights like all citizens? Yes, but finally it is the mother who remains the legitimate inheritor and protector of the child's rights

CAN AN unborn child claim maintenance from its father? The issue recently came up for adjudication before the Allahabad High Court where a pregnant woman has filed a suit under Section 125 of the Code of Criminal Procedure, 1973, on behalf of her unborn child claiming maintenance from the father.

Such petitions are rare but not wholly unknown. In 1982, a 20-year-old pregnant mother had filed a similar petition. The petition, probably the first of its kind, was filed on behalf of the unborn child, sponsored by the Women's Liberation Organisation and the Free Legal Aid Committee. While one needs no saying that the issue involved is of great significance.

The laws of maintenance impose a duty, inter alia on parents, to maintain their dependent children. While there are different personal laws provisions for maintenance, the Code of Criminal Procedure is a secular piece of legislation which is applicable to everyone irrespective of community or religion. Section 125 is the most commonly invoked provision for claiming maintenance.

However, the question that arises in an application where the claimant/petitioner is an unborn child concerns the *locus standi* of an unborn child in law. Is it a 'person' in the eye of the law and therefore entitled to certain rights and protection?

The *Shorter Oxford Dictionary* defines 'person' in two ways: 'an individual human being' or 'a man, woman or child'. The *Webster's New World Dictionary* defines a child as *inter alia* 'an unborn offspring'. It is established medically that an

933 women for every 1,000 men.

If economic well-being is considered imperative for a better sex ratio, Haryana and Punjab, two of the most prosperous states in the country...

gle conviction has been made under All that the law seems to have done to drive the business of sex determination tests underground. Indeed, the premier regulatory bodies of the country...

child's right to damages for pre-natal injuries was conceded (Montreal Tramways vs Leveille (1933) 4 DLR 337).

A woman, seven months pregnant, was injured while she was getting down the train. Two months later, the child was born with some deformity. On behalf of the child, the jury awarded \$5,500 to the woman. The Supreme Court affirmed the judgment. It observed: "If a right of action be denied to the child, it will be compelled without a seal of another's fault and bearing a very heavy burden of infirmity and inconvenience without any compensation therefore."

This and similar cases of damages pre-natally caused indicate that the law recognises an unborn child as a legal entity. Property and succession laws also clearly recognise the status of a child in the womb. Thus, under Section 20 of the Hindu Succession Act, 1956, "A child who was in the womb at the time of the death of an intestate (not having made a will before death) and who is subsequently born alive, shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate."

Likewise, under Section 98 of the Indian Succession Act, 1925 (construction of terms) in a will, "all words expressive of relationship apply to a child in the womb who is afterwards born alive." Likewise, gifts and transfers of property in favour of the unborn child are also valid. In the case in point, where



The right to dream

an maintenance application has been filed...

Table 2
FEMALE FOETICIDE AND INFANTICIDE IN INDIA IN 2000:
THE ROGUE STATES

States ↓ / Crime →	As percentage of total cases	
	Female Foeticide (as percentage of total cases)	Infanticide (as percentage of total cases)
Andhra Pradesh	8.8	7.7
Haryana	14.3	
Madhya Pradesh	15.4	29.8
Maharashtra	45.1	19.2
Punjab		5.8
Rajasthan	9.9	
Tamil Nadu		7.7

Source: NCRB, Crime in India and Monthly Crime Statistics, 2000.

THE RIGHT TO SURVIVE

Denied the right to be born, there is no guarantee that once born, the girl child will get an equal chance to survive and live a full life.

Twelve million girls are born every year in India. Despite being biologically stronger than boys, three million girls do not survive beyond their 15th birthday. About a third of these deaths are in the first year of their life. It is estimated that every sixth female death is due to gender discrimination.

The earliest risk to the girl is that she will fall prey to female infanticide — the murder of a female infant soon after her birth. Number of studies have brought to light the facts about female infanticide practised in some parts of the country. If the girl child is not strangled, drowned or poisoned as soon as she is born by the attending midwife or other female family members, mothers admit they do not feed the infant and leave it to die.

The practice of female infanticide in India was known to have existed in the 18th and the 19th centuries. Infants were killed for many reasons: to get rid of defective

children, control population, appease gods — and most importantly preference for a son. The practice still prevails in Tamil Nadu, Gujarat, Bihar and Rajasthan. Biologically, female children are more robust during the first five days. Hence the male mortality rate is usually higher than the female mortality rate during the immediate neo-natal period. However, a study in Tamil Nadu reveals that in most of the districts, the ratio of female to male deaths is much higher in the first five days of the child's life.

‘The Piranmalai Kallar a tradition bound community known for its militancy and extravagance in social functions and religious

ceremonies — ceremonies associated with women at puberty, marriage, pregnancy and child marriage — are now seen as the primary burden and female babies are no longer welcome. Erukkaikai milk, arall seeds, pesticides, paddy grain and hot chicken gravy are used to kill these babies within 10 hours of birth. The community has its own reasons. They believe that female infanticide acts against subsequent female births and even ensures the birth of males. Also the fourth and eighth female child is considered inauspicious. But above all they see female infanticide as an act of mercy, as a means of putting an end to future hardship and misery. (VHAI, 1992)

On September 10, 1999 there was a news item in the *Times of India* which said that a village named Devra in Rajasthan had received its first 'baraat' in 110 years because a girl child is killed immediately after birth — either by drowning the girl baby in a tub of milk or fed opium (afeem) or simply smothered with a pillow. The daughter whose baraat came after 110 years had survived because she was lucky. Her mother had delivered the baby in her parental home in another village where they were not averse to girl babies and therefore did not kill her. So the girl lived to be married.

Similar instances came to be heard from other states also. Salem district of Tamil Nadu had become infamous for the rising number of female infanticides.

Recognising the threat to the girl child, Tamil Nadu introduced the Cradle Baby scheme to prevent female infanticide. This has been extended to all primary health centres in the state. Under the scheme parents who do not wish to keep their girl child could drop them in the cradle kept in the reception centre.

THE RIGHT TO EQUAL OPPORTUNITY

Where the girl does survive, she faces discrimination when it comes to nutrition, health or education. That means that sons of the family will get better food, will receive more attention during sickness and will certainly get preference when it comes to schooling.

Almost every year, when results of board exams are declared, we hear that girls have fared much better than boys and that the pass percentage of girls is higher. It only goes to show that given the opportunity, girls can succeed as well as, if not better than their male counterparts. The tragedy is that very few girls are fortunate enough to reach class X and XII. Most often, daughters are either not sent to school or their education is discontinued at an early age. The incidence of dropout amongst girls is much higher than that of boys at the primary and upper primary stage. It is estimated that for every 10 girls who enter class 1, only six reach class 5. Nearly a third of the girls who manage to enter class 1 drop out before entering class 2. The dropout rate is higher as one goes up from primary to middle to secondary and is highest in higher education.

The overall literacy in India increased from 52 per cent in 1991 to 65.38 per cent in 2001 (Census of India). During this period, male literacy went up from 64 per cent to 75.96 per cent while female literacy rose from 39 per cent to 54.28 per cent. This definitely shows an increase in the literacy rate over the decade but the fact remains that more than 45 per cent females are still illiterate. The Census reveals that the proportion of females aged 15–19 years that have completed grade 5, has over the decade increased by 10 per cent (from 51 per cent in 1991 to 61 per cent in 2001). However, the remaining 40 per cent of the girls, who are over 14 years, and are not part of the Constitutional commitment of education for all up to the age of 14 years, are likely to be illiterate all their lives.

Girls in the age group of 13–15 years consume less than two-third of the recommended calorie intake.

Since the perceived role of girls is that of a homemaker and a mother (the bearer of many sons), little investment is made in meeting her other developmental needs. They are often kept at home to help with the housework or to take care of younger siblings. There it is a general belief, even among the wealthier classes, that if the girl receives high education, she will not get a husband. The groom, in any case, will be expected to be better qualified than his bride, and will therefore command a higher dowry.

In the classroom, the curriculum reinforces gender stereotypes. Examples of this can be found in textbooks. Teachers reinforce them in their own behaviour and attitudes. Often one finds a picture that projects a girl child helping in the kitchen whereas the boy child goes to school or the playground, men hold powerful jobs and are projected as strong, adventurous and intelligent. In contrast where women are included, they are depicted as weak and helpless, often as victims of abuse and beatings.

At home, the daughter is groomed by her family and prepared for the only function in her life: to be a good wife and mother. Socialisation begins with gender specific toys: dolls, kitchen sets for girls and outdoor games, medical kits etc for boys. Daughters are allotted many more chores in the house and do not have as much liberty as their brothers to go out. Even popular entertainment perpetuates these antiquated notions, with television soaps and movies promoting biddable, meek girls as the ideal daughter and daughter-in-law.

Most cultures perpetuate patriarchal notions, where women are accorded an inferior status. In some societies sons are preferred over daughters due to the traditional belief that they are necessary for the material and spiritual advancement of their parents. They are considered ritually essential for lighting the funeral pyres of the parents among Hindus or consigning the body to the earth among Muslims and Christians. Moreover, boys continue the lineage.

Girls, on the other hand, are considered an economic liability and a drain on the family resources because of the dowry that has to be given to her. Even where the girl child has an equal chance of survival, development and protection, when it comes to decision-making, she will have no role.



VOICES THAT ARE HEARD EVEN TODAY...

- Why can I not go and play outside after 6 pm when my brother can?
- After school I have to work and help mother in household chores while my brother plays.
- I want to continue education but parents say there is a financial constraint and so only my brother can study further.
- My brother gets the share of milk if there is less in the family.
- Birth of a boy is celebrated with pomp and show and sweets distributed, why are not girls welcomed like this?
- I am always given tasks at home while my brother goes to do outside work.

Children's voices from training programme on Gender and Child Rights conducted by HAQ.

THE RIGHT TO CHILDHOOD

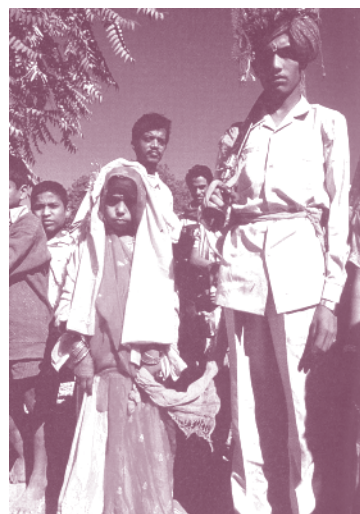
Burdened with too much work at home where she cooks, fetches water, cleans and takes care of her younger siblings, she is also made to work in the field or as a domestic help. As per the Census 1999, out of the 11.28 million child labourers, 3.42 million girls under 14 years of age were the main workers and 1.68 million were marginal workers. Most of the girls work in the invisible and unorganised sectors. Nearly 50 per cent of female child workers in urban areas are engaged in household industry. Where then are their joys of childhood — to laugh and play, simply be a child?

Child marriage though banned under Indian law, is still prevalent and continues in states like Rajasthan, Uttar Pradesh, Maharashtra, Gujarat, Haryana, Chattisgarh, Uttaranchal, Madhya Pradesh, Orissa, West Bengal and even Kerala — the most literate state. There are enough studies that have revealed the detrimental effect of early marriage on the life and development of the girl child, who is physically and psychologically not prepared for the various obligations and strains that the marriage brings. Though the Crime Record Bureau records not more than 485 child marriages between 1995–2000 under the Child Marriage Restraint Act, unofficial reports project that mass marriage ceremonies continue to take place across the country.

Over 3,000 child marriages are reported to have been performed in 1,021 villages of the Baiga and Marrar tribe dominated Kawardha district of Chhattisgarh on the occasion of Ramnavami. The children were in the age group of 4–13 and most did not even know the name of their spouses or what exactly was meant by marriage. Child marriage is followed by early motherhood. Malnourishment, severe anaemia, antenatal complications in such cases lead to a high rate of maternal mortality.

According to Forum for Fact Finding Documentation and Advocacy (a human rights organisation that visited 6 villages) child marriages had played havoc with women's mortality rate in the villages visited by them. Women hardly survived till the age of 40. The girls are sent to their in-laws' house as soon as they attain puberty, following which they conceive at the age of 12 or 13. This leads to a high incidence of child mortality and women often die of various diseases. (The Hindu, 24 April, 2002).

A study presented by the Society for Development Studies, Delhi reveals that while 18 per cent of the mothers in slum areas of Delhi are just 12 year old, almost 75 per cent are under 18. 90 per cent of the mothers had three or more children as against the overall 32.1 per cent women in Delhi having more than three children. The child mortality rate stood at 111 per 1000 in the slum areas as against 45 in Delhi city. Miscarriage figures too were dismally high at 6 per cent in the former as against 2.2 per cent in the latter. (Hindustan Times, 24 June, 2002).



About 13 per cent women die before the age of 24; most are due to complications of pregnancy and childbirth.

Study finds Delhi slums teeming with child mothers

Press Trust of India
New Delhi, June 23

LACK OF education and guidance and the vicious circle of poverty has made Delhi slums virtually bursting at the seams with child mothers. While children of their age are under their parents' care, these kids have become parents themselves.

A recent study by an NGO has found that while 18 per cent of the mothers in slum areas of Delhi are just 12 years old, almost 75 per cent are under 18 years.

The study, presented by Society for Development Studies at a recent meeting of concerned agencies organised by National Commission on Population, said that more than 75 per cent of women in various slums of Delhi were married before the age of 16 and 90 per cent of the mothers had three or more children.



For Delhi slum girls, children are not a matter of choice.

Mother at 13. Gender bias plagues rural India

By VANITA SHIVASTAVA

Bhopal, Feb. 20: Not yet 40, Shreya is up before the crack of dawn to pack her brothers off to school only to return with a heavy heart to the daily household chores. Her ailing mother looks on helplessly. She would rather be at school but her father thinks otherwise.

The diminutive little girl yearns for a chance to study but her father, Virendra, a daily wage worker, fails to see the need. Or the hurt in her eyes. "What is the point in spending money on her education when ultimately she has to sit at home and do what her mother is doing," he argues.

Between cooking and doing the laundry, Shreya still dreams of attending school someday, but Kaushalya, a mother at 13 has

after she attained puberty, leaving her physically weak and psychologically scarred. "My parents married me off when children my age were playing," she says cursing her fate. Kaushalya's body resistance suffered due to early childbirth and she is now perennially battling diseases—a fate that befalls most girls pushed into early matrimony by illiterate parents.

under economic and social pressures. "My parents were too poor to send me to school. My marriage meant we could eat to feed," she says in a matter of fact tone.

Shreya and Kaushalya are two victims of the gender bias that continues to plague most of rural India. The girl child is considered to be an unwelcome addition to the family

director-general of police, who has done extensive work on gender discrimination. Greater efforts are required to make the girl child socially, economically and culturally free as social dogmas and archaic traditions continue to hamper the intellectual and physical development of the girl child, he says. The Beijing Declaration for Action

adopted unanimously at the Fourth World Conference on Women by representatives from 189 countries reflected a new commitment to the goals of equality, development and peace for all women but the ground realities have not changed much since then.

According to official sources, girls upto 19 years of age comprise a quarter of

believed to be caused by gender discrimination. Every year about 12 million girls are born in India, three million or 25 per cent do not survive to see their fifteenth birthday and a third of these deaths occur in the first year itself. While 13 per cent of female deaths before the age of 24 are due to complications in pregnancy and childbirth, studies reveal that region, religion, caste and poverty exercise an influence on the mortality rates. The lower the social and economic status of women, the lower the expectation of life at birth.

"A girl born in UP can expect to live for 54 years, 20 years less than her peers in Kerala whose life expectancy is 74 years," gender-based studies say. The main reason for the declining sex ratio has been identified as the gap in the

THE RIGHT TO PROTECTION

Violence against girls as well as women remains a persistent problem that takes many forms, including sexual exploitation and abuse, rape, incest, prostitution, child pornography, trafficking, and harmful traditional practices such as female genital mutilation. Research studies point out that the victims of any kind of physical and mental abuse including sexual abuse, suffer from internalised feeling of shame, disgust, anxiety, guilt, low self esteem, low self confidence, helplessness, revolt, resentment and anguish. Any violence has long term physical and psychological implications. Girls face violence in the homes and outside, in the community and the workplace. In any emergency situation — conflict or natural disaster, they are even more vulnerable.

Minors' rape on the rise in Delhi

Neeta Sharma
New Delhi, August 13

TWO-YEAR-OLD Ananya (name changed) was playing near her house, when she was approached by her uncle who promised to take her to a marriage procession. She was lured to a lonely spot, where he raped her.

He then tried to strangle her. When found by the police, Ananya was unconscious and bleeding. Though the accused was arrested, her parents are now being threatened to withdraw the case. Ananya has persistent psychological and gynaecological problems, and is being rehabilitated. Alarming as it may sound, a rapist may be lurking in your neighbourhood or may even be one of the family.

Statistics collected by Delhi Police over the last three-and-a-half years reveal that in almost 90 per cent cases, rapists are known to the victims; while in three-fourth

of the cases reported, the victims are minors. This year, out of the 233 rape cases registered in Delhi, 152 victims are below 18 years of age. And out of them, 25 are below seven years of age.

A district-wise report revealed a high incidence of rape cases in resettlement colonies like Trilokpuri, Sultan Puri, Seelampur, Shahdara and Seemapuri.

"Legally, the definition of child sexual abuse is limited to sexual penetration of a child below 16 years. But what is unrecognised by the law is the fact that the abuse also includes molestation, sodomy and verbal suggestion," says senior counsel Ashish Bhagat. Even if a case goes to court, in 96 per cent cases the accused gets away due to lack of evidence.

Delhi Police Commissioner R S Gupta says adequate precaution should be taken to protect a girl child. "The trauma is worse as it is done by someone you trust."

According to the Department of Women and Child Development, Government of India, there are 4 lakh child prostitutes in the country. (Country Report, 1997), and this data is outdated now. The girl child falls prey to the vicious sex trade, often sold into prostitution by her own relatives — people she trusts to protect her. As per the National Crime Record Bureau, the incidence of child rape had increased from 3,986 cases in 1994 to 16,496 in 2000. Detailed statistics available on victims of rape in the years 1995 to 1999 reveal that the percentage share of child rape victims is 20.4 per cent of the total rape in the country. During 1999, there was an increase of 13.2 per cent in case of child rape for the age group below 10.

Table 3 highlights the vulnerability of the girl child. These figures are merely indicative as many rape cases are not reported to avoid social stigma and harassment.

Table 3
VICTIMS OF CHILD RAPE 1995-1999

Year	Age group		% share of child rape victims to total rape victims
	Below 10 years	10-16 years	
1995	747	3320	29.5
1996	608	3475	27.5
1997	770	3644	28.5
1998	646	3507	27.4
1999	731	2422*	20.4

* Age group 11-15 years

Source: Crime in India 1999, National Crime Records Bureau, 2001



WHAT WE CAN DO?

India in its Constitution and with various international instruments that it has ratified, has promised to end gender discrimination and ensure equality in law, programmes and policy as also in practice. The fact that a decade 1991-2000 was declared the SAARC Decade of the Girl Child reflects that there is awareness that the girls in India need special provisions and initiatives by the state and non-government agencies.

Even with the recognition the discriminated and unequal status of the girl child and recognition of her special needs, schemes fail to specifically provide for them and therefore often she gets subsumed under the wider canvas of schemes for women and children. A few such attempts have been made. The focus of major schemes like the Integrated Child Development Services scheme concentrates basically on providing day-care to small children, family life and education to girls who have dropped out of school. Some other schemes like Balika Sammridhi Yojana, the scheme of Delhi Government under the Welfare of Schedule Castes and Schedule Tribes Department for the Dalits in the city whereby Rs. 5,000/- is given to the girl child of economically weak Scheduled Caste parents, have been initiated as 'incentives' for parents with girl children.

Despite these the situation on the ground reflects very slow change. The schemes meant to empower the girl child are more palliative in nature than actually empowering and lack a rights based perspective. This is because of deeply ingrained social attitudes. Those responsible for implementation of our programmes are part of this very society, and steeped in patriarchy.

Schemes for BPL girls

OUR CORRESPONDENT

SONEPAT, MARCH 26

The Haryana Government has launched a series of welfare schemes for the girls belonging to the families living below the poverty line (BPL) in the state.

Giving this information, Mr S. N. Roy, Deputy Commissioner, told mediapersons here today that the schemes included financial assistance to the BPL parents soon after the birth of the child. Under the Balika Samridhi Yojana, a financial aid of Rs 500 was being given to a woman giving birth to a female child. This facility, he said, would be provided to such women up to two female children and the amount was being deposited in the banks or post offices in their names.

When these girls started going to schools, they were given Rs 300 each a year for Class I to Class III, Rs 500 for Class IV, Rs 600 for Class V, Rs 700 for Class VI and Class VII, Rs 800 for Class VIII and Rs 1,000 for Class IX and Class X as scholarship.

The original amount was released to them when they attained the age of 18 years, he said. He claimed that at least

304 beneficiaries were provided financial assistance during the year 2001-2002 under the scheme. The number of such beneficiaries had gone up to 679 since it was launched in 1997.

The Deputy Commissioner further disclosed that the state government had launched several schemes for boosting the

farm output in the state.

The farmers, he said, were being provided know-how about the latest technology and using the improved quality of seeds and pesticides.

He said that the area under cultivation of wheat crop had gone up to 169.5 lakh hectares against the target of 159 lakh hectares fixed by the govern-

ment this year. It registered an increase of 11 per cent. Similarly, the area under gram had also increased considerably.

The DC said that instead of the cultivation of cash crops, efforts were being made to encourage other crops and the state government was giving incentives for this purpose to the farmers.



FD certificates given under girl child scheme

Chennai, April 5: Chief Minister J Jayalalithaa today distributed fixed deposit certificates in the tune of Rs. 1.82 lakh covered by the state government's assistance to girl children. Our News Bureau

Chennai, April 5: Chief Minister Jayalalithaa today distributed financial assistance totalling Rs. 1,82,400, deposited in the Tamil Nadu Power Finance Corporation (TNPFC), to parents of 12 girl children under the State government's scheme to protect girl children. An official press release here said under the scheme, a sum of Rs 22,200 would be deposited with TNPFC if the parents undergo family planning operation after one child, the couple had two children. Once these children begin their schooling, a sum of Rs 150 would accrue to them as monthly interest, for a period of 15 years, which can be used to meet their educational expenses. On attaining 20 years of age, the sum deposited would net a total of Rs. 150 per month for a 15 year period.

CONCLUSION

In India, the patriarchal system is so ingrained in mindset, no matter how many laws and policies are made, the situation can change only with societal initiatives. The fact that separate policies and programmes have to be made for the girl child, itself project that discrimination exists. The State has to intervene in enforcing the laws be it against female foeticide, child marriage or programmes for survival of the girl child by giving monetary benefits to the family. If the survival of a child is only based on monetary returns, can one expect a change in society? If mothers themselves or under pressure from the family decide that they want selective abortion, how can we prevent the murder of a foetus or new born baby girl? How can a traditional mass marriage be stopped if the entire community desires it? These are some of the questions that haunt all of us today. Laws alone cannot alter the situation. It needs the support of religious, political and community elders who will promote the right of a girl child to live — with equality and justice.

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One of the most visible manifestations of patriarchy in India in the last two decades has been the alarming decline in the ratio of female to male children (henceforth, FMR¹) in the country. This was once again highlighted by the Provisional results of Census 2001. The decline in the FMR in the 0–6 years age group was of 18 points; from 945 girl children per 1000 male children in 1991 to 927 in 2001. A similar decline of 17 points took place between 1981 and 1991.

This imbalance is most visible in the 0–6 age group.

Such a trend and the consequent imbalance in the sex ratios, the Registrar General of India (RGI) warns us, will 'continue to haunt the society' for decades to come, unless of course corrective steps are taken.²

If corrective steps are to be taken, it is not enough to merely look at the aggregate data at state or the national level. We must disaggregate the data to identify segments of population where the girl child is 'at risk'. This can be done along different lines; region-wise, by location — urban and rural, by social groups — scheduled castes or tribes and even by prosperity levels. This will tell us where the shoe pinches; the aggregated data merely tells us whether it does. There is clear evidence that the patterns of 'female deficit' are not uniform in our society. There are 'epicentres' of such deficit from where the pattern spreads elsewhere. Some of these epicentres appear at unlikely places, the urban segment of our population is one such place.

The term sex ratio is used to denote the number of men per thousand women. India, however, has traditionally used this term other way round, i.e. the number of women per thousand men. To avoid confusion on this score, it is better to use the term FMR or female to male ratio.

ADVERSE SEX RATIO - AN URBAN PHENOMENON

State level data on the changes in sex ratio among children in the 0–6 age group³ between 1991 and 2001, in the rural and the urban population shows that the FMR among children in urban India declined by 32 points during this period compared to a decline by 14 points in the rural region. Moreover, in most of the states the decline in urban FMRs among children is significantly larger compared to that in the rural areas.

It is always believed that progressive thinking and attitudinal change, following much greater access to modern facilities and information, is more a feature of urbanisation than of the rural populace. Indeed one would have expected that the retrograde male preference too would be more distinctly visible within rural areas. However, data belies this notion. Analysis of state level, district level as well as regional level data indicates a trend towards lower FMR ratio in the urban areas.

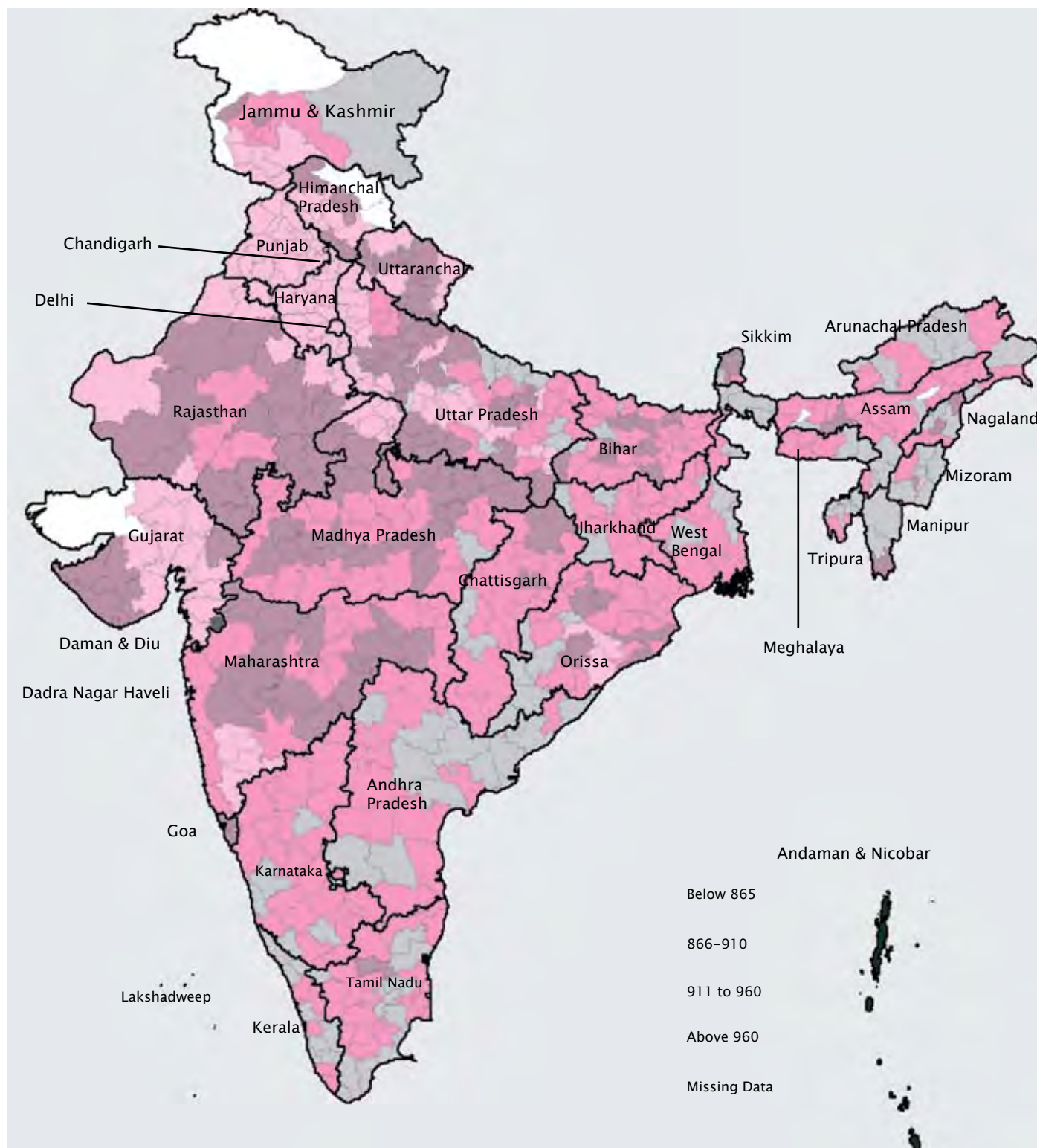


¹The term FMR is used here to differentiate it from SR or Sex Ratio used internationally to denote the number of male per 1000 females in the population.

²The RGI deserves credit for highlighting this aspect rather than seeking comfort over a 6-point increase in the FMR of the overall population; from 927 in 1991 to 933 in 2001.

³As the 0–6 age group population data are not affected by sex selective migration, the escape hatch of migration cannot be used in explaining away the low FMRs.

Figure 1
FEMALE TO MALE RATIO (URBAN) AMONG CHILDREN
(0-6 YEARS) CENSUS 2001



Source: Census of India

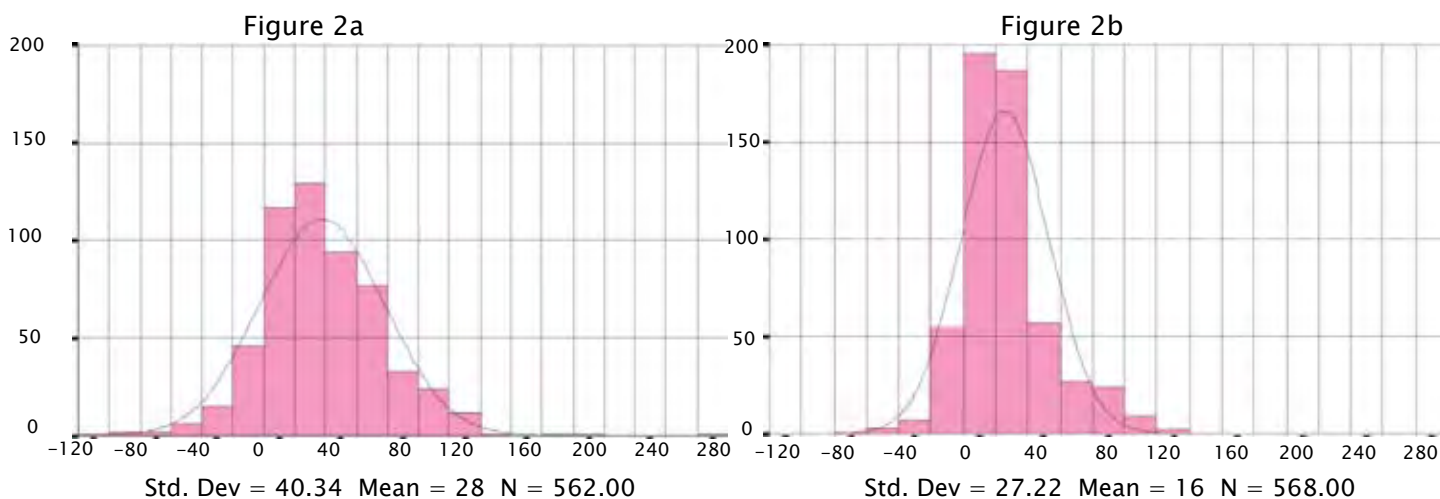
The above pattern can be seen more sharply through the district level data. A district level map of the FMRs among urban children in the 0–6 year age group in 2001, is a case in point (Figure 1). Even a cursory look at the map, brings out the disturbingly low proportion of girl children in a large tract. There are as many as 110 districts where the FMR in the 0–6 age group is below 865 and 141 districts where it is between 865 and 910. Both the ranges are disturbing, the former more so. It is pertinent to point out that the all-India FMR of 927 itself is low by international standards.

What stands out is a clear regional pattern. Literature has talked of a north-south divide in sex ratios⁴. Sopher (1980) has elaborated the north-west versus the south-east divide in sex ratio patterns while Miller (1989) has expressed concern over its movement 'down south'. Caldwell's (1990) expressed a similar concern over growing 'northernisation' (read 'masculinisation') of the sex ratio patterns. This conventional north-south divide is breached in 2001 and low FMRs in the 0–6 age group have made ingress into hitherto unaffected regions of southern and eastern states. However, in many of these districts, the rural FMRs have not shown a comparable decline. This lowering of FMRs is happening along certain tracts or 'routes of cultural circulation'. (For a detailed table of the rural, the urban and the total FMRs in the 0–6 age group see Appendix 1)

The decline in FMRs in the urban and the rural areas can also be analysed by comparing the extent of decline in the 593 districts⁵ between 1991 and 2001. (Figures 2a and 2b) provide the distribution of the decline. The mean decline in rural FMRs in the districts is by 16 points, but in the urban segments it is as high as 28 points. Further, the number of districts where the FMRs have declined by 60 to 100 points is much higher in the urban areas than in rural areas.

Figure 2

DECLINE IN THE FEMALE MALE RATIO IN THE 0–6 AGE GROUP BETWEEN 1991 AND 2001 IN URBAN AND RURAL POPULATION BASED ON DISTRICT-WISE DATA



DIF06U

DIF06R

⁴This divide can more correctly be described as the north-west versus south-east divide across the river Narmada or the Bharuch-Chhota Nagpur axis.

⁵Population data for 1991 has been recalculated for the newly created districts between 1991 and 2001 to facilitate inter censal comparison.

Foeticide slur on posh Delhi

By Kalpana Jait
TIMES NEWS NETWORK

New Delhi: After Punjab and Haryana, Delhi too provides statistical proof that the wealthier the area, the greater the discrimination against the girl child. The latest data to emerge from the 2001 census reveal that the areas in Delhi with the largest number of 'missing' girls — girls who are never born because of female foeticide — are also some of the most posh ones. This is reflected in abysmally low child sex ratios.

The sex ratio for any age group is defined as the number of females per 1000 males in that cohort. A sub-district break-up of child sex ratio data in Delhi done by the census authorities shows areas such as Hauz Khas, Defence Colony, Model Town and Punjabi Bagh as the worst offenders. In some of these areas, there are less than 850 girls per 1000 boys aged six and below. Other areas which do poorly are Delhi's traditional Jat villages like Najafgarh and Narela.

A normal sex ratio always shows more women than men but only 10 districts in the country qualify as normal. South district in Sikkim has the highest sex ratio of 1036, while Sonapat in Haryana has the lowest at 783.

Experts also fear that the large number of



'missing' girls, evident in the child sex ratio in Delhi, is indicative of rampant female foeticide in these areas. Even if some adjustments are to be made in some areas — such as the industrial belt or cantonment areas — for migration, the large gap in sex ratios cannot be explained. As it is, the 2001 census showed that child sex ratio in Delhi declined steeply — from 945 in 1991 to 865.

Demographer A R Nanda explains that in Delhi one needs to take out factors such as migration stream and people coming from

with the male child. Underenumeration of girls can be another factor, parents simply forget to count the girls when the census man visits them. "But even then, foeticide would be a factor for the missing girls, particularly in prosperous areas. In these places, people are trying to limit their family size to two or even one," says.

So Hauz Khas shows a child sex ratio as low as 841 and Vasant Vihar 865, with Defence Colony only slightly better at 883. Only Daryaganj, Sadar Bazar and Kotwali areas have a child sex ratio that is above 900. Daryaganj, with a ratio of 936, is the best in Delhi. "One is not surprised," says Mira Shiva at the Voluntary Health Association of India. "It is the educated who are making the maximum use of (sex determination) technology." The fact that educated mothers are willing to abort the girl child only reflects the social conditioning of women. "Till the mother of a baby girl is respected, this practice will not change," she adds.

The decline of child sex ratios is causing serious concern. Census 2001 showed a decline of 18 percentage points from 945 to 927 during 1991 to 2001. The decline was much higher in the economically developed states of Punjab, Haryana, Gujarat, Maharashtra, Delhi and Chandigarh.

In most countries of the world, FMRs are usually above 1000. In South Asia, China and a few other countries, the FMRs are well below this figure. As we know in India, the FMRs have steadily declined from 971 in 1901 to 933 in 2001.

Such low FMRs have been attributed to excess female over male mortality. This excess mortality arises, due to the unequal access a female has to life-sustaining resources like food, nutrition, health and other care in general, compared to her male counterpart.

The Rural 'Resonance'

It is also plausible to expect a similar lowering of FMRs, especially in the urban areas, among the prosperous segments since their access to the technologies of sex selective elimination is much better than that of the poorer segments. Even the prosperous households in the rural areas have good access to these technologies either through better 'communication' facilities or through the 'mobile clinics'. If this were so, the FMR data by prosperity may provide suitable evidence. This is what we turn to next and analyse the data from an unlikely source: the quinquennial surveys of household consumer expenditure from the NSSO (National Sample Survey Organisation). These surveys provide data on the family composition by AMPCE (Average Monthly Per Capita Expenditure) — a good surrogate for prosperity. Analysis of the data from the 43rd (1987-88), and the 55th (1999-2000) round show a clear trend of more masculine sex ratios among the prosperous groups in nearly all the states and an intensification of such trend with time.

While all eyes were fixed on the 2001 population census data for information on sex ratios, the 55th round of the NSSO survey on household consumer expenditure has come up with an important and disturbing observation. The recently released report (No. 475: 17) blandly provides the following information based on a survey of over 1.20 lakh households in the country (rural 75 per cent and urban 25 per cent).

This information is significant. It shows how masculine the sex ratios are among the prosperous groups both in rural and in urban areas. It also highlights the trend of more masculine sex ratios in urban households compared to the rural households. The pattern is the

High school physics books give an interesting illustration of the process of 'sympathetic resonance'. Imagine two parallel cloth-strings in a garden on which clothes are kept for drying. If one string is continuously vibrated up and down from one end, the other string also starts bobbing up and down or 'resonating' with the first one after some time even when the two are not touching each other. The rural FMRs can similarly 'resonate' with the urban FMRs. In some states these could remain 'indifferent', in others these may show 'weak resonance' while in some others it may be the case of 'strong resonance'.

Table 1
SEX RATIO BY AMPCE CLASS: INDIA (RURAL)

PCE CLASS	AMPCE	No. of Hhs	Log AMPCE	FMR(0-14)	FMR (All)
0-225	191	2547	2.28	946	1004
225-255	242	2451	2.38	951	990
255-300	279	5147	2.45	950	988
300-340	321	5588	2.51	925	971
340-380	361	5892	2.56	914	946
380-420	400	5895	2.60	948	955
420-470	445	6783	2.65	895	940
470-525	497	6635	2.70	832	904
525-615	567	8253	2.75	853	921
615-775	686	9383	2.84	820	904
775-950	853	5337	2.93	854	908
> 950	1345	7474	3.13	804	858

Source: NSSO Survey: Round 55, July 1999-June 2000.



