Last one and a half years has been the most happening period for HAQ: Centre for Child Rights. What began as an initiative requiring inputs every now and then turned into full-time occupation as HAQ came to be nominated for coordinating the twenty-year audit of implementation of the Convention on the Rights of the Child in India. HAQ thus became a proud member of what gradually came to be known as the CRC20BS Collective.

HAQ: Centre for Child Rights is grateful to all the Steering Committee and Organising Committee members of CRC20BS Collective for vesting their faith in us and their continuous support throughout the audit process. We also thank all the children, individuals and organisations, networks, campaigns and trade unions, who contributed to the report and those who have endorsed it to become a part of the collective and give strength to the cause.

We value the longstanding partnership with terre des hommes Germany, who have supported the organisation ever since its inception and have also been a true partner in action. HAQ is thankful to every individual in terre des hommes Germany for extending their cooperation and recognising HAQ’s work.

Indeed such a mammoth task could not have been possible without the HAQ team constantly on its toes, looking for information, seeking data, contacting people, pursuing organisations for contributions, organising consultative processes and doing every other odd job that went into producing such a voluminous report. We hope it was a learning exercise for the Interns who contributed to the initial research and we thank them all.

Our families, often taken for granted, have always stood by us patiently. Aspire Design has been the most reliable resource in our life, working day and night to print our reports at the last minute. They did this one too.

Most importantly, on behalf of the CRC20BS Collective, we thank Dr. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights for her encouragement and support to the report.

Bharti Ali

Enakshi Ganguly Thukral
FOREWORD

The Report “Twenty Years of CRC: A Balance Sheet” is an indispensable document for policy makers, professionals and experts, activists and the civil society, scholars in the field of protection of children and child rights. Covering a span of two decades, the volume is a rich resource with both qualitative and quantitative data on the status of children in India from authentic and established sources.

It also gives a balanced review and analysis of the implementation of the laws, policies and programmes designed for children, and makes an assessment in relation to the UN Convention on the Rights of the Child.

The report carries an optimistic tenor reflecting on some progressive legislation that came about in the last two decades, such as the ‘Right of Children to Free and Compulsory Education’ Act 2009, which made education a fundamental right; the series of pronouncements of the judiciary that propelled provisioning of hot cooked meal at the Anganwadi centres, schools making access to food entitlements a basic right; the Integrated Child Protection Scheme that has elements of decentralisation through a network of structures and processes from the ground, block and state level to protect every child – all based on a child rights perspective with emphasis on State obligation and principles of universality, equity and justice, moving away from charity.

The data that shows some improvement in the status of children indicates the efforts of officials, and efficient structures and processes that make the system work. It shows the movement from Statelessness to availability of State support, from deficit childhood to childhood being fulfilled and more importantly, the triumph of dignity of the child.

Yet the failure of the State to meet the constitutional obligations are warning signals that it would be disastrous for children if no action is taken with a sense of urgency and immediacy. The report brings out some disturbing facts and shows the innumerable hurdles and barriers children are to overcome to access their rights, the unfinished tasks and the failure of the State to protect children.

Resulting from a nation-wide consultative process and endorsed by over 350 organisations and children from all parts of the country, it calls for serious attention.

(Shantha Sinha)
Children have only recently come on to the Human Rights agenda. Traditionally, they have not been treated as a separate group but were regarded merely as a residual category. They were thought of merely as an extension or property of their parents. Children did not enjoy any special protection or benefits in medieval times. Even in the landmark French Declaration of Rights of Man in 1780 the question of children’s rights did not find any mention. The industrial revolution did not make much of a difference. Children continued to be lumped together with adults in the world of work and toil. “As the industrialisation process progressed, children were moved from mills to factories and mines, where conditions were often even worse”.* However a concern for childhood began to grow towards the end of 19th century. Ellen Key, in a book, entitled, The Century of the child, prophesised that the forthcoming century would be the ‘century of the child’.** This prophecy appears to have been fulfilled by the adoption of the Convention of the Rights of the Child (CRC) by the UN General Assembly in 1989.