Table 2
SEX RATIO BY AMPCE CLASS: INDIA (URBAN)

PCE CLASS	AMPCE	No. of Hhs	Log AMPCE	FMR(0-14)	FMR (All)
00 - 300	256	1585	2.41	903	949
300 - 350	326	1586	2.51	977	988
350 - 425	389	3290	2.59	948	961
425 - 500	464	3886	2.67	894	941
500 - 575	537	3926	2.73	915	958
575 - 665	619	4374	2.79	885	913
665 - 775	719	4785	2.86	875	896
775 - 915	841	5150	2.92	840	871
915 - 1120	1010	5677	3.00	795	848
1120 - 1500	1286	6651	3.11	798	815
1500 - 1925	1692	3901	3.23	810	847
> 1925	3074	4113	3.49	819	836

Source: NSSO Survey: Round 55, July 1999-June 2000.

Table 3
DEMOGRAPHIC DIFFERENCES BETWEEN LOWEST AND HIGHEST MPCE CLASSES

Population Characteristic	Rural			Urban	
	Bottom 5 per cent	Top 5	All per cent	Bottom 5 per cent	All
Sex Ratio	1005	858	941	949	900
Sex Ratio (Adults)	1067	873	966	993	908
Sex Ratio (Children)	946	804	900	903	883

Note: AMPCE or the Average Monthly Per Capita Expenditure is a good surrogate for prosperity and is free from the effect of the family size. For further elaboration on this see Krishnaje (1987). The log AMPCE used here and in figures 3a and 3b is the logarithm of the AMPCE values. Ceteris paribus, a household with higher log AMPCE is more prosperous compared to a household with lower AMPCE.

same for adults as well as children in the 0–14 years age group. As stated earlier, the sex ratio among children does not suffer from sex selective migration. Further, the difference of 142 points in rural and 84 points in urban households between the bottom 5 per cent and the top 5 per cent of the households is too large to be explained away by migration. The observed distortion in the sex ratios is clearly man-made.

It is also pertinent to look at the sex ratio figures by different AMPCE classes. There are 12 such expenditure classes. Table 1 gives the details of the AMPCE classes, number of households surveyed, mean AMPCE in each class and the sex ratios among these for the total as well as the child (0–14 years) population in rural areas. Table 2 gives corresponding information among the urban households.

A consistent decline in the FMRs (females per 1000 male population) as one moves up the AMPCE range is clearly discernible. This is so for both rural and the urban households and the 0–14 years population as well as the total population. Figure 3a and 3b depict the relationship between the sex ratios and prosperity as measured by the variable log AMPCE⁶. The two have strong negative correlation for the overall FMRs as well as the FMRs for children in the 0–14 age group. It is pertinent to note that the quality of enumeration in the NSSO surveys is considered to be quite high. The possibility of female undercount can as such be ignored.

Figure 3
SEX RATIOS BY PROSPERITY

Figure 3a

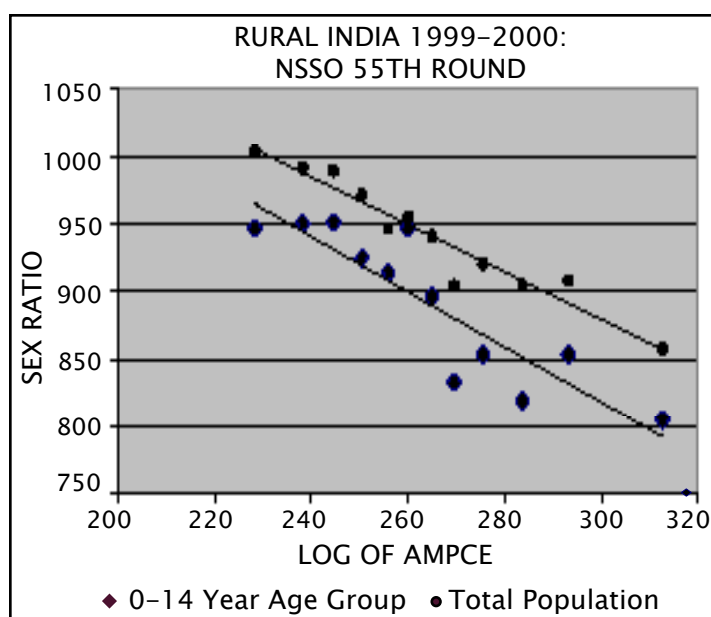
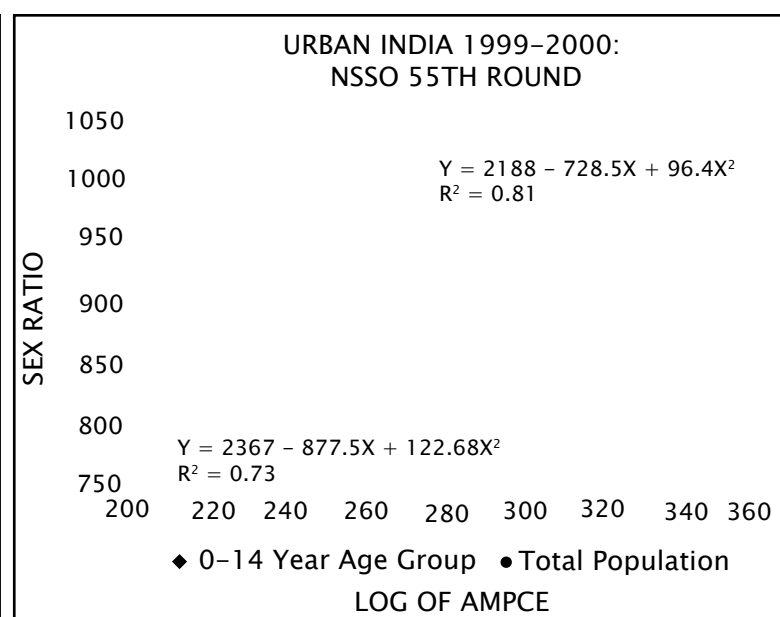


Figure 3b



⁶ Taking the Log of AMPCE suitably 'deflates' the income effect; an accepted method in the economic literature.

Sex Ratios Across and Within a Region

Links between prosperity and sex ratios have been explored by researchers. Bardhan (1974) had pointed out how the relatively poorer regions in the country like Kerala appear to treat their daughters better than the relatively more prosperous districts in the north-western part of the country. Within a given region too, Miller (1981) has discussed the differences in sex ratios among the 'propertied classes' and others. Most recently, Premi (2001) has stressed the need to examine as to why the largest decline in the child sex ratio (0–6 years age group) has come about in the economically well-developed states.

However, these analyses compare sex ratios across different regions but not the sex ratios at different prosperity levels within a given region. This is probably so because the mainstream population census data do not provide sex ratios by prosperity level. As a result, this important issue has not been addressed in the demographic literature (Krishnajee, 1987 and Agnihotri 2000, Ch. 8). Analysis of the NSSO data fills this gap and throws up an important agenda for research and advocacy.

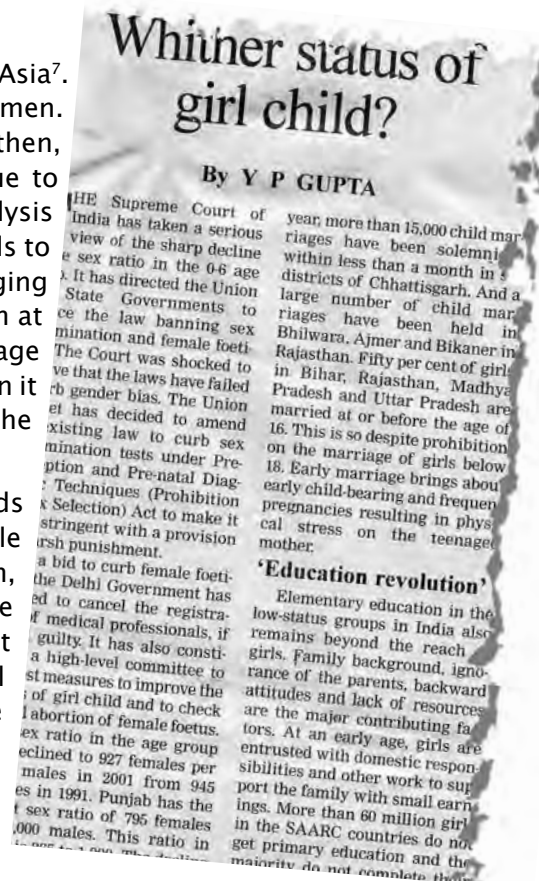
This analysis can and ought to be carried out at the state level and if possible at the level of NSSO regions that are smaller in size and more homogenous compared to states as units. This will reveal the nature of regressive practices faced by girl children in different regions of the country.

Gender Discrimination and High Female Mortality

Discrimination against girls is neither new nor unique to South Asia⁷. Even in other parts of the world women are less 'equal' than men. Yet the sex ratios do not always reflect this. Why it is here then, that the sex ratios are so masculine and the FMRs continue to decline steadily? Our statistics do give us some insights. Analysis of data in South Asia, discrimination against girl children leads to excess female mortality below the age of 5 years itself impinging on their life chances at such an early age. It is this 'deduction at source' in South Asia that renders sex ratios in subsequent age groups masculine. This high mortality rate and a gender gap in it in the first 5 years of life lowers the FMRs much more than the gender gap in mortality in subsequent age years can do.

Mortality patterns among children are highly skewed towards younger ages. More than 90 per cent of the deaths in the juvenile age groups take place by the fifth birthday. Of these again, deaths during the first year of life, or infancy, account for above 60 per cent of the deaths. Within infancy, deaths in the first one-month, or the neonatal deaths account for a substantial portion of about 60 per cent to 70 per cent. The more the gender-gap at younger ages, the larger is the 'cascading effect' on the subsequent population. In some sense, this is similar

⁷Nineteenth century US, Meiji era Japan or England during Industrial Revolution are some of the examples (See, Agnihotri, 2000 for further details).



to placing an object between a source of light and a screen. Closer the object is to the source, the larger the shadow cast on the screen.

It has been observed that in most countries of the world, during infancy, male mortality rates are invariably higher than the female mortality rates. When the overall infant mortality levels are high, the gap between the two is considerable. As the IMRs decline, which usually happens as a society develops, the gap narrows down; and the male IMRs reduce faster than the female IMRs. However, in India the trend is different. Depending on the severity of discrimination, the gap may remain marginal or become substantial and distort the sex ratios in the process. Analysis of the child mortality data in India indicates that the female mortality rates in the 1–4 year age group could be substantially high in certain regions.

Excess female mortality below 5 years' age, is not biological in origin but is rooted in behavioural practices that create inequality of access to life sustaining resources for girl children. In fact, when all other things are equal, the female child is biologically hardier than her male counterpart and enjoys better survival chances. Behavioural discrimination overshadows this biological advantage, sometimes marginally, sometimes significantly and sometimes substantially.

DEBATE ON SEX RATIO IMBALANCES

Although this imbalance cannot be traced to biological reasons, this phenomenon of excess female mortality has made ingress right into infancy, especially in the post-neonatal period (1 to 11 months age). Yet, the debate on sex ratio imbalances in India has taken enormously long time to recognise this reality. In certain circles, there is a strong urge to explain away the problem using three popular escape hatches — female undercount, migration and high sex ratios at birth or, in other words, a biological propensity of Indian women to give birth to more male children! We will examine each one of these.

The Migration Argument

Sex ratios in a population are affected by migrations; sometimes substantially so. Usually men migrate for economic reasons while women do so mostly for reasons of marriage. As such the migration patterns in a given area can be sex selective. However, among children, such sex selective migration hardly happens. Sex ratio patterns among children, therefore, are free from the effects of migration. Many researchers have used sex ratios for the juvenile or 0–9 years age group; some others have used 0–6 years age group.

The migration argument can be taken care of by using sex ratio data for the younger age group like 0–9 years or 0–6 years since these groups are free from the effects of sex selective migration. Many scholars have used this approach while some others have directly used the infant and child mortality estimates based on the 1981 and the 1991 census data to examine the gender gaps. In any case, the results of the Census 2001 are so clear that migration is not likely to be invoked to explain away the decline in the FMR among the children.

Female Undercount

The bogey of female undercount continues to be raised even though the quality of enumeration is improving continuously. There is enough evidence to show that the relative undercount of the females has reduced over the decades. Moreover, it is unusual to assert that the undercount will be higher in the urban areas. As such when the urban segments show very low FMRs, enumeration errors cannot be used as an excuse.

Sex Ratios at Birth

As regards the sex ratios at birth, these usually vary in a narrow range of 102 to 106 male children per 100 female children born, in the absence of any interference. This roughly corresponds to 940 to 970 females per 1000 male babies born. If the sex ratio at birth is high, say, 108, the FMR at birth will be about 925 and the child sex ratios are likely to be more masculine.

Until recently, district level estimates of sex ratios at birth (SRB) were not readily available. Based on the data from the Census, Rajan et al (2001) have estimated these for 1981 and 1991. It can be noted that in 1981, only 26 districts had sex ratios at birth of 108 and above. The number jumped to 85 in the 1991 Census. For SRB above 108, the number of districts were 20 and 60 districts respectively. For 2001, these numbers will go up and so may the upper limit of SRB.

Further, the districts which showed very masculine SRBs in 1991 happen to be the ones in which the FMR in the 0–6 age group have become alarmingly low in 2001. This has important policy implications; that is, we need not await the results of the Census 2011 to find out districts where the FMRs may reduce further, such reduction can be anticipated on the basis of the 2001 data and preventive steps can be initiated. It is imperative therefore, that district-wise estimates of sex ratios at birth are made available in the public domain as early as possible.

Conventionally, sex ratios at birth are still expressed as number of male children born per hundred female children. This can create confusion in the minds of lay reader. The SRB of 102 to 105 corresponds to FMR 970 to 940 at birth. The term FMR at birth is yet to gain currency, however, even though it will be a more appropriate term.

Compared to female infanticide, foeticide has become a more acceptable mode of disposing of the 'unwanted' girl child. Infanticide is an overtly 'barbaric' practice, carried by non-professional and less powerful persons like the traditional dais or any old lady in the household. It does not allow parents to distance themselves from the event — killing of the child and be free of any guilt. 'Professionals', superior in the power hierarchy, on the other hand, carry out sex selective abortion. They use scientific skills, techniques and hardware; sanitise the process of eliminating the foetus and reduce the burden of guilt on the parents.

The point to be noted however is that such rapid changes in sex ratios at birth do not happen through natural processes. The increase in SRB noted between 1981 and 1991 has clearly arisen due to human intervention. One such interference that has gained currency during the 80s, and more so in the 90s, is the use of sex selective abortions or female foeticide. The sex of the foetus could be identified through amniocentesis or ultrasonography. Abortions could be carried out either independently or as an 'attached' service. Indeed sex selection in preference of males seems to have been 'sanctified by technology'.

Concentration of medical facilities and professionals in the urban areas and more important, their absence from the rural areas is well-known in our society.

Naturally, the facilities for sex selective abortions and other sex selection techniques will be available in the urban areas first even as these foeticide service providers, who often claim to be rendering 'national service' provide the service free; even for some of their poor clients! As their practice and the profit 'roar', the doctor-entrepreneurs starts attracting clients from the rural 'catchment'. Gradually, the number of such 'service providers' increases and in many instances, they start providing mobile service. Large scale use of sex selective abortions or any sex selection technique would render the sex ratio at birth and consequently the sex ratios in the child population more and more masculine in the concerned area.

It is plausible, therefore, to anticipate the effects of this interference in the urban areas first. In the initial stages, the lowering of urban sex ratios will not show any significant correlation with rural sex ratios, as the 'services' have not penetrated deep enough. Hence the demographic effect will become discernible only in the urban areas through child sex ratios. As the scope of the 'services' deepen and widen, the rural FMRs in the 0-6 age group will begin to decrease in tandem or 'resonate' with the urban FMRs. In the next phase, the lowering of the rural FMRs will accelerate. What one may not anticipate, but what the data reveal, is that certain rural areas overtake the urban areas in lowering of the FMR among children. Some of these districts may have had an earlier history of female infanticide.

Locating The 'Epi-Centres' Of Female Deficit

What are the implications of the above results? We clearly see that :

- The urban and the prosperous segments of the society are emerging as the 'epi-centres' of female deficit.
- These provide the 'role models' for the rural and the poorer segments and the trend for more masculine sex ratios spreads around these 'nodes'.
- There is emergence of new epi-centres and of the intensification of the trend of more masculine sex ratios around the existing ones.

Efforts for countering this trend must therefore, begin from the very centres they originate from. This is one area where blaming the poor, the rural or the marginalised groups will not do. The culprits exist among the urban, the prosperous and among the non-marginalised and that makes it a different ball game altogether. While it is difficult to suggest any perfect solution right away, (there never are any perfect solutions) it is possible to suggest some corrective steps to begin with.

Three factors can be listed straightaway that reinforce the perception and the argument of 'girl as liability'. Each of these factors operates more strongly among the non-poor and it is among them that changes must take place:

- Viewing girls as a financial burden.
- Apprehensions about her physical vulnerability — these apprehensions accentuate when the rule of law gets diluted and the powerful get away violating it.
- Mobility restrictions imposed on girls by acts of omission and on women by acts of commission.

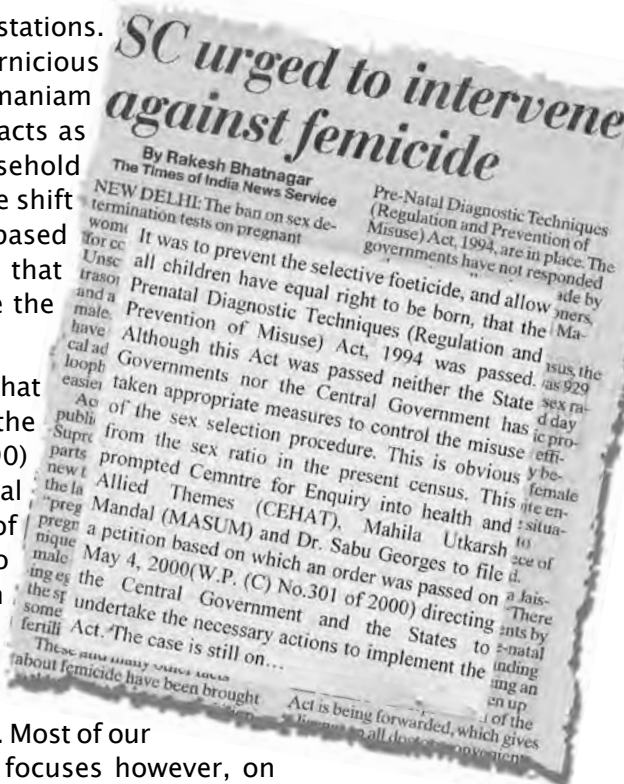
The girl-as-a-financial-liability issue has different manifestations. Some of these are contradictory. On dowry and its 'pernicious effects' a lot has been written. Some scholars like Subramaniam (1996), have clearly shown that the birth of a daughter acts as a 'negative income shock' and is reflected in the household expenditure. Kapadia (1994) has elaborately described the shift from close-kin based low dowry marriages to stranger-based high dowry marriages among the Tamils. It is obvious that the higher the household prosperity level, higher will be the dowry demand.

Strangely however, it is the same prosperous households that also adopt the culture of withdrawing their women from the work-force for the purpose of what Papanek (1989, 1990) calls 'status production'. Ironically, while this withdrawal enhances the social status of the household, the status of the woman diminishes within the household. At a macro level this has an effect on the status of the girl children in these households. It becomes necessary therefore, to create avenues for employment for women among the non-poor. Such avenues have higher chances of success if these are in newer or non-traditional sectors (Kabeer 1995). Most of our policy discussion on women's work-force participation focuses however, on the poor households.

Higher work-force participation among women also makes it difficult for the household to practise restrictive seclusion. The role of women's seclusion and its links with men's 'honour' has been extensively dealt with in Mendelbaum (1988). This does chime in with the 'nearly unanimous' observation in the received literature that higher work-force participation is a sufficient condition for better survival of women, although it is not a 'necessary' condition. The analytical framework in looking at the intra-household resource sharing does show that work-force participation is not critical to women's survival if culture takes care of it. But where culture does not, work-force participation is crucial. If the urban and the prosperous households in some parts of our country are adopting a culture that discounts female survival, their higher participation in the work-force seems to be crucial for survival of the girl children. As such one completely agrees with Alaka Basu's (1992) description 'probably the best placed mother is one who does not work herself but knows that there are no restrictions on her finding work...*should the need arise.*' (Emphasis added)

It is also necessary, in this context, to create avenues for women's re-entry into the formal work-force after their responsibilities of 'bearing and rearing' are over. A society that places a premium on women's role in biological and social reproduction, also owes to them the facility to re-engage with formal work-force. Today, a mother of two, in her late thirties, cannot think of getting into a formal sector employment even if she is well qualified.

A conducive environment for women's engagement with the formal labour market is contingent upon the law and order situation. Regions where crimes against women with sexual overtones are high, their participation in the work-force will



obviously be hindered. Such regions also enhance the perception of girls as liability with men dominating as 'protectors' of the household and as perpetrators outside it. Whether it is the cases of acid attacks, sex scandals or sexual assault, high crime rate involving women can result in distorted social perception. This is one area of research and debate where considerable work is required to be done. Advocacy efforts in the child rights area should straightaway begin demanding a better law and order environment.

An additional though somewhat unorthodox area of intervention and advocacy relates to the issue of mobility. Whether it is moving about in the neighborhood, going to school or in the workplace; women's lack of mobility is always cited as one distinguishing feature. At the same time girl children are not given the wherewithal for mobility. As a matter of fact, the number of girls on bicycle on the streets of any town, is a very useful surrogate for the freedom they may enjoy. But this has not been an explicit focus activity for advocacy or activism. Mobility through bicycles, in my opinion should be a strong area of advocacy and intervention.

Finally, there is a need for advocacy in dispelling the myth among the urban and the prosperous that sons look after their parents in their old age while daughters do not. There is a growing realisation in urban India, especially the metropolitan India that daughters do look after their parents, particularly when the NRI sons do not discharge this responsibility. Even in rural areas such anecdotal refrain is often heard. There is a strong need to project this fact in the media.

While these efforts may not solve every problem these will create a good beginning. Any long march begins after all, with some first few steps!

> **WEBSITE HELPS TRACK THOSE RESPONSIBLE FOR FEMALE FOETICIDE**

Net the girl killers

Ann De Ron

NEW DELHI: Do you know of any doctor, clinic or person performing pre-natal sex determination tests and abetting female foeticide and want something to be done about it? You can now lodge a complaint just by logging on to www.indiafemalefoeticide.org.

Sex determination tests are prohibited under the Pre-natal Diagnostic Techniques Act, 1994. This site collects names of law-breaking institutions or individuals and hands them over to the competent authorities, who then take suitable action. The complainants' identity is kept secret.

About 550 people have submitted complaints already, of which 340 were clinics. Forty of these were from Delhi.

The website was launched nine months ago by Delhi-based NGO Datamation. The NGO, which works on gender issues, aims to spread awareness on sex-specific

abortions and promises to take 'fast and prompt action' against erring institutions or individuals.

"The incoming information has already led to the closure of sever-

al clinics and there are hundreds of courts cases pending, with us as an important source," says Chetan Sharma, a Datamation member.

In case of women, who have undergone sex-selective abortion, the NGO does not take legal action, instead it sends over a woman volunteer to counsel them.

Says Sharma: "Until now we were not that well-known, but the Delhi and Central governments have very recently recognised us as an official website and will be advertising for us."

In 3-4 weeks, the site will also broadcast a Hindi film on female foeticide, called *Atmaja*. The film has been produced by the Ministry of Health and Family Welfare and Plan India.

For now, the surfer can rely on the site for listings of clinics with registered ultrasound machines, an overview of organisations working in this field and also discuss gender-related issues online.



About 550 people have already sent in their complaints to the website.

APPENDIX 1

DECLINE IN FMRS (FEMALES PER 1000 MALES) IN
THE 0-6 YEAR POPULATION: 1991-2001

Nation/States/UTs	FMR06U01	FMR06R01	FMR06U91	FMR06R91	DeclineU	DeclineR
INDIA	903	934	935	948	32	14
States						
Andhra Pradesh	958	965	962	979	3	14
Arunachal Pradesh	981	957	946	986	- 35	29
Assam	931	967	955	977	24	10
Bihar	924	940	950	953	26	14
Chhatisgarh	941	982	960	988	19	6
Goa	919	948	953	972	35	24
Gujarat	827	905	909	937	81	32
Haryana	809	824	884	877	76	53
Himachal Pradesh	858	900	904	955	46	55
Jharkhand	931	973	950	985	19	13
Karnataka	939	954	951	963	12	9
Kerala	958	964	958	958	- 1	- 6
Madhya Pradesh	906	941	931	944	25	4
Maharashtra	908	923	934	953	27	30
Manipur	980	956	972	975	- 8	19
Meghalaya	964	977	968	989	4	12
Mizoram	961	978	965	973	4	- 6
Nagaland	935	983	959	1001	24	17
Orissa	927	954	949	969	23	15
Punjab	789	795	936	952	147	157
Rajasthan	886	914	909	919	22	4
Sikkim	925	991	936	967	12	- 24
Tamil Nadu	951	931	955	945	4	14
Tripura	948	978	959	968	11	- 10
Uttar Pradesh	880	922	928	927	48	4
Uttaranchal	874	914	913	898	39	- 16
West Bengal	948	967	955	969	7	3
Union Territories						
Andaman & Nicobar	940	976	970	973	31	- 3
Islands						
Chandigarh	844	852	879	891	35	39
Dadra & Nagar Haveli	885	995	977	1015	92	20
Daman & Diu	935	920	996	933	62	13
Delhi	866	853	917	900	51	48
Lakshadweep	920	1010	932	951	11	- 59
Pondicherry	951	971	962	963	11	- 7

Note: FMR06U01 - FMR in the 0-6 year population, Urban, 2001, FMR06R01 - FMR in the 0-6 year population, Rural, 2001
 FMR06U91 - FMR in the 0-6 year population, Urban, 1991, FMR06R91 - FMR in the 0-6 year population, Rural, 1991
 Decline U - Decline in FMR, Urban, Decline R - Decline in FMR, Rural

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✿ ***THE TRAFFICKED CHILD***



SECTION 8

THE TRAFFICKED CHILD

Sonu got his first beating when he was just one year old. His parents were unable to cope with his 'demand' for attention. To the parents this was necessary in order to make the child understand at a very early age that his 'demands' cannot always be fulfilled. A convenient justification washes us off all the guilt and life continues, screaming at and beating up the child as and when it is thought 'necessary'. This is not a case of a child from a poverty-stricken family. Such Sonu(s) could belong to a fairly well-to-do family living in a township around a megalopolis like Delhi or to wealthy parents residing in a posh locality of Delhi, Mumbai, Kolkata, Chennai, Bangalore, Chandigarh, Goa or any upmarket city.

Violence against children permeates all societies and cultures, it cuts across all caste and class barriers and assumes different forms and manifestations. What is visible is indeed the situation of children from poor families as their life lays bare open or situations that are outside the domestic sphere.

For some children life is even worse as they get physically and sexually abused in their very own home by people they trust most, more so if the child is a girl. Children are also bartered or sold by their own parents and relatives, not only because their family is poor and desperately needs money, but primarily because the child is unwanted and the greed for money allows 'good riddance to bad rubbish'. In most cases the unwanted child is the girl. Often, where it is a boy, he is sent away for labour or given away in bondage in exchange for the never-ending debts of the family. This is not to say that violence against the male child is any lesser. Boys too are sexually abused both in their homes and outside; both girls and boys are targets of child pornography and sex-tourism; while girls are sent off to join the circus, undernourished and malnourished boys from South Asian countries serve as camel jockeys in the Middle East. The stories of violence against children are endless.

Of the many forms of violence against children that remain undocumented or underdocumented is child trafficking. Of late, trafficking of children has come to receive great attention internationally. With pressure from the international human rights lobby and child rights activists, nations will soon be compelled to address child trafficking through systematic documentation, policy change and legal reform.

Combatting child trafficking is not going to be easy as it is not only about lack of information and understanding but also about mafias and nexus, about 'demand' and 'supply' market forces and most importantly, about conflicting morality and value system. How can we allow a child to serve us as a domestic servant and take care of the needs of our children either younger to her/him or same age or for that matter much older? We allow laws to be passed that ban contesting for a political office by persons with more than two children because it is easy to disown and abandon the extra child. While we do not allow unwed mothers, we allow our girls to either abort the child in secrecy or to deliver the child and then sell it off or abandon it. A man will perhaps not divorce his wife who cannot conceive if the wife allows him to buy a young girl, sleep with her, impregnate her so that she can be a surrogate mother to his child and then abandon her forever. As we buy a computer and an internet connection for our children to help them access information and knowledge, we either fail to notice the vulnerability of our children to cyber pornography or do not want to notice it as that would imply talking to children about children about sex and sexual behaviour, a subject not to be discussed in the family.

Trafficking of children is not something that happens to the child out there. Any child can be a victim and therefore it is necessary to stop it in the interest of child rights.

Buying and selling of human beings is not a new phenomenon. Humans — women, men and children — have been captured, bought and sold in marketplaces for centuries. History is replete with tales of the slaves of Alexandria, the sugarcane plantations of Trinidad and the niggers of the deep South. India was not untouched by this phenomenon either. Indians, particularly from Coromandel, Malabar and Nagapatam were sold as slaves to the Cape, Trinidad and the Mascarene Islands. Yet those were not ‘modern times’.

Evidence suggests that trafficking has been rearing its ugly head again in recent times. Unfortunately, data on trafficking and related aspects is variable in quality and estimates vary significantly. Worldwide, 250 million children are estimated to be working; 600 million children still live in extreme poverty¹. Many of these are children as young as 5 or 6 years. The 2001 Census of India puts the number of children living in the country at 400 million. Approximately 37 per cent of them are in the 0–14 years age group and if we were to include those below 18 years, then these children would constitute nearly 45 per cent of India’s population. If government estimates place children in the work force at 11 million; others quote a figure of a 100 million. Worse, more than half the children born in India reportedly remain unregistered. Moreover, in the absence of compulsory registration of marriages it is impossible to keep a check on trafficking of young girls through marriage.

In the past decade, the volume of trafficking has increased to make it one of the fastest growing and perhaps the most lucrative international criminal activities. United Nations estimates suggest that globally trafficking in women and children is an operation worth \$5–7 billion annually. (Saha, 2002). Indeed this is a modern form of slavery, and although prostitution has come to be recognised as the most common purpose, children are also trafficked for labour, domestic work, organ transplants, begging, drug peddling, marriages, adoption, camel jockeys, circus and other forms of entertainment. According to the Report of South Asian Workshop on Trafficking in Women and Children, ‘... it is now widely admitted that global trafficking of women and children today is more profitable than arms or drug smuggling’. (UBINIG, 1996). It is estimated that 25 per cent of the victims of commercial sexual exploitation in India are below 18 years. Large-scale movement of refugees and migrants along the Bangladeshi, Indian and Chinese borders has never been enumerated or documented systematically. Nor is there any record of the number of children who are displaced during civil conflicts, earthquakes or riots like the recent ones in Gujarat — significant numbers of these children are trafficked.

‘The sale of a person or the trafficking of a person reduces that person to the level of a commercial commodity and is therefore inherently condemnable, regardless of the ultimate purpose for which it is carried out.’

*Ofelia Calcetas-Santos
Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography.*

This paper is based on documentation available with the Secretariat of the National Campaign Against Child Trafficking, hosted by HAQ, and the Regional and State Consultations held by the Campaign. The text for this paper has been compiled by the HAQ team.

¹ www.savethechildren.ca

Trafficking of children remains one of the worst forms of human rights abuses and intolerable forms of contemporary slavery. Children are usually preferred because they are docile and can be physically controlled more easily than adults. Because of their young age, they are unlikely to question their plight and are more easily manipulated by their keepers. They are used as pawns, sometimes at a very young age. Their guardians pass them on to another person for financial gain, who gets the control of the children and their labour. These children work excessively long hours in dangerous or cramped conditions, are vulnerable to sexual abuse and many other forms of exploitation. They are also subjected to mental and physical abuse.

The biggest hurdle in assessing its gravity and magnitude is the very nature of this complex trade. A nexus of professional crime syndicates runs it across the world and they operate through a chain of middlemen, sometimes including the victim's kith and kin. This makes it all the more difficult to identify the crime. Trafficking is lucrative and what makes it even more attractive to the perpetrators is the ease with which the money gets laundered through underground systems such as the Hawala to ultimately feed different terrorist and criminal organisations across the world². Moreover, since the users themselves are part of the civil society, they prefer to turn a blind eye thereby leaving the field open for traffickers.



Rapacious dalals and a drying farm economy force Bihar's Rat-Eaters, the lowest of the low, to sell off their children

By **AMARNATH TEWARY**

Brokering Innocence

Rs 2,000 who had promised him a job | ers for anything between Rs 400 to Rs 4,000

² This information is based on conversations with a Kolkata based journalist (who has requested anonymity), covering terrorism and internal conflict.

IT IS DIFFICULT TO ASSESS THE MAGNITUDE OF CHILD TRAFFICKING

Reasons:

- There is no comprehensive statistical data available on child trafficking in all its forms and purposes.
- Most cases go unreported.
- There is no one law to address the issue.
- Compilation of data by government sources is under certain IPC crimes and some special laws.
- Even with legal provisions available to address some forms of child trafficking, data is not always compiled as such.
- Crime statistics may not always be available in terms of cases reported under each and every section of the IPC.
- Whatever little statistical data is available is related to women and children in prostitution. Most of it is based on micro studies and to a large extent are projections and estimates.

The consequent absence of reliable quantitative data adds to the difficulty. To a large extent trafficking continues to be synonymous with commercial sexual exploitation or prostitution both at the national and international level. As a result, most studies, data and action in the field of anti-trafficking work in India are focused on trafficking for sexual exploitation. The buying and selling of children for labour, organ trade, marriage, adoption, sports and entertainment and other illegal activities like begging, drug peddling and smuggling thus remains under documented or not documented at all. While the government is unable to provide adequate data on 'trafficking' per se, crime records for certain crimes against children recorded under the Indian Penal Code and the Immoral Traffic (Prevention) Act may be accounted as the official data available on 'child trafficking'. (For crime records reflecting on 'child trafficking' see Appendix 1). By and large, for more insight and information, one has to rely on news reports and stories published or highlighted in the media or those brought out by NGO initiatives.

WHAT IS CHILD TRAFFICKING?

Children across the globe are bought and sold for a number of reasons. This is what poses a challenge for all those attempting to find an accurate and a widely accepted holistic definition of the term 'trafficking'. In India, the one and only one national legislation on trafficking, the Immoral Traffic (Prevention) Act, 1956 does not really define the term and treats it synonymous with prostitution. The absence of a comprehensive and a common understanding has made it difficult not only to deal with this issue but also in designing appropriate policies and interventions to tackle the problem.

The Oxford English Dictionary defines traffic as 'trade, especially illegal (as in drugs)'. It has also been described as 'the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc'. The word trafficked or trafficking is described as 'dealing in something, especially illegally (as in trafficked in narcotics)'. In other words, a trafficked person is one who has been transported to any part of the world as an object of trade or commerce, especially for illegal purpose or illegally. A slave on the other hand 'is the property of another or others and is bound to absolute obedience; a human chattel' and slave trade 'is the procuring, transporting and selling of human beings'. Clearly,

THE BASIC ELEMENTS OF CHILD TRAFFICKING

- A majority of the victims are children below 18 years.
- Both boys and girls are equally vulnerable to trafficking.
- There is no question of willingness or voluntariness in the case of children as they often do not know or understand the consequences or exploitation that may result.
- Coercion or actual force, abuse of authority.
- Involvement of exchange of money or any other form of consideration.
- Subjection to situations of abuse and exploitation either during the process of being trafficked or as a result of trafficking.
- Confiscation of travel documents or debt bondage.

intrinsic to child trafficking is the sale and purchase of children, their movement from one place to another and the use of force or other forms of coercion that leads to exploitation. There is also the element of migration especially illegal migration.

After extensive discussion, the Campaign Against Child Trafficking in India (CACT), a nationwide campaign, adapted the definition of 'trafficking' given by the United Nations Office of Drugs Control and Crime Prevention (ODCCP), to address 'child trafficking' and arrive at a wider understanding of the term in the Indian context. CACT is the only campaign in the country addressing 'child trafficking' exclusively. Most other campaign and networks on trafficking such as the Anti-Trafficking Network, ATSEC, Anti-Trafficking Centre, deal with trafficking in women and children together and therefore tend to treat trafficking synonymously with prostitution. Child trafficking however, takes many more forms. Most victims of trafficking are children and young persons below the age of 18 years and to assume voluntariness or willingness on their part for being trafficked, as done in the case of adults, will amount to gross injustice. Keeping this in mind, CACT added three aspects into the original ODCCP definition:

'The recruitment, transportation, transfer, harbouring or receipt of persons below the age of 18 years, within or across borders, legally or illegally, by threat or the 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 is likely to cause or lead to exploitation.' (CACT's inclusions are in bold italics)

It was strongly felt that the definition of the child must be in consonance with the UN Convention on the Rights of the Child (CRC), ratified by India in 1992, whereby children are persons below the age of 18 years. A lot of trafficking in India is found to happen using perfectly legal means such as marriage (which, once having taken place, remains legal, unless repudiated by the girl when she reaches puberty or 15 years of age) or adoption. This kind of trafficking needs to be countered. Thus the words legally or illegally were added even though the campaign recognises that all child trafficking is illegal. Moreover, the campaign partners felt that exploitation is inherent in any act of trafficking. Therefore, to be able to book the culprits it is important to add the dimension of 'intention to cause exploitation' or 'knowledge of exploitation' that may result or may happen in the course of the transfer or movement of the child from one place to another. The clause 'with the intention or knowledge that it is likely to cause or lead to exploitation' was thus inserted.

Just as it is hard to distinguish between trafficking and slave trade, it is also difficult to define 'sale of children' since children are not, and should not be, the objects of trade or commerce. The reality of such selling however, proves the need to gain a clearer perception of the meaning of 'sale'. The Oxford English Dictionary defines sale as 'the transfer by common consent of the ownership of a thing or an interest in land, or in incorporeal property, from one person to another in exchange for a price in money'. In other words, the traditional concept of sale is that it pertains only to 'property' and the consideration is always price in money. In no way does it pertain to the sale of 'humans'.

'We cannot fight for justice with people who are powerful,' says the unmarried minor from Bogadi, Mysore, who was impregnated by a businessman to be a surrogate mother for Rs. 5,000.00 given to her parents in turn.

Indian Express.
April 12, 2001.

Forms and Purposes

As mentioned earlier, trafficking is seen to be synonymous with prostitution or commercial sexual exploitation. Over the years however, many more forms and purposes have come to light.

In the year 2001, newspapers carried a story about a girl playing surrogate. This brought to light yet another form of child trafficking never documented earlier.

In a South Asian workshop on Trafficking in Women and Children organised by UBINIG (1996) the participants felt that 'It is important to distinguish between different forms of trafficking in terms of the final use of the 'good', as the traffickers say. This distinction is necessary to understand that it may not be always useful to discuss the internal and trans-boundary migration of people under a single term like "trafficking". It is obvious that the issue such as organ trade requires completely different type of attention than other forms of traffic. The children and women are ending up being sexual slaves, but there are also cases where they are legally or illegally married to a person. The cruelty of the situation varies and the nature of the problem is wide in spectrum.'

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; 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
- Entertainment and sports
- For and through adoption
- For and through marriage

Sexual Exploitation

Forced prostitution

Prostitution — always forced in the case of children — is the most documented and visible form of trafficking. Almost 15 per cent of the prostitutes enter the profession before the age of 15, and 25 per cent enter between 15 and 18 years. Around 60 per cent of the prostitutes belong to the scheduled castes, tribes and backward classes (UNICEF, 1995). A significant number are children of prostitutes.