Thus, during the course of this century, a universal concern for childhood has grown along side the ideas of human rights. Human rights are today understood not only in the form of the individual civil and political rights within a nation state, but also in terms of social, economic and cultural rights. The United Nations Organisation has in fact established an international community which sets up ideal standards to be laid down in many matters including the treatment of children. According to Sieghart: “How a sovereign state treats its own citizens is no longer a matter for its own exclusive determination but a legitimate concern for all other states and their inhabitants”. Thus the concern for children which initially started as part of the concern for the future of individual nation states, has spilled over the boundaries of the nation states and become a universal concern. This will be further borne out while going through the whole process of the evolution of the Convention on the Rights of the Child (CRC).

It is in this context, that one can safely say, that of the various steps taken in the protection and interest of the child, the most significant one was the “Declaration of Geneva” which was promulgated in 1924 by the “Save the Children Fund International Union”. This declaration put forward 5 basic principles of child welfare and protection. The League of Nations endorsed this declaration in the same year. Then came the devastating Second World War after which the United Nations (UN) was set up on 24th October 1945. This Declaration of Geneva was further revised and extended in 1948 and in 1959 by the UN Declaration on the Rights of the Child and adopted unanimously by the General Assembly of the United Nations (20th November 1959).

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*Joel Bakan, Childhood Under Siege, Published by The Bodley Head, 2011, Chapter 1, p 8.
What exactly is the difference between Declarations and Conventions? Declarations are certain general principles put forward as guidelines. These have no binding force. Technically these are known as “soft laws” whereas Conventions are binding. Conventions which have been ratified by those party to it, become a legal instrument. These are known as “hard laws”. Hence though the Declaration on the Rights of the Child was unanimously accepted by the UN General Assembly in 1959 it had no legal binding on the member states. Hence, the movement towards the Convention on the Rights of the Child. This does not mean that there have been no binding instruments on the international community of nations as far as the Rights of the Children were concerned. There have been ‘the Red Cross Geneva Convention’, ‘the ILO Convention’, ‘the International Covenants of Civilisation and Political Rights on Economic, Social and Cultural Rights’, etc, which have relevance to the situation of children. Further there have been ‘Standard minimum rules for the treatment of prisoners’, ‘the principles of medical ethics’, etc, which are not binding. All these may have specific references to the child but they have been spread out in different documents and have not been codified. Further these references did not take the specific situations of the child into consideration. All these were a mixture of “hard” and “soft” laws and not easily complied with or enforced.

The Universal Declaration on Human Rights was adopted in 1948. Children's Rights are an integral part of this declaration but as the situation of children is specific, protection of the rights of the Children also called for a specific international convention which was binding on the parties to the convention.

It was the Government of Poland which first proposed such a convention on the Rights of the Child on the eve of the International Year of the child i.e. in 1978. This initiative provided an opportunity and impetus to define more clearly and to harmonise Human Rights standards for children. This proposal was not meant to replace the Declaration on the Rights of the Child of 1959 but to supplement it. It was meant to make at least part of the declaration on the rights of the child, binding on the member states.

However, this proposal was not easily accepted by the members of the United Nations. Some argued that it was not necessary because there already existed a declaration on the Rights of the Child and others argued that the Rights of the Children were also protected by the Universal Declaration on Human Rights and the other International Covenants etc. but finally the supporters of the idea of the convention succeeded in dispelling the hesitations and in taking the project forward. Hence a working group, set up to review the UN Commission on Human Rights in 1979, reviewed the text proposed by the Polish Government. The working group was called “Working Group” on the question of a Convention on the Rights of a Child. It consisted of members from 43 member states. The delegates from other member states also could attend as observers. Non-Governmental Organisations (NGOs) in consultative status with the UN Economic and Social Council could also be represented. The working group meetings were open to the public.

Several NGOs reacted to the Polish proposal for the draft convention. A few of them played a very active role but as the NGO involvement was rather sporadic, a consultation was organised for interested organisations and an **adhoc** NGO group on the draft of the convention was set up. This group met twice a year and unified the NGO proposal to the UN working group. The contribution of the NGOs have been significant and the UN working group has sometimes taken the entire article proposed by the NGO **adhoc** group. The NGO **adhoc** group also worked in collaboration with UNICEF.