'Thousands of Nepali and Bangladeshi girls and women, some as young as 9–10 years old, are reportedly sold every year to brothels in Kolkata, Mumbai



Young girls from after being dedicated as devadasis

and Delhi. Amongst those trafficked into India from Nepal for prostitution, it is said, 'most females are girls under-16. Many are also between 12 and 15 years, some as young as eight. Young girls are lucrative sale.' (Maiti, Nepal, 1999). The Government of Nepal estimates that in 1992, at least 200,000 Nepali women and girls were working as prostitutes in India. The Bangladesh Government estimates that several thousand women and children have fallen victims to trafficking for work, including prostitution in South Asia and the Middle East.

Religious Prostitution

Dedication of young girls to temples or to Gods or Goddesses has been practised in many parts of this subcontinent for centuries. This system is known by different names such as Venkatasani, Jogini, Nailis, Muralis, Theradiyan and Devadasi and is practised in India and Nepal. It is prevalent in temple towns and requires dedication of young girls to deities such as Yellamma, Meenakshi, Jagannath and Hanuman. These girls are then trafficked by temple priests and others into prostitution. (HAQ, 2001). 95 per cent of the Harijan (Scheduled Caste) families send about 5-10 thousand girls every year in this practice. (Sinha, 1996). Besides the Devadasi system in Karnataka and Maharashtra and the Jogini system in Andhra Pradesh, temple prostitution is reportedly practised in other parts of the country too, such as Uttar Pradesh and Orissa.

Their playground is the brothel, they are the playthings and toys of lust. India reportedly has the world's largest concentration of child prostitutes, accounting for one in every four of the global number. In India, children are no strangers to exploitation, but none of it is as brutish as the terror to which these particularly unfortunate kids have been subjected. Raped at 10, tortured and starved to submission at 11, an abortion at 12 and sexually violated 15 times a day till age and AIDS throws them on to the streets.

The Times of India, November 15, 1998.

For initiation into becoming a Devadasi, pre-pubertal girls, aged between five and nine years, from poor, low caste homes go through an initiation rite at the local temple during full moon where they are married to the presiding deity, Goddess Yellamma by the tali³ rite. She is then branded with a hot iron on both shoulders and her breast. Sometimes, even before menarche, she is auctioned for her virginity; the deflowering ceremony known as *Udilumbuvadu* becomes the privilege of the highest bidder. The market value of a girl falls after she attains puberty, when she is said to have no recourse other than prostitution. The situation is not very different with the girls initiated into other forms of 'dedication' to temples or Gods or Goddesses.

Sex Tourism

A burgeoning tourism industry, a direct result of the global economy, has given an impetus to the sex industry. Any child, irrespective of caste, class or sex is vulnerable to sexual exploitation by tourists who lure children with small toys, trinkets and fancy gifts. Besides Goa, there are reports of tourists sexually exploiting children in Gokarna and Karwar in North Karnataka. The other popular destinations for the paedophiles are Kovalam, Mamallapuram and Puri. (HAQ, 2001).

³ Tali is the sacred thread tied around the bride's neck as part of the wedding ceremony.

Kunti was five when her mother died. Her father was killed in an accident. Her maternal uncle sold her to the brothel the day she turned 13. She recalled the first day she was brought here: 'I was made to strip in front of the "bai". It was basically a test I had to clear to stay here and to present myself to men who prefer clean and young girls.

*The Pioneer,
March 1, 2002.*

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The golden triangle of tourism on the Agra–Delhi–Jaipur belt has spawned a flourishing trade in child prostitution among Rajasthan's nomadic tribes of entertainers, with middlemen coercing the tribal communities to send girls as young as 10 years to serve in sex shops along the highway.

The golden triangle of tourism on the Agra–Delhi–Jaipur belt has spawned a flourishing trade in child prostitution among Rajasthan's nomadic tribes of entertainers, with middlemen coercing the tribal communities to send girls as young as 10 years to serve in sex shops along the highway. The *Dalals*⁴, with an eye on the booming market among tourists, travelling businessmen and truck drivers who believe that sex with a young child may keep them safe from diseases, are forcing the community to send out their girl children, most of whom are between the age 10–14 years. (The Asian Age, June 20, Jonaki, September 1997).

Pornography

In most such cases, street children or children from poor and middle class families are the most vulnerable. These children fall prey to foreigners who tempt them with money and gifts and lure them into such exploitation. In 1991, Freddy Albert Peats was booked for using children for pornography and selling young boys to foreign paedophiles in Goa. He had managed to escape being caught for over 25 years. In December 2000, a Mumbai based NGO, Forum Against Child Sexual Exploitation (FACSE), helped the police unearth a child pornography racket being operated by a Swiss couple from a posh hotel at Marve Road, Madh Island, Mumbai.

The latest addition to child pornography is the expansion of the World Wide Web and low cost advertising. This has led to an explosion of pornographic advertising on the Internet, encouraging the growth of sex tourism and paedophilia.

Interactions with children on the streets of Mumbai indicate that the use of children in pornography exists in an alarming magnitude. Incidents of children being picked up are very common. Girls are picked up more often and receive more expensive gifts than boys. Often the impoverished parents of such children are in collusion with the offenders in lieu of the expensive gifts and other remuneration they are provided with. There have been cases wherein children have gone with such gifts alluring people more than once.

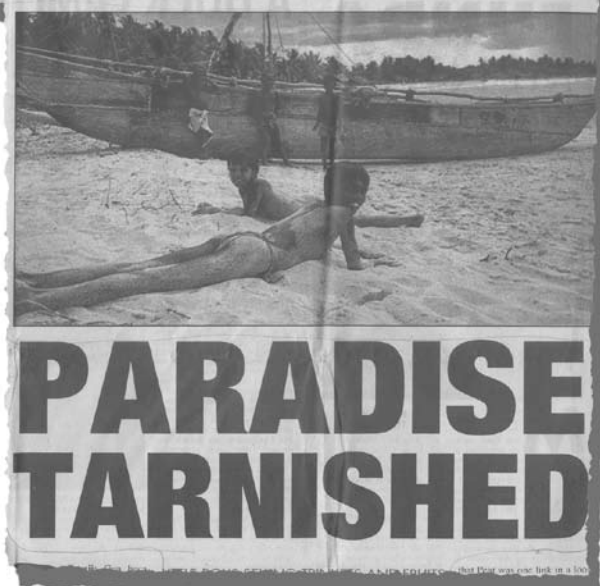
FACSE, 2000.

'There is a lot of pornography which one can witness online. In the West, stringent laws are drafted protecting children from being exploited as well as children viewing or promoting it.recently, a man in Hyderabad was found uploading paedophilia content in the guise of the famous cartoon character "Pink Pokeman".Opines Qamar Ahmed, additional CP Crime, 'Such a crime is more pronounced in the West, but with the fear of social stigma looming large, many cases in India go unreported.'

The Times of India. January 9, 2002

⁴ Dalals is the term used for middlemen.

THE SEXUAL ABUSE OF BOYS IN INDIA



In 1997, a large number of Bengali children were deported to India from Saudi Arabia, where they had been taken on the pretence that they would visit Mecca. Instead they had remained in the country, forced to beg everyday from the many pilgrims there. On their return to India, it was discovered that several of them had broken limbs.

Ofelia Calcetas-Santos, 1999.

Illegal Activities

Begging

Poverty and handicap are an ideal combination for children to be trafficked in the belief that the handicap will induce sympathy in the giver. This belief puts the child beggar at serious risk of being deliberately maimed in order to increase his or her earning potential. Street children and children from poor families are the most vulnerable.

A child begging on roadside kerbs in metros like Delhi, Mumbai, Calcutta and Chennai or other big cities is a common sight. Many of these are landless persons or those who have migrated to the cities in search of a livelihood in the face of droughts and food scarcity⁵. While some of these children are put to beg by their families, many others are part of organised mafias.

A government-run adoption body in Andhra Pradesh has referred a blind orphan girl, rescued from a private adoption centre in the outskirts of the city, to an eye hospital following reports that the home may have removed the cornea of her eyes...The suspicion of cornea removal from the girl's eye has prompted police to investigate whether the private adoption home, accused of selling children, were also involved in illegal sale of organs.

India Abroad News Service, May 1, 2001.

Organ Trading

There is very little information available on this aspect of trafficking. Whatever little we know is based on newspaper reports and incidents related by persons working at the grass-root levels. These stories clearly indicate that trafficking of children for organ replacements is a 'lucrative business'. In a recent workshop held in Chennai by the CACT, several participants spoke about cases of children being taken to Bangalore. While most never return, a child who managed to escape was in a state of shock. Back home he kept babbling about someone who had tried to remove his kidney.

Activists of the Kerala Samskarika Sangham alleged that 31 boys have been reported missing in Malappuram and 19 in Kozhikode. According to popular belief the boys were now in the grip of an organised mafia gang, which pushes them into earning a living as drug peddlers, pimps and touts. Some of them were allegedly forced into homosexual activities. The mafia targets unsuspecting boys who leave home or those returning late night. 'The boys are pampered with money and drugged heavily, inducing them to become addicts,' says P.A. Pouran, State General Secretary of the People's Union for Civil Liberties. Later, the boys are trained to become carriers of drugs and gold.

Indian Express, May 7, Jonaki, September 1997.

Drug Peddling and vSmuggling

Using children for drug peddling is common because it is assumed that they would be suspected the least. These children are initiated into drugs and then used as conduits for peddling. Such instances have been reported in the north-eastern states like Mizoram and even in the big metros like Delhi.

⁵The nats of Durdhena village, Jodhpur who have settled in the Yamuna Pushta area of Delhi send their children to beg. Many of them reportedly rent their 3-month old babies out for Rs. 40 per day to beggar women.

Labour

According to conservative estimates there are over 20 million child labourers in India. Because there is a large-scale movement of children for labour, it is very difficult to identify instances of 'trafficking'. Children are often sent out by their families to earn their livelihoods as agricultural labourers, domestic workers, in hotels and small shops. They work as construction workers or even in hazardous industries like match and fireworks factories, shrimp cultivation in the coastal states such as Kerala and Orissa, and carpet weaving in Uttar Pradesh especially in and around Mirzapur. Several instances of children being trafficked from Tamil Nadu and Andhra Pradesh to sweetshops in Allahabad and other cities have been reported. These children when rescued recounted horrifying stories of physical abuse and inhuman working conditions long working hours, poorly lit rooms and being confined to unventilated premises. Many NGOs, in partnership with the Karnataka Government, rescued and repatriated children who had been trafficked for work in the jewellery sector. These children belonged to villages in West Bengal and were rescued from Bangalore.

Nepalese boys are being trafficked to Indian cities for cheap labour and some of them are being sexually abused, says a study...by Women's Rehabilitation Centre for the International Program for Elimination Of Child Labour run by the International Labour Organisation. Some boys mostly from the Terai districts of Dhanusha and Mahottari bordering India, are sexually abused ...As young as 6-year olds are forced to work for more than 11 hours and sometimes 18 hours a day in Indian cities... Many work in carpet factories under exploitative conditions in Mirzapur in Uttar Pradesh... Most do not get any money for the first three years, which instead goes to traffickers who get Rs 15,000-20,000 for each boy.

The Times of India, Lucknow, April 22, 2002.

Indeed every day there is a new sector or industry that children are being trafficked to work in and this makes it all the more difficult to identify and rescue them. Some are even sold into bondage in exchange for debt. This is a highly unorganised sector as well as an invisible one. The demand for children in these sectors is enormous as these children are paid a pittance considering the amount of work they are made to do. These children remain at the mercy of their employers.

Entertainment

Dance and Theatre Troupes

Trafficking children especially young girls as part of dancing troupes — the nautankis in North India and the jatras of Bengal and Orissa — is traditional. Reports suggest that the post cyclone period in Orissa saw an increase in the number of girls being trafficked into the operas or the *jatras*. Similarly, young Nepali girls are taken into the circus as acrobats. Often it is the parents themselves who leave their children with the Indian circus owners or circus agents because they see no harm. Many never see their children again. A more modern form of entertainment are the bar girls of Mumbai. Young girls dancing in clubs and hotels are a common sight. This too is a thinly disguised form of prostitution.

The incidence of minor girls being trafficked to Dubai for dancing as nautch girls came to the fore when the Delhi High Court gave its judgement on a petition filed by one Ahmed that his wife and two daughters were forcibly taken to Mumbai by their maternal uncle, who later sent off his daughters to Dubai on forged passports. The two girls were made to dance and sing in Dubai. The Court had ordered the Union Government to inform what measures were being taken to protect innocent girls from falling into the clutches of gangs. The judges enquired whether the government had any intention of amending the Passport Act to protect such girls from being sent abroad.

Hindustan Times, August 28, 2000.

'A group of 17 Bangladeshi nationals consisting of 4 gents and 4 ladies accompanied by 9 small children aged 5–8 years was off-loaded from Emirates Flight EK 3541 on 3 January, 2002 for the adults were taking the children to Dubai for camel racing, a form of child abuse, in the Gulf countries. Scrutiny of travel documents revealed that they had reached Kolkata from Dacca between Dec 1 to 5 on a one-month tourist visa. During questioning they stated that they visited Secunderabad, Ajmer etc. by train before arriving at Chennai....All are malnourished children with a few tell-tale marks of torture on their faces and body... All the Bangladeshis intercepted belonged to the poor and impoverished class of society and there cannot be any grain of truth in their claim that they were on a sightseeing tour to the Gulf countries...Also worthwhile pointing out is the fact that the air tickets in their possession were booked from Rasel Khaima, UAE indicating that some agents based in Gulf countries had arranged the transportation of these children through India...'

*Excerpt from Memorandum Prepared by Chief Immigration Officer, Dated 21.1.2002
Collected by the CACT Fact Finding Team from Tamil Nadu.*

Camel Racing

Young boys are trafficked from the subcontinent to the Middle East, especially Saudi Arabia, to serve as camel jockeys. These little boys are in demand because they are small built in order to be light on the camel's back. They are forcibly tied to the back of the camels during a race so that they do not jump off in fright. The child's screaming and shouting scares and excites the camels who run faster in their agitation. Children who fall, risk being trampled to death by the other camels on the track. A recent ban by the Saudi Government on the use of children as camel jockeys in the face of international criticism is a welcome move.

Adoption

Adoption is one of the most important alternative care systems in the absence of a natural and fit family for children in need of care and protection. In India too adoption has been in practice for hundreds of years, and is both culturally and socially accepted. Unfortunately, the selling and buying of children for adoption has become a thriving racket. Inter-country adoption has been found to be particularly 'profitable'. The Government of India has developed and put in place clear guidelines and rules that are meant to govern any adoption undertaken through registered agencies. These procedures are meant to check the antecedents of the adopting couple thereby ensuring the child gets a protected and loving home. Unfortunately, with the introduction of financial transaction between the adopting couple and the adoption agency, adoption has become a good business for some adoption agencies. Desperate and poor parents are convinced to sell their children with promises of better lives. Children are bought and sometimes even kidnapped by these agencies and sent for

A doctor-couple running a nursing home and three employees were arrested in Bhopal on 10 November, 2001. The couple was caught red handed selling a three month old girl for Rs. 30,000 to a decoy couple. The baby's mother was an unwed mother.

The nursing home was selling babies at fixed prices: Rs. 50,000 for a male baby and Rs. 30,000 for a girl. Police sources suspect a chain of nursing homes, especially in old Bhopal area, to be involved in the racket.

*The Telegraph,
November 11, 2001*

More skeletons have started spilling out of the child adoption racket from AP's dark cupboards. ...a private adoption agency has sold seven children to one US family and a Danish paedophile sponsored a child in one of the adoption homes in the state ... adoption agencies ran a pre-natal centre in the heart of Hyderabad to ensure that the children were given to them immediately after delivery ...investigations had revealed that placement agencies kidnapped children and employing agents are being used to bring street children for adoption.

Free Press Journal, January 29, 2002.

adoption, especially to foreign couples. The most sensational and high profile reporting has been the cases of trafficking of children for adoption unearthed in Andhra Pradesh. But such instances are not confined to Andhra Pradesh alone.

Similar reports have also been received from Bhopal in Madhya Pradesh, Orissa, Goa and other states.

Marriage

The whole racket of trafficking for marriage came to light in August 1980 when the Statesman Weekly carried a story titled 'Marriages Not Made in Heaven', about Muslim girls from Hyderabad being married off to Arab nationals.

Hundreds of Bengali women and teenage girls are routinely brought into the Kashmir Valley every year to be sold to aspiring grooms, who are often poor, old and physically disabled and thus unable to find a local bride. Some aspirants prefer to marry in such a fashion because they cannot afford the huge expenditure involved in performing local customs ... Dalals smuggle women into the Kashmir Valley mainly from West Bengal's Murshidabad district in large numbers.... Each girl or woman, depending on her age and physical features, is bought between Rs. 2,000 and Rs.15,000 and then sold to a customer for double that amount. The racketeers lure the poor parents of underage girls in West Bengal and Bihar with promises. The parents, stricken by poverty fall prey to such enticements. In order to avoid penal action under the laws pertaining to trafficking in women, the sale is given a legal colour by solemnising the 'marriage' through the institution of 'nikah'.

The Asian Age, 1999.

Gulf countries provide a lucrative business and on an average 200 girls leave the city every month, according to the regional passport office here. Some of the Arabs marry as many as three to four girls on a single trip. These Arabs who come in search of young brides are not the oil-rich sheikhs but small time businessmen or petty traders. In a number of cases these young brides never leave the Indian shores. They are taken to Mumbai and when the Arab visitor's tourist visa expires, he abandons her. A decade after this story was published; the newspapers flashed another story of 9-year-old Ameena from Hyderabad who was married off to a 60-year-old Arab Sheikh Yahyah-al-Sageih for a sum of Rs. 10,000 by her parents. Ameena was Yahyah's fourth victim in the last six-months. (Sinha,1996).

The legal age of marriage for girls is 18 and for boys, 21. But, legal age notwithstanding, child marriages continue in rural areas of states like Rajasthan, Uttar Pradesh, Maharashtra, Chattisgarh, and even Kerala — the most literate state. A recent survey conducted by the Ministry of Health and Family Welfare in Kerala found that nearly 36 per cent of the girls got married before 18 years of age.

Trafficking of children for marriage is an inter-country and intra-country phenomenon. There is a thin line that divides the illegal act of child marriage and child trafficking. What complicates the situation further is that under the Child Marriage Restraint Act, 1929, the marriage continues to be legal.

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

Despite laws, child marriages have continued in Rajasthan by the sheer force of tradition and social pressure. A 1993 survey of 5000 women in Rajasthan conducted by the UNICEF found that 56 % had married before the age of 15 and of these, 17 % before they were 10 years old.

Deccan Chronicle, Hyderabad, March 8, 2002.

to western 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.

WHY DOES TRAFFICKING TAKE PLACE?

The root causes of trafficking in children are multiple and complex. The reasons could be as varied as poverty, religio-cultural practices, traditions and gender discrimination. Globalisation has severed the traditional socio-economic relations and the growth of tourism has made women and children vulnerable. Disintegration of the rural communities and the grim reality of the poor and the marginalised, loss of sources of livelihood, forced migration, lack of employment opportunities for the adults, low social status of the girl child, a general lack of education and awareness and growing consumerism make them easy prey for traffickers. Natural and man-made calamities render many a children vulnerable to various forms of exploitation, including trafficking. Political uprisings are now emerging as a factor responsible for trafficking for prostitution, labour and also as child soldiers to fight for the 'cause'. Inadequate legislation in the countries concerned and weak law enforcement machinery only makes it easier for the traffickers to operate.

It often becomes difficult to distinguish between the cause and purpose of trafficking as, for instance, in the case of the Devadasi system of Karnataka, a form of prostitution, which has religious sanction.

The rural-urban divide clearly manifests itself in terms of access to development resources, which appears highly skewed in favour of the urban areas. More than 70 per cent of our population lives in the rural areas and a large majority remains afflicted with poverty, illiteracy and lack of employment opportunities. Of the 26 per cent of our population below the poverty line, children and women account for 73 per cent. They are the most vulnerable to trafficking, especially if they belong to the underprivileged sections.



Migration is a common phenomenon with men, women and children moving out from villages to small towns, cities and across borders in search of work. While it may seem that migration and trafficking are distinct and separate, they are at the same time integrally connected. The pressing need to migrate in search of work creates a fertile ground for traffickers and unscrupulous agents to exploit this need and profit from it. An added concern is the rising consumerist culture that has made inroads into the villages through television and cinema. It has become a strong incentive for parents and family to sell their children especially daughters or send them out in search of a livelihood. When this is coupled with a lack of awareness and illiteracy, it enhances the chances of traffickers luring unsuspecting parents to part with their children.

Exploitation of trafficked children does not end with their being sold and bought. It is merely the beginning of a long saga of exploitation and abuse. Inevitably, because of their already vulnerable situation in society, girl children are softer targets. The 'demand' and 'supply' phenomenon applies to 'human trafficking'

as much as it does to any consumer good. Amongst the demand factors, the demand for children is undoubtedly far greater. Moreover, often the purpose of trafficking also determines the age-specific demand for children. For example, for camel jockeying, young boys in the age group of 4–5 years are preferred, while prostitution demands young girls in the age group of 10–15 years. In such cases, the younger the child, the more money he/she will fetch.

The Stakeholders in Trafficking

Child trade is never for their well-being, despite assertions to the contrary. All involved are assured of high returns with a low investment. The trade is highly attractive for people at both ends of the trafficking chain: the seller and the buyer. The magnitude of financial benefits for those involved in trafficking must not be underestimated. These traffickers sell the children for huge profits. Families stricken by poverty get immediate financial relief and if the girl gets trafficked into prostitution, instant economic upliftment through monthly returns from the income of the child. The only non-beneficiary in this entire process is the trafficked child. As the trafficked victims are children below the age of 18 years, the question of willingness or consent just does not arise, particularly when a child is trafficked for illegal activities, including prostitution.

More than 9,000 girls are trafficked each year from Nepal and Bangladesh into bondage in India and Pakistan, often with the acquiescence or cooperation of State officials

GATW Fact Book, April 22, 1998.

There are 5 child trading rings in and around Murshidabad in West Bengal, who operate by trafficking children to Mecca, says local police.

Swati Bhattacharjee, Child Newslines, May 1997.

There is considerable degree of internal trafficking and cross border trafficking. The procurement and sale of these children is undertaken in an organised manner — by organised syndicates or individuals and sometimes, informal groups including relatives and parents. The organised syndicates are out of the reach of law or they operate in connivance with the authorities. They are particularly active during periods of crisis in any area, which could be due to a natural calamity or riots and the like. By and large, they do not have a criminal record in the books of law. Children, when procured, are taken from place to place and kept captive in alien locations, to avoid being apprehended.

The Trafficker's Profile

A trafficker is any person who can exercise a degree of power/control/authority on the child. This may be attributed to the age factor (the age difference between the trafficker and the child being trafficked), the socio-economic position of the trafficker, power derived from patriarchy and its structures or it could also be sheer muscle power. Both men and women are involved in the trafficking racket. Because the whole process of trafficking is so invasive and involves such a wide range of actors, it is difficult to identify or apprehend them. What makes it worse is the involvement of members of the family or the community in some instances.

THE TRAFFICKERS

- Organised Crime Syndicates
- Local criminal nexus
- Pimps
- Traffickers posing as social workers
- Women already in the flesh trade
- Brothel owners
- Employment agents
- Tourists and travel agencies
- Labour contractors
- Clients of prostitutes
- Paedophiles
- Corrupt officials (local and border police, airport officials, passport officials)
- Government and non-governmental institutions (children's homes, crèches)
- Doctors and medical personnel, adoption agencies
- Community
- Friends
- Teachers
- Local politicians
- Villagers and village headmen
- Unemployed adults who act as pimps
- Temple priests
- Family
- Parents
- Relatives

Besides the traffickers, there are others who act as abettors to trafficking. The abettors include the police, government officials and politicians. Though not directly involved in the acts that can be said to constitute trafficking, nevertheless, support the crime in many ways and hence need to be recognised as abettors to the crime.

The purpose of trafficking usually determines the specific characteristics of the traffickers. Where children are dedicated to temples or gods and goddesses, both the parents and the community are responsible, if thereafter they are sold into prostitution; there is a chain of people involved, including the temple priest and others who are the middlemen. Similarly, where a child is trafficked for adoption, it is usually by people from the medical profession or adoption agencies. Children put into begging are almost always trafficked by organised mafias and so on and so forth.

THE GEOGRAPHY OF TRAFFICKING

India is one of the largest transit and destination points within South Asia. It is both a supplier as well as a 'consumer'. Thousands of children are trafficked daily not just across borders but also within the country — from one town to another, one district to another and one state to another. (see Appendix 2).

MODUS OPERANDI OF TRAFFICKING

It is undertaken in an organised and professional manner, using modern technology to channel children from supply areas to demand locations. The traffickers know their job well and rarely fail with their techniques. The techniques are many but the ones that seem to work the best is luring them through marriage or for jobs. Children are trafficked for labour mostly from areas where poverty levels are high and parents are amenable to sending off their children. For the pimps or the middlemen, enticing girls is easy. There is no need for deception. Instead they use marriage, friendship and emotional manipulation to traffic these children into the sex trade.

TECHNIQUES USED BY TRAFFICKERS

- Seeking the help of a local person or contact to approach the victim's family as well-wishers.
- Making contacts with unsuspecting women and children at bus stands and railway stations.
- Making friends with children while at play or in school.
- Approaching poverty-stricken families and forcing them to part with or sell their child to meet their debts.
- Luring women and children with false promises of well-paid jobs or marriage with rich men.
- Using false documents and passports to traffic people across borders.
- Paying bribes to the officials to procure false documents.
- Kidnapping/abduction.
- Rape or other forms of sexual abuse.

CONSEQUENCES OF TRAFFICKING

For any victim, being trafficked is a nightmare; but for a child, the consequences are devastating as the child suffers the repercussions for the rest of her/his life. The physical impact is enormous. These children are snatched from a familiar environment and thrown into a completely alien environment. Often, they are taken to their destination through a hazardous journey, confined to small rooms, transported from one place to the other, over unmarked routes to avoid detection. In many cases, they are illegal immigrants who are made to travel across borders in the dead of night. Deprived of food and access to health services, these children live with a constant fear of the unknown.

The ultimate forms and purposes that the child finds himself/herself trafficked into also determine the magnitude of the child's physical and mental damage. In the worst scenario, it could lead to the death of the trafficked and exploited child or physically and mentally impair the child for life. As sex workers, they suffer from violence in the hands of the brothel owners, the pimps and the clients. They are forced into sex at a premature age, a constant exposure to STDs, HIV /AIDS and multiple abortion combines to stilt their mental and physical development permanently. Children trafficked into labour work long hours with little or no pay and adverse working conditions. They are treated like slaves. They face beatings, torture and even sexual abuse by their masters. At the psychological level, this isolation and domination by the exploiters makes them victims of substance abuse, which is their only escape from reality.

Two senior managers of the Karnataka Finance Corporation (KFC), who employed a 10-year old girl for domestic work, had a unique way of punishing her, they bit her. When the girl was rescued recently, she had 42 human bites on her person. And she is yet to get over the shock.

*TheTimes of India,
Bangalore,
April 30, 2002*

Trafficked children are not only deprived of their right to freedom from exploitation but are denied their basic right to a childhood. For the family who sends these children to earn a livelihood, the incentive of a financial upliftment gets belied when the child goes missing. Communities who send their children out, are targeted as a potential source by the traffickers. At the national level, depriving these children of education, nutrition and proper health care means a generation of young adults with little or no productivity and earning power and loss of a potential human resource in the future.

INTERNATIONAL INTERVENTIONS IN CURBING TRAFFICKING

Despite increasing evidence (as well as acknowledgment) of the varied purposes for which trafficking is taking place across the world, international laws confine themselves largely to trafficking for sexual exploitation. Some of the important legal instruments in force are:

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (The Suppression of Traffic Convention), 1949
This is the first international instrument to conceive of trafficking in gender-neutral terms by referring to 'traffic in persons' without restricting the scope to women or children. It came into force on 25th July 1951. India had signed the convention on 9th May 1950.
- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979
Article 6 of CEDAW urges all States Parties to take appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. CEDAW covers trafficking into domestic labour or forced marriages in addition to incriminating the exploitation of prostitution of women.
- Convention on the Rights of the Child (CRC), 1989
Article 34 and Article 35 of the CRC direct States Parties to take all appropriate national, bilateral and multilateral measures to prevent and to protect the child from all forms of sexual exploitation, and prevent the abduction, the sale of or traffic in children for any purpose or in any form.
- The Optional Protocol to the CRC on Sale of Children, Child Prostitution and Child Pornography
This was adopted by the UN General Assembly on 25 May 2000. It aims at reinforcing the Convention on the Rights of the Child and criminalises violations of children's rights, such as sale, transfer of organs for profit, illegal adoption, prostitution and pornography.
- International Labour Organisation (ILO) Convention No. 182
Adopted by the ILO General Conference on 17 June 1999 it relates to prohibition and immediate action for elimination of worst forms of child labour. It has identified the use of children for prostitution as one of the worst forms of forced labour. Consequently, the focus of ILO's efforts in the area of forced labour has been on trafficking in children.

There are many more international instruments and mechanisms available to address child trafficking. Some attempts have been made to tackle the issue even at the regional level, though they have been limited to cross-border trafficking for prostitution. The most recent effort at the South Asia regional level is the SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution, 2002, which calls for co-operation between member States to deal with prevention and suppression of trafficking across borders and for rescue and rehabilitation of the victims. In 1999, the ASEAN (Association of South East Asian States) made a Declaration. This Declaration addressed child trafficking under the rubric of transnational crime, calling for creation of an ASEAN Centre on Transnational Crime (ACTC) to co-ordinate regional efforts to fight such crimes, including trafficking in children and women in the region. The other regional efforts that may be mentioned include the SAARC Summit in Male, 1997 and the SAARC Rawalpindi Resolution of 1996. Amongst the international measures effective at the regional level are the 1997 UN Economic and Social Commission for Asia and the Pacific (ESCAP) Resolution 53/4 on Elimination of Sexual Abuse and Exploitation of Children and Youth in Asia and Pacific and International Programme for the Elimination of Child Labour (IPEC), 1992. Unlike other measures concentrating on sexual exploitation, the ILO-IPEC programme seeks intervention on trafficking of children for labour at the regional level.

Many international conferences and conclaves too have looked into the problem. In May 2002, at the UN General Assembly Special Session on Children although discussions encompassed the entire orbit of trafficking, ultimately the participating countries restricted themselves to include sexual exploitation, labour, organ sale and entertainment only. At the 11th SAARC summit at Kathmandu in January 2002, the member countries signed a convention on combatting trafficking in women and children for sexual exploitation. At the 2nd World Congress against Commercial Sexual Exploitation of Children (December 2001) in Yokohama, the participating countries reaffirmed as their primary considerations, the protection and promotion of the interests and rights of the child to be protected from all forms of sexual exploitation. The Yokohama Congress was a follow up to the 1st World Congress against Commercial Sexual Exploitation of Children held in Stockholm in 1996.

WHAT HAS THE INDIAN GOVERNMENT DONE?

When the world leaders gathered in New York in May 2002 for the special UN Session for children, India found it hard to explain its poor performance in meeting the goals it had committed itself to at the 1990 World Summit for Children. The fact sheet on the state of children in India does not present a very optimistic picture. Even though Child Rights is a global concern today and as a nation we boast of committing ourselves to it, there is a continuous and blatant violation of the rights of our children. We, as a nation, have fallen short. Porous borders, corrupt border police and an apathetic local administrative authority contribute to the high number of trafficked children. At the international level, cross-border trafficking continues to flourish because of a lack of effective and co-ordinated action among the involved countries. At the national level too, the failure to take effective measures to address this problem and a general apathy and indifference among the civil society makes India a fertile ground for the traffickers.

INDIA'S ABYSMAL PERFORMANCE IS TELLING

- According to a survey conducted by the ILO, roughly 5 per cent of India's children constitute a large chunk of the total labour force in the country. In 1991, official estimates placed child labour at 1,12,85,349. According to the Operational Research Group (ORG) there are 4.4 crore children engaged in labour in India.
- According to the Rural Labour Committee's estimates, children work 280 days a year earning roughly half the adult wages .
- Of the 15,000 children reported missing every year, only 22 per cent get traced.
- According to a study by the Centre for Concern for Child Labour, New Delhi, 'Of the 9 lakh estimated number of prostitutes in India, 30 per cent are children, numbering between 2,70,000 to 4,00,000. Number of children below 14 years in "commercial prostitution" is increasing at the rate of 8-10 per cent per annum.'
- There are 4 lakh child prostitutes in India. Unofficial estimates say there are 2 million prostitutes of which 20 per cent are below 15 years of age. At a conservative estimate, about 200 girls and women enter prostitution daily.

How serious is the government in addressing this issue? Is this an indicator of our nation's priorities and intent?

Children constitute almost one-fourth of our population. India is a signatory to several international conventions including the Convention on the Rights of the Child. This has meant that the country has committed itself to ensure a child his/her its basic rights by putting through appropriate legislation. Laws have been enacted and international and national initiatives have been launched. Where trafficking is concerned they are inadequate and ineffective. Moreover, even within the overall legal framework, poor implementation puts paid to any attempt at bringing the traffickers to book, giving India the reputation of being a 'soft' State and a haven for traffickers.

Existing Laws

- Article 23 of the Constitution of India prohibits traffic in human beings and 'begaar' (bonded labour) and other forms of forced labour. Clearly states that the Right against Exploitation is a fundamental right.
- The Immoral Traffic (Prevention) Act, 1956, was amended in 1986 to widen the scope of the law to cover both the sexes exploited sexually for commercial purposes and provided, inter alia, enhanced penalties for offences involving children and minors. It prohibits prostitution in its commercialised form without rendering prostitution per se an offence.
- The Juvenile Justice Act, 2000, relates to juveniles in conflict with the law and children in need of care, protection and treatment by catering to their development needs and providing for their rehabilitation.
- The Indian Penal Code, 1860, includes offences relating to buying and selling of girls, procurement of minors, unnatural offences, rape and kidnapping. It also includes offences related to abduction for begging, for export, for slavery, forced labour, sexual offences, forced marriage and wrongful confinement of a person.

Some of the other national legislations directly relating to trafficking include:

- Child Labour Prohibition & Regulation Act, 1986
- Andhra Pradesh Devadasi's (Prohibition of Dedication) Act, 1988

- Karnataka Devadasi (Prohibition of Dedication) Act, 1982
- The Bombay Prevention of Begging Act, 1959
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988
- The Bonded Labour System (Abolition) Act, 1976
- The Child Marriage Restraint Act, 1929
- The Transplantation of Human Organ Act, 1994
- The Information Technology Act, 2000

Gaps in the Existing Legal Framework

Most attempts made by the government to address trafficking have been at best sporadic or limited to trafficking for sexual purposes. Even the trafficking bill that has been in the offing for a while is restricted to trafficking for sexual purposes only. Besides the fact that the laws are not child-friendly, more often than not it is the victim who gets punished while the offender goes scot-free. For any NGO to be effective in its interventions, it requires support from the government. This means a change in mindsets of our policy-makers and a more sensitive legislative and judicial system.

- Our laws are more punitive in nature than being preventive or protective.
- Legal enactment invokes different age specifics for the child. e.g. Child Labour Act defines a child to be below 14 years whereas the CRC defines a child as a person below 18.
- The Immoral Traffic (Prevention) Act (ITPA) tends to further victimise the victim.
- There is no comprehensive legal framework to cover all forms of child trafficking.
- The Indian Penal Code (IPC) has no specific provision on trafficking. Abetment to trafficking or attempt to traffic in any form whatsoever are obviously not addressed.

There is a need for a comprehensive legislation on child trafficking, which goes beyond child prostitution and addresses other grave forms and purposes of trafficking of children. There is no comprehensive policy on child trafficking either. We do have an old National Policy for Children of 1974, which has been lying dormant. It contains nothing on child victims of trafficking though it does talk about protection of children against neglect, cruelty and exploitation. One reason for the low level of prosecutions in cases of cross-border trafficking is that the women and children who could testify against the perpetrators are deported because of their irregular residential status.

INTERVENTIONS BY NGOS IN INDIA

More than 80 NGOs in 10 states of India work actively among sex workers, and play a major role in advocacy to influence policy reforms (UNIFEM, 1999).

NGOs working in the area of child trafficking are also restricted to sexual exploitation and labour. They are mainly involved in investigative research, documentation, advocacy, health and education programmes and rescue and rehabilitation efforts. Whatever documentation does exist in the country is focussed on trafficking into the sex industry.

There are several networks, campaigns and intervention programmes to curb trafficking in India initiated by local and international agencies. But, there are a

very few who work on the issue of child trafficking in its entirety. This can be attributed to the manifold nature of the problem.

Besides advocacy, NGOs also play a significant role in rehabilitation of the victims of trafficking. Their biggest challenge, however, has been in terms of reintegrating the victims into their families, who do not accept them due to the social stigma. As a result, the victims often fall back into the trap of getting further victimised. For NGOs to be effective, it is essential that they have adequate 'backup' systems provided by the government. Simply rescuing the victims through 'raids' by the police drives the victims further into bondage. This is true of child labour, but even more so for children in prostitution.

CONCLUSION

There is a need to recognise the fact that trafficking violates a child's basic right to life, dignity, freedom and happiness. The guiding principle for dealing with children must be 'the best interest of the child'. Interventions are required at various levels and all of them need to be undertaken simultaneously.

Internationally, despite the various mechanisms set in place to curb trafficking and meet the commitments to children, countries have been slow in implementation. In the light of the fact that the years 2001 to 2010 had been declared as the SAARC decade of the Rights of the Child, India's abysmal performance is all the more telling. At the political level, little has been done in India even 50 years after independence. Political factors too are related to trafficking as they contribute considerably to the rampant spread of the trade, especially where vested interests play a major role. At one level are the rich employers, from the carpet-making or shrimp cultivation industries, who make a powerful lobby at the centre. They argue that they need the "nimble fingers" of children. On the other level is the government, who in its bid to promote industry in the face of extreme competition, would rather turn a blind eye to children working with extremely low wages and in hazardous circumstances.

APPENDIX 1

Table 1
INCIDENCE OF CHILD TRAFFICKING
Kidnapping and Abduction by Purpose, Age and Gender (1999 and 2000)

PURPOSE	Total no. of Cases		Up to 10 years		11-15 years		16-18 years	
	1999	2000	Male	Female	Male	Female	Male	Female
Adoption	100	37	11	3	10	6	9	3
Begging	34	15	13	5	6	2	10	8
Camel racing	6	4	0	0	0	0	0	1
Illicit intercourse	1240	1092	1	6	33	11	1	16
Marriage	4891	4871	0	3	13	4	5	8
Prostitution	182	190	2	0	0	6	2	2
Sale	65	16	7	1	2	0	0	1
Selling body parts	1	1	0	0	0	0	0	0
Slavery	60	63	1	1	1	1	21	7
Unlawful activity	303	273	22	20	12	9	42	41
Total	6882	6562	57	39	77	39	90	87

Source : Crime in India and Monthly Crime Statics, 2000.