Once the working group adopted the first draft of these three sections, the entire text was reviewed to remove any contradictions that might have been there. The text also was standardised in the terminology of international legal usage. It was then put before the Commission on Human Rights, which after approval sent it to the UN Economic and Social Council. This Council presented it to the UN Assembly.
Thus in November 1989 at the 44th session of the United Nations, the member states were asked to vote for this historic Convention on the Rights of the Child. The Convention was designed to elevate the nations’ political and humanitarian obligations towards their children. The commitments to the protection of children which were scattered through more than 80 International Treaties and Declarations since the days of the League of Nations (a 60 year period) have been codified and upgraded through this convention. The existing standards have been modified and consolidated and a range of relatively new issues of importance have been included. This is a comprehensive Human Rights Convention focusing on the special needs and situation of children. The convention required an active decision from the individual states to ratify them. A mechanism of monitoring was included in the convention.

The convention recognises the special vulnerability of children and addresses their civil, political, economic, social and cultural rights as elements of inter dependent or mutually reinforcing set of provisions. The rights of survival, development, protection and participation are recognised as basic human rights of children. The right to survival includes adequate living standards and access to medical services.

The right to development includes access to information, education, play and leisure, cultural activities and the right to freedom of thought, conscience and religion. The right to protection, apart from embracing the above also covers all forms of exploitation and cruelty, arbitration, separation from family and abuses in the criminal justice system. Participation rights include the freedom to express opinions in matters affecting ones’ own life and the right to play an active role in the society at large.

The other problems addressed by the convention are problems of refugee children, sexual and other forms of child exploitation, drug abuse, children in trouble with the law, inter country adoptions, children in armed conflicts, disabled children and the children of minority and indigenous groups.

The primary underlining principle of the convention is the ‘best interest of the child’. It states that the child’s own opinion shall be given due regard. The child is regarded as an individual with needs which evolve with age and maturity.

The convention recognises the importance of the family as the primary social group. However, here also the primary concern of the convention is the interest of the child in question. If the interest of the child calls for its separation from the family, the convention allows it. The child has the right to protection even against familial abuse. The convention recognises adoptions as an alternative solution if the child is deprived of family environment. However, it puts the obligation on the member state to have standard safeguards in the child’s own interest against both domestic and inter-country adoptions. It regulates that no improper financial gain should be involved in the inter-country adoption process.

The convention recognises the child’s right to protection from economic exploitation and from performing work that is likely to be hazardous or to interfere with the child’s education. The child is further protected against sexual abuse. The child has a right to express his or her views and the state parties are obliged to give due regard to the same. The state parties are further required to respect the right of the child to freedom of thought, conscience and religion. The convention lays down the state’s obligation to ensure the survival and development of every child. This means that the states are legally bound to do everything possible to prevent child mortality and disability.

The states which agree to observe the convention will report to a committee on the steps they have taken to comply with it. The convention requires the states to ensure that the principles of the provisions of the
The convention would be widely known and to see that their reports to the committee on the rights of the child are made public. The convention would become an International Law when twenty nations had ratified it.

One of the special features of this convention is the recognition of children’s right of choice. It allows them to have a voice in decisions made for their protection and welfare. The 1959 Declaration did not include this. Another significant feature is the extra-ordinary involvement of Non-governmental organisations in the entire process of preparing the draft, deliberating on them etc. The assertion that the ‘best interest of the child’ shall be a primary consideration in all actions concerning children is another significant feature.

The convention became a law on the 2nd September 1990 only nine months after it was approved unanimously by the UN General Assembly. It is reported that no other human rights convention has become a law so quickly. By the time of the World Summit for children in 1990 fifty nations had ratified the Convention on the Rights of the Child and a further seventy-eight signed their intention of becoming parties when their governments completed the ratification procedures.

The two decades after the adoption of CRC by UN General assembly and the subsequent ratification of it by many countries including India, also happen to be the two decades of a new economic paradigm becoming dominant. This is the decade in which the neo-liberal economic tenets which started with Ronald Regan and Margaret Thatcher in the nineteen eighties, took firm root all over the world. The core idea of the paradigm that free markets are the most effective way to achieve the greatest public good for society and individuals, began to be practiced aggressively. Free market economy, liberalisation of trade and privatisation were the three pillars of globalisation which became a purely economic globalisation and resulted mainly in the penetration of financial capital into all regions and sectors. Consequently the priority of children’s wellbeing and acting on the basis of the ‘best interest of the child’ was relegated to the background. It was as if there were conflicts of interest between two sets of legal persons, the children on the one hand and the corporations on the other. The interests of the corporations were promoted and those of children neglected.