Table 2
PROCURATION, SELLING AND BUYING OF GIRLS
Incidence and Percentage of Cases (2000)

State/UT	Procuration of Minor Girls		Selling Girls for Prostitution		Buying Girls for Prostitution	
States	I	P	I	P	I	P
Andhra Pradesh	2	1.4	3	20.0	0	0.0
Arunachal Pradesh	1	0.7	0	0.0	0	0.0
Assam	21	14.3	1	6.7	1	1.9
Bihar	27	18.4	1	6.7	0	0.0
Goa	1	0.7	0	0.0	0	0.0
Gujarat	19	12.9	0	0.0	43	81.1
Haryana	1	0.7	0	0.0	0	0.0
Himachal Pradesh	0	0.0	0	0.0	0	0.0
Jammu & Kashmir	0	0.0	0	0.0	0	0.0
Karnataka	7	4.8	0	0.0	0	0.0
Kerala	9	6.1	0	0.0	3	5.7
Madhya Pradesh	24	16.3	1	6.7	0	0.0
Maharashtra	24	16.3	5	33.3	1	1.9
Manipur	0	0.0	0	0.0	0	0.0
Meghalaya	0	0.0	0	0.0	0	0.0
Mizoram	0	0.0	0	0.0	0	0.0
Nagaland	0	0.0	0	0.0	0	0.0
Orissa	4	2.7	0	0.0	0	0.0
Punjab	0	0.0	0	0.0	0	0.0
Rajasthan	0	0.0	0	0.0	0	0.0
Sikkim	1	0.7	0	0.0	0	0.0
Tamil Nadu	0	0.0	0	0.0	0	0.0
Tripura	0	0.0	0	0.0	0	0.0
Uttar Pradesh	0	0.0	0	0.0	0	0.0
West Bengal	4	2.7	4	26.7	5	9.4
Total (States)	145	98.6	15	100.0	53	100.0
Union Territories						
Andaman & Nicobar	0	0.0	0	0.0	0	0.0
Chandigarh	1	0.7	0	0.0	0	0.0
Dadra & Nagar Haveli	0	0.0	0	0.0	0	0.0
Daman & Diu	0	0.0	0	0.0	0	0.0
Delhi	1	0.7	0	0.0	0	0.0
Lakshadweep	0	0.0	0	0.0	0	0.0
Pondicherry	0	0.0	0	0.0	0	0.0
Total (UTs)	2	1.4	0	0.0	0	0.0
Total (All India)	147	100.0	15	100.0	53	100.0

Note: I – Incidence P – Percentage

Source : Crime in India and Monthly Crime Statistics. 2000.

Table 3
EXPOSURE AND ABANDONMENT OF CHILDREN
Incidence and Percentage of Cases (2000)

States and UTS↓/ Crime→	Exposure & Abandonment	
States	I	P
Andhra Pradesh	22	3.3
Arunachal Pradesh	0	0.0
Asam	0	0.0
Bihar	3	0.5
Goa	2	0.3
Gujarat	88	13.3
Haryana	16	2.4
Himachal Pradesh	10	1.5
Jammu & Kashmir	3	0.5
Karnataka	9	1.4
Kerala	5	0.8
Madhya Pradesh	132	20.0
Maharashtra	265	40.2
Manipur	0	0.0
Meghalaya	0	0.0
Mizoram	0	0.0
Nagaland	0	0.0
Orissa	0	0.0
Punjab	4	0.6
Rajasthan	57	8.6
Sikkim	0	0.0
Tamil Nadu	0	0.0
Tripura	0	0.0
Uttar Pradesh	0	0.0
West Bengal	0	0.0
Total (States)	616	93.3
Union Territories		
Andaman & Nicobar	0	0.0
Chandigarh	7	1.1
Dadra & Nagar Haveli	0	0.0
Daman & Diu	0	0.0
Delhi	37	5.6
Lashdweep	0	0.0
Pondicherry	0	0.0
Total (UTs)	44	6.7
Total (All India)	660	100.0

Note: I – Incidence P – Percentage

Source : Crime in India and Monthly Crime Stastics. 2000.

Table 4
PERCENTAGE CHANGE IN CERTAIN CRIMES AGAINST CHILDREN BETWEEN
1999 AND 2000

Crime Head	Years		Percentage Variation 2000 over 1999
	1999	2000	
Kidnapping and Abduction	791	711	-10.1
Selling of girls for prostitution	13	15	15.3
Buying of girls for prostitution	5	53	960
Exposure and Abandonment	593	660	11.2
Child Marriage Restraint Act	58	92	58.6
Total	1460	1531	4.86

Source: Crime in India, 2000

Table 5
CHILDREN APPREHENDED UNDER
THE NARCOTICS LAW AND THE LAW ON IMMORAL TRAFFICKING
1999 AND 2000

LAW	Total no of children apprehended		7 to 12 years				12-16 years				16-18 years			
			Male		Female		Male		Female		Male		Female	
	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000
NDPS Act	9	22	0	0	0	1	6	11	2	0	NA	NA	1	10
ITPA	187	86	0	0	0	0	0	1	6	1	NA	NA	181	84

Note: NDPS - Narcotics and Drug & Psychotropic Substances Act
ITPA- Immoral Traffic (Prevention) Act
NA - Not Available*

* Under the Juvenile Justice Act as it existed in 1999, a juvenile boy was a person up to 16 years of age and a juvenile girl, a person up to 18 years of age. As a result, statistics for the 16-18 year olds include only those related to girls. While the new Juvenile law of 2000 treats all juveniles (both boys and girls) as persons up to 18 years, statistics on juvenile delinquency for the year 2000 continue to be presented in the same format as the one existing in 1999.

APPENDIX 2

TRAFFICKING ROUTES

This list is just indicative of the source areas and consumer zones. Activists engaged in rescue and rehabilitation of trafficked victims report that traffickers tend to change the old routes and discover newer routes for operation every now and then.

- Major cities like Delhi, Mumbai Kolkata, Bangalore, Hyderabad and Chennai act as consuming areas as well as transit points.
 - Children are sent to the Arab countries. Delhi and Mumbai are the main transit grounds for international trafficking.
 - Major cities like Mumbai (Kamathipura), Delhi (G.B. Road), Calcutta (Sonargachi, Bahubazar, Tollyganj, Kalighat), Bangalore, Hyderabad and Chennai have the largest concentration of prostitutes.
- Bangladeshi women and children are trafficked to India
 - Through the bordering districts of Satkhira, Jessore, Jhenidah, Meherpur, Rajshahi, Nawabganj, Joypurhat in Bangladesh.
 - Indo-Bangla international border at Khojadanga in the North 24 Paraganas in West Bengal is the receiving area in India.
 - In North Bengal, Siliguri is a major transit and destination point.
 - There are reports from NGOs in Bangladesh of young girls and women being trafficked to Lucknow and Firozabad districts in Uttar Pradesh (UP).
- Trafficking from Nepal largely takes place thorough the adjoining border districts of Bihar and West Bengal, from where they make an entry into other places in India. The Nepal-UP border is also another easy entry point.
- Five pockets in India are said to be primary recruiting grounds:
 - Andhra Pradesh: Adilabad, Kurmul, Enadi
 - Bihar: Dhanbad, Dumka, Sahebganj, Ranchi, Purnea
 - West Bengal: Murshidabad, Nadia, Jalpaiguri
 - Karnataka: Belgaum, Raichur
 - Tamil Nadu: Madurai, Coimbatore

The sourcing areas are also reason specific

- Trafficking for religious purposes
 - In Karnataka Belgaum, Raichur, Bijapur are some of the districts where the Devadasi tradition is practised. These Devadasis later turn to commercial sex-work in the cities.
 - Some districts of Andhra Pradesh and Maharashtra are also known for religious prostitution (JOGINIS).
- For sex-tourism and pornography major source and destination points are
 - Goa
 - Orissa: Puri beach
 - North Karnataka: Gokarna and Karwar
 - Kerala: Kovallam and Mammallapuram
 - The pink triangle — Delhi-Agra-Jaipur
 - Goods transport routes like Calcutta-Siliguri-Guwahati-Shillong and Kandla-Rajkot-Udaipur-Jaipur-Delhi.
- Children are sold in the name of adoption to prospective parents from both outside and within the country.
 - Andhra Pradesh (especially among some nomadic tribes such as the Lambadas)
 - Goa

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THE WORKING CHILD



SECTION 9

THE WORKING CHILD

India has the highest number of working children in the world. More and more children are joining the legions in the wake of globalisation and liberalisation. Children in India have been forced to work for as long as we can remember. But it is only in 1985 that it became an issue for national debate, which was triggered off by an NGO drafting a Bill who for the first time introduced the concept of regulation of working condition rather than prohibition of such work. Groups working with children and child labour were all drawn into a nationwide debate. They were divided in their stand. One group felt that, although it may not be possible to eliminate child labour immediately, any move — legal or programmatic must be towards elimination. The second group felt that since child labour was a 'harsh reality' steps must be taken to ensure that they are not further exploited and therefore, legal measures were required to ensure this.

The general approach of this Bill and the ideology of the second group was endorsed by the government and it came up with a position paper on the proposed comprehensive legislation which would regulate the child labour in certain processes and prohibit them in the hazardous ones. The government's stand led to several meetings, seminars, lobbying and campaigning. The paper was ambivalent about the minimum age for employment; it took the view that since child labour was a harsh reality and children of the poor were forced to work, law must provide protection to them. It would, therefore, be better to have a law that was realistic to permit children to work under regulated conditions.

Arguments about Indian culture in which all children work to assist the family were also thrown about. The then, Law Minister, in a meeting with activists said, 'I was a child labourer... look how far I have reached'. Arguments whether he would wish the same for his own children of course fell on deaf ears.

In December 1986, the Child Labour (Prohibition & Regulation) Act came into force. It is interesting to note that the provisions of the 1986 Act were almost identical to those in the Employment of Children Act 1938, with certain processes in certain industries being banned for children below the age of 14 years, with a proviso that such a ban would not apply to children working as part of family or to those working in any state funded or state supported institution.

The only significant difference between the laws of 1938 and 1986 was that the latter envisaged the constitution of a Child Labour Technical Advisory Committee which was to investigate on a continuing basis processes in different industries in order to determine whether they were hazardous or not. Interestingly, after a decade and a half of the law being in place, the situation of child labour has shown little change. Indeed, there are more children in work than ever before and many more new processes or occupations have come up that demand cheap and unorganised labour — and, who better than children? In spite of several reported incidents of torture, mistreatment and even death of domestic child workers, government has not taken notice nor has it been declared hazardous — one more example of the myopic nature of the present legislation! The debate that started in 1985 still continues. Varying definitions of Child Labour, lack of consensus on the number of working children, distinction between hazardous and non-hazardous occupations, and the myth of poverty — so little has changed in 15 years.

While the debate on the legislation was still on, the government announced the National Child Labour Policy in which some industries were identified for priority action and soon after the National Child Labour Project was also announced. Both these have been examined in this section.

The issue of child labour is simple but not simplistic, complex but not complicated. Political will of communities, families and the State, access to free, good and equitable schooling, livelihood entitlements — all form the cornerstone of a complete initiative to combat child labour. Any one by itself will simply not do. Initiatives that tend to isolate issues, such as focussing on access to schooling without generating political and social will of communities etc. will continue to fail. But most important it requires political will of the State — but are we expecting too much?

India has the highest number of child labourers in the world (GOI–UNICEF, 1999). In the past, economic arguments were used to justify child labour, but people are now increasingly accepting the reality: that child labour depresses adult wage levels, perpetuates survival modes of production, outdates technology and offsets long-term social, human and economic development. Despite changes in societal attitudes and government's efforts to develop policies and implement measures to eliminate child labour, only a small fraction of children have benefited. A majority continue to work instead of attending school.

The strong correlation between basic education — formal, quality schooling — livelihood insecurity and the persistence of child labour have been researched and established strongly over the last decade. The approach to work on this issue too is diverse, based on different philosophies, which may even contradict each other. Yet, understanding of the issue and interventions continue to fall far short of the need. The State, UN or international/local NGOs have addressed the issue at the micro level. Their interventions and programmes have been short-sighted and based on priorities that suit either the international mood on child labour (which furthers protectionist interests of nations that gain from trade sanctions on India or those interested only in child labour in hazardous sectors) or their own geographic and sector priorities. Of course there are exceptions and one must not undermine the efforts of some good agencies, but such initiatives are very few. The ultimate responsibility of public well-being rests with the State and non-governmental initiatives, however praiseworthy, are only a drop in the ocean. Not surprisingly, the problem is only growing, especially in the wake of globalisation.

To analyse the status of child labour in India, we have to look at factors that contribute to the confusion:

- Definitions of child labour or working child are varied.
- Data on child labour vary due to differences in definitions and problems with methodology.
- Official trends of decline in child labour are contrary to macroeconomic evidence and field surveys.

In fact, child labourers today may be in the worst ever situation. Macroeconomic processes that have led to increasing impoverishment at the household levels, combined with the failure of the public school system to provide free and quality education to all children and the state's failure to address the root causes of child labour, have all contributed to this. There is an urgent need for reviewing the state's understanding, definition and policy of child labour if it really wants to protect the 'best interests of the child', as enshrined in the Convention on the Rights of the Child (CRC), which India ratified in 1992.

'The fact remains that we have failed to reach the goal (of total elimination of child labour) and should honestly and candidly acknowledge this.'

*L.D. Mishra,
ex-Secretary Labour, GOI*

WHAT IS CHILD LABOUR?

An Unending Debate

Varying Definitions

The ILO definition (1983) on child labour is by far the most widely accepted definition. It states:

‘Child labour includes children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future.’ (ILO, 1983).

The Campaign Against Child Labour (CACL), a network of over 1000 organisations, defines child labour as:

‘Child labour includes children (under 18) prematurely leading adult lives, working with or without wages, under conditions damaging to their physical, mental, social, emotional and spiritual development, denying them their basic rights to education, health and development.’

The CACL is against all manifestations of child labour in any occupation or process in all sectors of work including formal and non-formal, organised and unorganised, within or outside the family. It believes that any child out of school is a potential labour and that the enforcement of free, quality, elementary education for all children below 18 years is a pre-requisite for the eradication of child labour.

Avoiding hazards a priority

Child labour thrives in India despite a whole plethora of punitive as well as prohibitive laws. In the absence of a political will, all efforts in the past to eliminate the curse of child labour have failed and the situation has been aggravated with the succeeding years. It would be unrealistic to expect a complete abolition of all forms of child labour. However, ensuring against their employment in hazardous industries and occupations needs to be accorded the top priority, say Jagjit Singh/Tameem Hashmi.



Varying Perceptions

To understand the complexity of the situation, we have to start with the debate. Mishra (2000) has summarised the three schools of thought on child labour,

- The first group feels education is a fundamental right of every child from 5–14 and any child out of school should be treated as a working child. All forms of work, whether hazardous or not, fall outside the concept of childhood. The situation where millions (100 million in India) are out of school spending their days at home or doing some work, at home without wages or outside home for wages, is unacceptable.
- The second school perceives that the problem (of child labour) is too big for the state to allow it to create the environment and provide the infrastructure, logistical support and resources to send the additional 100 million children to school, formal or non-formal. The total amount of resources required to put all these children in school is an unattainable Rs 40,000 crore. This view thus contends that elimination of child labour should be viewed as a long-term goal, where the emphasis should be on a ban on children working in hazardous occupations and regulate their working in the non-hazardous ones.
- The third school, in total contrast to the first two, advocates that it should be left to the children to decide whether or not they want to go to school. If they want to go to school, the state must provide for necessary infrastructure, logistical support and environment for it. But if the children find the educational system dull, demotivating and irrelevant, and would prefer to work instead, the State should create opportunities for forms of work matching their physical and mental capacities.

The first group is mostly national and international NGOs. The second, in line with the spirit of the Child Labour (Prohibition and Regulation) Act 1986 (CLPRA), is what the government circles think. However, even these groups have also defined child labour differently.

Perception of the Indian State

Many consider the Government of India's perspective on child labour the primary reason for the persistence of the problem. Specifically, they blame the complete lack of political will in the state to deliver a labour-free childhood to our children. With over 80 per cent of child labour in agriculture and allied activities, the Indian problem is predominantly an agrarian phenomenon, even though many children are also employed in the domestic, hotel and some other industries. Yet, the National Policies and the CLPRA (Appendix 1) only recognise and prohibit certain select 'hazardous' occupations and processes which are only six per cent (Chaudhry, 1996) of the total child labour force. As a result, a very large number of working children in the 'non-hazardous occupations' are without legal protection or social programming that ensures the realisation of their rights.

Distinction between Hazardous and Non-Hazardous

There are several reasons why drawing a line at hazardous occupations runs contrary to the objective of eradicating child labour.

1. A large proportion of our children are engaged in agriculture or as part of family labour. Both these activities are more or less full-time and prevent children from going to school and/or enjoy their other rights, in the same way as the long hours of work in the domestic, hotel and other more invisible sectors do.
2. This is essentially unfavourable to the girl child. Female children are mostly engaged in agricultural activities as well as household work — cooking and cleaning, fetching fuel and fodder and taking care of the siblings. It is now established that female literacy and off-farm female work participation are the critical components that help societies graduate to the 'virtuous spiral' from the 'vicious cycle' that perpetuates child labour. According to Chaudhry (1996), 'Ignoring the plight of increasing number of female child workers, 80 per cent of whom are full time agriculture labour, is socially inappropriate and an economic disaster.'
3. The persistent de-growth in agriculture following globalisation, leading to growing impoverishment and loss of livelihoods and food security in rural communities, has resulted in more and more children moving into the hazardous sector¹. Unless steps are taken to ensure livelihoods for the large number of our people living below the poverty line, more children will be forced into exploitative forms of work.

The problem increases in the case of interventions to eliminate child labour in the 'hazardous' sectors. Most interventions are opportunities for rehabilitating children through education (non-formal) and supplementing family income. This gives rise to serious equity issues at the household and community levels. First, not all children within the same households may be employed in the 'hazardous' sectors. Therefore, even if they may need rehabilitative inputs, they do not get benefited from such interventions. The girl child is often left out. We'll discuss this later in the section on National Child Labour Projects (NCLP).

THE HAZARDOUS VS NON-HAZARDOUS DEBATE

Concern among activists over this distinction is that it is fallacious and misleading when referred to the labour/work done by children. The ILO too has categorised some forms as the 'worst forms of labour'. However, cultivation or household work is not perceived as hazardous for any. However, what is being missed out here is the understanding that any work done by a child that impedes on the rights of the child as enshrined in the CRC as well in the Constitution should be considered hazardous for the child and hence unacceptable.

Children languishing in TN hazardous units

By Radha Venkatesan

CHENNAI, FEB. 5. Even five years after the Tamil Nadu Government spotted hundreds of child labourers, most of them continue to toil in hazardous industries, while a Rs.4.74-crore fund created for their rehabilitation is lying idle.

Despite a Supreme Court directive and a legislative ban, the Government has rehabilitated only eight child labourers among the 18,170 identified in a Statewide survey. And, only Rs.7.75 lakhs from the Rs.4.74-crore, State-level rehabilitation-cum-welfare fund, set up following the apex court fiat, has been spent so far.

In the five-year wait for rehabilitation, a majority of the children have crossed 14 years and hence will no longer come under the "child labourer" category. Consequently, the criminal action initiated against 8,789 employers can may come to naught, say officials.

The survey conducted following the December 1996 Supreme Court order in the M.C.Mehra Vs. State of Tamil Nadu case has not only ended up as a farce but also spawned income-based child labour, say the officials.

In the hazardous industries particularly in the match factories in Virudhunagar district and beedi units in

Child labour-prone districts

	No. of child labourers	No. of child labourers in hazardous units
Tiruchirappalli	1,517	730
Salem	1,505	1,070
Virudhunagar	1,225	170
Vellore	1,139	323



According to the survey, there are 18,170 child labourers in Tamil Nadu.

Graphic by Varsha Kalade

Vellore district, children continue to be employed but they work from their homes.

Row over findings

Meanwhile, the survey findings too have become a subject of dispute.

Through the 1991 census found 5.76 lakh child workers in the 5-14 age group and the State Education department states 35.59 lakhs children are out of school. The survey came up with a count of only 8,670 children in hazardous industries and 9,052 non-hazardous units.

A supplemental survey revealed another 1,148 children in the hazardous industries, especially in gem-cutting units in Tiruchirappalli and match factories in the southern districts.

Curiously, the survey conducted by hundreds of staff members from various departments—from block development officers to factory inspectors and anganwadi workers—showed only two children in the hazardous units in Chennai and 1,055 in non-hazardous occupations.

Not too pleased with the survey results, the Supreme Court has asked the Government whether another survey could be conducted.

But, when the Government is unable to rehabilitate even the 19,000-odd child workers, a spate of surveys will be an answer to their robbed childhood, feel the officials. Instead, the Government should at least rev up the State child labour monitoring cell, which now functions with a pathetic three-member staff and little funds.

¹ According to the NSS 55th Round (1999–2000), in rural India, proportion of workers engaged in agriculture declines from 81 per cent in 1997–98 to 71 per cent in 1999–2000 for males and 88 per cent to 85 per cent for females. Simultaneously there has been a rise in the proportion of workers engaged in activities like construction, trade, hotel and restaurant during this period.

HOW MANY CHILDREN ARE WORKING?

Problem with Data

Defining child labour is extremely crucial for correctly estimating the number as well as for designing and implementing comprehensive and effective strategies to ensure the rights of all children. But available statistics vary widely, owing to differences among and within agencies in terms of perception, understanding and definitions of child labour.

The Child Economic Activity rate for 1980–1991 was 13.5 per cent for males and 10.3 per cent for females (ILO, 1995, 113). In comparison, other developing countries such as Sri Lanka and Malaysia (data for which are available) have lower activity rates: 5.3 per cent for males and 4.6 per cent for females in Sri Lanka, and 8.8 per cent for males and 6.5 per cent for females in Malaysia (ILO, 1995).

- 17.36 million, Planning Commission, 1983
- 13.6 million, 1981 Census
- 44 million, Operation Research Group, Baroda, 1983
- 111 million, The Balai Data Bank, Manila
- 100 million, assuming that if nearly half of India's over 800 million population lives in poverty, the number of working children is likely to be over 100 million
- 77 million, Commission on Labour Standards and International Trade, Government of India, 1995, computed on the basis of families below the poverty line
- 100 million, Campaign Against Child Labour, based on the number of non-school going children and families living in destitution.

Official Data

No analysis of the estimates on child labour in India can be complete without examining the government data. Let us look at the data provided by the National Sample Survey and the Census of India.

Table 1
NUMBER OF CHILD WORKERS — CENSUS DATA
ACROSS FIVE DECADES

Census of Child Workers	1951	1961	1971	1981	1991
Full Time child workers Census (in Millions)	13.4	14.5	10.7	11.2	9.1
Number of Marginal child workers Census (in Millions)				2.4	2.2
Total child workers (in Millions) Census	13.4	14.5	10.8	13.6	11.3

Source:

* For data pertaining to the period 1951-1981: Chaudhry, D.P. (1995), *Dynamic Profile of Child Labour in India: 1951-1991*.

* For data pertaining to 1991: *Working Children in India: An Analysis of the 1991 Census Data*, Census of India 1991, Registrar General, India.

Table 2
NSS DATA — NUMBER OF CHILD WORKERS ACROSS TWO ROUNDS

	1987-8 (43rd round)	1993-4 (50th round)
Total child workers (in Millions)	11.8	10.1

Source: State of India's Labour Report, CEC, New Delhi (unpublished).

Clearly, there are major discrepancies in the reported full-time child workers and the associated child labour participation rates between the two data sources. These are due to the differences in definition and the reference periods. These reflect the lack of a common understanding and agreement within governments about what constitutes child labour and is a comment on the lack of commitment towards dealing with the problem. Another important reason for lower estimates is the lack of information on the vast unorganised sector that employs children and non-inclusion of children working in own households or in other people's homes.

Methods for establishing the working status of a child are often skewed. Data collectors are poorly informed about the nature of work of the children and are unable to secure such information from the families. Also, they are mentally not oriented to accepting the status of children helping families as working. Parents, on the other hand, fear prosecution if their child is 'working', especially where children are engaged in occupations prohibited by law and hence do not report them.

To sum up, the lack of recognition by parents, data collectors and framers of the census and the NSS, of some activities by children as 'work' (such as assistance in agriculture work, cattle rearing, household chores, care of younger siblings) contribute to the disparities and underestimation in government figures. According to Chaudhry (1996), there is a scope for standardising the information base disaggregated by gender, five-year age groups, and rural and urban areas and it is an absolute minimum informational need for child-focussed policy formulation and debate.

The lack of recognition by parents, data collectors and framers of the census and the NSS, of certain kinds of activities by children as 'work', and a common definition of child labour between government agencies contribute to the gross disparities and the underestimation in data.

Non-Governmental Data: Miles Away from Official Data

Non-governmental estimates on child labour range between 60 million and 115 million, the highest number in the world 'ranging from 75 to 90 million child labourers under the age of 14' (Human Rights Watch, 1996). The CACL considers all children out of school as child labour, which amounts to about 100 million. The India Human Development Report, 1999, estimated that about 10 million children are engaged in earning an income. This obviously doesn't include those as unpaid family workers.

Decline in Child Labour: Contradicting Evidence

The recently convened Social Audit of Child Labour interventions² agreed that not only is the number of children working relentlessly increasing but the complexities in addressing the issues are intensifying as well. Jayati Ghosh, in her keynote address during the Audit, cautioned against revelling in the results of the latest NSS (55th round) that reflect a huge decline in the number. She urged that these official estimates be analysed in the context of the macroeconomic processes and indicators. The same round has also reflected the lowest growth rate of employment in post-independent India. In both rural and urban areas, employment growth rate lags behind labour force growth.



About 4.4 per cent male and 3.5 per cent female children aged 6–14 are reported working on a regular basis. Most of these children work as wage earners and earn cash incomes. Although the extent of child labour could be many times higher, the number of children engaged in earning cash either through wage or other forms of employment is 10 million for rural India. The other category of child workers excluded from this estimate is those who work as unpaid family workers.

Source: India Human Development Report 1999: Estimates on Cash Earning from Child Labour.

Apart from the macroeconomic evidence, there is micro evidence too on the continuation of child labour in sectors employing child labour and sectors where targeted interventions have been made to reduce/eliminate child labour. Beedi, carpets, bangles and knitwear sectors are far from being child labour free. Mishra (2000) admits that nearly 2 million children still work in sectors where child labour was officially prohibited over 10 years ago. More alarmingly, newer sectors are emerging where bonded child labour is being used to exact higher profit margins by the employing MNC, as in hybrid cottonseed production in Andhra Pradesh.

ECONOMIC INDICATORS CONTRADICT DECLINE IN CHILD LABOUR

Official data, on the one hand, suggest a decline in the number of children working. But on the other, they also suggest that the economic and social conditions that generate child labour and the desperation for survival have worsened in the last decade. The condition of sheer lack of productive income and jobs is in complete contradiction with the condition 'necessary' to ensure decline in child labour. It is possible therefore, that the broad decline in child labour as reflected in the NSS figures is concealing an intensification of economic exploitation of children, which is not reflected in the official data.

² Fifteen Years of Intervention against Child Labour, A collaborative Social Audit, National Consultation, November 27-29, 2001, IHC, New Delhi. Particulars included representatives of a number of premier UN organisations, GOI departments, Trade Union and NGOs working on the issue of child labour.

Estimates of the number of child workers vary in India because of: (a) the difference in the methodology used to estimate child labour and (b) the conceptual differences on definition of 'child', 'child labour' and 'work' itself.

Studies have indicated an increasing number of girl children employed in these sectors (Venkateshwarlu and Da Corta, 2001). Studies by the Centre for Education and Communication, New Delhi, to assess the current trends in child labour in beedi-making in Madhya Pradesh (Pratap, 2001) and as domestic help in New Delhi (Gaikwad, 2001), corroborate this. The fact that official data continue to suggest decline in the number indicates a lack of understanding as well as political will to tackle the issue. Hence, the number games.

The Current Situation

Even to assess the current situation, we have to look at the 1991 Census as the data on child workers for Census 2001 are not yet available. Over 80 per cent of child workers at the all-India level were employed in agriculture. In rural areas this share was a 90 per cent, followed by livestock (animal rearing), forestry, fishing and so on. These account for 5.67 per cent of all child workers in the country. Table 3 once again reinforces that more and more children are being pushed into the informal sector.

BONDED GIRL CHILD LABOUR IN HYBRID COTTONSEED PRODUCTION

It is estimated that in India nearly 400,000 female children, in the age group 7-14 years, are employed in the cottonseed fields. Of these 250,000 are employed in Andhra Pradesh alone. This figure surpasses the total number of children employed in industries such as carpet, bangle, diamond, gem polishing and limestone put together. Moreover, as against these sectors where child labour does not account for more than 25 per cent of the total labour force, a majority of them being boys, in the cotton seed production, female child labour constitutes about 90 per cent of the total labour force.

Bengal prawn units stink of child labour

SANTANU BANERJEE
KOLKATA, AUGUST 11

BIJOY is four and he is used to peel prawn for a solid 12 hours every night for Rs 8. A destitute home saved him from a prawn-processing unit in Kuzipara, a village in South 24-Parganas. But hundreds of other kids between 3 and 8 still live a life of drudgery.



hours," he mumbles.

Centre for Communication and Development (CCD) secretary Sawapan Mukherjee said: "Bijoy was not the only child." He should know, for CCD runs a home for children rescued from hazardous sectors.

A CCD estimate said: "How is it that in a country

where there is such widespread adult unemployment there are no job opportunities for more than 50 million children?

Is poverty the cause of child labour really?

C V MEERA RAMAN

looks into the many causes and comes up with suggestions to tackle the malaise

CCD survey showed "over 50 per cent of the total labourers (in prawn processing units) are children between 3 and 6 years".

could be hazardous. Constant exposure to ice eats away the palms, leaving festering sores. The sharp prawn cell the children peel often perforate their palms, bleeding. Most

Children chained in cotton farms

FROM GS. RADHAKRISHNA

Hyderabad, May 5: Kurnool district of Andhra Pradesh, which made headlines last month for an acute shortage of drinking water, is again in the news. This time for an alarming increase in child labour.

According to a recent survey, the district's bidi industry, cotton and chilli farms employed nearly 1.5 lakh child labourers. Almost 30 per cent of them were kept chained throughout the day to prevent them from running away.

More alarming was the inhuman treatment meted out to the child labour employed by the big landlords of the district. Some of them were chained when they retired for the day, while the poorer ones were chained throughout the day to prevent them from running away.

According to...

A lost dream



'Firework units still employ child labour'

By S. Annamalai

MADURAI, APRIL 29. The fireworks industry, which is concerned at the implications of the World

of child labour in fireworks units. In Sankaranatham and Naranapuram, the team came across six children employed in

involved in tube rolling after school hours.

The CACL has demanded that the district administration stop

ting it "child-labour free." A rally and public meeting have been organised by over 150 NGOs in Virudhunagar tomorrow.

Table 3
SECTOR-WISE PERCENTAGE DISTRIBUTION OF
CHILD LABOURERS — 1981 VS 1991

Sector	Percentage Distribution (Total) 1981*	Percentage Distribution (Total) 1991**
Agriculture (cultivated and agricultural labourers)	78.71	80.2
Livestock (animal rearing), Fishing, etc.	6.30	5.67
Mining and Quarrying	0.23	0.1
Manufacturing at Household Industry	8.63	4.2
Manufacturing other than Household Industry	–	6.3
Construction	0.72	0.5
Trade and Commerce	2.20	2.9
Transport, Storage and Communication	0.29	0.4
Other Workers***	2.92	4.4

Source:

* Census of India, 1981, Office of the Registrar General, India, New Delhi.

** Working Children In India- An Analysis of the 1991 Census Data, Census of India (1991), Office of the Registrar General, India, New Delhi.

*** Other workers include those outside cultivation, agricultural labour or household industries.

Almost 90 per cent of the child workers (main) are in the rural areas, even though the 1991 Census says the rural areas are home to three-quarters of the population. The child labour population is concentrated in 11 states. Andhra Pradesh, which had 1.66 million working children, has the highest number of child labourers and the maximum number of school dropouts. Other states where child labourers are more than one million are Madhya Pradesh, Uttar Pradesh and Maharashtra.

The 1991 Census gives the 5–14 age group specific work participation rate (WPR) of

THERE IS ENOUGH EVIDENCE TO SUGGEST THAT

- a) In the last 50 years, the situation of working children has hardly changed, despite legislation, policies and programmes.
- b) Four-fifths of child workers continue in the agriculture sector, and their participation still goes under-recorded due to the lack of conceptual clarity and political will.
- c) Girl workers continue to be under-reported due to the invisibility and non-recognition of their work at home/s.
- d) Disputes, lack of consensus and insufficient survey methodologies mar accurate estimation of the number of child workers.
- e) Many NGOs have undertaken highly innovative, cost-effective and result oriented initiatives and received striking results, but in terms of coverage or spread, this is negligible and uneven.
- f) Unless definitions of child labour and focus of interventions zero in on children working fulltime outside factories, mines and 'hazardous occupations', we won't be able to help a majority of the labour force, and definitely the girl child.

INCREASING NUMBER IN BEEDI AND DOMESTIC WORK

In the Beedi industry, in the Tikamgarh district of Madhya Pradesh, there is a significant rise in the number of children engaged in this work, especially girl children who constituted 23.3 per cent of the total workers in the sample. Females represent 96.2 per cent of the total. Gender discrimination is vivid, as female children were worse off than the male in terms of education. Child labourers are mostly 10–14 years old. In domestic help, it was found that over 92 per cent of child domestic workers were girls who worked for an average of 8–9 hours of work every day without any leave/holiday and a meagre income.

4.33 per cent in the case of main workers and 1.05 per cent in the case of marginal workers giving a total WPR of 5.37. In the case of 10–14 age group, the WPR is 8.48 per cent for main workers and 1.93 per cent for marginal, which means far more older children are engaged in economic activity than younger ones.

A small percentage of our children are also employed exclusively, instead of adults in industries which make carpets, matchsticks, hosiery, beedi, bangles, and so on. When media and legal attention was drawn to these sectors, they moved their bases to a more invisible locale: homes of these children. Simultaneously, newer sectors such as jewellery — making, sweets (mithai) production are emerging which employs only children, like hybrid cottonseed production etc.

WHY CHILDREN WORK?

Myths continue to aid the persistence of child labour and we discuss them one by one.



Cheap Labour and the Myth of Nimble Fingers

In some sectors, especially carpets and even zari, employers cite the ‘nimble finger theory’ as their rationale for employing children. That is, children are more deft in these ‘specialised’ activities than adults. The employers/contractors also market their profiteering under the guise of providing poor families with opportunities for developing a skill while earning.

The real reasons are that children are submissive, cheap and malleable. They are not only unable to unionise and engage in collective bargaining, most of them also work in bondage. Employers and contractors take advantage of low adult wages, poor employment opportunities and absence of effective political and legal apparatus for employing children. What is more alarming, many girls attending school were made to leave school and taken to work by their parents. In hybrid cottonseeds production, for instance, employment was exclusively for girl children and its propagation was done door to door by the contractors. Adult males in the region stopped working. (Venkateshwarlu and Da Corta, 2001)

Poverty: Demystifying the Link

Poverty is another oft-used cause, cited even by the government. But rather than being the cause, it's really the outcome of persisting child labour. Children, deprived of education and thereby unfit to be effectively employed, burn out faster and end up sending their children to work, resulting in a vicious circle.

THE MYTH OF POVERTY

To project poverty as the reason for persistence of child labour and their being out of school is really a move to hide the real reasons why these problems exist. Poverty is an all-encompassing and complex problem, which does not belong to any government department or agency. Thus, it is easier to ignore child labour and high illiteracy among the school going age group and wait for poverty to be eliminated before dealing with the problem. This has been the general attitude towards child labour in official circles.

However, this doesn't undermine the impact of economic constraints faced by a large number of very poor Indians, on the education and work status of their children, or the need for poverty alleviation. But we need to transform our understanding of poverty as an intangible and nebulous issue into more tangible and 'addressable' constituents. Lack of entitlement such as land, water, and access to fodder and fuel, violation of the Minimum Wages Act and the lack of adequate employment opportunities contribute to poverty. Some NGOs have proved that once the root cause of child labour is identified — such as bondage of families in stone quarries of Shankargarh in Uttar Pradesh — and addressed effectively through political, legal and social action, initiatives for getting children out of work and into school are a success. Bondage, illiteracy, lack of minimum wage are all tangible constituents of poverty, and can be eradicated.

Children's employment and adult unemployment are directly related. Cheap jobs for children mean fewer job opportunities for adults. Societal attitudes, especially towards the girl child, contribute to this vicious cycle. In hybrid cottonseeds, many fathers were found living off the earnings of their small daughters. This is true of most sectors including domestic work. Interventions made to address the issues of bondage and gender, through grass-roots initiatives, saw parents willing to withdraw their daughters from work and put them in schools. Hence the importance of land reforms, equitable distribution of water, fodder and fuel, enough job creation, and collective will. These moves need to combine with accessible, inviting and accountable schooling.

Education: Part of the Problem and Solution

Failure of the education system to provide free and quality schooling is another cause. The Public Report on Basic Education (PROBE, 1999) says child labour is not the main obstacle against children being in school. That's because a majority of Indian children are working at home or in the fields, but not as wage labourers. This distinction is important because the scope for adjustment of working hours (to allow for schooling), is usually greater in family labour than in wage labour. Yet children remain out of school because of the 'discouragement (of parents and children) effect', which is largely due to the failure to create conditions favourable to quality education. Failures in the school environment, according to PROBE, have happened in physical infrastructure, teacher resources, activity patterns and social discrimination. Not only PROBE, several studies including one from Western Uttar Pradesh (Chaujar, 2000) find that the persistence of child labour has more to do with the failure of the public schools to reach out to the rural poor families than with economic conditions of these families. Even Dreze and Sen (1995) say: 'The opportunity cost of children's time is certainly an important consideration for some parents, but school hours are short, and schooling can be combined with a substantial contribution to the household economy at other times'. Further, the parents' willingness to bear these costs and

coax their children into going to school may depend crucially on the 'quality' of schooling services they get in return. Child labour, they argue, can be tackled to a large extent by expansion of schooling³. Parental excuses for not sending children to school, according to Dreze and Sen, are: (1) the high opportunity cost of time (what is sacrificed in terms of wage labour earning, household activities and help with minding younger siblings) and (2) the lack of interest in education, which is a function of the (poor) quality of schooling.

In 'The Child and The State in India', Weiner (1991) examines the practices in countries like Germany, Austria, Japan, England and the US as well as China, Taiwan, South Korea and Sri Lanka, where compulsory education has been instrumental in eliminating child labour. He contends that since education in India is not compulsory, children begin to work very early. However, while formal schooling is a critical tool for realising children's right to education and ensuring that they are protected from work for a big part of the day, it is not a panacea. There is a tendency now in the government to use the focus on education for working children, to the exclusion of other important interventions such as implementing the Minimum Wages Act and employment opportunities for all. Initiatives for eliminating child labour must be a combination of all those at the levels of education, livelihoods and collective conscience.

Collective Will: Gender and Caste

Traditional beliefs have contributed significantly to girls and Dalits remaining out of schools and into work. The main notion that educated women won't get married nor have children nor will be able to do household chores like collecting firewood, fodder, cleaning and maintaining cattle, preparing dung-cakes, etc. The traditional role of women in society also prompts older women to look upon daughters or granddaughters as helping hands and their own replacement, sometimes releasing them for paid labour.

Just as the acceptance of gender stereotypes perpetuates child labour, so do class distinctions (ibid,1999). The lower castes are expected to perform manual labour and are more likely to skip school. If they try to break away from the stereotype, they are ridiculed and discriminated against by the communities and even in the schools, forcing them to drop out. Such stereotypical behaviour affects girl children from scheduled castes and tribes the most.

Collective conscience among communities and their will to ensure that children do not work by foregoing their rights to education and protection is very crucial to elimination of child labour. This has to be accompanied by building political will among the communities, especially to help break away from the old norms and set newer ones such as encouraging education of girls and Dalits. Unless there is a commitment at the level of the community and support for that, individual families, especially those economically and socially backward, may not be able to remove their children from work and put in school.

Child labour elimination through social mobilisation

MV Foundation in Andhra Pradesh and Centre for Rural Education and Development Action (CREDA) in Uttar Pradesh consider social mobilisation as one of the most critical factors. Many of the villages they work in now are free of child labour due to their community mobilisation initiatives.

³ Dreze and Sen (1995): The authors discuss five ways in which education and health can be valuable to the freedom of a person (p 14 - 15).

INDIA HUMAN DEVELOPMENT REPORT, 1999: SOCIO-ECONOMIC AND GENDER CORRELATES OF CHILD LABOUR

In many respects child labour is an outcome of extreme poverty and lack of reasonable levels of adult earnings. Thus, one can see that the extent of child labour falls considerably as income increases. An important point however is that the participation rate for female children increases as income falls. Indeed, a larger proportion of female children work among the landless wage earner category and the STs. Female child labour is the lowest among the rich, large landowners, the salaried and professionals, Muslims and households with literate males and females.

Conversely, participation of children, especially females, in gainful work falls as prosperity rises in terms of income, landholding and also adult literacy.

Worsening Ecological Crisis: Increased Burden on Children

The Citizens Fifth Report on State of India's Environment (1999) comments that while cultural and economic factors play a key role in keeping girls away from schools, little is known about the constraint of ecological degradation. The implication is of being 'thrice cursed' for women —female, illiterate and living in tired degraded lands — is an extraordinary work burden. Overworked mothers need help for their daily chores and therefore the education of the girl child is the first to be sacrificed. The report seeks more commitment and attention to ecological constraints.

The report cites an interesting case study of a village in Chamoli district of Uttaranchal where the total work hours were computed. The result: women put in 59 per cent, children 26 per cent and men 15 per cent of work hours. So, women worked nearly four times more than men and children almost double. Even excluding household activity such as cooking, fetching water and cleaning utensils, children were putting in 1.4 times more work than men. This only proves that a subsistence economy built on an interactive, land-vegetation-livestock system is greatly dependent on the heavy work performed by women and children, with the latter getting involved also to free women to take up more productive or heavier work.

The village is close to the forests and communities do not have to go far to collect stuff they need, but the ecological crisis is triggered by the fact that its agriculture suffers from poor fertility and production. Agriculture work is backbreaking, especially for women who have to spend long hours collecting biomass resources to maintain fertility of their small plots. Since the heavy work burden falls on women, much of the domestic work is delegated to children, especially girls. In the case of this village, the ecological constraint argument is strengthened by the fact that there was no problem of access to school. A primary school of the eighth standard was located right in the midst of the village and communities were keen to send their children there, especially boys in the hope of jobs with the army. Not with the girl children though.

The report tries to infer that easier availability of biomass resulting in low work burden for women had possibly provided the appropriate precondition for literacy programmes to succeed in Kerala, compared to the poor performance in UP, Bihar and Rajasthan. Women in Kerala rarely spend more than an hour collecting fuel, fodder and water, whereas in the states where forests are vanishing and agriculture remains poor, women continue to spend 6–10 hours daily collecting basic survival needs. Not surprisingly, more girls in Kerala are able to go to school.



The experience is not unique among India's villages, especially arid regions like Maharashtra, where children work for almost 10 hours daily in search of fodder for cattle and firewood for fuel. Similarly the amount of work hours required to treat soil for better fertility is far more than a generation ago. The impact of a degenerating ecosystem on working children is clear: more work pressure and extra working hours. Since natural resource crisis will only get worse, it doesn't seem possible that children will be able to combine work with schooling, an alternative suggested by many. It is also not surprising that NFE centres that run at night are failing to achieve their goals of making education compatible with the child's working conditions. For, quality education requires a rested body and mind.

Given the strong positive correlation between livelihood security and the education of children (and decreased fulltime child labour in turn), the following is a must. Regeneration of natural resources with a view to secure livelihoods is a non-negotiable imperative for the elimination of the drudgery of labour that inflicts our children. So, efforts to universalise quality education must go hand in hand with those towards regeneration of natural resources.

Child labourers kick off protest
Rahat Bano
 New Delhi, May 31

Child labourers rescued
PRESS TRUST OF INDIA
 CHENNAI, JUNE 6
 OVER 100

29 child labourers rescued by police

HT Correspondent
 New Delhi, June 19

AFTER BEING battered and starved for nine months, 10-year-old Basant was rescued from the clutches of his employer. Basant is one of the 29 child labourers rescued by the south district police and presented to the media today. Fifteen persons — touts and their clients — have been arrested.

Basant's story is virtually the same as any of the 28 others rescued. Driven by poverty, Basant trudged to the Old Delhi railway station in search of a job. His "savior" Rajinder promised him a job and good money in the Karmadpuri area in Sahadara.

Basant and four others almost his age were confined to a room at a factory, working from 6 a.m. to 2 p.m. Food was at a premium; batterings by his employers were not. "There were times when I fell asleep out of sheer exhaustion and Rajinder would wake me by slashing me with a sharp blade," recalled Basant.



STANDARD AND POOR: Three of the 29 children presented to the media at the Delhi Police HQ on Monday. Photo: Pradeep Bhatia

His companions, Munir and Vikas, suffered the same fate. They were never paid. They almost succeeded in escaping, but were caught.

A police official in the Lodhi Colony area recently received a tip-off about the plight of Basant

and his friends. He acted on it.

Said Joint Commissioner (South) Amod Kanth today: "The children were picked up at railway stations by touts, mostly drug addicts and alcoholics, and 'sold' for anything between Rs 100 to 400."

Attar Singh, Ehsan Ali and

Ramesh — the employers of Basant and his friends — are among those who have been arrested.

With bruises on their backs, these children spent months in captivity and slavery. They have now been sent to NGO Prayas's observation home.

For Basant, a standard VI dropout, it is back to books and the renewal of a dream of becoming a police officer.

Not all the 29 children rescued appeared to see it Basant's way. Anand Das, a sprightly 12-year-old, said he was happy with his employer.

"I worked at Ramesh's tea shop at the railway station. He treated me quite nicely and paid me well," said Das. "I was picked up from the shop by the police yesterday."

The other kids who stood on the sprawling lawns of the Police HQ seemed overwhelmed by the attention being showered on them. "Most of them have been abused and starved. They are afraid and unsure of themselves," a police official explained.

Convention on the Rights of the Child (CRC)

Article 32 of) recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The article requires State Parties to take legislative, administrative, social and educational measures to ensure its implementation and in particular to provide:

- (a) a minimum age or minimum ages for admissions to employment;
- (b) appropriate regulation of the hours and condition of employment;
- (c) appropriate penalties or other sanctions to ensure the effective enforcement of the article.

The Government of India, while acceding to the Convention on the Rights of the Child, made the following Declaration:

"While fully subscribing to the objective and purpose of the convention, realising that certain of the rights of the child, namely those pertaining to the economic, social and cultural can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation: 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 age for employment in hazardous occupation 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 – Government of India undertakes to take measures to progressively implement the provision of article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party."

(DWCD.1997.72,73)

India has Ratified Six ILO Conventions on Child Labour. These are:

ILO Convention No. 6, 1919 - Night work of Young Persons (Industry) Convention

It prohibits the night work of young persons in any public or private industrial undertaking and was ratified by India in 1921.

ILO Convention No.15, 1921 - Minimum age of Trimmers and Stokers, Convention

It prohibits the employment of young persons as trimmers and stokers in vessels and ports and was ratified by India in the year 1992.

ILO Convention No.16, 1921 - Medical Examination of Young Persons Convention

It provides for compulsory medical examination of children and young persons employed at sea and was ratified by India in the year 1922.

ILO Convention No. 90, 1948 - Night work of young persons (Industry) Convention Revised

It abolishes night work by children and young persons and was ratified by India in 1950.

ILO Convention No. 5, 1919 - Minimum Age Convention

It prohibits the employment of children under the age of 14 years of age in any public or private industrial undertaking and was ratified by India in 1955.

ILO Convention No. 123, 1965 - Minimum Age (under ground water) Convention

It prohibits employment of persons below 16 years of age for work underground in mines and was ratified by India in 1975.

WHAT HAS THE STATE DONE

As a corollary, interventions that aim to provide additional goats/cattle to select families in select villages in select project areas is just a means to address the livelihoods crisis, nothing else. And by doing this, we may be adding to the pressure on working children. We would do far better to address the basic causes of ecological crisis and adopt a community and regional approach rather than a narrow sector- and target-based approach.

The Indian State's lack of political will in addressing this issue becomes clear as we examine the state policy programme and legislation on child labour.

The Constitution

Independent India's state interventions can be traced to these provisions in its Constitution — Articles 24, 39 e & f and Article 45, now the 86th Amendment. Analysing these provisions in the light of child labour situation, one finds that:

- a) The State is concerned with working children only when the child's work is recognised as being hazardous or unsuited to its age. What constitutes hazardous or unsuited is unclear and open to extreme interpretations.
- b) There is an inherent contradiction among these provisions, signifying a complete lack of understanding on child labour. By qualifying the sectors in which children's employment is prohibited, the Constitution has actually allowed for children's employment in other sectors such as agriculture where about 80% of the children are employed. Yet, the same Constitution provides for free and compulsory education for all children until they complete the age of 14. Are we then promoting a society wherein children are expected to work and compulsorily attend school at the same time? This contradiction is even more ironical as the work hours of children in agriculture and allied activities are increasing everyday.

CONSTITUTIONAL PROVISIONS

Article 24

Prohibition of employment of children in factories etc. No child below the age of 14 years shall be employed in work in any factory or mine or engaged in any other hazardous employment.

Article 39

The State shall, in particular, direct its policy towards securing

- (e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength
- (f) That children are given opportunity 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 against moral material abandonment.

Article 45/ 86th Amendment Provision

The State shall endeavour to provide, within a period of 10 years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of 14 years.

Child Labour (Prohibition & Regulation) Act, 1986

The Child Labour (Prohibition and Regulation) Act, 1986, followed a very long, wide-ranging and heated debate. There were two main schools of thought, similar to what has been analysed by L.D. Mishra and discussed earlier. One group supported the Government's position of regulation and the other argued for prohibition. Those criticising the Bill felt that it was 'a one-sided and half-hearted approach of banning child labour in a few establishments and regulating it in a few others without adopting a holistic or integrated approach, without solving the problem of poverty and economic deprivation, without enforcing the Minimum Wages Act, without resolving the problem of universal enrolment and retention of children of school-going age in the formal school system will serve little purpose.' (Mishra.2000)

The 1986 Act seeks to prohibit employment of children in certain types of jobs and regulating the conditions of employment of children in certain others. It began with a provision for prohibiting employment of children in 6 occupations and 14 processes, which went up to 11 occupations and 14 processes (GOI, 29 March, 1994) and finally to 13 occupations and 51 processes respectively (27 January, 1999). The working conditions for children that are not prohibited under the Act were regulated in all employment only in 1993.

What the critics feared has come true in the last 15 years and the Act is far from successful in achieving its aim of prohibiting employment of children in hazardous sectors. The Ministry of Labour itself estimates two million children still engaged in the hazardous sectors. Besides, the Act has a limited impact as it focuses only on certain sectors targeting only 6 per cent of the total child labour force. There are several other flaws in its design. One of the most crucial flaw is the proviso in clause 3, part 2 of the Bill (Part II, Section 3 of the Act) which says:

'...provided that nothing in this section shall apply to any workshop wherein the process is carried on by the occupier with the aid of the family or to any school established by or receiving assistance or recognition from government.'

It appears from this that hazardous work becomes safe if it is undertaken within the premises of the house. Hence, children rolling beads, making firecrackers, matchsticks, bangle and carpets within their homes can continue doing so since these activities are performed at home. With the current trend of de-industrialisation and contractual work (part of which is done by employers just to evade the law) more children are getting out of the purview of this Act. Is this a case of abdication of State responsibility, by putting it on to the family?

Another major loophole puts the onus of proof of age of the child worker on the State, instead of the employer, stipulating that, in the event of a dispute between the employer and the Government Inspector as to the age of the working child, "the question shall... be referred by the Inspector for decision to the prescribed medical authority." This means that on the rare occasions when

'Child labour practices continue despite laws'

By Our Special Correspondent

CHENNAI, AUG. 3. Federal and regional governments as well as law-makers should send "very strong" signals to builders, contract firms and building material makers so that they do not violate laws that prevent forced or child labour, but seek to provide better labour standards. However, trade unions need to join with governments and the private sector to achieve sustainable development in a context of growing globalisation, says Anita Normark, general secretary of the International Federation of Building and Wood Workers (IFBWW). The IFBWW is a global body working to protect workers in building, building materials, wood, forestry and allied sectors.

There are eight ILO conventions on fundamental rights of workers, including freedom of association, right to collective bargaining, abolition of forced and child labour and preven-

tion of discrimination at work place, said Ms. Normark. She was here to attend a seminar to train national level trade union leaders in the construction industry on advocacy and sustainable development.

Ms. Normark told presspersons here on Friday that despite child labour or use of bonded/forced labour, these practices continued. Globalisation might have negative aspects like the spawning of new technologies that took away jobs, especially from unskilled labourers. But, it was also helping in the networking of unions and advocacy groups. Instances of bad labour practices by any employer/contracting firm drew world-wide attention because of modern communication. International level worker unions could contact the firm and take up the issue with the governments and law-makers immediately. The IFBWW had entered into agreements with multinationals on observing the ILO

conventions on workers' rights. Indian leaders of the IFBWW, R.C. Khuntia and P.K. Sood, said the seminar wanted to provide an Indian perspective, so that all stakeholders in the industry could work for social development. Unions too had a responsibility to prevent child or forced labour. They could open schools in areas where child labour was rampant or provide health and drinking water facilities.

They said construction and wood workers would participate in the programme organised by the National Assembly of Workers Against Anti-Labour Policies, seeking a halt to privatisation, a halt to the amendments to labour laws, more social security measures for labourers. From August 19, district and State-level mobilisation of workers would take place to prepare them for peaceful demonstrations. The workers also planned to march to Parliament on the third day of the Budget Session in 2003.

From 1990 to 1993, 537 inspections were carried out which turned up 1,203 violations. Inexplicably, only seven prosecutions were launched. At the state level, over 1990 to 1993, there were 60,717 inspections in which 5,060 violations were detected and 772 of these resulted in convictions. At the state level during 1993-94, the latest period of data, 1,596 cases were filed against employers. The number of convictions is unknown: many of these cases may still be pending.

Human Rights Watch, September, 1996.

Labour Inspectors do pay a visit to production sites, they must pay a doctor to accompany them and evaluate the age of the children, which rarely happens. Even then the age is not accurately verified, as manufacturers are known to bribe the doctors — not to mention the inspectors themselves — in their favour.

A report by the US Human Rights Watch (HRW) contends that the government's failure to enforce this and the Bonded Labour System (Abolition) Acts, as well as several other legislations protecting child workers are manifestations of the same phenomenon: apathy, caste and class bias, obstruction of enforcement efforts, corruption, low priority and disregard for the deep and widespread suffering of bonded child labourers. It adds that the glaring sign of neglect of duties by enforcing officials is the failure to collect, maintain and disseminate accurate statistics regarding their own efforts. HRW met with a top official of the Ministry of Labour, even he was unable to provide any such data. So it gleaned the enforcement from a variety of sources, including public government documents, news reports, and interviews with government officials.

Even the fines under the convictions are small. The vast majority of adjudicated offenders receive fines of just a few hundred rupees, as opposed to the Rs 10,000 — 20,000 stipulated by the Act. HRW didn't find a single case of imprisonment till date, though the Act allows for sentences of three months to a year for first-time offenders and six months to two years for repeat offenders.

Some information on enforcement is also available from states. In Tamil Nadu, the Act was not enforced until 1994, eight years after its passage. In two years since then, according to a senior state official, there were 15—16 convictions and another 50 cases were pending. Even here, no one has been imprisoned for the violation of this Act or the Bonded Labour System (Abolition) Act. According to activists, on

the rare occasions when the state decided to initiate prosecution of offenders, some judicial magistrates were quick to dismiss the charges for supposed lack of evidence, but probably due to sympathy for the employers or corruption.

In the Firozabad district of Uttar Pradesh, more than 50,000 children are working in glass factories in violation of the Factories Act and the Child Labour Act. Still, in 1995,

Child labour laws violated with impunity in city

YOUNG, HELPLESS AND AVAILABLE!

PRATEEK CHAUHAN
NEW DELHI, July 17

Get a child labourer for a paltry sum of Rs 10,000. The agent will deliver him at your doorstep, assuring you he will work like a slave. He will stay with you for life and if he misbehaves, the agents will come and fix him for you.

In a shocking violation of all labour laws in the Capital, young boys are lured away from desperate poor families from their native villages and sold to restaurant owners, dhaba owners, car mechanic families to act as life-long slaves.

Page

YOUNG, HELPLESS AND AVAILABLE!

Front Page

You would have seen these Chhatus in virtually every dhaba and auto workshop in the city, and think that they ran away from home or are sent out to work by their parents. What you probably don't know is the shocking fact that many are being brought to the city as part of an organised racket.

A random study by the Delhi MID DAY team in even the elitist PVR Anupam area in Saket indicated that most of the eating joints in the complex are violating laws that debar employing of children under 15 years of age.

Yusuf Ali, 12, works here for a dhaba and gets a wage of Rs 75 per day. He told Delhi MID DAY: "I have come from Shahajapur (UP) and have been working for this person for more than one year. I sleep in the restaurant and work for the whole day. This is my life now. We were 20 boys from Shahajapur and the agent told us we would be working in a big bungalow and would be allowed to go to school. But after we reached Delhi, all the boys were separated, and we have not met each other since."

PVR Anupam complex is just an example of how children from neighboring states are brought to the Capital and made to work for paltry sums in miserable conditions.

rescued more than 90 boys and girls from employers who used to physically assault the kids if they did not obey their orders. The number employed here in Delhi in similar work conditions could go into thousands.

However, in a Capital overflowing with migrant workers, the labouring children appear to have gone unnoticed. The Delhi police and NHRC, who are supposed to take cognizance, are keeping silent, and the child labour is thriving.

A case study from Lajpat Nagar: Akhtar Ali, 12, was brought from Meerut after paying Rs 10,000 to his father, Sakhruddin. Ali is now working for a dhaba in Lajpat Nagar, and earns Rs 50 per day.

Ali said, "Now I am not interested in going back to my home. There are many boys like me from different parts of the country. If you want a boy or girl to work in your house, I can arrange it for you. You will have to provide shelter and food."

responsibility among the poor are the main reasons for the violation of the rights of children. I myself once upon a time worked as child labourer and farm labourer, and just sheer determination, hard work and education could break the vicious circle of poverty and illiteracy. The laws to livelihood, right to health and those relating to social justice and empowerment of the poor are not implemented effectively. They have become ornamental. But voices such as these are rare. The aspect of illegality that what is going on is completely against the law — is rarely brought up. And as for the young labourers — they are merely flowing with the tide, unaware of their rights, and just thankful that when they sleep at night their belly is full of leftover food.



OTHER IMPORTANT LEGAL PROVISIONS

The issue of child labour is dealt with in many legislations like the

- Factories Act (1948);
- the Plantation Act (1951);
- the Mines Act (1952);
- the Merchant Shipping Act (1958);
- The Motor Transport Worker Act; and,
- the Beedi and Cigar Workers (Conditions of Employment) Act;

In all these laws, employment of children under 14 years of age is prohibited.

there were only two convictions in Firozabad, and the Assistant Labour Commissioner, B. K. Singh, told a journalist that '[t]here is no child labour in the district now'. According to the Secretary General of the National Human Rights Commission, the enforcement problem is 'just a matter of people not doing their work.' Post-1996, since the HRW report, barring a few instances, the same situation prevails.

The 1996 Supreme Court Judgement

The State's failure of enforcement was brought to light by a Public Interest Litigation filed by M.C. Mehta (Civil Writ Application No. 465) in 1986, which led the Supreme Court to pass a remarkable judgement in 1996, urging for immediate and effective implementation of the Act. Follow-up action, however, has been disillusioning. For starters, the unnecessary publicity of the case cautioned the employers who began disengaging and withdrawing children from work. Over time, most children went underground. Some employers (in Sivakasi) closed shop, making inspection and survey impossible and children worked in another location. So, the results of the survey carried under the Judgement put the total number of children employed in both hazardous and non-hazardous sectors at half a million or, less than 5 per cent of the actual child labour force number of 11.28 million in the 1991 Census.

SUPREME COURT JUDGEMENT 1996: SALIENT FEATURES

1. Under the CLPRA, 1986, every offending employer must be asked to pay compensation amounting to Rs.20,000 for every child employed in contravention of the Act.
2. This Compensation should be deposited in the 'Child Labour Rehabilitation-cum-Welfare Fund'. The fund so generated shall form a corpus whose income shall be used only for the concerned child.
3. One adult member of the family whose child is employed in a factory, mine or in any other hazardous work should get a job anywhere in lieu of that child. Where it is not possible to provide a job to an adult member of the family, the government concerned should deposit Rs. 5000 per child in the Child Labour Rehabilitation-cum-Welfare Fund.
4. A survey should be conducted of the type of child labour under issue, which should be completed within six months from the day of this judgement. The survey could be taken up in relation to Article 24, which might be regarded as the basis for determining which hazardous aspect of employment should be treated as the criterion, the most hazardous form of employment.
5. On discontinuation of the employment of the child, free education should be assured in a suitable institution to make him a better citizen. It would be the duty of the inspectors to ensure that this direction of the Constitution is complied with.

The State machinery's callousness was not restricted to this survey. There is still no confirmed data on the total number of children released from work and put into formal schools. Nor is there anything on the number of families assisted with employment for the adult or with a compensatory amount being deposited in the fund. Second, there has been hardly any prosecution since most states and Union territories reported that employers were contesting the show cause notices.

National Policy on Child Labour

The Constitutional provisions are subject to interpretations. It is possible to prohibit all forms of child labour, by combining the Articles 24, 45 with 39 (e and f). Yet the State chose to translate these provisions to suit economic interests rather than children's well-being. This choice is translated into the National Policy on Child Labour, which justifies continuation of child labour in rural agriculture and allied sectors. Consider the following statement in the Policy document:

'Both in enacting the legislation and thereafter in proceeding to lay down the policy and the outline of the programme of action, Government have had to keep in mind the economic and social aspects of child labour in the country, for example, with substantial portions of the Gross Domestic Product (GDP) coming from the agricultural sector, from rural industries or artisans workshops, or from small-scale services, often children work as an essential part of a farm household, or as part of the working family assisting parents in ancillary tasks. In such working activities by children in farm and the field... children most often acquire the skills which enables them to become fully-fledged workers in the farming households, family establishments or trades. While work of such kinds has its problems, it is more essential at the present stage of our national development to concentrate in those sectors or establishments where children are deployed on wage or quasi-wage employment, outside the family, where the possibility of children being subjected to exploitation is greater'.(GOI, 1987)

The NPCL and the CLPRA are in complete disregard to the commitment of the Constitution as well as to the Convention on the Rights of the Child (CRC), 1989. The CRC seeks to protect a wide range of children's rights, including their right to protection from economic exploitation and from performing any work that is likely to be hazardous, right to interfere with the education of children, or the right to be harmful to their physical, mental, spiritual, moral and social development (Article 32, CRC).

In its Country Report on the CRC in 1997, the Government merely repeated its lack of political will for complete elimination of child labour. The Report says that while it realises the objectives and purposes of the Convention, it also realises that rights can only be progressively implemented in the developing countries subject to the extent of

Hi-tech Naidu blind to child labour scourge

Ashok Das
Hyderabad, July 22

DESPITE ALL the hi-tech hoopla, Chandrababu Naidu's Andhra Pradesh has a seamy side. It has the largest number of child labourers in the country. Nearly 1.66 million, to be precise, of which, 51 per cent are girls.

In other words, 14.7 per cent of the total number of child labourers in the country are found in Andhra Pradesh, points out ILO project manager M P Joseph.

The children are mostly employed in hotels, automobile workshops, shops, establishments and the agriculture and construction industry.

In a bid to rid the state of the scourge, the ILO — with support from the INTUC, AITUC, CITU, BMS, HMS and Telugu Nadu Trade Union Council — has launched the International Programme for the Elimination of Child Labour. To begin with, the

programme is being implemented in five districts where the incidence of child labour is the highest. Under the scheme, the ILO will provide an aid of Rs 1.5 crore to the AP Federation of Trade Unions for the Elimination of Child Labour — an umbrella organisation formed by the six trade unions. On its part, the federation will undertake awareness campaigns for next 21 months, targeting the parents of child labourers.

The campaign is part of the Rs 21-crore AP State-Based Project, a pilot project for the progressive elimination of child labour in the state. Initially, the project, funded by the UK Government through the Department for International Development, will run for two years, with the option of a three-year extension.

The project will also focus on mobilising women against child labour and providing livelihood options to families of rehabilitated children.

THE NEED TO ADDRESS CHILD LABOUR IN AGRICULTURE

The farm sector, steadily shrinking, supplies children to the hazardous sectors. Limited opportunities within the sector have historically pushed communities, men, women and children into non-agricultural sectors, many of which are recognised as 'hazardous'.

There is an urgent need to support the agriculture sector not only for its growth and viability but also to help the children working there. Unless interventions aim at supporting growth of agriculture and agro based occupations for adults, while simultaneously taking care to re-route children to schools, we won't be able to achieve sustained elimination of child labour. We must distinguish between short-term steps to make children stop working and long-term efforts to strike at the roots of the processes by which children join the labour force. Hence the focus of any strategy should be to address children in agriculture.

available resources and within the framework of international co-operation. It also mentioned that for several reasons, children of different ages do work in India and that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment. It ends by saying that the government will take measures to progressively implement the provisions of Article 32, in accordance with its national legislation (CLPRA) and relevant international instruments to which it is a party.

The policy faces criticisms for its assumptions about what is acceptable and not acceptable about children's work. Judged even against its own parameters, the policy has several shortfalls. The action plan under the NPCL 1987 comprises:

- A legislative action plan. Incidentally, the CLPRA was enacted before.
- General development programmes for benefiting children wherever possible, and
- Project-based action plans in areas of high concentration of child labour engaged in wage/quasi-wage employment

Table 4
STATE-WISE POSITION ON THE NUMBER OF PROJECTS SANCTIONED
AND COVERAGE

No.	States	No. of Districts Covered	Schools	Children
1.	Andhra Pradesh	22	936	61,131
2.	Bihar	08	187	11,213
3.	Karnataka	03	39	600
4.	Madhya Pradesh	07	81	4,358
5.	Maharashtra	02	61	3,170
6.	Orissa	18	511	31,456
7.	Rajasthan	05	078	3,900
8.	Tamil Nadu	09	353	17,190
9.	Uttar Pradesh	11	170	11,730
10.	West Bengal	07	234	11,750
11.	Punjab	01	–	–
12.	TOTAL	93	2,650	157,848

National Child Labour Projects (NCLP)

The Ministry of Labour has been implementing these projects since 1988 for rehabilitation of child labour. A major part of this is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, stipend and health care to children withdrawn from employment. Seven such projects came up in 1988. By mid-1994, there were 12 of them.

After a new programme (child labour in hazardous occupation) was announced on 15 August 1994, the ambit of these projects was enlarged from industry-specific projects to area-specific (areas with high concentration of child labour) projects. Some 64 more projects were sanctioned bringing the total to 100. To date, there are 93 projects in 11 child labour endemic states for rehabilitation of about 1.9 lakh working children. (GOI-UNICEF, 1999).

Funds Crunch Hits Child Labour Project

Chennai's Child Labour Elimination Programme (CLEP), which rehabilitated 6050 children, has been forced to wind up owing to paucity of funds. The programme has died a premature death, leaving beneficiaries in a lurch. Operational for the last five years and activated by a one time grant of Rs.10 million, Tamil Nadu Slum Clearance Board'(TNSCB) project was until recently the strongest hope for the city's child labourers. This year, however, paucity has downed the shutters of transit schools and sent the children out on to the streets once again.

Child Labour News
Service,
9 September , 2002.

Where NCLP Fails

The primary criticism of course stems from the policy, where the focus is limited to the hazardous sectors. The only state where such an agreement has been made and administrative adjustments made to fulfil this objective is Andhra Pradesh.

A review by Vidhayak Sansad, an NGO based in Thane, Maharashtra, through its Centre for Budget Studies, in 2001, sums up the inadequacies in formulating and implementing the projects.

1. Against a total number of child labour 11.2 million, the sanctioned coverage of NCLP for 2000-01 is only 2,05,800. Which means the labour ministry intends to cover a mere 1.82 per cent of the total. Even actual coverage has always been much lower than what was sanctioned.
2. The per-child investment is extremely inadequate. The Centre estimates that while the allocations over 1996-2000 was Rs 850 per child (Rs 8,500 million for 2 million children), the actual cost of schooling for children in the age group 6-10 in Maharashtra is Rs 2,293.78.
3. There is unequal distribution of allocations under the NCLP among the child labour endemic states. Even though Maharashtra ranks 3rd among states in number of child labourers, with 11.4 per cent of the total, the sanctioned coverage is just 1.79 per cent (and actual coverage is 1.76 per cent), according to the Annual Report of Labour Ministry 2000-01. Instead of in 17 districts where the problem is acute, the projects are in only two districts.
4. Even as the manual for implementation says that 'the main thrust of NCLP is to reduce the incidence of child labour, thereby encouraging the elimination of child labour progressively', it is restricted to merely running special schools.

WHAT NCLP SHOULD BECOME: SUGGESTIONS OF THE CACL

- NCLP should be reviewed and revamped to include all children out of school up to 16 years of age.
- It has to be community-based and community-driven.
- Local bodies should be endowed and empowered with the responsibility of mainstreaming all the children out of school by utilising NCLP along with other government programmes.
- It should be time-bound.
- A structurally defined monitoring and evaluation system has to be in place.
- Project planning should be taluk and district-based involving the community, NGOs/ CBOs and taking into account the total number of children out of school in that defined area.
- One single government department should be accountable to the community on the impact of NCLP.
- Stipend given under NCLP is a disincentive to normal schooling process and this provision should be channeled into the fulfillment of the visions of the NCLP.
- Before implementation, intensive orientation and capacity building at all levels should be undertaken to ensure quality.
- Clearer guidelines are required at the policy and programme levels.
- In the light of mainstreaming there has to be a specific pattern and standardisation of curriculum.
- Support of families is crucial for poverty alleviation.
- Admit the children in mainstream schools without any age proof certificates.
- Government to be fully engaged in enforcement of child labour laws.

The Centre review contends that special schools should just be a part of a broad programme and the NCLP should address the main causes in collaboration with the ministries of Rural Development and Human Resource Development.

Perhaps the most flawed component is the absence of a convergent mechanism with the Department of Education. If education is the focus and if mainstreaming working children from special schools to formal schools is an objective, then how can this plan be carried out without a basic agreement with the Department of Education? Attempts to bring the NCLP schools under the education department are worth studying and perhaps emulating.

CONCLUSION: NEEDED POLITICAL WILL

The reality of child labour in India is grim and will continue to be so unless some strong and bold corrections are made with a definite political will. We have examined only a few aspects of this grim reality, which are summarised below:

- There is no composite or agreed definition of child labour.
- The state continues to be selective in what it wants to address and is not in favour of eliminating all forms of child labour. So, we only address 6 per cent of the total child labour force .
- Inadequate and disjointed interventions, coupled with ever decreasing security of livelihoods at the household level, depleting natural resources and inaccessible, unappealing and unaccountable school system help perpetuate child labour.
- Even in the selected sectors, the coverage under NCLP and prosecutions under the CLPRA are abysmally low.
- There is a complete absence of convergence of different initiatives. This perhaps stems from the basic inadequacies in the policy.
- Finally, no amount of disjointed interventions, legislation and Supreme Court Directions will help eliminate child labour unless the Indian state commits itself to completely and sincerely addressing all forms of child labour.

APPENDIX 1

EVOLUTION OF INDIA'S CHILD LABOUR POLICY

July 1921	Ratification of ILO Convention No. 6 (1919)	Night work of young persons in any public or private industrial undertaking prohibited
November 1922	Ratification of ILO Convention No. 15 1921	Employment of young persons as trimmers and stokers in vessels or ports prohibited
November 1922	Ratification of ILO Convention No. 16 (1921)	Compulsory medical examination of children and young persons employed at sea provided for.
February 1933	Enactment of Children (Pledging of Labour) Act, 1933	Pledging of Labour of Children prohibited and penalty for pledging child labour prescribed.
1938	Enactment of Employment Children Act, 1938	Employment of children below 14 years prohibited in certain occupations.
1949	Adoption and Enactment of Constitution of India Act by the Constituent Assembly	Prohibition of employment of children below 14 years of age in factories, mines and hazardous employments in terms of a fundamental right: and Directive Principles laid down against the abuse of the tender age of the children until 14 years of age
February 1950	Ratification of ILO. Convention No. 90 (Revised) 1948 of	Night Work of Young Persons (in Industry) abolished.
September 1955	Ratification of ILO Convention No. 5 1919	Employment of children under 14 years of age in any public or private industrial undertaking prohibited
1969	Report of the National Labour Commission	Recommended combination of work with education and flexible employment hours, which would not inhibit education.
March 1975	Ratification of ILO Convention No. 123, 1965.	Employment of persons below 16 years of age for work under ground in mines prohibited
1979	Report of Gurupadaswamy Committee, 1979	Recommended setting up of Child Labour Advisory Boards; fixation of minimum age of entry to any establishment; strengthening of

		enforcement machinery, formulation of effective educational policy with emphasis on integration of education requirements with local crafts.
March 1981	Establishment of the Central Child Advisory Board with Labour Minister as Chairman	To review implementation of existing laws; to suggest legislative and welfare measures for working children; to review progress of welfare measures; and to recommend industries where child labour should be eliminated.
December 1986	Enactment of Child Labour (Prohibition & Regulation) Act, 1986	Employment of children below 14 years of age prohibited in specified occupations and processes; procedure of modification of schedule of banned occupations of processes laid down; regulation of working conditions of children in non-prohibited employments provided for; penalties for violation of the law provided; and uniformity in definition of 'child' in related laws provided for.
August 1987	Adoption of the National Child Labour Policy, 1987	Provided for a legislative action plan focusing of general development programmes for the benefit of working children as well; and formulation of project based action plan in areas of high concentration of child labour.
1988	Launch of National Child Labour Projects	Projects for rehabilitation of children released from selected 9 'hazardous' sectors. Components included non formal education, mid day meals, Income generation for family and stepping up of enforcement of CLPRA. By 1996, 76 projects were sanctioned..
December 1989	Report of the task force on child labour set up by the Child Labour Advisory Board under the chairmanship of Dr L M Singhvi	Recommended amendments to child labour laws and national policy on Child Labour

July 1991	Report of the National Commission on Rural Labour	Recommended enactment of Compulsory Primary Education Act by State; creation of non-formal education centres, enhancement of outlays for elementary education: guarantee wage employment for parents of working children; universal prohibition of child labour; media publicity against child labour.
December 1992	Ratification of UN Convention on the Rights of the Child, 1989	Enjoins upon State Parties to implement Article 32 of the Convention that seeks to protect children from performing any work that is likely to be hazardous or to interfere with the education of children or to be harmful to their physical, mental, spiritual, moral and social development.
October 1994	National Authority For Elimination Of Child Labour launched	Labour Minister PA Sangma calls for weaning away 2 million children in hazardous industries within the specified time frame.
December 1996	Landmark Supreme Court Judgement	The Supreme Court of India, ruled in a 36-page judgement heavy fines for employers of children in hazardous industries, violating the provisions of the CLPRA.
1997	Government of India's Country Report on the CRC	States that for several reasons children of different ages do work in India and that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India.
July 2001	Inter-ministerial meeting of GOI recommends ratification of ILO Convention No. 182	The Conventions enjoins upon ratifying parties to take immediate and effective measures to secure prohibition and elimination of the worst forms of labour.

Sources: Mishra 2000; www.ilo-ipeec.org; www.ficci.org

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ADOPTION



SECTION 10

ADOPTION

Adoption of children is not new. In India and across the world, parents craving for children or looking for heirs as in the case of royalty have adopted them informally or through a legal process. No one talked about it or noticed it unless one was directly involved in either adopting the child as potential parents or as those facilitating the adoption process. However with news of adoptions being made illegally and children being bought and sold for adoption making the headlines, it suddenly became a topic of discussion and controversy across the country. There was a sudden need felt to monitor the adoption agencies and the process more closely. But adoption of children is more than about buying and selling of children from impoverished parents. More importantly it is about providing children in need of care and protection, orphaned or destitute an alternative family care where they feel physically and emotionally protected and secure, while providing the adults the children they crave for. It has been acknowledged by the Convention of the Rights of the Child as a critical aspect of child rights. Indeed, while adoption processes have to be closely monitored so that they do not become yet another method of violating child rights, they have also to be streamlined and encouraged to ensure that children in need can find the love, care and protection in a family that can take them in.

Unfortunately, in the absence of a comprehensive law, at present only the Hindus, including Jains, Buddhists and Sikhs can legally adopt children. The personal laws of other religions do not allow for legal adoption. Parents belonging to other faiths keen to adopt can only take children as their wards, making them their guardians under the Guardianship and Wards Act, 1890. The other matter of concern is 'son preference' in adoption, thereby discriminating against the girls. Disabled children almost never find a home within the country. Even though it is well established that the first choice for homes for children must be within the country in a social milieu that they can identify with as they grow up, over the years there has been an increase in inter-country adoptions, which has also come to be linked with the growing trafficking racket. It is in this context that it has become important that we examine the adoption laws and the process. At the same time we have to ensure that children who need homes and parents who want children are able to find one another.

Adoptions have been documented in civilisations as old as the Greeks, Romans, Egyptians and Babylonians. The adoption of Moses, a Jew, by an Egyptian princess is one of the first known documented trans-racial adoptions. In India too, the Hindus have had religious sanction to practice it for centuries. Sons have always enjoyed a special status among them. From Karna in the Mahabharata to erstwhile rulers like the Rani of Jhansi who adopted to ensure succession, Indian history is replete with such examples.

Adoption is a process whereby childless couples take orphaned, destitute and unwanted children into their care and give them the same privileges as a biological child.

Poskem

Labelled after the Konkani word for adopted, children who were abandoned in Goa used, till a few decades ago, to be taken in by well-to-do families, who often had children of their own. The practice that was discontinued a few decades ago was common among Christian families of the landowner class. The child, usually a female, would spend the rest of her life serving the adopted family as an unpaid household help. In return, with no rights or inheritance privileges or a future of her own, she would be assured three square meals and a roof. If the foster family were so inclined, they would bestow a monetary settlement on her when she came of age or got married.

Femina, January 23, 1996.