Ever since the adoption of the CRC, Governments, International organisations, Civil Society organisations and social movements have all struggled to bring the articles of the convention into reality.

Numerous actors have engaged passionately in such efforts. Twenty years after the CRC came into existence, seemed to be an appropriate time to pause and review the situation.

TdH Germany too shared these concerns. Hence the idea of the “Twenty Years Audit” emerged from a common meeting of elected representatives of tdh partner organisation from four continents, as well as tdh members and colleagues, during the delegates conference of 2009 – the resolution was introduced by delegates from India and was passed as follows:

“Be it resolved that Terre des hommes Germany starts an international AUDIT on the implementation of child rights in all project countries including Germany and elsewhere in Europe on the occasion of the 20th anniversary of the UN Convention on the rights of the child (20th November 2009). The central message of the AUDIT: governments have not kept their promises. Terre des hommes presses the governments at the national and international levels to grant the children their (the Human) rights which are their due. The necessary financial resources that have been promised must be actually made available. The audit is planned to last until the end of the year 2010. It will conclude by enlisting specific issues for campaign and advocacy. Until the 25th anniversary of UNCRC there will be campaigns in the Project regions and Germany.”

Subsequently the proposed audit process was undertaken in India through setting up of a Steering Committee and an Organising Committee. HAQ: Centre for Child Rights agreed to coordinate and anchor the whole
study and audit process. The process has been extensive and engaging. Draft versions of different chapters were prepared and introduced to meetings of partner and other organisations working on child rights in different regions. Inputs from all these meetings were incorporated and further discussed with experts and activists through focus group discussions and the final draft was presented to a national consultation in Delhi. Children too were consulted. The whole exercise has been done with a sense of ‘common but differentiated’ responsibility of the governments and other actors, all duty holders in realizing the rights of children. The report acknowledges the efforts and achievements, but at the same time records the deficit, as in a balance sheet. It is hoped the same will motivate all duty bearers like the government, the parents and civil society organisations in a more engaged and focussed attempt to realise the “best interest of child” in all senses.

This principle of ‘best interest of the child’ together with other guiding principles CRC would lead us to recognise even more areas of rights of children which need to be asserted, for example ecological rights of children.

C J George
Regional Coordinator
South Asia
terre des hommes Germany
Contents

1 Twenty Years of CRC – General Measures of Implementation

   Introduction

Part A: India’s status and position on international human rights law and procedures – an overview

   1A.1 India’s status vis-à-vis international human rights instruments relating to
or having a bearing on children’s rights

   1A.1.1 Status of ratification of international and regional human rights instruments directly
related to realisation of children’s rights

   1A.1.2 Ratification of CRC and its Optional Protocols

   1A.1.3 Application of International Law in Domestic Legislation

Part B: Twenty years of India’s commitment to children and the CRC – General Measures of Implementation

   1B.1 General Measures of Implementation

   1B.1.1 National Legal Regime

   1B.1.2 Constitutional Guarantees

   1B.1.3 Legislation

   1B.1.4 Rules

   1B.1.5 Important Judgements

   1B.2 Policy Framework

   1B.2.1 Policy Documents

   1B.2.2 Plans of Action for Children

   1B.2.3 Children in the Five Year Plan Documents

   1B.3 Programmes and Schemes

   1B.4 Mechanisms for Realisation of Rights of Children

   1B.4.1 Ministries

   1B.4.2 Other Institutions/institutional mechanisms set up for implementation
and/or monitoring of programmes and schemes

   1B.5 Coordination and Monitoring

   1B.6 Data Collection and Management

   1B.7 Training and Capacity Building

   1B.8 Resources

   1B.9 Reporting on Implementation of the Rights of the Child
1B.9.1 Reporting on World Fit for Children +5 36
1B.9.2 Reporting to the Committee on the Rights of the Child 36