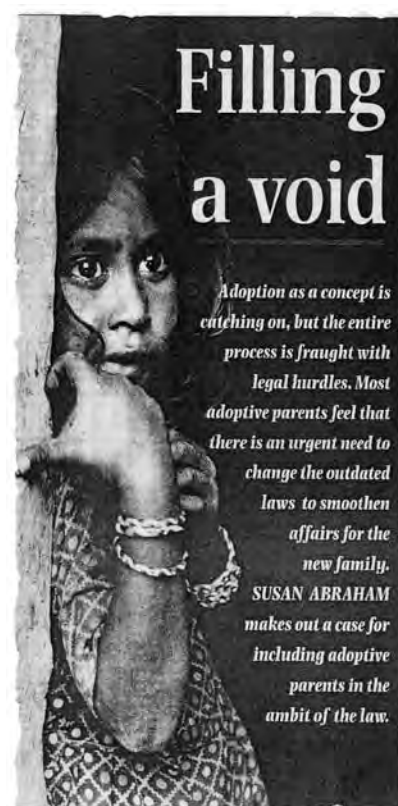
Although sanctioned by customary law and religion in India, adoption was not for protecting destitute children or giving them a home and a family. Indeed, the focus under the old Hindu law was to enable the parents to perpetuate the family and ensure that there was someone to perform the death rites. Only a boy of a near relative or of the same caste, whose parents were alive, could be adopted. Orphans, illegitimate children, handicapped or female

children were never adopted. Where the child belonged to a poor family or was of an unknown parentage, he was either taken on by the local elite as an indentured servant, like the Poskem tradition of Goa, or simply cast away.

In recent times child placement in India has taken several dimensions, and not all of them result in legal adoptions due to various constraints in law and practice.

In recognition of its existence in practice in India, adoption received its first formal nod on 21 March 1890 with the Guardian and Wards Act (GAWA). However this law, as its very name suggests was more for providing foster care within the ambit of the personal laws than for legalising adoptions. As a result, just as before children continued to be transferred informally and confidentially to adoptive parents within the family or the community. It was easy because, there were no formal procedures of birth registrations.

Adoption got legal sanction in 1956 when the Government of India enacted the Hindu Adoption and Maintenance Act (HAMA). By this time the concept of the Welfare State had also started evolving, and there was recognition of the need for the State and society to take responsibility of the orphaned, abandoned and the destitute children. Orphanages and homes started being set up. The State gradually took over the responsibility of housing them in institutions and



Filling a void

Adoption as a concept is catching on, but the entire process is fraught with legal hurdles. Most adoptive parents feel that there is an urgent need to change the outdated laws to smoothen affairs for the new family.
SUSAN ABRAHAM makes out a case for including adoptive parents in the ambit of the law.

'Adoption is a social and legal process whereby a parent-child relationship is established between persons not so related by birth...the child...assumes the same rights and duties as those that obtain between children and their biological parents.'

Costin, 1972.

rehabilitating them through adoption and foster care. Thus the modern day version of the practice of adoption gradually gained acceptability in India, as it did across the globe. Today there are a large number of parents who adopt children irrespective of their caste or parentage.

Adoption serves two purposes. It provides the child with an identity and security in a loving and nurturing family environment. At the same time the parents get the child they crave for. It is particularly preferred by parents unable to have children of their own due to medical reasons or those not wanting to go through the process of pregnancy and childbirth. For the altruistic, a rehabilitation process for the destitute and the orphaned. The child gets the chance to be loved and nurtured within a familial environment.

Unfortunately the HAMA the only codified law available for adoption in India is restricted to Hindus, which includes, Jains, Buddhists and Sikhs. Persons belonging to other faiths cannot legally adopt a child because their personal laws do not allow it. The consequent result is that this lack of laws acts as a major deterrent to non-Hindus from adopting, thereby opening the gates for inter-country adoption. The only option open to non-Hindus who want to 'adopt' children is to take them as 'wards' under the GAWA. There have been four unsuccessful attempts to introduce a uniform code bill but as of date adoptions continue to be governed by the person's religion in India.

'Inter-country adoption began at the end of the Second World War when many Americans decided to adopt European war orphans. This humanitarian response was further developed after the Korean War when both war orphans and children fathered by Americans in Korea were adopted in significant numbers. Interest in overseas adoption was boosted in 1975 with Operation Baby Lift, the emergency airlift of 215 Vietnamese children from a burning Saigon.'

The number of inter-country adoptions has grown steadily in the past few decades. There are many reasons why an increasing number of couples abroad are opting for adoption. Some do it as a philanthropic gesture. For others, the modern lifestyle has taken its toll, leading to a higher infertility rate. Moreover, with dual career couples becoming a norm, an increasing number of upwardly mobile women have neither the time nor the inclination for a pregnancy. The result, a growing number of childless couples are queuing up for adoptions. In the absence of adequate children within their own countries, hopeful parents look to poor and developing countries devastated by natural and man-made disasters to acquire babies to fill their emotional void.

Viewed as a child-centred method of providing the child in need of care and protection, an alternative family, adoption has been recognised in the Convention on the Rights of the Child (Article 20 and 21).

It is sad that over the last couple of years, the legal process of adoption has come to be used as a means of buying and selling babies. It has indeed come to become an example of how a perfectly legitimate activity designed in the best interests of the child, can be criminalised. But we have to be careful. We must ensure that the baby is not thrown away with the bath water. The need is to

* Vivien Altman, Reproduced for Signposts to Asia & the Pacific.

CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Article 20: A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance by the State.

Article 20 (2): States Parties shall in accordance with their national laws ensure alternative care for such a child.

Article 20 (3): Such care could include, inter alia, foster placement, kafala of Islamic law, adoption or if necessary placement in suitable institutions for care and protection....

Article 21: States that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure adoption of child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognise that inter-country adoption may be considered as an alternative means of child care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within the framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

ensure that adoption continues simultaneously putting in place checks and balances to ensure that it does not become yet another avenue for the traffickers to profit.

Even though the agencies are meant to keep copious records of all adoptions taking place, it has been found that analysis of the adoption system is severely constrained by the lack of adequate information. This is further aggravated by the lack of birth registrations in the country, which allows for children to be taken away without any records available to trace them.

INADEQUATE LEGAL PROVISIONS

Adoption has come to be accepted in India as a child-centred welfare activity and the best possible way to rehabilitate abandoned, orphaned or destitute children, who have no family or whose families are unable or unwilling to take care of them.

The lack of a comprehensive law on adoption makes it difficult for all interested parents, irrespective of their religion, to be adopted. The same is true of children of non-Hindu children who need homes, but are constrained by their religion. As mentioned earlier the HAMA applies to Indian citizens who are Hindus (including Jains, Buddhists and Sikhs) living within India, or abroad.

Although it brought in some radical changes into the existing law, HAMA continues to have serious flaws and antiquated provisions. A single woman (unmarried, widowed or divorced) can adopt a child but a married woman is not allowed to do so. She can only be the consenting partner and not the petitioner. The husband has to be the petitioner thereby discriminating against married women. The Act also imposes serious disabilities on a spouse. The moment a Hindu converts to another religion, he/she not only loses the right to adopt, but will have no legal recourse if the spouse decides to place the child for further adoption. It prohibits the person with a son, grandson or great-grandson, from adopting a boy, and adopting a girl if he/she has a daughter or son's daughter living with them (Section 11(1)). Such a clause may have been included to prevent discrimination of the child of the same sex in case of the presence of biological child. What complicates the situation further is the Supreme Court judgement (Lakshmikant Pandey vs Union of India, No. 1171/1980) that directs that 'Brothers and Sisters and other children who have been cared for as siblings should not be separated by adoption placement except for special reasons'. Here lies the dichotomy. Since an Indian parent as per HAMA cannot adopt siblings of the same sex, siblings of the same sex are necessarily put up for inter-country adoption. Though the Juvenile Justice (Care and Protection of Children) Act 2000 (JJ Act) does attempt to clear certain anomalies like allowing parents to adopt more than one child of a particular sex, the act itself does not supersede the existing legislation including the HAMA. In fact, as the situation stands, the enactment of the JJ Act may lead to more confusion and contradiction.

The JJ Act defines a child in need of care and protection as one 'who is found without any home or settled place or abode or without any ostensible means of subsistence'. These children are under the jurisdiction of Child Welfare Committee (CWC) previously known as the Juvenile Welfare Board (JWB). The JJA provides for the rehabilitation and reintegration of these children to be carried out alternatively by adoption, foster care, and sponsorship or by sending them to children's homes recognised by the State as adoption agencies. It clearly states that the primary responsibility for the children will be with the family. Adoption shall be resorted to for rehabilitation of orphaned, destitute and abandoned children. It provides for two children of the same gender to be adopted by one family.

The Juvenile Welfare Board has been empowered to give these children for adoption after the required investigations. The board gives custody to adoptive



parents for 2 years during which period there are regular follow-ups. At the end of the 2-year period, it grants final custody to the parents who then have to move the court for legal custody.

In the absence of laws, Muslims, Christians, Jews, Parsis can 'adopt' children using the Guardians and Wards Act (GAWA) of 1890. This Act confers only a guardianship status on the parent, which ceases once the child completes 21 years of age. Since the child has the status of a ward, she finds no legal protection in terms of enjoying legal rights over her parents' property. It is left to the parent/guardian to will his property to the child, or as is the case with Muslims, gift their ward a section of their property during their lifetime as Muslim personal law does not allow a person to will away his property.

Indian law has no provision for foreigners to adopt Indian children. However, under GAWA, they may petition an Indian District Court for legal custody of a child to be taken abroad for adoption. Once the child is in another country, he or she will be adopted there as per the law of that country. This process is governed by the guidelines to Regulate Matters Relating to Adoption of Indian Children (1994).

All children, biological or adopted require the same amount of care, nurturing and attention in the initial months of its life. The only difference is in its not being breastfed by the adoptive mother. Indeed that makes the child even more vulnerable to disease and sickness requiring even more care. However, while the Maternity Benefits Act (MBA) of 1961 has a provision for paid maternity leave, there is no provision for maternity or paternity leave for adoptive parents. In other words, a woman who adopts a child will have to give up her job in order to be able to give the child the initial quality time and care, which is a must.

As is apparent the existing legal framework, obsolete laws and the dichotomies within the existing framework have not only made adoption a painful process for prospective parents but have also indirectly given a boost to inter-country adoptions. Till the mid-eighties foreign adoptions, which were slowly gaining momentum, were unregulated and prone to malpractices by adoption agencies. In the absence of a uniform law, the series of judgements passed by Justice Bhagwati from 1984 to 1991, based on a writ petition filed by Lakshmikanth Pandey, have acted as a landmark in the annals of Indian adoption and served to form a case law corpus for future reference.

KEY ELEMENTS OF THE SUPREME COURT JUDGEMENT

- An Adoption Cell in the Ministry of Welfare (now named Social Justice and Empowerment) at the Centre.
- A Central Adoption Resource Agency (CARA) as an apex body to monitor and regulate the working of Voluntary Co-ordinating Agencies and recognised agencies (i.e., one which obtains a licence from CARA).
- Scrutinising Agencies to assist the court in 'adjudicating' inter-country adoption cases.
- Voluntary Co-ordinating Agency at regional levels to promote in-country adoptions.
- Formulating and circulating guidelines to regulate procedures for adoption.

CHRISTIAN PARENTS CAN NOW ADOPT

In a pathbreaking order, Justice F I Rebello of the Bombay High Court held that High Courts do indeed have the powers under Article 225 (in matters of protection of minors and children) to give children and minors up for adoption, even if there are no legislations for adoption in some personal laws. In fact, a child's right to be adopted, flows from Article 21 of the Constitution that guarantees life and liberty to every individual. 'The fundamental right to life of an orphaned child includes a right to be adopted by parents, to have a home, name and nationality and it is an enforceable right, justiciable in civil courts.'

The High Court also held that couples who have been made guardians under the Guardianship and Wards Act, 1890 can move for adoption of their wards after a two year period. Following which, a court would have the powers to allow them to adopt the children, provided certain provisions were met.

Rebello admitted that there were many potholes in the road ahead, but hoped that the judgement 'will awaken the sensitivity of our lawmakers, so all children in the new millennium will have an opportunity to enjoy the joys of childhood'.... following the powers conferred on the High Courts under Article 225... district courts and High Courts pending further legislation will have powers to give children for adoption... binding directions to all state governments under the jurisdiction of the Bombay High Court including Goa.

'The right of a child to be adopted, is independent, and is not pursuant to any Common Civil Code,' the judgment says...apart from Article 21, the court has drawn powers from the fact that India is a signatory to a large number of international conventions including the Convention on Child Rights... Supreme Court has upheld the right of the executive to enforce such international conventions... 'Parents cannot be discriminated from adopting a child without the state being accused of arbitrariness and infracting Article 14 (guaranteeing equality to all citizens). Once a Guardianship petition is allowed, the consequences must follow that the legal guardian can move for adoption,' the order states unambiguously.

Express, News Service, 28 October, 1999.

These judgements laid down comprehensive guidelines to be followed to protect the interests of the child with special emphasis on the promotion of in-country adoptions. It also brought in government intervention by establishing CARA, the Voluntary Co-ordinating Agencies (VCA) and the Scrutinising Agencies while simultaneously defining the role of adoption agencies. In 1994, the Government of India issued Revised Guidelines on Adoption of Children based on the norms and principles laid down in the judgements of the Supreme Court. The objective of these guidelines was to regulate matters relating to adoption of Indian children and to provide a sound basis for adoption in the absence of a regular law.

The Courts stepped in again when two Christians, Manuel Theodore D'Souza and Gordon Maurice filed separate petitions in the Mumbai High Court seeking legal adoption of a child given to each of them for guardianship under the Guardianship and Wards Act.

THE ADOPTION PROCESS

Adoptions can be best facilitated through registered adoption agencies, responsible for providing abandoned, orphaned or destitute children with good institutional care while looking for the best possible alternative permanent family for them.

The three key links in an adoption chain involves the biological parent, the adopting family and the child. Adoption is the culmination of a sequence of decisions by these entities.

Biological Parents

This is the most vulnerable element in the adoption process. A mother may voluntarily relinquish her child. It is the agency's responsibility to provide adequate counselling to the parents, especially the mother, keeping the best interests of the child in mind. The onus of checking the mother's social and medical history also lies with the adoption agency. She is given two months to reconsider her decision, as once taken, it is final. Once the decision is taken, the parents or mother have to execute a 'Document of Surrender' thereby voluntarily giving away the child.

The Foster Parents

The parents who come for adoption should be emotionally and psychologically ready for it. Besides providing counselling, the agency is supposed to provide potential parents with information about adoption procedures, origin and medical background of the baby and the expenditures (including medical) they will have to bear. The key principle of adoption is confidentiality. Potential parents are given three choices based on the initial assessment and matching by the agency. This is done to spare the parents the trauma of choosing, and the child from rejection. Only after exploring all possibilities of finding Indian parents have been exhausted, can a child be placed for inter-country adoption. The placement agencies are required to adhere to the following order of priority while considering the adoption of Indian children:

- ___ Indian families in India
- ___ Indian families abroad
- ___ One parent of Indian origin abroad
- ___ Totally foreign.

Before doing so, the agency must get a 'No Objection Certificate' from CARA.

The Child

Children who are put up for adoption have either been relinquished by their parents or are mostly lost and found cases. They could be left at the institutions, referred by medical practitioners and hospitals or brought by the police. These cases are referred to the Child Welfare Committee within the stipulated period. The Committee hands over the child to an institution it deems fit. The agency may then place the child for adoption after going through a full medical examination and counselling in case of an older child.

Agencies Facilitating Adoption

Till the eighties, there was hardly any government mechanism to regulate adoptions in India. Till then, adoption agencies were free to decide on adoptions and sometimes even indulged in malpractices. It was to check such acts that the government mechanisms were put in place, thereby regulating the adoption process. As mentioned earlier, the Supreme Court guidelines have laid emphasis on in-country adoption. According to Justice Bhagwati a child develops best in his or her own cultural and social milieu. As has been emphasised in the Convention on the Rights of the Child too, the child's placement through adoption in an indigenous setting would be ideal for its growth and

development. Inter-country adoption must be resorted to, only if all efforts to place the child with adoptive parents residing in India prove unsuccessful. Generally, in all matters concerning adoption whether within the country or abroad, the welfare and interest of the child shall be paramount.

Regulatory Agencies

The Directorate of Social Welfare (DSW)

The DSW in each state is expected to conduct regular inspections and provide licenses to only those agencies that pass muster, i.e. provide shelter, protection and rehabilitation facilities to abandoned or relinquished children as per certain minimum standards. This licence is renewable annually. It is on the recommendation of the State Government that CARA sanctions or renews the recognition of agencies for inter-country adoption.

Central Adoption Resource Agency (CARA)

Established in 1990 under the aegis of the Ministry of Welfare, CARA deals with matters concerning adoption. It facilitates implementation of norms, principles and procedures relating to adoption of children as laid down by the Supreme Court. It frames rules, guidelines and issues instructions to State run and private voluntary agencies, (VCAs) and scrutinising agencies to facilitate Indian adoption and regulate inter-country adoptions. Every adoption agency is required to send a quarterly update to CARA on the number of children and adoptive families registered by them to enable CARA to assess the number of children available for inter-country and in-country adoption. The adoption agency applies to CARA for a No Objection Certificate (NOC) after receiving the appropriate documents of the family and the child with a copy to the scrutinising agency. The NOC makes it possible for the adoption agency to file the case in the court.

Juvenile Welfare Board (JWB)

Children who are lost or found, abandoned in hospitals or streets are registered under the category of medico-legal cases. An adoption agency applies to the JWB for certifying the child as an orphan, available for adoption. The Board conducts inquiries. If the child's family remains untraceable even after a month, the agency is given an abandonment certificate declaring the child an orphan, available for adoption. Only after receiving this certificate can the agency place a child for adoption within the country or abroad.

Voluntary Co-ordinating Agency (VCA)

The VCA (known as the CVARA in Delhi) was formed on the recommendation of the Supreme Court, to identify Indian parents for all the children who are referred to them by the adoption agencies for clearance certificate. Based on a quarterly update on the number of children and families registered, the VCA monitors the process to ensure all procedures are being followed by adoption agencies. It also pays surprise visits to adoptive homes as follow-ups.



Operational Institutions

The Adoption Agency

Children referred to these agencies are abandoned and destitute. The agency houses these children and provides for their health, hygiene and education. It registers suitable adoptive parents, conducts comprehensive home studies and provides counselling and guidance to prospective parents while simultaneously preparing the children for adoption.

Some of the other responsibilities that fall within its ambit are:

Court Proceedings

When a child is declared medically and legally free for adoption, the agency has to complete all legal formalities completed for each child. A social worker is personally present at the court from filing of the case, to procuring of the court order and birth-affidavit.

The Handing-over Process

It usually takes between 4–6 weeks to complete all the formalities and legal paperwork. It is mandatory for the agency to give the adopting parents the latest comprehensive reports, a photo-album, court order, birth-affidavit, passport and visa. In case of Indian Hindu parents however, they are given photographs and a medical chart after signing a foster-care note, which entitles them to keep an unrelated minor in their custody till the completion of legal action.

Follow-up

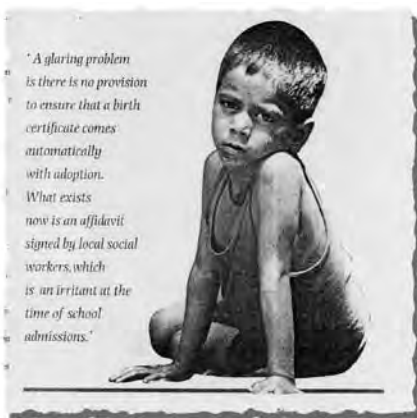
Once the child is given for adoption, the agency is supposed to maintain follow-up reports for five years in respect to inter-country adoptions. Where Indian adoptions are concerned, a follow-up link is maintained till the child is legally adopted. The follow-up reports of children adopted abroad are shared with CARA. The agency also needs to maintain proper records as the child may come back later to find out his/her origins.

Foreign Referring Agency

Indian agencies can only deal with those referring agencies that have been authorised by their respective governments, recommended by the Indian Embassies and enlisted by CARA. The adoption of Indian children is undertaken in partnership with these agencies. They are responsible for ensuring the adoption of the child according to the law of the land, for providing follow-up reports for five years, intervening if a placement breaks down by rehabilitating the child with another family or repatriating the child.

Scrutinising Agencies

These are agencies responsible for the home study and the child study report, as also all the documents attached with the application. In addition the agency ensures that the proposed child has received clearances from the JWB, VCA and CARA by checking the copies of respective clearance certificates. Members of the scrutinising agency visit the child at the centre to verify the details given to the adoptive parents in the medical and child study reports. They ensure that there is a suitable match between the needs of the child and the ability of the adoptive parents to fulfil them.



Indian Embassies and Consulates' Certificate

CARA maintains contact with Indian Embassies and Consulates stationed in all those receiving countries where Indian children are adopted by foreign parents. The Embassies/ Consulates identify and verify the foreign agencies' objectives and work ethics in adoption procedures. The foreign agencies are enlisted by CARA only after a complete inquiry and recommendation of the concerned Embassies. The Embassies authenticate the home study report and all the other required documents of the adoptive family and the child approval before it is sent to CARA. After the placement of the child with the family abroad, the Consulates maintain a discreet watch over the post-placement situation.

THE ADOPTION MECHANISM

The diagram shows the systematic route that an adoption agency is supposed to follow before a child is actually placed.

1. DIRECTORATE OF SOCIAL WELFARE ↓	a) Receive renewable annual licences for the home and also for conducting Indian adoptions. b) Recommendation to CARA for recognition of Inter-country adoptions.
2. JUVENILE WELFARE BOARD ↓	Clearance of a child's legal status through abandonment certificate.
3. VCA ↓	Certificate of clearance if Indian parents cannot be identified.
4. FOREIGN AGENCY ↓	Required to send a complete set of documents of a registered family for a CVARA cleared child. These have to be duly signed, stamped, attested and authenticated by the Indian Embassy.
5. CARA ↓	An agency that issues a No Objection Certificate (NOC) to foreign PAPs.
6. SCRUTINY AGENCY ↓	A complete set of documents for scrutiny and comments to be forwarded to the court.
7. COURT ↓	Completion of legal formalities on the basis of documents and respective clearances.
8. PASSPORT OFFICE ↓	A completed set of application forms with all the legal documents and relevant affidavits.
9. EMBASSY	For issuance of Visa.

Source: [www. Indian mother.com](http://www.Indian mother.com)

ADOPTION STATISTICS

As mentioned before, all adoptions that are undertaken legally in the country have to be registered with CARA. But these records do include the confidential adoptions that circumvent the legal framework, including those arranged by fly-by-night operators, dubious agencies and those that take place as a private understanding between two parties.

CARA recognises 70 Indian adoption agencies in India who deal with in-country adoptions while for inter-country adoptions it interfaces with 247 agencies in 27 countries. While the demand for children both within and outside the country burgeons, there has been a distinct shift noticed from the seventies, towards inter-country adoptions.

Table 1
NUMBER OF ADOPTIONS THROUGH AGENCIES RECOGNISED
BY CARA (1995 TO 2001)

Year	In-Country Adoptions	Inter-Country Adoptions	Total
1996	1,623	990	2,613
1997	1,330	1,026	2,356
1998	1,746	1,406	3,152
1999	1,558	1,293	2,851
2000	1,870	1,364	3,234
2001	1,899*	7,377	17,403

Source: CARA Annual Report. 2001-2002

Table 1 indicates that the number of inter-country adoption grew six-fold from 1996 to 2001. Between 1995 and 2000, of the 16,886 adoptions handled by CARA, 7,315 were for inter-country. Because it is well-known that there is a distinct 'son preference' for adoption within the country, with nearly two-thirds of the total adoptions being that of the girl child, the trend in inter-country seems to be tilted towards adoption of girls. While this could be seen as a mark of greater gender sensitivity, it may also be a cause for worry.

Table 2
DISTRIBUTION OF INTER-COUNTRY ADOPTIONS

Country	1997	1998	1999	2000
Belgium	19	84	26	22
Denmark	96	76	116	160
Norway	21	74	35	35
Sweden	25	150	29	41
Netherlands	50	81	61	62
France	33	102	42	31
Austria	31	19	22	25
Italy	87	176	76	85
USA	287	295	155	420
Mauritius	0	0	2	2

Source: India Today, May 2001.

This can also happen

'On a trip to the US, I happened to meet a farmer couple who had adopted siblings, a boy and a girl. The children were not allowed to speak to me in Telugu. On the pretext of seeing the boy's room, I took the boy upstairs and asked him how were they both keeping. The boy told me that while he was going to school, his sister was doing domestic work in the house.'

JusticeTHB Chalapathi in
UNICEF, 2001

'Lambadas: A Community
Besieged'

USING ADOPTION FOR TRAFFICKING

Children have been sent for inter-country adoptions over the years. The fact that there was malpractice involved and that children were not always protected and secure within the country of adoption, was also known. This led to Lakshmikanth Pandey filing a writ petition in the Supreme Court of India, and the subsequent modifications in the adoption procedure discussed earlier. That they were being trafficked came into light once again after the trafficking racket in Andhra Pradesh whereby children from poor Lambada tribal families were being bought and sold for adoption, was busted. Since then several more incidences have been reported from various parts of the country. One of the most well-known cases is that of the *Hindustan Times* reporter who did an exposé by buying children in Orissa.

As we have seen, demand for children in other countries, combined with the anomalies in the domestic law that act as deterrents for adoption within the country creates a situation that encourages inter-country adoptions. At the same time, there is a growing demand in the West for children for adoption. It puts a very strong pressure on institutions in 'Third World countries', obliging them to respond quickly to this demand. In this context, abuses have burgeoned with foreigners seeking to obtain a child corresponding to their wishes without having to wait too long. Prospective parents are ready to pay large amounts in the name of a processing fee making it attractive for business agencies. The money, which varies from child to child, is allegedly used to pay for legal processes, medical expenses and other documentation. And taking advantage of the situation, are a number of agencies and groups that have mushroomed across the country. When all other sources dry out some agencies even resort to using force, deceit and even kidnapping the children from their biological parents in order to sell them to the highest bidder in the name of adoption. This has led to a situation where inter-country adoption is being increasingly identified with baby trafficking (BBC, 31 July 2000). UNICEF estimates that currently, the trade is worth \$ 25m a year.

With the profitability taking precedence over principles, the ethics behind inter-country adoption is widely debated. Supporters of inter-country adoptions believe that these adoptions are wholly justified by the quality of life that children are likely to get in developed countries — a life which is far better than what would have been their due in an institution or may be a family in India. According to the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography, Ofelia Calcetas Santos, 'Those who argue that inter-country adoption is exploitative complain that it encourages the purchase of children, which in turn thwarts the development of children's services in the developing world and is destructive of a child's heritage.' In July this year, the newspapers splashed the story of 21-year-old Dhani Bachmann, who became the first non-white Swiss Guard in the militia's 500-year history. An Indian by birth, he was adopted by a family from Lucerne when he was five years old. Founded in 1506 by Pope Julius II, The 100-strong Swiss Guard is the world's smallest army and stands guard at the Vatican. A swan song perhaps for those who argue in favour of inter-country adoption.

KIDNAPPED GIRL ESCAPES BEING ADOPTED BY AMERICAN

In 1989, before CARA came into existence, a 9-year-old Telugu Christian girl was kidnapped from Andhra Pradesh. She was kept at a home for 4 years at the end of which a single American woman wanted to adopt her. However, after scrutinising the case, the child was restored to her family as the child could recall them. At no stage was the child questioned about her family by the adoption agency.

*Mangala Deshkar, Indian Council for Social Welfare (ICSW),
Campaign Against Child Trafficking (CACT) Workshop, Mumbai 2001.*

Supporters of inter-country adoptions argue that though a large number of Indian families are going in for adoptions, they invariably choose babies who are healthy and fair. They are reluctant to adopt children who fall into the special needs category and those with severe medical problems. They note that in general, older children, siblings, handicapped children and those with severe medical problems or very dark children are given clearance for foreign adoption by CARA. Moreover, since Indian law forbids an Indian to adopt two children of the same gender, siblings of the same sex have to be placed for adoption abroad. The other argument that is often heard is that if the parents are too poor to look after the child, she will be better off abroad. Finally, they argue that trafficking is as much a reality for in-country adoptions as for inter-country.

Critics, on the other hand, point out that it is certainly not in the best interest of the children to be sold, trafficked or brought into another country late at night in the back of a car-boot. They argue, it is the fundamental right of every child to be reared by her biological parents within her natural environment and in the absence of her family, within her own natural environment. It is also questionable whether removing children from their natural environment offers any lasting positive solutions for their overall development.

CONCLUSION

Every child has the right to grow up feeling loved, protected and secure. It has a right to a name and a nationality. The ideal place for the child to grow up in such a way is the family. But in cases where the biological parents are unable to look after the child, or the child is abandoned or apprehended, the best alternative is of adoption into a family that can provide the child the necessary environment. Laws on adoption need immediate review and change to encourage in-country adoptions. This is possible through a common adoption law or through changes in personal laws. The menace of using adoption as a way to traffic children for adoption or using adoption as a means of trafficking children for some other purpose, has to be stopped. Arguing against trafficking for and through adoption does not imply putting an end to adoption or discouraging people from adopting by making the adoption procedures difficult for the common man. It is only to say that adoption procedures need to be streamlined further, with more emphasis on regular monitoring of the process. The only way to curtail trafficking in adoption is to have community-based surveillance mechanisms along with government monitoring. Like all other measures for children, adoption has to be in the best interests of the child.

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CHILDREN IN ARMED CONFLICT



SECTION 11

CHILDREN IN ARMED CONFLICT

Generations of children in the north-eastern states, Kashmir and Punjab have grown in situations of violence and conflict. There are others who have been intermittently affected by conflict — caste, religious or ethnic in different parts of the country. The riots in Gujarat are still fresh in our memory. Bombay riots are still to be forgotten and wounds heal completely. Every other day, we hear of caste violence in Bihar or Uttar Pradesh or some other state. It appears that the Indian society today is fragmented as it was never before, with each group feeling the need to assert its identity and using violence to do so. Indeed, India, today, is among the most violent places in the world. Torn by secessionist wars, caste conflicts, religious slaughter, there are hundreds of thousands of children who will never lead a safe life. The greatest affliction of the nation today is its 'million mutinies'. Guns and violence have invaded regular life. Children inadvertently become the victims of these conflicts — they are killed, maimed, physically or sexually abused, orphaned and used to perpetrate violence. They are victims because they are faced with violence. They are also victims because inadvertently, by force or because of their socialisation, they become perpetrators of violence. Although there is very little documented information available, we felt that the inclusion of this section was critical to this volume because so many children are being forced to grow up in the backdrop of armed conflict.

Growing up in these circumstances affects children in a number of ways. In any conflict situation, the first to be hit are the basic services. Therefore access to education and health services suffers, affecting the children's growth and development. As livelihood of the adults gets disrupted, entire families are forced into poverty. Constant killings, bloodshed and insecurity, which is sometimes accompanied by loss of parents and family, leads to long term psychological impacts. In this atmosphere of hatred, children are forced to grow up watching and living through experiences that no normal child should be forced to. Even as adults continue to battle over their ethnic, linguistic, religious identities and over territories, children grow up believing that this situation is 'normal'. Would it be surprising if they grow up to be perpetrators of violence and hatred in the future?

In the absence of systematic documentation, this section relies primarily on the personal experiences, observations of the author who has been writing on this topic for a long time. Therefore although not comprehensive, the contents reflect the extreme gravity of the condition of these children and the need for an immediate and concerted focus.

'My children,' said Mehraj Bibi, 'have forgotten how to laugh. They have seen ugliness no child should ever see. Neighbours killing neighbours. Men with swords slashing women and children. Their homes burning. And three days of acute fear as we hid in the jungles, begging for food from nervous friends who wanted to help but were too scared. Do you know, my children had to drink urine because we had no water?'

February and March in Gujarat was a scene from hell. It began in Godhra where some Hindu pilgrims travelling on the Sabarmati Express got into a fracas with local Muslims. The train was stoned by an angry mob and eventually firebombed, killing 58 passengers including 15 children. The dead were Hindus who had gone to Ayodhya to participate in rituals to build a Ram temple — and, more importantly, to shout 'Jai Shri Ram' whenever they were asked to. We will never know if these children really cared about any temples — they did not get a chance to grow up and form their own views. They died, not for a cause that was their own. They had not even taken part in that quarrel on the train or the platform. They died because they simply happened to be there.

Were there children in that murderous mob that attacked the train? No one knows, but it is perfectly likely that they had joined the adults who felt that Hindus on that train had to be punished. Will they grow up hating Hindus, justifying in their minds, the violence they witnessed?

The deaths on Sabarmati Express were immediately avenged and this time, we know that some children took part. Among them was a 12-year-old Hindu boy who joined his elders when they poured out into the streets of Ahmedabad. It

UNICEF had conducted a training programme for Medical Officers deputed to provide medical care at the camps. Using a structured protocol, they screened 723 children for signs of mental trauma and found that 239 children required counselling (according to the protocol). This need was rephrased as 'parental support' in the interim report data. In addition, 12 children required referral to a psychiatric specialist.

These findings seem to underestimate the extent of trauma. There was no information about whether the symptoms recorded in the protocol were probed or only recorded if reported spontaneously. Also there were no details about which children were screened.

Medico Friend Circle, 2002.

Hiding from rampaging mobs: A four-year-old's traumatic tale

Sourav Sanyal
Kolkata, March 8

SITTING ON a heap of baggage on platform No. 19 at Howrah station, he typifies the living dead. After a struggle to hold back tears, four-year-old Mohammod 'Guddu' finally breaks down into silent sobs. Memories of the past few days throw him into traumatic fits. For little Guddu has seen what others of his age can't even think of.

When children spend time with dolls and toys, Guddu has played with the dead. His ordeal began when a 500-strong mob attacked the raincoat-manufacturing factory on the fringes of Ahmedabad where his father worked and where his beloved elderly 'chacha' baby sat for him. As the four-year-old watched, the rioters hit the old man on the head, doused him with petrol and burnt him.

That was just the beginning. The mob tried to snatch Guddu from Sama Mallik, a worker at the factory, and hurl him into the pyre of his still-alive chacha. Mallik managed to shove Guddu into a wooden box. Forty-eight



ASHOK NATH DEY/HT
TERROR STRUCK: Guddu was kept in a packing box for 48 hours to save him from Ahmedabad mobs.

hours after he was taken out of the box, Guddu was in for yet another shock. His father, whose name he struggles to recollect, was nowhere to be found.

"We don't have words to describe

what Guddu went through. Chacha was this elderly gentleman who was our friend, philosopher and guide. With Guddu's father engaged in work most of the day, chacha was always by his side. Seeing chacha being mercilessly beaten up in front of his eyes was too much for the child. To top it all, when the murderers doused chacha with petrol and set him on fire, the child went into severe shock," says Mallik and S.K. Azmal, two of those who returned to Kolkata on Friday.

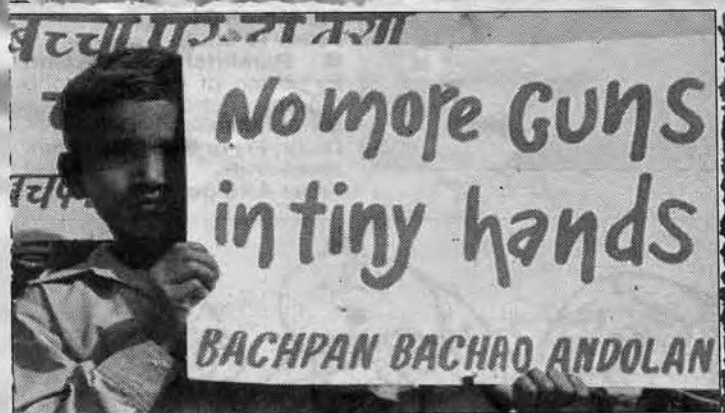
"We had left for Ahmedabad in search of a living. It's a miracle that we are still alive. We condemn what happened at Godhra but is it justified to slaughter innocent souls?" asks Azmal. For Mallik, it's enough just to be home and alive. "Now all that we want is that our other colleagues also come back," he says.

Many like Azmal and Mallik can vent their anger and anguish in words. Except Guddu, who stopped talking a week ago.

And, no one has a clue whether the little one's nightmare will be an enduring one.

Ulla women
rock the cradle
and wield guns

'Dear friend, my name is Hema. I have seen the bodies of people you killed in Kashmir. I saw an aunty crying and my father told that you killed her son with a gun. What will happen if your sister or mother is killed? Take out the handkerchief from your face and stop killing.'



YOUNG PROTESTERS: Former child workers lead a march in New Delhi on Tuesday, under the banner of Bachpan Bachao Andolan, to express their solidarity with the victims of the Gujarat riots. They were demanding their "Right To Peace." (Saab Press)

Asian Age, New Delhi

Abnormal situation
affects children: experts

Mr. Srinivas, school principal says, 'The children were scared after the recent violence in Bangalore and killings in Kashmir. A wonderful way to lessen thier anguish was to provide them an with outlet.'

Hello Veerapan Uncle, I am Nithin. Please come to our school and teach. Instead of guns and bombs come with books and charts. Will you take us to the jungle and show us a big elephant? I will give you chocolates.

Child victims

The letters and paintings addressed common emotions of love, sacrifice, friendship and need for harmony defined in a child's language. Many children addressed the terrorists as brothers or respectfully as 'Sir', praying for sanity and love. A girl drew the paralell of Angulimala reformed by Buddha. 'Come to me with love. Burn your guns. I want to tie a friendship band on you,' another appealed.

Chief Postmaster-General V.M.Kelkar told The Times of India that his department was 'helpless in the absence a specific address' where the works are to be delivered.

The letters plead for peace, most are backed by paintings startling in their freshness and epousal of basic human values — promising roses for guns, wishing to wipe out blood with goodness of chocolates.

'City Kids write to 'Militant' Friends and Veerappan Uncle'
By Anantha Krishnan The Times of India, 24 Aug 2000

was not every day that there was sanction to loot and destroy. The child, along with his mates, joined the crowd as they ripped open shops owned by Muslims and walked off with goods.

Then the mob decided to do a little more. They began stoning Muslim homes. The boy too participated in target-shooting windowpanes and tin shacks. The boy knew the neighbours under attack — he probably called them Uncle and Auntie as India's urban kids do — but still, he says it was amusing to throw those stones. And it was all right to do so. Grown-ups had started it.

When the mood changed, the boy fled. That was when bottles of petrol were collected; knives and rods were brought out. As the crowd charged into Muslim homes, he hung back. And watched. Men, women and children were dragged out. They were stripped, beaten and then set alight. 'They were all crying and begging to be set free,' remembers the child.

But a self-righteous anger drove the crowd to commit cruelties that would appal them in regular life. There was little difference really, between the group that attacked the train and the ones that were looting and killing now. Only, the revenge was on a much greater scale: according to conservative estimates 2000 people died to make up for the 58 killed before. Many more children were killed, hundreds injured, thousands left without homes. Substantial numbers are said to be missing.

When the boy walked through the blackened neighbourhood the next morning, he looked a little shaken. 'There was one old man, the Imam, hiding under these stairs,' he said. 'They found him and dragged him down the stairs by his beard.' He hesitated before he said it. 'I saw him die.'

He then went to the charred pyre of furniture and rubber tyres where the old man had been burnt alive. A blackened bit of bone, the remains of a hand, lay on one side. The old man's? 'No. This was a kid, a small boy,' he said. He kicked it away.

What will this boy grow up to be? A bigoted killer? A psychologically scarred youth that cannot shake away images of his neighbours being burnt? A peacemaker because he has seen violence at its ugliest. Those are not choices any child should face.

Shamshad, however, will not have any choices at all. He was 5 years old in 2002, clinging to his sister's hand as they ran from the shouting throng. The mob caught up with him, pulled him away from his sister, and set him on fire. He died screaming.