Part C: Gaps and Challenges 38

1C.1 Need to harmonise domestic law with international human rights obligations 38
1C.2 Strengthening Law and Policy formulation and reform 39
1C.3 Need to ensure formulation of state rules 41
1C.4 Need to build linkages with other non-child specific national laws and policies 43
1C.5 Need to ensure transparency and increased participation of civil society, including children, in law and policy-making processes 46
1C.6 Need to ensure proper implementation of existing laws and policies 47
1C.7 Need to improve implementation of programmes and schemes 53
1C.8 Need for greater impetus to put in place certain critical measures of implementation 60
1C.9 Need for setting up agencies like the National and State Commissions for Protection of Child Rights in accordance with Paris Principles relating to the status of national institutions (General Assembly resolution 48/134) and the CRC Committee's General Comment No. 2 on national human rights institutions 62
1C.10 Coordination and monitoring remain a challenge 65
1C.11 Data collection and access remain inadequate and a challenge 66
1C.12 Training and capacity building 71
1C.13 Resources 71
1C.14 Need for Improved Reporting and Monitoring 72
1C.15 Need to comply with the recommendations in the Concluding Observations on India 73
1C.15.1 Recommendations that have been complied with 73
1C.15.2 Measures underway 74
1C.15.3 What remains 75
1C.16 Need to strengthen the MWCD and the corresponding Departments in the states 76
1C.17 Complaint mechanism under CRC in case of a state party’s failure to comply with the CRC obligations 76

2 Definition of the “Child” 79

Introduction 79

Part A: Definition of the Child – Age Variations under Different Legislations and Policy Documents 79
2A.1 Minimum legal age defined under national legislation 79
2A.2 Definition of the child in various policy documents 82

Part B: Areas of Concern 82
2B.1 Definition of the child – a critical analysis of progress in last 20 years 82
2B.2 Need to define the child in policy framework 84
5 Family Environment and Alternative Care

Introduction

Part A: India’s Status and Position on International Human Rights Law and Procedures – An Overview

5A.1 Progress on Concluding Observations made by the CRC Committee

5A.1.1 Recommendations that have been complied with
5A.1.2 Measures under way
5A.1.3 What remains
5A.1.4 National Commitments: Shifting Goals

Part B: Situation of children’s rights to family environment and alternative care

5B.1 Parental Guidance & Responsibility (Articles 5 and 18)

5B.1.1 Separation from Parents

5B.2 Children Deprived of Family Environment (Article 20)

5B.3 Alternative Care

5B.3.1 Institutional Care
5B.3.2 Adoption (Article 21)

5B.4 Abuse, Neglect and Maltreatment (Article 19)

6 Basic Health and Welfare

Introduction

Part A: Progress on the Concluding Observations – A quick glance

6A.1 Progress on Concluding Observations made by the CRC Committee

6A.1.1 Recommendations that have been complied with
6A.1.2 Measures under way
6A.1.3 What remains

6A.2 Shifting goals reflect shifting priorities

Part B: Status of health of children: Still far to go

6B.1 Survival and Development (Article 6)

6B.1.1 Mortality Rates
6B.1.2 Early Marriage and Pregnancy
6B.1.3 Morbidity
6B.1.4 Malnutrition, Anaemia and Underweight Children in a Booming Economy
6B.1.5 Adolescent Health
6B.1.6 HIV/AIDS
6B.1.7 Drug and Substance Abuse
6B.1.8 Children now used as guinea pigs for multinational drug companies

6B.2 Children with Disabilities (Article 23)

6B.2.1 Physical Disability
6B.2.2 Mental Disability 195

6B.3 Health Services and Standard of Living (Article 18, 24, 26 and 27) 196
   6B.3.1 Programmatic Efforts to Address Children’s Health Issues 197
   6B.3.2 Privatisation of healthcare 201
   6B.3.3 Inadequate investment 203
   6B.3.4 Impact of Urbanisation, Industrialisation and Environmental Degradation on Children 204