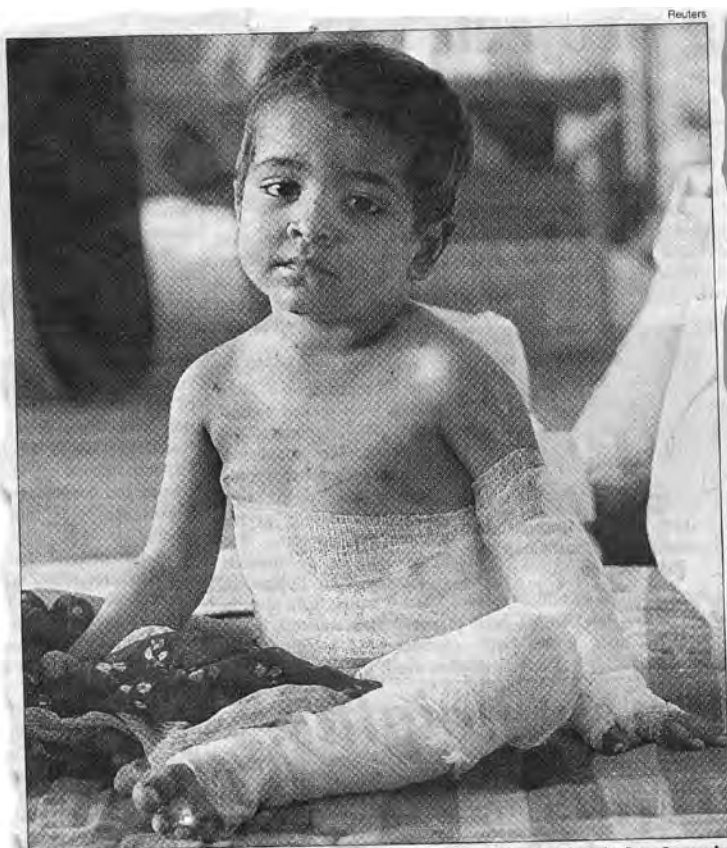
Protect Children from War

Children must be protected from the horrors of armed conflict. Children under foreign occupation must also be protected from discrimination, as well as all forms of terrorism and hostage taking.

*'A World Fit For Children'
UN General Assembly Special
Session Children, May, 2002.*

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

Article 39, The Convention on the Rights of the Child.



ANY FAULT OF MINE? A child injured in rioting sits swathed in bandages in Ahmedabad Saturday.

What we witnessed in Gujarat is most vivid because it is recent. But India has seen several such clashes based on caste, ethnic or religious difference. Like in Gujarat, the children who lived through those riots cannot remain unaffected by what they saw, suffered or participated in.

Thousands of children in India are being raised in regions that are designated as 'conflict areas'. Conflict can be any form of disharmony, and in that case children witness ugly quarrels in their homes, in their neighbourhood and in their communities. In this section, however, we will not be discussing abuse inside the house or even the scuffles over water rights at the community tap. This section is devoted to children who grow up witnessing or falling victim to armed violence in the name of religion, caste or ethnicity. Often enough they find themselves unconsciously becoming perpetrators of violence for causes they little understand.

Every conflict, as terrorists, freedom fighters, ethnic cleansers, religious extremists or politicians love to explain, is a cycle of 'action and reaction'. At some point, however, it all gets blurred. History, after all, is subject to people's interpretation and quite often victims choose to

forget what may have initiated the wrongs that they suffer. Each group recalls only their own saga of victimisation. It takes just a little over a decade for a new generation of warriors to emerge. And then, no one can remember how or why the fight began and the primary question — who started it? — can draw an easy answer: a finger pointed to the 'enemy', the 'other'. An underlying simmering distrust and hatred remains, which when stoked flares into full-fledged 'action'.

THE VIOLATED, THE VIOLATOR AND THE VICTIM

Two years ago in a mindless act of violence Mr. Staines along with his two little sons were inhumanly set on fire in Orissa. Their only fault — they were Christian missionaries. Among those arrested for the murders was another little boy named Chenchu Hasda. After having spent a year in an adult prison, the 14-year-old was he was tried and found guilty, 'convicted' and sentenced last year. There are questions about whether Chenchu had really actively participated in the killing or just happened to be there, on the spot and therefore an abettor. But even if one were to assume, he did participate, today as Chenchu languishes in jail, we have to ask ourselves is Chenchu just a violator or also a victim of the intolerant and violent world that he sees around him and he understands so little?

In these conflicts, children are inevitably involved. Some, of course, become perpetrators. In a region where there is violence, guns tend to become the symbol of power. Young children are drafted, either voluntarily, because they want to be like their elders, or involuntarily because there is a need for new soldiers. Children are often targets as well. In any violent quarrel, there is some sort of craze for annihilation of the enemy, which includes, their children. And lastly, children become victims because they are caught in the middle of a battle, where they end up falling prey to stray gunshots, step into landmines or are blown away in bomb attacks. Indeed, thousands become homeless because of a war that they are not concerned with. Education, mental and physical health are all affected leaving long-term consequences.

THE ANATOMY OF ARMED CONFLICT

Like all post-colonial nations, India's birth was determined by a great protest against the rule of foreigners. It was easy to blame the country's misfortunes on the injustice of colonial occupation. Of course, the colonial masters were self-serving, their interest in native welfare determined either by their own moral codes or merely as a means of ensuring profit. A mass protest was therefore easy to sustain.

In 1947, India was poor, ill, over-populated, underdeveloped, and had very little means to improve the life of its people. And yet, after participating in the independence movement, bearing up against the oppression of the rulers who tried so hard to contain the protests, Indians hoped for instant relief. Once the colonial masters were gone, there was a belief that their troubles would be over.

It was soon apparent that nothing like that was going to happen. There were too few resources, and too many people clamouring for their share. Soon, ethnic groups, tribal groups, caste groups or religious groups emerged to lobby for their own rights. There were demands for independent states and even outright secession. Indians either set about gathering individual wealth, leading to corruption and an enormous class divide. Or they joined the protestors, the have-nots, who soon took up various violent forms of protest to demand their share of national wealth.

UNICEF observes that children are always affected in wars. 'Even if they have never seen a gun, millions of children suffer from wars, as resources that could have been invested in development are diverted into armaments. Indeed, one of the most distressing realities of our time is that most wars have been fought in precisely those countries that could least afford them.'

United Nations Children's Fund (UNICEF), 1996.

- In the last decade, approximately two million children have died as a result of war, while a further 12 million have been left homeless and six million have been injured or physically disabled.
- In violation of their human rights thousands were forced into armed conflicts as soldiers, sex slaves or porters.
- Children are the first to suffer the poverty, malnutrition and ill health that result from the disruptions and dislocations caused by war.
- At least half the world's estimated 40 million displaced are children, of whom a third have been displaced within their own countries borders.
- More than one million children have been orphaned or separated from their families

UNICEF, Plight of Children in Armed Conflict, Actions on Behalf of Children Affected by Armed Conflict (2000).

'How do we count those of our children who are affected by armed conflict? Are they only those who carry guns and throw bombs? Or those who have bombs and bullets directed at them? Are they only those who have lost their parents, their families, their homes? Or does the count include those who have lost their communities, their way of life, their past and their hope and faith in the future? Does the count include those who have never lost because they have never known, peace? If that is so, then we have millions of children in the country today, in this country, who are affected by war, by armed conflict.'

*Anna Pinto, Convener,
National Coalition on Children
in Armed Conflict, 2002.*

Ethnicity

India's pluralism is often celebrated as the confluence of many smaller nations. In reality, this is no amicable nationhood, but one where there is constant upheaval, a giant writhing as various groups attempt to establish their power, rights, and although they would not admit it, supremacy. It started soon after independence as various provinces splintered on ethnic lines. Some achieved it without violence. Others drew blood. And it continues even today. Even in July 2002, six people were killed in police firing in Jharkhand, a newly carved out state of India, where ethnic groups fight over rights of domicile.

Caste

As the poorer lower castes used democracy to demand their own rights, there was resistance from the upper castes who were upset by the decimation of their feudal rule. The lower castes were punished with sticks, and then with guns. Soon they mobilised too, into people's armies. Now India's countryside is ridden with caste conflict, where families from both upper and lower castes are ritually massacred by the other. Caste groups like the Ranvir Sena may or may not have formal 'conscriptations'. But socialisation ensures that there will be children and youth who feel a sense of identity through them.

Religion

Despite the partition, religion was never effectively resolved. India, with a majority Hindu population, declared itself a secular nation, welcoming millions of citizens who followed Islam, Buddhism, Sikhism, Christianity or the Jain faith. But Hindus, angry that the Muslims had asked for an independent homeland, felt that since there was already a separate country for Muslims in Pakistan, those that stayed behind had to submit to the majority Hindu culture. It has led to numerous riots. In recent times, an upsurge in Hindu nationalism has led to the clashes with minorities, both Christian and Muslim. In areas where other religions are predominant, for instance, in Kashmir with its Muslim majority or some north-eastern states that follow the Christian faith, it is Hindus who are similarly targeted.

Tribal Rights

Two new states were created in the 21st century in India, to accommodate the long marginalised tribes in central and east India: Jharkhand and Chattisgarh. In the North-East, one province eventually splintered into seven to preserve the identity of the different tribes. Unfortunately, new boundaries could not quite resolve the basic problems of discontent with the lack of opportunity, the blatant inequities within India. Power hungry leaders can still instigate fury by pointing at discrimination and gradually build up the hate. There are several ongoing wars against the State. Tribal groups have been known to slaughter each other in hundreds to assert their rights of domicile and ownership. And in the plains, it has led to the birth of a violent Naxalite movement that stretches from Bihar to Andhra Pradesh.

HOW CHILDREN GET AFFECTED

Children are creatures of their socialisation. They believe what they are brought up to believe, or are taught by their surroundings. In a culture where hate is a way of being, a child will only want to excel in his own expressions of hate. No child is born racist. They learn distinctions of wealth, of caste, of ethnic identities or religion as they grow up. When there is conflict, children become victims, either indirectly because they have to abandon schools and homes to escape to safety, or because they are caught in the crossfire. At the same time, many of them are coerced or tempted to join the fighters.

UNICEF notes that in the decade since the adoption of the Convention on the Rights of the Child, approximately two million children have died as a result of war, while a further 12 million have been left homeless and six million have been injured or physically disabled. Tens of thousands were victims of landmines. (UNICEF, 2000). It is almost as if the global market for small and light weapons has been created to facilitate the induction of children into violence. Children have been psychologically scarred by the violence they have witnessed, and many have died due to lack of food and health services. They suffer the long lasting psychological effects of war's brutality. While these are global estimates, much of this trend is mirrored on a smaller scale in India. The losses they face are hard to imagine, let alone capture statistically. Children have suffered malnutrition and disease because of conflict; many have been orphaned or displaced from their homes. Girls suffer the additional trauma of rape and other forms of gender violence. Indeed, like the ravages of poverty, the festering conflicts, many masked as political instability, undermine and even negate all efforts by governments, international agencies or NGOs and Community groups towards provision of health and education, and elimination of poverty.

'Children are regularly caught up in conflict because of conscious and deliberate decisions made by adults,' noted Graca Machel in the path breaking 1996 report to the UN General Assembly called *The Impact of Armed Conflict on Children*. The solution, Machel said in the report, was to 'claim children as "zones of peace". In this way, humankind will finally declare that childhood is inviolate and that all children must be spared the pernicious effects of armed conflict'.

Nothing like that has happened yet in India. Millions of children remain mired in violence.

Warriors

There was a boy, let us call him Yusuf, who was a 15-year-old student when Kashmir exploded into bloody rebellion. Hundreds of young men trekked through the passes into Pakistan, where they were welcomed by extremists who took them to training camps, gave them weapons, and sent them back to fight for Kashmir rights.

Yusuf says he was not quite sure why people were so angry. 'Political talk was a little boring,' he says, 'but I knew that there had been terrible wrong.' All his friends were talking about jihad, which seemed much more exciting than the 12th Standard Board Exam and entrance tests to engineering or medical schools.

Childhood is especially perishable in war. In the last 10 years, in much of the developing world, children have endured losses far out of proportion to their years and strength, of family and community members, of time to grow and learn, of a sense of hope.

UNICEF, 2000.

When he heard that his friends were planning to leave for the border, he decided to join them. Luckily, Yusuf's parents discovered his plans and he was brought back before he became a gun-wielding killer. Not all of them escape. Many other youngsters have been co-opted into battle. They start out as messengers, hanging on the fringes as the elder boys plan strategy. And then, they disappear into the hills as full-fledged fighters. Their weapons of choice, light and easy to use small arms, semi automatic rifles and grenades, makes it simpler for children to become warriors. And this happens not just in Kashmir, but in all those places where adults have opted for violence to voice their concerns and assert themselves.

According to the Coalition to Stop the Use of Child Soldiers (2001) there are more than 300,000 children aged under 18 that are fighting as soldiers with the government or with armed opposition groups in more than 30 countries. 'While many children fight in the frontline, others are used as spies, messengers, sentries, porters, servants and sexual slaves; children are often used to lay and clear landmines or conditioned to commit atrocities even against their own families.' (ibid). In India, the Coalition notes in its report, 'There are indications of under-18s recruited in government armed forces as voluntary recruitment is possible from 16. There is widespread use of child soldiers, some as young as 11, by armed groups in various regions'. (ibid.)

UlfA women rock the cradle and wield guns

Prabin Kalita
Guwahati, December 25

AMONG THE ones who keep the banned United Liberation Front of Asom (ULFA) going are its women cadres. Indeed, they play multiple roles: as wives of militant leaders; mothers; and of course militants themselves. According to intelligence reports, there are at least 26 hardcore women ULFA cadres, including the wife of ULFA's chairman Arabinda Rajkhowa. The oldest among them is Shanti Rajkonwar, married to the assistant secretary

quarters and is always on the move.

The outfit's cultural secretary, Pranoti Deka, is married to the general secretary in charge of its Chitranan headquarters. He heads the ULFA camp at the NSCN(K) base at Mynmar, called the Naga Base.

Pranoti delivered five years ago at Jas in Mumbai. A major allegedly footed bills. Pranoti was immediately. She and her baby were lodged

'CPM-TMC's tug-of-war left children scarred'

SANTANU BANERJEE
KOLKATA, FEBRUARY 10

THE children of Keshpur suffered while CPM(M) and Trinamool Congress waged a two-and-a-half year political battle leaving behind gutted homes and unsettled villages. This was found in a survey conducted between September to December last year in 16 villages by a Non-Government Organisation.

The report says "the political war has left over 100 families and 316 children with deep scars and unsettled education." Says S. Mukherjee, chairman, Free The Children — India: "Our survey shows that despite returning to peace, 49 children returning to their families, claiming to be Trinamool Congress members, still live in East



A child at a TMC relief camp in Midnapore after violence forced them to flee their homes — Express photo taken in July 2009, in village Karanovic. "These are just

Unemployment, militancy feed on each other

By Aunohita Mojumdar

(Budgam): On February 25, the police wraah registered an FIR. The culprit was not a criminal. A doctor who had for duty at the sub-divisional hospital patients awaited him, was booked SHO.

ad the doctor running to the hos intervention is rare and, in the e. Absentee government function politicians are only one aspect of pment. Militancy has long providing alibi for unwilling workers

t even as the hat is changing. Unless we healthily govalysed one, is a securi-

has been e roads and the vil-

and Sogam in Anantnag. ater and power are two of rge supply. Development is lge in Beerwah has been ds, but the water filtration years. e favourite whipping boy, and for the year were reg season in the Kashmir ended. Though the chief

there is no other avenue but a government job," an official.

Scores have lined up to meet the state's minister forests and wildlife, Peerzada Gulam Ahmad Sha his visit to Anantnag. The main demand: jobs. points to the enormity of the problem. J&K spends 13 crore out of Rs 17 crore on employees. One of smallest states, it has one of the largest number of ployees on its payroll.

Most charges of corruption and nepotism relate jobs. In Kulangam, people complain about the minister from Handwara providing jobs to his kith and kin. "We have a new saying here, Marry into Handwara and get a job." A comedy gramme on the radio said even cow from the town would be assured of an appointment letter.

While MLAs try to earn pu approval by providing jobs, the government strains to keep the recruitment process above board transparent, often earning the wrath of its own politicians.

Every unfair appointment causes a huge outburst of resentment and, even where there is no favouritism, touts claiming to have secured the job fuel anger.

Private enterprise might be the answer to this, but industries will not come. "Even government factories are not running, why should private business invest here? Who will guarantee the safety of the investment? Even bridges are blown up by the militants," says Shah. Unemployment is identified by every security official as one of the

Abnormal situation affects children: experts

By Our Reporter

SHILLONG: Whether war or war-like situations, armed conflicts or other similar social movements, every bit of crisis that creates a situation disturbing normal life in a civil society invariably affects the children living in such a situation.

The National Workshop on Children in Armed Conflict judiciously focussed on this particular aspect, while dwelling upon situation in a country

cussion on the issue of child rights in a situation where they grow in despair as destitutes.

Addressing a congregation of child-rights activists, Justice Verma spoke for understanding of "conflict" in its broader sense and the limitation of the word itself. "We are a country where a child is exposed to nutritional deprivation, lack of health-care and proper shelter and clothing. With the armed conflicts emerging in every nook and cranny, the situation gets worse with children suffering more from psycho-



Since the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-CAC) came into force on 12 February 2002, there have been increased signatures and ratifications to the treaty. The Protocol raises the minimum age for direct participation in hostilities and for compulsory recruitment by government forces from 15 years to 18 years. It prohibits all recruitment of under 18s (voluntary and forced) by non-governmental armed groups.

India has not signed it and claims it does not hire children for its armed forces. However, students can sign up with the National Cadet Corps and 'Persons who are recruited at the age of 16 years undergo basic military training for up to two-and-half years from the date of enrolment and are then inducted into regular service.' (DWCD, GOI, 1997).

Various armed groups around the country blatantly use child warriors as do groups that have caste-based armies. Since non-State actors involved in combat and insurgencies are not obliged to sign, ratify or agree to any human rights standards, there is no way to coerce them in committing to the protocol. The coalition to Stop the Use of Child Soldiers has noted in its 2001 Global Report that armed groups in Jammu and Kashmir, Assam, Nagaland and Manipur use child soldiers. So do the Naxalite movements, and Hindu and Muslim 'extremist paramilitary self-defence groups'. (2001).

Violent protest movements need children because no one suspects kids, and because they are easy to convince — whether it is battles of secession in the North-East, or in the tribal areas where communists are waging their armed struggle, or in Kashmir, where teenagers sign up because they are expected to. Anxious adolescents, desperate to prove their brave 'adulthood' are brought in to join the war by irresponsible leaders, who need foot soldiers for their causes.

In the North-East, child rights activists say that children are routinely used as runners, messengers or cooks. By the time they are 14 or 15, they have already received arms training. Then they join the guerrilla groups, planting landmines and striking against the enemy. Often, splinter groups with the insurgency attack each other — children become easy targets. 'One local survey estimated that up to half of all combatants in most groups are children.' (Coalition to Stop the use of Child Soldiers, 2001). Children have also been victims of armed opposition groups themselves.

'Children, both boys and girls, are used by both government and guerrilla armies for a variety of purposes such as cooks, messengers, sex slaves, spies, and front-line combatants. Over 50 countries currently recruit child soldiers into the armed forces. Children participated in over 30 armed conflicts during 1996 and 1997.'

Centre for Defence Information, 1998.

Afaq Ahmed, a schoolboy in Srinagar, was a model son, his mother still remembers. 'He was quiet, obedient and studious. He wanted to be a doctor.' When he started visiting the mosque regularly, his mother was a little surprised — they had never been a particularly religious family — but not worried. 'Boys of his age can get into all sorts of trouble,' she says. 'I was only too happy that he was going to a mosque.' It turned out to be a dangerous preoccupation. At the mosque, Afaq was indoctrinated into a culture of vengeful murder. Eventually, he drove a car full of explosives and rammed it into the gates of Srinagar's army headquarters. Afaq died instantly, a willing martyr to a religious cause. He never got the chance to grow up, perhaps consider other options for protest. His mother still weeps when she talks about her son. And she warns other parents. 'Watch your children carefully, insist on meeting their friends. You never know who will use your child for their war.'

MCC recruiting kids into outfit

Anil Panicker
Hazari, May 23

THE COMBING operation by the police on Sunday, in which 14 dreaded Maoist Communist Centre (MCC) extremists were arrested, brought to light a shocking fact: Recruitment of small children into the organisation.

Those arrested after the five-hour operation included four children aged below 12.

"Instead of sending them to school, these kids were being taught how to kill and maim by the Maoist Communist Centre (MCC)," says the Superintendent of Police (SP), Mr Alok Raj.

Take ten-year-old Kishen Kumar for instance. The wafer-thin boy is an expert at climbing steep slopes, dodging police cordons and even knows how to skilfully use a bow and arrow.

Ask him about A,B,C,D... and he draws a blank but inquire from him about his past exploits and his innocent face lights up. "I have been with Baba all along and he has taught me everything," says Kishen as he gets lined up along with 13 others for the mandatory photo-

Six children below 12 years in police net

session. "Baba" happens to be his grandfather Kailash Mahto who too was nabbed on Saturday evening.

Kishen is a third generation Naxalite. His father, a Naxalite himself, is at present on the run and in his absence, Kishen has taken up the

mantle.

Ask him who is the MCC, he replies proudly: "They are my *mai-baap* and we will rule this land one day." The police station where the four children have been kept along with the other MCC extremists is bursting at the seams following the arrival of these unexpected 'guests'.

"We are in a fix as to where to lodge these young ones," says an official of Mofussil thana, Mr Vinod Kumar. The grip of the MCC over the villagers is clearly evident from the fact that not a single relative has come forward to inquire about the welfare of those nabbed.

As for the fate of the young Kishen and three others who are presently cooling their heels in the police lock-up, Mr Raj says: "As they are all juvenile delinquents, we plan to produce them in the court from where in all probability they will be handed over to a remand home."

Driven by vague motivations of fighting for their people or religion, the kids are gradually brainwashed into fearlessly supporting the war. And it is the eagerness of childhood that makes them the most fearsome of warriors, who commit sadistic violence simply because they can. In Bihar, children are enthusiastic students when it comes to lessons in the use of guns. They proudly bring out their father's weapons and show off their skills.

There are no real estimates of how many such child soldiers are battling in India today, but the number could safely be in thousands. Even if they are not directly at war, they are 'involved' and in time will grow up in the same mould as the adults before them. In view of the large number of children who are drafted in as 'soldiers' across the world, some international organisations got together and set up a Coalition to Stop the Use of Child Soldiers. Many groups in India too are members of this coalition.

Targets

Children have been deliberately murdered in conflicts. In the caste wars of Uttar Pradesh and Bihar, armed men have slaughtered entire families. Armies claiming to be Communists and Marxist extremists have attacked upper-castes neighbourhoods, shooting, stabbing and killing sleeping families. Even babies are not spared. Similarly, upper caste armies like the Ranvir Sena routinely attack lower caste villages to shoot and murder their enemy.

In a secessionist war like the one in Kashmir too, children have been targeted. In Gandherbal, a settlement of Hindus was attacked by Muslim terrorists in the mid-90s. Only one boy, hiding in a stack of cattle fodder, survived to give an eyewitness account of the murder of his parents, relatives, brothers and sisters.

He is said to be suffering acute trauma, and is under medication. He represents the children of Kashmir living in the shadow of terror and violence, by terrorist groups.

In the North-East, ethnic quarrels between tribal groups have resulted in mass slaughter, leaving behind a trail of corpses, many of them children. Hundreds died in ethnic clashes between the Kukis and the Nagas. Among the dead and the wounded, were scores of children.

During the recent Gujarat riots, children were not spared. One mother saw her three-year-old smashed to death against a rock. A grandfather saw his grandson killed and thrown into a well. The argument worked in two ways.



Since Hindu children had been killed by Muslims, the mob deliberately targeted Muslim children. Also to kill children is to prevent the enemy from perpetuating its race, shouted the rioters.

At the Kaulchak army camp near Jammu, kids were getting ready for school early one May morning in 2002. As mothers nagged them, they packed their bags, hurried through breakfast, hunted for a missing pencil. Suddenly doors were pushed open and men in army fatigues, carrying assault rifles, burst in and opened fire. This was supposed to be a safe place, their fathers were soldiers, but no one could protect those children. The men, ostensibly fighting for their religion or perhaps to win Kashmir the right to choose if it wanted to be Indian, had no compunction in killing little kids for their war. By the time the terrorists were stopped, eleven children had been murdered in Kaluchak army camp. The youngest was a two-month-old baby.

On the other side, the State too can be brutal in its retaliation against insurgency. In early 2002, it was reported that soldiers from the Border Security Force had raped a 17-year-old in Kashmir. Senior officials promised an enquiry, and soon, the child's trauma was forgotten. That is only one of several such cases of rape and abuse by soldiers.

Children also have to cope with the trauma of having their brothers or fathers picked up for questioning by security troops, never to return. This is common in all areas where armed groups are in conflict with the state. What is more, families of known terrorists suffer constant interrogation. The children eventually even end up joining the secessionists because they cannot cope with constant suspicion from the authorities.

Even schoolboys have been known to disappear once they have been picked up for interrogation. It is assumed that the torture for information was bad enough to have resulted in their death. 'The presence of children in armed groups has led to the targeting of children' notes the Coalition to Stop the Use of Child Soldiers.

Victims

In situations of conflict, children are the most unprotected. They are victims because they are growing up in a violence-ridden world with hatred and fear as the emotions that they recognise most. Health, education, recreation — all services are disrupted. They are victims because they are forced to grow up without the most basic services and infrastructure essential for their growth and development. They are victims when there is an attack — violence, assault, rape, homelessness — anything may happen. And they are victims because they bear the brunt of the abuse and assault from those who are meant to protect them within their homes from adults who vent anger and frustration on hapless children, or from army or police personnel who vent their own frustrations on them.

Tens of thousands of children have become refugees because they happened to live in conflict zones. In Kashmir, for instance, there was an exodus of Hindu families in the early 90s after Muslim

The targetting of children continues in situations where armed conflict, in its various guises of 'law and order problems,' is endemic. Even where the state forces are not directly involved, such as in caste wars or inter tribal wars, the state role was seen as inadequate and even partisan.

*National Coalition of Children
in Armed Conflict, 2002.*

'Strife in J&K responsible for rise in child labour'

By Our Special Correspondent

SRINAGAR, JULY 21. The problem of child labour has assumed dangerous dimensions in the Kashmir Valley, owing to militancy in the State since 1990. According to a latest survey conducted in Srinagar and Budgam districts by a local NGO, 'Better World', in collaboration with 'Save the Children' of the United Kingdom, the estimated number of child labourers in the State is 25,753.

A report on child labour, entitled 'Adphail Gulab' (half-bloomed roses) was released by a young victim of the practice of child labour, at a function here. The report reveals that 18,749 children are employed in carpet weaving in Budgam. Among these, 9,212 are below the age of 14 years while 9,537 are in the age group of 15 to 18 years. Similarly, in Srinagar district, 4,004 children are employed as carpet weavers.

The survey observed that 1,000 workshops and garages in Srinagar district employ two to three children each. Thus there are about 2,000 to 3,000 working children in the district.

The report says child labour remains a serious issue throughout the country and gains equal, if not more, significance in Jammu and Kashmir because this issue has been neglected by the Government and the society. "This is probably because of the priority that the Government and the society places in addressing the conflict issues and also because most handicraft units, employing children, are run by their families", reads the report.

Linking this disturbing trend to the ongoing turmoil in the State, the report says: "The conflict situation since 1989 in J&K has brought unprecedented suffering to the people. It has disturbed the source of livelihood of thousands of families and in many cases, deprived the family of its breadwinner. Children and women of the State, particularly in the Kashmir Valley, have gone through a gruelling trauma over recent times. The unabated turmoil has left behind a trail of devastating hardship and misery". One of the fallouts of the loss of breadwinners has been the involvement of children in various kinds of labour to support the household economy.

The research, compiled by Manish Jain (Save the Children), Fouzia Gillani (Executive Director, Better World) and Mohammad Iqbal (Programme Coordinator, Save the Children), is aimed at developing an in-depth understanding of the lives of working children in the carpet and automobile industry in Srinagar and Budgam.

Nine recommendations have been made in the report, which identifies main areas of their implementation. It has stressed upon an awareness in the society about issues of working children, urging employers of children to provide better working conditions, networking and coordination with NGOs and various Government departments to take forward the cause of working children and collaborate with rich carpet owners/exporters to regularise the wage structure.

'I am protected. I have armed guards who escort me to school...' said a young girl attending a HAQ workshop in Jammu. It is shocking that children feel protected by the very instruments that are used for violence.

'The victims who were in a festive and holiday mood were suddenly and unexpectedly caught up in a terrifying and horrifying sequence of events lasting for a period of four hours. The victims not only survived the merciless brutality of the army but were also witnesses to the gunning down of persons, looting, destruction and burning down of buildings, hearing the shrieking voices in agony of those persons who were being roasted alive. The women were invariably stripped off their garments which were rolled into balls then soaked in petrol and thrown into the burning building. Some of the soldiers taking advantage of the terror-stricken people dragged some of the women folks into shops and raped them at gunpoint,' said Dr. P. Ngully, Naga Peoples Movement for Human Rights on the 27th Dec 1994 incident at Mokokchung.

Report on Seminar on Mental Health Concerns of People Affected by Terrorism, 2002

terrorists targeted them. They lived in makeshift camps, lost years of education, and still depend on state grants or favours from relatives. Now Muslim families have begun sending their children away as well. Classes are often stopped because of strikes; a three-year graduate programme can take five to six years to complete. Then there is the risk of kids falling in with the terrorists, or becoming victims of random bomb blasts, landmines or shoot-outs.

State repression has become a way of life. Army officials admit that their soldiers sometimes go berserk. During cordon and search operations to hunt for terrorists, civilians are marched out of their homes and lined up, while soldiers rip through personal property looking for weapons. Men in uniforms hunting for their enemy wake frightened children up in the middle of the night. They are roughly questioned, and often, out of habit, pushed around. This is a story repeated all around India.

Two months ago, kids playing cricket were rounded up in a playground in the suburbs of Srinagar. The police had heard reports of a terrorist in the neighbourhood and the teenagers were being frisked, checked for identification. The kids had all stopped their game and were waiting, resigned, to be sent back home. 'This happens often,' they shrugged. The officials, too, said they had no choice. 'We are only trying to do our jobs,' they said. 'We have to try and catch the terrorists.' The kids and the cops, both used to the routine, joked and laughed with each other. This is the way of life in a conflict zone.

Whether they are people peaceful protests or violent ones, the state can be heavy-handed in curbing such movements. In situations of insurgency or terrorism, innocent people are caught in the middle: if they don't support the extremists, they die. And if they do back the terrorists, the State punishes them as well. Whether in Manipur, Bihar or Kashmir, people say they have no choice because they are caught between two sets of guns.

This constant state of war has its own effect on children. In the North-East, no one goes out after dusk. Children come back from school and have no choice but to spend their evenings at home, either watching television, reading, or just hanging about. There is no entertainment, no sports, no gyms, and no movies. It leads to boredom, and eventually, they start hanging out where it is safe: with the insurgents. Or they take up an even more dangerous pursuit: the injection of heroin, which has led to an explosion of AIDS in Manipur and Mizoram.

'Specific laws that had adverse implications and impact on children were cited, such as the Armed Forces (Special Powers) Act, the TADA, the Punjab Security of State Act and the Public Safety Act. Participants stated that there were innumerable cases of abuse of powers under these Acts and that child victims were lodged in jail and kept under trial for extended periods in inhuman conditions and even tortured under protection afforded to security

Report on the First National Workshop on Children in Armed Conflict, 2002.

In Bihar, the upper and lower castes have been fighting for years. The upper castes have been fighting for years. The upper castes punishing the 'upstarts' who dare demand equality, the lower castes avenging generations of oppression. Families are choosing to leave their village homes, migrate to the cities where they end up in slums, because they can no longer cope with the constant hate and violence.

Then there are ethnic wars — between tribal groups, between the state and its people, between rival factions of protestors. Villages have emptied as people flee with their children to other places where there is the safety of majority, their own protectors with guns.

In Jammu and Kashmir, the people are almost constantly facing war. Exchange of fire is common across the border, and civilian casualties inevitable. Along the northern border of the troubled state, in Kargil, Rajauri and Poonch, it is artillery shelling that can destroy homes and families. Several villages along the border come under fire. Some have shifted away, living in tents until the administration can find them alternative shelter. Once again, children become the desperate victims, plucked from their homes, their schooling disrupted. They suffer severe psychological damage. The burst of a balloon or firecracker can make them cringe, bringing back memories of a shell whistling through their roof, injuring relatives and killing pets.

Again, there are no figures estimate the number of children who may have been affected by violence. India is now witnessing a high rate of urbanisation. A lot of that can be explained by the violence in the countryside, where jobs and education are no longer available. Instead, there is a constant fear of death.

Psychologist and psychotherapist Lars Loof at a conference on children in conflict zones organised by International Save the Children Alliance in Sweden in March 2001 noted that:

Children are increasingly the direct target of hostilities leading to:

- (a) More children suffering from physical and psychological effects of modern warfare;
- (b) More children having experiences of war differing from the experience of adults;
- (c) Effects of war and of direct hostilities targeting children are more severe.

'The involvement of children in armed conflict is a massive problem — and it one of the worlds greatest scandals.'

In the Firing Line — War and Children's Rights, Amnesty International, 1999.

WHAT IS BEING DONE?

The Indian Government has ratified and accepted the UN Convention on the Rights of the Child, which is monitored by the Committee on the Rights of the Child. It has also signed the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict. But just signing treaties is not enough. 'A general concern was that India's international commitments under various treaties and conventions that have been ratified are not being met by the existing legal framework.' (NCAC, 2002).

Yet, the care of children in conflict zones is not a priority. If they take up arms, they become terrorists, subject to the same harsh laws that are employed upon adults. Security becomes the biggest motivation. The State is so busy concentrating on implementing law and order; there is no attention on prevention. And living in these violent areas, children therefore end up, either falling prey to violence or taking part in it themselves.

While the Indian army does not recruit children, the armed groups follow no such rules. The only option is for the government and voluntary groups to work together to ensure the future of children. Voluntary groups, trusted because they are not involved in the local issues of conflict, have been urging armed groups not to recruit children. At the same time, the state is becoming more diligent about punishing human rights abuse by its security groups.

In the North-East, the constant state of violence had led to an explosion of drug and alcohol abuse. Now, even the rebels have become conscious of such risks and are participating in the prevention of such dangerous addiction. In Manipur, for instance, heroin dependency has led to a high rate of HIV-AIDS, both among civilians and the insurgents. Now, the State and the rebels are both fighting against the spread of the deadly virus.

In war zones like the border districts of Kashmir, makeshift schools are springing up to ensure continuity of education. State officials are scared of working in regions afflicted with conflict because they fear assault or extortion. Voluntary and religious groups who have taken charge of healthcare and education often fulfil the State's role.

Child victims of insurgency see hope

SAMUDRA GUPTA KASHYAP
GUWAHATI, MAY 29

THREE years ago, when extremists gunned down Nagen Kalita, a poor cultivator from village Bari-majha under Kamalpur district, about 50 kms from here, his then nine-year old son Manoj had almost given up hope of attending his classes again. But today he is back in school, thanks to Project Aashwas, which has provided him a monthly stipend of Rs 600 to help him continue his studies.

Altogether 116 children in the state, all victims of insurgency, have benefitted from the project that was launched to support such children.

The project was launched in November last year by the Assam Police with support from UNICEF. A list of children, most of whom had lost their fathers to insurgency in the state, has been drawn up.

"The first phase of the project has been completed with support from UNICEF. The National Foundation for Communal Harmony (NFCH) has come forward to ex-

tend support to the children in a phased manner so that they do not have to quit their studies. The NFCH is a godsend for these children who had nearly lost hope," said Bhaskar Jyoti Mahanta, an IPS officer who is also nodal officer of Project Aashwas. The NFCH is headed by former Assam cadre IAS officer S.K. Agnihotri.

As many as 30 children from different parts of Kamrup district were handed cheques at a solemn function held here last evening. The children, who were accompanied by their wid-

owed mothers, received the cheques for Rs 600 from Assam Home Minister Pradyut Bordoloi and Assam Police DG Hare Krishna Deka.

The 166 children who have been selected for the first phase include 32 from Kokrajhar, one of the districts worst affected by insurgency, 20 from Darrang, 18 from Goalpara, nine from Morigaon, four from Dhubri and three from Lakhimpur, apart from the 30 from Kamrup.

Mahanta pointed out that a small monitoring body has also been set up in every block.

THE CHILDREN OF MANIPUR REQUEST...

The children of Manipur born since the last 1980s are in armed conflict. The security forces and CRPF including the Civil Authority is functioning arbitrarily since 1980. Many innocent victims including boys, girls and women were killed. They (security forces) have committed rape and sodomy many times. Many students have been killed in their custody. The Indian Government had made a bill named POTA and passed it. We children of Manipur think that this is like putting salt on a wound. We children of Manipur request to remove such laws. We want that the Disturbed Area Act is removed from our State or removed from the civilian area, confining it to only the insurgents area. Hope that you will do your best to meet our demand.

Santosh Kumar (12 years) and Jeena Wanghem (12 years)

*Children's Welfare Society of Manipur
at a workshop to plan the National Plan of Action for Children, organised by India Alliance
for Child Rights, 17-18 July, 2002.*

However, to ensure our future, it will take the State, voluntary groups, community leaders and religious leaders to prevent children from taking part or becoming victims of conflict. Amnesty International points out that intervention is needed in three key areas: preventing children from participation in armed conflicts, shielding them from tactics that target civilian children in armed conflicts and protecting them when they flee conflicts and seek refuge and asylum.

India has already committed to protecting its children. But in the long term, there is an urgent need for social reform. Children have to be taught tolerance, given lessons in equality and secularism. Only then can these million mutinies end. Otherwise, a new generation of warriors and enemies will be born. And the relentless cycle of action and reaction will continue. More importantly, there is an urgent need to realise the importance of focussing on children in conflict — plan policy and programme interventions to ensure a sense of stability during conflict and rehabilitation and reintegration into normalcy after conflict is over. Unless health, education other immediate needs are addressed, the children will find it impossible to live their lives after the conflict situation is over. Special and integrated programmes on trauma recovery are essential to ensure healing of the mind and spirit.

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CHILD PARTICIPATION



SECTION 12

CHILD PARTICIPATION

What is child participation? And why must there be any such recognised right? Most people will dismiss it as yet another tamasha by child rights activists 'influenced by the West'. In effect, child participation is nothing more than the recognition of a child's personhood and her or his ability to take part in decisions that affect her or his life — whether in the family, or community, or the country. The catch is that there is no one universally accepted definition of child participation.

Traditionally, the family and community have sought their participation in earning for the family, participating in agricultural activities, family trade and vocation but hardly ever in decision-making. But there have also been some formal mechanisms for building their leadership skills and enlisting their participation, through their involvement in Scouts and Guides, appointment as class monitors or representatives to students' councils in schools and later to students' unions in colleges and universities. Several NGOs had initiated processes that included the children and adolescents.

Children in India are generally seen as the property of parents, who should only respect and do what their elders tell them. Sociologists and anthropologists assert that there is no universal model of childhood; different cultures present different development tasks for children and in the process create a concept of childhood. The social construct of childhood in India emphasises discipline and obedience. In this milieu, participation of children is viewed as a socially and culturally alien concept — imposed by the Western liberal institutions, viz. Human rights, UN system and the international non-governmental organisations.

Culturally, children in India are not encouraged to express themselves or participate equally in decision-making in the family, in schools, community or State institutions. Therefore, while their participation may have been voluntary or enlisted, invariably it was directed by adults and undertaken as per an adult worldview that sought order and discipline in their lives. It is only with the ratifying of the Convention on the Rights of the Child that children's right to participation began gaining formal recognition. That *each* and *every* child should receive unconditional concern is the qualitative shift brought about by the human rights orientation in the last few decades. Therefore, in the present context, the notions of childhood and children's participation have to be viewed and respected as an outcome of the social and historical thinking processes that are enriched by external influences and acquire meaning by finding value within the local context. The germs of the idea have been there even though they have not received widespread recognition. The value of loving and nurturing of children in order to enable them realise their potential has always been promoted in India. It is now moving towards institutionalising it. However, there is still a fairly long journey before this 'inclusion' of children's participation into rhetoric is internalised and accepted widely.

WHAT IS CHILDREN'S PARTICIPATION?

There is no one universal definition of children's participation. Joachim Theis (2001) looked into various writings on children's participation and concluded that child participation is an 'amoeba term' that is being used in relation to a wide range of situations, including children singing at adult conferences, children answering the questions of adult researchers, children educating other children or children forming their own organisations. Possibly because the concept of children's participation draws upon different sources and has taken different routes, there is no unanimity about its meaning among child rights activists and researchers. The term is increasingly being used in the context of 'political participation' (to distinguish itself from 'participation' in the broader and blurred sense), and a number of other terms — 'citizenship' and 'protagonism' are being used to overcome the overuse and misuse of 'participation'. (Theis, 2001).

The UN Convention on the Rights of the Child (CRC) could be considered a milestone in the emerging discourse on child rights in general and child participation in particular, as it provides a comprehensive framework for children's rights. It does not mention the term 'child participation' explicitly but the tone and tenor of its articles advocate a proactive role for children in matters concerning them, upholding an independent personality of the child.

Article 12 is very radical in its formulation and has far-reaching implications. It recognises children and young people to be holders of rights as well as beings with developmental vulnerability, need and potential. It demands reconsideration of the status of children and young people in most societies and the nature of adult-child relationships. It requires that we recognise the value of children and young people's own experience, views and concerns and listen and respond with respect to what they say. As the CRC is viewed not merely as an international law but a comprehensive framework for action, for the advocates of children's rights the participatory involvement of children in the processes to improve their collective situation and those within their community exemplifies their role as citizens.

The CRC could be considered the document, the framework and the event that brought the concept of children's participation at the centrestage of development discourse. But many of the related ideas and practices precede the CRC. They emanate from the contemporary praxis of pedagogy, child psychology and sociology and are contributing to the efforts at creating a distinctive conceptual entity that is further defined and legitimised with reference to human rights and law.

Children's Participation takes forward the process of giving children an identity that is independent of others.



THE UN CONVENTION ON THE RIGHTS OF THE CHILD

Recognition of children as subjects of rights is expressed, explicitly or implicitly, in a number of Articles in the Convention:

- Article 5: parental provision of direction and guidance in accordance with respect for children's evolving capacity
- Article 9: non-separation of children from families without the right to make their views known
- Article 13: the right to freedom of expression
- Article 14: the right to freedom of conscience, thought and religion
- Article 15: the right to freedom of association
- Article 16: the right to privacy
- Article 17: the right to information
- Article 29: the right to education that promotes respect for human rights and democracy

However, Article 12 — one of the general principles of the CRC — articulates the real essence of the idea of children's participation. It states the right of children and young people to express their views freely in matters affecting them and that their views should be given due weight in accordance with their age and maturity, for which they should be provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through representative or an appropriate body in a manner consistent with the procedural rules of national law.

TRACING THE ROOTS OF CHILDREN'S PARTICIPATION

Despite the silence of the Indian social and cultural traditions about children's claims to rights as individuals, children's participation has existed in fairly institutionalised forms within the extra-curricular stream of the education system, supporting to some extent the elements of the notion as it is currently practised. The Scouts and Guides movement has sought to inculcate social responsibility and leadership among school children and mock parliaments have been a regular feature of a sizeable number of well-to-do schools. The newer developments in formal education have further enriched such efforts by promoting teaching-learning processes based on the complementing roles of the teacher, student and the subject matter.

Through their profound influence on the alternative development and education discourse in India, Paulo Freire's ideas have also influenced the theoretical construct of children's participation. He advocated humanising of education that would provide the 'oppressed' with the rights tools for a dialogical encounter with others for dealing critically with the perception of their personal and social realities as well as the contradictions in it. Along with dominated cultures and social institutions, Freire also identified children as being among the 'oppressed'. Their oppression was attributed to parental and teacher authoritarianism through the institutions of child rearing and education. (Freire, 1993). While Freire's ideas

have generally been considered too radical for the formal education system, he has influenced a great deal of the developmental and social transformation work undertaken in India in the last three decades.

Community participation has for long enjoyed primacy in the Indian development discourse. As its basic principles have been gradually refined in the last few decades to incorporate the nuances of economic and political power and gender, caste and other differentials, the role and agency of children could no longer be ignored. The issue of child labour gained urgency in the 1980s amidst the debate on the impact of emerging world economic order as a consequence of globalisation and commercial interests of the western nations. It also helped highlight the contribution of children to household, community and national economy. The failure of the State to ensure basic necessities of life and provide alternatives added grist to the efforts of the NGOs working with children, particularly street and working children. As a result, many models of child participation in India are based around the ideal of empowerment of children.

Another stream of influence has been the child-to-child approach that was first introduced in India in the late 1980s. Developed by the Institute of Education and the Institute of Child Health of the University of London following the International Year of the Child in 1979, this approach recognised that children can assume many of the responsibilities normally associated with adults and emphasised holistic set of activities that were not just useful but more importantly were enjoyable and creative from the perspective of children. It was initially conceived to promote community health and not practised widely beyond the projects in the health sector but its basic ideas influenced other spheres in which children were visible or sought to be involved.

The child-to-child approach has found much greater acceptance than the models of children's empowerment largely because it is perceived as being more feasible. It adds value to and fits in more neatly within the framework of action of the NGOs who have pursued a conventional welfarist approach to work. The government projects that target or involve children define 'child participation' more in terms of the child-to-child approach that arguably does not challenge the established power structures the way the models of empowerment do. The empowerment models of children's participation are made more complex because of their ideological underpinnings. On the other hand, much of the practical aspects of children's participation are derived from this approach.

The value of children's participation in a traditional adult-centric milieu because of its obvious linkages with concepts such as citizenship has been recognised by some NGOs. Albeit adopted at the practical level in India, the idea has not been explored and extended sufficiently. For the Indian society, which is quite proud of its traditional social values and modern democratic institutions, citizenship finds greater acceptance as it goes beyond kinship without undermining it. Citizenship in its broader sense is about engaging, including and being empowered to assert one's best interests, realising and appreciating that an individual's best interest is complementary and not contradictory to another's best interest. It refers to interactions and relationships within the community, society and the state and has the potential for operating at the global level.

CHILD PARTICIPATION - AS WE SEE IT TODAY

Upholding the role of children as a positive force, development practitioners in India are trying to innovate and scale up interventions that would make children's participation a reality. Much of the action is taking place in the realm of a civil society and is being led by non-governmental organisations (NGOs) working with children.

The Indian State and Children's Participation

According to various accounts, the Indian government's acknowledgement of children's right has at best been ambivalent and taciturn. The general perception is that it would be quite a while before the Indian State begins to subscribe to the underlying values of children's participation as the understanding and support for children's active involvement is confined among few officials. For the majority, children's participation is still a 'tamasha', a stage-managed show by adults.

In response to the emerging discourse on children's participation and compelled by the international and national organisations working for children's rights, the Government of India held consultations with children while formulating India's periodic report on the implementation of the CRC and the End-of-the-Decade review of the implementation of the action plan formulated after the World Summit for Children (1990) in 2001 and enabled their participation at regional consultations prior to the UN Special Session on Children in 2002.



Young ambassadors share their experience at a Press conference in New Delhi on Wednesday, after returning from the Children's Earth Summit in South Africa.

Meet on climate change begins amidst differences

HT Correspondent
New Delhi, October 23

Children's Charter

WHILE REPRESENTATIVES from 186 nations

Children chalk out charter for world meet on environment

HT Correspondent
New Delhi, June 2

On top at the Earth Summit

TIMES NEWS NETWORK

New Delhi: Dressed in cream kurta-pyjamas, bespectacled Ankit Singh Bhandari from Class 9 was part of the delegation which represented India at the Children's Earth Summit 2002 in Johannesburg, South Africa.

The 12-member team — which was selected after competitions like poster-making, skits, debates etc in an eco-camp in Dehradun — discussed environmental issues at the world summit.

Ashu Goyal, a student from Doon School in Dehradun, said: "The summit was educative as we

learnt about our ecosystem and the various ways it is being depleted. We also met various heads of states and made a representation to UN secretary-general Kofi Annan."

For Akhilesh Goswami, who comes from Kotdwair, in Uttarakhand, being part of the delegation was one of his most important achievements. "The trip was awesome. I learnt about various cultures in South Africa and went on a safari to see their rich wildlife. We will encourage the use of organic food and promote herbal products."

The delegation on Wednesday

also met President and presented the summit's do-At the sumto be taken up in the coming five problems World Summit on Sustainable Development in Johannesburg later this year. Nothing unusual about this, except that the delegates were 385 children aged 10-12 years including two from the Capital.

Raghav Srivastava of Sanskriti School and Robin Rajput of Salwan School, Delhi along with Namrata Anirudh of GERA Foundation and Niveda Manjunath from Centre for Learning, Bangalore comprised the four-member team that represented India at International Children's Conference on Environment (ICCE) held from May 21 to

Bangalore and so they worked on surface water quality, quips Robin.

So what do kids know about water quality? "We conduct quality checks in different parts of the Capital twice a year and give a report to the Delhi Jal Board authorities. In places where the quality has deteriorated we seek immediate action," elaborates Robin with confidence.

Who listens to kids or takes their reports seriously? "They not only promise to take action they actually do it."

We have even met the CEO of Delhi Jal Board, P.K. Tripathi, says Raghav solemnly.

Ask them about the friends they made from the 80 other countries who took part and they rattle off names of the children with

countries must not see their obligations as a "burden" but as an "internationally supported development".

Baalu said the key to the Kyoto implementation was with the developing countries, and that "ethical and moral dimension" of the issue should not be sidelined.

But Waller-Hunter stressed equal action "by all actors at the national level, supported by international cooperation following the principle of common but differentiated responsibility".

She hoped the Delhi convention will mark a transition from negotiations to implementations.

The focal theme of the Delhi negotiations would be adaptation for the vulnerable, transfer of clean technology to developing countries, financial assistance to help the poor adapt, capacity building for climate research and information dissemination.

As of now there is no legislation that specifically mentions the right of the child to express his/her views freely. The Constitution of India does, however, confer freedom of expression as a fundamental right on every person in India and nowhere is it mentioned that children are to be excluded. But the exclusion does take place because the patriarchal norms governing societal attitudes also define the general attitude of the government functionaries. Neither the proposed National Commission for Children, nor the proposed policy and charter make an unequivocal statement on children's participation.

While the notion of 'best interest of the child' is implicit in the constitutional provisions, the welfare-orientation prevails in the national policies, programmes and legislation. The welfare-orientation represents the tendency of balancing the identified needs of children in proportion to the available resources while the rights-orientation seeks to confer upon each and every child the basic conditions that enable him or her to experience their rights. Given the culture and ethos of the government, the opportunity to participate — one of the conditions for the realisation of children's rights — is mostly not provided for. The Government of India has been focusing on the training of personnel dealing with children as one of the ways towards the realisation of children's rights but sensitising and compelling them to encourage and respond sensitively to children's views is a difficult task.

Some State governments (e.g. Andhra Pradesh, Rajasthan, Uttar Pradesh), with motivation and support from UNICEF, are beginning to encourage efforts to organise and mobilise children. Although the critics in the NGOs recognise the good intentions and contribution of a number of key government functionaries who have encouraged and enabled children's participation in government programmes and policy development initiatives, they are cynical about the way children's rights and children's participation are interpreted and practised. They view children as channels for achieving project goals rather than as participating agents in the children's participation being practised in the government projects.

International Organisations Catalysing Children's Participation

Although the movement towards children's participation in India is home-grown, international organisations have helped strengthen and upscale it. In the 1990s, international organisations acted as catalysts in developing the idea conceptually and through practice. The Aga Khan Foundation (AKF) had helped introduce the child-to-child approach in India in the late 1980s among its partners and in its work in the health and education sector. By the mid-1990s, it had taken a step forward through its initiative called 'Children-in-Charge for Change' in association with CHETANA, the Ahmedabad based resource NGO. The effort was to facilitate learning from the experiences of NGOs working with children at the grass-roots levels and to advocate for greater children's participation in development. Although AKF's direct engagement with children's participation more or less ceased with the culmination of this project, the participating NGOs have continued to take forward the agenda.

Save the Children — UK (SC UK) continues to be a strong, indeed the leading, protagonist of children's participation among the international NGOs. In the mid-1990s, as part of a wider project it had sought to introduce child-centred participatory research in India. This capacity building project was based on the recognition of children as a key resource in research and sought to develop the tools, skills and ethical norms that must govern participatory research involving them. With the organisational mandate to promote CRC, it has provided financial and technical assistance for children's participation initiatives and helped bring practitioners together in developing the ideals of citizenship and tools and techniques such as theatre for development (TFD). SC UK is also furthering opportunities for actively involving children and young people in reviewing their programmes and programme planning.

UNICEF has been a relatively late entrant among the international agencies promoting children's participation. By virtue of its clout as a UN organisation and closer working relationship with the relevant government ministries and departments, it has tried to convince government officials about the importance of providing spaces for children's participation. As a consequence, a consultative process was designed to incorporate children's perspectives in the Government of India's periodic report on the implementation of the CRC and the End-of-the Decade report for the UN General Assembly Special Session on Children. With support from UNICEF, SC UK and some Indian NGOs working with children in different parts of the country, the Department for Women and Child Development organised four consultations with children.

UNICEF also helped Indian organisations promote the cause of children by lobbying for children's participation at the regional and international level. Selected children from India were invited to the regional consultations prior to the Second World Congress against Commercial Sexual Exploitation at Yokohoma in December 2001 and the Special Session in New York in May 2002. Plan International is trying to build in child centredness in its programme planning, implementation processes through 'child-centred community development approach', which also seeks to strengthen children's organisations. International Planned Parenthood Federation (IPPF) through its Family Planning Association in

FOSTERING RIGHT TO CHILD PARTICIPATION WITHIN ORGANISATIONS

SC UK's recent experiment with a child on the interview panels for recruitment of staff required to work with and for children meant a step forward in recruiting sensitive personnel who would work on promoting child rights through its various programmes in India. Most of the adult interviewees although taken by surprise found it to be a creative exercise. Instead of letting it be a one-time experiment, the organisation has followed the practice in its recruitment processes in South India. It is too early to say, especially without studying its implications, if this can be a feasible practice across different organisations. However, it does give the NGOs, UN and government bodies that work directly on child rights issues to ponder over the values and practices they must adopt for ensuring that the people they select to work with — children — have the right attitude, sensitivity and abilities.

India has been supporting adolescents in their reproductive and sexual health rights programmes. Centre for Development in Population Activities (CEDPA) and its partners have been working extensively with adolescent girls and boys for developing their life skills. terre des hommes (Germany) India programme, involved children in the planning process of the next 10 years during the commemoration of their 25 years of TDH partnership in India. Since then participation of children has become an integral part of all their planning processes in projects supported by them across the country.

Indian NGOs:

Facilitating Children's Participation

During the 1980s, many Indian NGOs, such as the Concerned for Working Children and Butterflies, began working with rather than for children. They formed collectives or informal organisations of children at particular risk and found them to be an effective vehicle of children's empowerment and protection. Their experience and advocacy has contributed significantly to the current thinking and practice of children's participation nationally and internationally. The working group organised by Butterflies for writing the 'alternative' report to the Government of India's State Party Report for submission to the UN Committee on the CRC also invited children's views and expressions.

In recent years, more Indian non-governmental organisations have joined them in experimenting with innovative approaches where children have been given an ample opportunity to express their right to participation in the decision-making process. The most recent experience of children's participation was in the UN Summit on Climate Change held in Delhi in October 2002.

The term 'model' is often employed to help in the understanding of the practice of children's participation. Although there has not been a proper study of how the social, cultural and political context of the area in which NGOs have been working has determined the practice and outcome of children's participation, the contextual factors seem critical to choice of 'models' being innovated, practised and promoted. NGOs have tended to project and promote their own interpretations of children's participation. If there is no single definition of children's participation, there is not any single approach or model either.

Organising Children

Most NGOs, currently identified with children's participation, began working with working children and street children and mobilised and encouraged formation of their organisations for collective empowerment and effective bargaining. The Concerned for Working Children (CWC) in Karnataka has organised children into Bhima Sangha, a forum for interaction, discussion and action through a conscientisation process.



BAL MAZDOOR UNION (CHILD WORKERS UNION)

Every time a crisis occurred involving the children at their work, especially with children at the INA market, Butterflies used the opportunity to discuss the importance of forming a Union in its Bal Sabha (Children's Council). It took four years for the children to finally accept the importance of unionising. When it happened it was a spontaneous reaction to a case of physical assault of one of its members.

The application to register the Child Workers Union with the Registrar of Trade Unions was rejected on the grounds that no person below the age of 15 could be a member of union, or form a union according to the Trade Union Act of 1925. So they filed a petition in the Delhi High Court but this too dismissed because under the Law of Contracts, children cannot enter into a contract with an adult. An appeal was filed in the Supreme Court. The petition was accepted based on Article 15 of UN Convention on the Rights of the Child, which states that children have the right to form associations. The Supreme Court directed the Government of India to reply to the petition clarifying why the Bal Mazdoor Union could not be registered legally. This was the first time that a children's union had gone to court. Although, Butterflies subsequently withdrew this petition, the option of going back to court is still open.

In recent years CWC have also broadbased their work, bringing village girls and boys (school going, as well as working children) together to form Makkala Panchayats (Children's Governments). Their 'Toofan Programme' was launched in 1995 to consolidate as well as intensify CWC's strategy with the objective of evolving a child-centred development process for rural areas through a broad-based local consensus on strategies to revive the rural economy, introduction of appropriate education programmes, and the empowerment of working children, families, and communities. Toofan was launched in eight *panchayats* (a few villages usually make up one panchayat) across four districts of Karnataka. The objectives were to create new support structures where necessary and reinforce the existing structures (like panchayats, formal schools) to enable the creation of child labour free and child friendly panchayats.

The Makkala Panchayat (Children's Government) has been introduced as a new support structure. Children elect their own representatives (including reservations for girls, working children, school children, disabled children) to form their Makkala Panchayat. The Makkala Panchayat is positioned to interface between the children and local self-government structures — with the elected members participating in highly structured meetings at the adult panchayat level.

Recognising that child labour was a very real phenomenon that could be attributed to lack of society's concern and state action, New Delhi — based NGO Butterflies supported working children to form their own Bal Mazdoor Union — a working children's trade union and tried to obtain formal recognition for it. While the efforts to obtain a trade union status for working children's organisations have not borne fruits as yet, children's participation in the decision-making process is being promoted through the Bal Sabha (Children's Forum). Butterflies is now trying to strengthen the movement for children's rights by assisting grass-roots level NGOs in different states initiate child rights clubs and enabling networking amongst them.

Butterflies and CWC approaches to empowering street and working children were influenced by wider global movements of organising working children in Latin America and West Africa while Social Work Research Centre, Tilonia's approach was home-grown, an innovation that flowered into an interesting and rich experience in children's participation. A growing number of NGOs are following in the footsteps of CWC, Butterflies and SWRC, who might be considered the pioneers in the promotion of children's participation. Although the name and structure of the children's organisations are changed in their area of operation, the core principle remains the same. In Kargil, Jammu and Kashmir, the young members of the Children's Committees for Village Development (CCVDs) organise themselves, identify local problems (such as teacher absenteeism, irregular school attendance by children and poor sanitation practices) and initiate necessary action by collaborating with the local authorities and community. Calcutta Samaritans organises working and non-working children into 'Pavement Clubs' in order to create and strengthen peer group support for children who are at risk of trafficking. There are a number of working children's unions in different parts of the country, viz. Andhra Pradesh, Tamil Nadu and Orissa. These working children's unions are trying to consolidate themselves towards ensuring their rights as children and as child workers. Furthermore, there are also village level children's sanghas and clubs for school going as well as working children supported by NGOs in Andhra Pradesh and Orissa. Many of these children's groups are also seeking to establish firm linkages with the local government structures, such as the Panchayati Raj System, so that the concerned adults may address their issues.

Some children's group are formally structured as 'children's organisations' and an effort is made to carve out their distinct identity by projecting the name of the organisation through symbols, collective initiatives and exercises. Some NGOs believe that formal organisation is very important if children's participation is to be made more effective and meaningful. However, there are many instances of children coming together into a loosely organised group and networking with similar groups for a common purpose or on the pattern of legislative bodies at the block, district, state and national levels. Thus, one could make a subtle distinction between creating children's organisations and organising children. Nonetheless, whether it is through formal organisation or informal group formation, the attempt is to enable children to become active participants.

Young members of these children's organisations meet periodically at contact points or pre-determined venues to discuss important issues, to critique ongoing activities and to plan the future course of action. Facilitators or field workers associated with the NGOs very often assist them and ensure that mobilisation does not slacken. The value of formal communication has been recognised and working children in different states across India are producing their own regular wall newspapers. Some child journalists, such as those from *Bal Mazdoor ki Awaz* (BMKA) (promoted by Butterflies), have acquired enough confidence and skills for training other children. Groups of child workers from NGOs across the northern states of India have been trained by the BMKA child journalists in skills to bring out their own wall newspapers.

Most NGOs working for children's rights have recognised the worth of advocacy. Some of them have tried to raise children's rights issues through children. Children have raised issues concerning them in the public fora, addressed press conferences and held discussions with government officials and local panchayats regarding steps that could be taken to solve their concerns.

When children belong to an organisation, 'their' own organisation, the potential and impact is different. The repute and recognition of their organisations opens many doors for them. They have been many occasions in the recent years for children to participate in national, regional and international consultations and meetings. It is now much easier to invite representatives of active and/or well-known children's organisations to such meetings while in the past organisers were known to select children (articulate, presentable and often well-connected) to voice concerns. The chances of tutoring is reduced, if not done away with entirely, when the process is consultative. However, one needs to be careful about the tendency of selecting same children, representing same organisations, and in all probability, saying the same thing at all fora. How can children from different walks of life and representing different viewpoints be enabled to voice their concerns and be taken seriously is an issue that has still not been considered sufficiently in depth. After all, there are few NGOs working for children's rights, fewer children's organisations and even less of those who are able to send their representatives at important events or occasions.

It has been observed that some contexts and situations are more conducive for organising children and the outcomes of the process of group formation are largely determined by the social structures and norms. The nature and level of adult involvement in children's lives is critical to the autonomy in decision-making they enjoy or are likely to enjoy. For children who are not living with their parents it may be in a sense easier to form groups than for children who live in families or in institutions. Children living in difficult circumstances (e.g. street children and children in labour situations) are likely to bond better as they have common experiences. Children living and working on the streets acquire independent traits by coping and battling with adversities on their own. They have their own mutual support mechanisms and once they begin trusting the facilitators from the NGO, they are more open to the idea of developing a common cause and identity.

This also points to the ability (or the perception of) of children to operate independently. As children's lives are governed by the adults — in the family, at school and at work, the subjective perceptions of adults regarding their age and readiness determine whether they would be allowed to take part in group activities. The consent and cooperation of adults concerned with the safety and security of their wards (especially girls) is important if children are to participate.

The urban areas with their characteristics of impersonality and long distances for commuting are not generally child-friendly. Indeed, one does not find any instances of organising children in urban areas who do not belong to vulnerable and at-risk categories, and who cut across classes. It could be attributed to

dissimilar concerns and interests, other pressures on their time and the practical difficulties in coming together. Obviously, being 'children' alone is not enough. On the other hand, the sense of community is stronger and the children do not have to travel distances to get together with their peers in the rural areas. Besides CWC, the Social Work Research Centre, Tilonia in Rajasthan, SMTA at Chakrata in Uttaranchal and local NGOs in Ladakh region of Jammu and Kashmir have been able to foster children's organisations that are organically linked with the social and political contexts of their rural environments. Despite caste, community and gender differentials, most rural areas still have a communitarian social environment and not all members of children's groups are poor and vulnerable. It would, however, be interesting to explore in depth the social and economic profile of children who are members of active children's organisations.

Giving Opportunities and Responsibilities

In the past, the well-meaning adults and NGOs roped in children to reinforce their points of view in public fora for engaging public attention through the media. While children's images at demonstrations and functions were engaging, often they contributed to public scepticism about the worth and meaning of such participation. With the growing concern about making children's participation more meaningful and less tokenistic, there has been a perceptible shift over the years in the way children are being involved. The elements of manipulation, decoration and indulgence can still be observed, but the events increasingly combined with consultative processes are providing children with some opportunities to display their abilities and potential.

Growing acceptance of the worth of consultation and decision-making with children among different agencies and institutions holds promise. It helps enable children assume responsibilities as a matter of right, and in pursuit of their collective rights. There are three areas in which organised efforts are being made to foster and promote children's participation:

- (i) the media,
- (ii) national, regional and international policy processes, and
- (iii) community-level planning and development.

The media had always carried information and entertainment-based programmes for young children. However, the programmes developed and presented by children on the State-owned Doordarshan and Akashvani and the private channels such as the STAR television and Channel V have increased in quantity and quality over the years. On the International Children's Day of



Broadcasting (ICDB) on the second Sunday in December every year, children voice their concerns and opinions as broadcasters and producers. Albeit the outreach and the audience profile of these programmes and channels is still fairly limited to a certain section of Indian society, this trend helps demonstrate the practicability of children's participation.

A variety of participatory processes with children at local, district, sub-national and national levels are currently being promoted and supported by many local, national and international NGOs across India with fruitful results. The idea of children's participation in national and international policy processes has gained currency with their visible and active profile at the international events, the Johannesburg Earth Summit being the most recent. The convention and the UN CRC Committee encourage participation of civil society with active facilitation of the State. UNICEF advocated with the Government of India the need for children's inputs in the drafting of the State Party Report on the CRC because children's contribution — as the concerned section of the society — is particularly solicited. Although formal mechanisms for consultation with children were created for the CRC reporting process and the UN Special Session for Children, there were no mechanisms for it in the Government of India's official processes for the drafting of the National Plans of Action, the Children's Charter or the Children's Commission's Bill. As mentioned earlier, the government institutions are yet to be convinced about the value of children's involvement in policy discussions and planning and implementation of programmes.

Children's participation in community-level planning and development processes has not been explored sufficiently except by some NGOs. The CWC has encouraged the Makkala Panchayat following the pattern of the Panchayati Raj institutions for promoting children's contribution to micro-level planning in the five panchayats in South Kanara district.

The Social Work Research Centre (SWRC) Tilonia in Rajasthan and the Society for Motivational Training and Action (SMTA) at Chakrata in Dehradun District have envisaged a proactive role for children in the local community. From monitoring the running of their schools, children are now encouraged to

Ladakh children demand development as a right

New delhi, Apr 1: In the cold and barren deserts of Ladakh where time seems to stand still, teenaged children have set themselves the task of seeking better education and infrastructure to catch up with the rest of the world.

Organised into 'Children's Committees for Village Development (CCVDS)', an initiative of 'Save the children UK' conceived in 1997, the youngsters have been successfully involved in seeking an improvement in the education system as also better roads and health facilities that have remained a dream for them.

In Tukla village of Leh district, young children raised nearly Rs 5000 through dra-

mas conveying social messages to pay the winter tuition course and buy stationary for needy children.

In Kargil recently, the Children's Committees for Village Development (CCVDS) got together and organised a march in the Kargil town, forcing the attention of the district education authorities to their low pass percentage and seeking a review of the system.

UNIFORM: In yet another village Kungyam, the children of the CCVD took up with the teacher of the school a matter of beating a child for not wearing a uniform. The child could not afford the uniform and did not want to attend school.

"The children said they planned to talk to the teacher, to convince him not to beat the child," says M Sharif Bhat, programme co-ordinator in a report *Our voices, are you listening* on the experience of the children's development committees.

In Thang, a remote village not connected with the main road, the children's committee has addressed education, environment and health issues.

In education, the children persuaded the parents to send even their drop out children back to school by going to them in groups. Today there is no child above six years in the village who does not at-

tend school.

Explaining the idea behind the project, Vijaylaxmi Arora, head of the programme support unit, Save the Children UK, says "we have always believed in involving children in decision making process and that they have a right to participate in issues concerning them."

Today there are about 77 CCVDS in Ladakh, 38 in Leh and 39 in Kargil district, where children are taking a lead role in initiating and raising key development issues of concern and succeeding in getting their grievances addressed with the authorities concerned.

DEMOCRATIC: Describing

their activities, Nawaz Ali, president of the CCVD of Skamboo village, explained in the report that their's was a thoroughly democratic set-up with the members electing an smaller executive committee which represented them in the village and at other external platforms, where their issues were to be taken up.

Involvement in the committees has not only imbued in them confidence, but inculcated in the children, some positive qualities of leadership, confidence and ability to work in a team, says Bhat in the report, which is to be released shortly.

LONG VACATIONS: With schools closing every year for five

months for winter, the children are too long to sustain children's interest in education. By the time they resume studies the children have forgotten the previous course and are a loss to carry on further.

"It is this aspect and concern for seeking continuity in education that impressed me," said Arora about the role played by the children's bodies in seeking solutions by raising money to provide for tuition fee in the winter months.

The efforts have only just begun in the valley, where about half a dozen such village level committees have been constituted a few months ago in Srinagar and Badgam districts. [PTI]

involve themselves with various local and regional development initiatives (such as provision of safe drinking water, toilets and cleaning of the environment). To begin with, children were allowed the space and opportunity to understand and contribute to the functioning of the NGO itself. Thereafter, engaging with the village panchayat was not difficult for the children.

The CCVDs in the Ladakh region of Jammu and Kashmir have been developed on the same pattern as the local decentralised administrative structure and enables children to contribute to the development process of the area and sensitise adults on children's issues. They usually address the issues of clean surroundings, personal hygiene, provision of dustbins, protection of drinking water sources from contamination, white-washing school buildings and functioning of schools and ICDS centres.

'There was a tendency to neglect children, but now we have started this process of involving them, children have motivated their parents and villagers; they have made lots of positive changes.... Children's committees for village development can enable children to participate with adults in making the education system function.'

Executive Education Councillor, Local Government Official, Ladakh, Jammu and Kashmir.

Thus, over time children have been able to win the trust and support of adults. Through positive action organised by children's organisations (e.g. clubs, committees, unions) the status of children, their voices and their organisations are slowly, but gradually changing. Children's new role as actors in increasingly being encouraged and new types of partnerships between children and adults are being forged.

Building Capacities and Abilities

Children's participation should be in keeping with their capacity and ability (milestones of development), contribute positively to their growth and development and enhance their personhood. (Reddy and Ratna, 2002). Furthermore, children must have the capacities and abilities that enable them to participate in a meaningful manner. It has been recognised that children and young people and their communities do not develop by being passive, by simply observing or being told the key truths of development. They develop skills, build competencies, form aspirations, gain confidence and attain valuable resources through participation. Modern day educationists advocate the cause of active learning and the feedback from people who work with children or have witnessed some of the children's organisations corroborate that children's participation itself becomes an enabling or capacity building process.

A large and ever-growing number of Indian NGOs working for children have evinced keen interest in familiarising children with their rights through trainings and orientation workshops. Efforts being made to build the capacities and abilities of children recognise that conventional lessons conveying legalistic formulations about their rights are not very effective. There is general consensus that the learning process has to be interesting for children and help them articulate

Schools take part in children's Parliament

A CHILDREN'S Parliament was inaugurated for the first time in the Capital on Saturday. Organised by the Habitat Centre it had over ten leading public schools participating in its first session.

The concept had been taken from a similar exercise introduced successfully by Bunker Roy, founder of the barefoot college in rural Tilonia, at Ajmer. The children's Parliament had students in the age group 9-14 years who were incidentally elected by other children from the area. The exercise is to take education 'beyond the classroom' and to teach students about leadership.

The schools which participated in the first session included Vasant Valley School, Shri Ram School, Springdales School, Modern School Barakhamba Road, Sardar Patel Vidyalaya and Sanskriti School.

HTC, New Delhi

their views and engage with others. Drawing upon the participatory learning methodologies, life-skills trainings and theatre for development (TFD) have gained currency. Some organisations such as UNICEF, Save the Children Alliance and the HAQ — Centre for Child Rights have also seriously considered bringing out child-friendly learning materials on national and international laws that would inform and empower children, that in turn would enhance their participatory potential.

Children's organisations provide a ready and easy structure for participation and the learning that accrues from it. Schools and classrooms are also structures that could enable children to acquire the attitudes and skills for participating in matters concerning themselves and their social and physical environment. Several public schools emphasise the personhood of children but they can reach out to a miniscule number (and proportion) of children who come from a certain strata of society. This strata is in any case better able and resourced for providing its children more exposure and opportunities. For the majority of schools in India, a learning environment conducive to children's expressions and mutual learning is by all accounts still a dream and for the vast majority of school children, learning by rote is still the reality. Although the National Policy of Education (1992) provides a framework, education reforms in their widest sense are required if children's participatory potential has to be enhanced systematically.

In the interim, inspired teachers and educationists in different schools in different parts of the country are making efforts to go beyond learning by rote and encourage interactions among children and with adults that enhance their confidence and self-esteem, the qualities considered essential for meaningful participation. The out-of-school children have not been left far behind in the ongoing experiments. Indeed some of the most interesting and exciting innovations by the NGOs have revolved around them.

Some NGOs have focused on developing 'protagonism' among children by exposing them to real life situations and enabling them to take decisions and to act upon them. Butterflies and CWC on one hand, have been supporting and building children and young peoples' capacities to assert, negotiate, demand and advocate for their rights through participating in localised decision-making bodies and structures like *Panchayats/Zilla Parishad*/Municipal Blocks and on the other hand, they are working with for creating spaces for children's voices to be heard and valued (in decisions that affect them) in adult structures and spaces. They have enabled children and young people to organise themselves into 'Bal Panchayats' or 'Bal Sabha'. In Tilonia, children are members of the Bal Sansad (Children's Parliament) and its constituencies, following the Indian parliamentary system. Business is conducted through similar procedures, of course with some modifications. The process of elections, questions and replies inculcates a sense of accountability and responsibility among the children and the community. The model serves as training in responsible citizenship for both children and adults. SWRC has been active in the Right to Information campaign. As local community is aware, active and mobilised, children's protagonism is not an anathema for the adults. Indeed, it complements adult participation.

Learnings from experiences point towards the critical role of individual facilitators and facilitating NGOs in organising children or enabling their participation. They inform children of their rights by imparting them necessary life skills, encouraging their expressions and inputs in matters concerning them and increasingly in development planning, implementation and monitoring. They 'facilitate' a process on how to 'think' and how to make and take decisions through interactions with and among children. Thinking is not completely a natural process; reaction and response must also be differentiated. The child thinker has to be introduced to the idea of weighing the pros and cons of any decision.

INSTITUTIONALISING CHILDREN'S PARTICIPATION

Children's participation in India is still going through the stages of experimentation, innovation, learning and promotion. Action in various spheres and at different levels by diverse organisations and activists is helping build momentum towards greater acknowledgement of the role and worth of children but the jury is still out about what really is meant by meaningful children's participation and how it could be developed into a social norm. But it is important to note that the number of success stories and valuable lessons from experience are adding to the corpus of knowledge.

Whether child participation is an issue or an approach or an ongoing process, it is a matter of concern in a country like India. Children's participation is an anomaly in a culture that allows restriction and regulation of information to children by parents, teachers and other elders who decide what is best or appropriate for them. They are expected to obey without asking too many questions because fostering social cohesiveness is the primary concern in the society. In such a scenario, child participation becomes conditional. This does not however imply that the Indian societal values are opposed to the well-being of children. But rights-based thinking presupposes children as individuals, as human beings and as independent entities and any conditionality or patronising attitudes are considered unacceptable.

The value of children's views in judicial proceedings, in families and school situations and their recommendations in the governmental fora is determined to a large extent by the adults in key positions. For meaningful children's participation, spaces for children (including a conducive environment) to participate have to be created and the mindsets of the adults have to be shorn of the patriarchal values. While the government seems more comfortable with the idea of well-being rather than rights with its political overtones, children's rights organisations are now faced with the challenge of projecting and promoting it as a positive societal value. It is being recognised that more needs to be done to address children's participation issues within the families, local communities and society. Making the educational system child-centric rather than teacher-centric could be one of the strategies for creating an environment conducive for children's participation.

Children and young people's participation is not only organised mobilisation of children for an event or into a forum, club, union or organisation for collective bargaining but also in areas that go beyond collectivism to individual right — to be consulted and participate in decisions regarding one's welfare and development. Participation takes place in an environment where there is democracy. *Belief in democratic principles is important for ensuring participation.* In fact a process that encourages participation will also educate children and young people about democratic functioning.

The past experience and fresh thinking have helped refine the content and processes of formal and informal interactions with children at different levels. The experiences in the formulation of the End-of-the-Decade progress report for the UN Special Session for Children and India's second State Party Report (SPR) to the UN Committee on the CRC highlighted the importance of scaling-up of efforts to promote children's participation and contributed to the realisation that more nuanced and sustained work is needed with adults and established institutions as they determine the degree and extent to which children can participate.

Kids want to be part of decision-making

Shruti Maheshwari
New Delhi, April 12

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Students and a teacher
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national and
Foundation

participated.

The workshop was organ-
ised by Sanjivni, a non-prof-
it organisation offerin-

sions concerning them,"

said senior counsellor and
organiser Anandita D.

Motamma's statement sparks protest in Bangalore



Street children protesting against the alleged remarks by Minister Motamma on children in remand homes, in Bangalore on Wednesday.

BANGALORE, March 13
The controversy over the alleged remarks of Women and Child Development Minister Motamma on children in remand homes today spilled on to the streets in the City with a few voluntary organisations leading a group of children to stage a dharna in the sweltering heat.

Holding placards criticising the Minister for allegedly stating that children in remand homes should be punished, around 25 children and women under the banner of Campaign Against Child Labour gathered in front of Mahatma

'The Minister's justification of the punishment meted out to children in juvenile homes cannot be taken in the right spirit.'

the Minister's statements as irresponsible and anti-children.

The Minister's justification of the brutal punishment meted out to children in juvenile homes cannot be taken with the right spirit, he said.

As the representatives of the voluntary organisations were engaged in anti-minister rhetoric, the children, who apparently knew little of the significance of the protest, also joined them by raising slogans against the Women and Child Welfare Minister.

MINISTER'S DENIAL:

On the flip side, Women and Child Development

Minister Motamma denied having made such remarks and maintained that she was misquoted by a section of the media.

to Deccan Herald here, Ms similar poor

Up-scaling and institutionalising children's participation would require the adoption of key principles for good practice. Indeed, there can never be a model or blue print for child participation. To be successful and sustainable it necessarily has to be contextualised in its formulation. A commitment to process, a belief in children's personhood and democracy, willingness of adults to work in partnership with children and young people, recognition of the value for diversity are essential parameters. Girls, boys and young people must be empowered to develop their own participatory (and partnership) initiatives, to suit their own cultural, socio-economic, political and geographical contexts. Most important, adults must be prepared and enabled to support children and young people's participation and develop mechanisms that recognise and involve girls and boys as key partners in the development process.

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