7 Education, Leisure and Cultural Activities 207
   Introduction 207
   Part A: Progress on the Concluding Observations – A quick glance 208
      7A.1 Progress on Concluding Observations made by the CRC Committee 209
         7A.1.1 Recommendations that have been complied with 209
         7A.1.2 Measures under way 209
         7A.1.3 What remains 210
      7A.2 The Shifting goals of universalising education 210
         7A.2.1 Shifting goalposts leading to children still being denied education 211
   Part B 213
      7B.1 Right and Aims of Education (Articles 28 and 29) 213
         7B.1.1 Pre-primary education 214
         7B.1.2 Change in the Status of Elementary Education in India 215
         7B.1.3 Enrolment 216
         7B.1.4 Dropouts 221
         7B.1.5 Inadequate Infrastructure 223
         7B.1.6 Quality of Education 224
         7B.1.7 Corporal Punishment 226
         7B.1.8 Discrimination in Schools Persists 227
         7B.1.9 Parallel Systems of Education 230
         7B.1.10 Problem lies in conceptualisation of interventions 231
            7B.1.10.1 Growing dependence on private sector 231
            7B.1.10.2 Sarva Shiksha Abhiyaan 232
            7B.1.10.3 Loopholes in the Right to Free and Compulsory Education Act, 2009 234
            7B.1.10.4 Is the Right of Children to Free and Compulsory Education (RTE) Act truly justiciable? 236
            7B.1.10.5 Financing and Implementation of Education 236
            7B.1.10.6 Monitoring RTE: Role of NCPCR and the State Commissions 239
            7B.1.10.7 Mid-Day Meal Scheme (MDMS) 241
      7B.2 Leisure and Cultural Activities (Article 31) 243
8  Special Protection Measures

Introduction

Part A: Progress on the Concluding Observations – A quick glance

8A.1 Progress on Concluding Observations made by the CRC Committee

8A.1.1 Recommendations that have been complied with
8A.1.2 Measures under way
8A.1.3 What remains

8A.2 Shifting Goals on Child Protection

Part B: Present Status on Child Protection

8B.1 Children in Situations of Emergency (Articles 22, 38 and 39)

8B.1.1 Children and Armed Conflict (Articles 38 and 39)
8B.1.2 Child Soldiers
8B.1.3 Unaccompanied, Asylum Seeking and Refugee Children (Article 22)
8B.1.4 Children Affected by Natural Disasters

8B.2 The Administration of Juvenile Justice

8B.2.1 Evolution and the Present Status of Juvenile Justice Law in India
8B.2.2 Latest Amendment to the JJ Act
8B.2.3 Incidence of Crimes by Children
8B.2.4 Monitoring Progress

8B.3 Children in Situations of Exploitation, including Physical and Psychological Recovery and Social Integration (Articles 32, 33, 34, 35, 36 and 39)

8B.3.1 Economic Exploitation of Children (Article 32)
8B.3.2 Sexual Exploitation and Sexual Abuse (Article 34)
8B.3.3 Sale, Trafficking and Abduction (Article 35)
8B.3.4 Children and Substance Abuse (Article 33)
8B.3.5 Other forms of Exploitation (Article 36)

8B.4 Government’s Initiatives on Child Protection

8B.5 Budget Allocation and Expenditure

9  Ecological Rights of Children

Introduction

Part A: Ecological Rights as a Concept

Part B: Ecological Rights of Children
9B.1 Ecological Rights in India: International and National Commitments and Action

9B.1.1 Global Commitments
9B.1.2 National Commitments
   9B.1.2A Constitution of India
   9B.1.2B Policy Framework
   9B.1.2C Legal Framework
   9B.1.2D Action Plans and Programmes
   9B.1.2E Institutional Mechanisms

9B.2 Status of Ecological Rights of Children in India

Part C: Expected Role of the State
Part D: An Appeal to the Committee on the Rights of the Child

Annexures

1A Status of Ratification of International Human Rights Instruments
1B State Plans of Action for Children
1C Problems in the establishment and functioning of the State Commissions for Protection
   of Child Rights Compliance of Rules with the Commissions for Protection
1D Children’s Bill of Rights: Included in Class VII Social Science Text Books of NCERT
1E Concluding Observations of the Committee on the Rights of the Child: General measures of implementation
2A Concluding Observations of the Committee on the Rights of the Child: Definition of the child
3A Concluding Observations of the Committee on the Rights of the Child: General principles
4A Concluding Observations of the Committee on the Rights of the Child: Civil Rights and Freedoms
5A Concluding Observations of the Committee on the Rights of the Child: Family environment and alternative care
5B Data for Delhi on the number of parents waiting to adopt (both in- Country and inter-Country)
5C State-wise list of RIPAs, Shishu Grehs and Other Specialised Adoption Agencies
6A Concluding Observations of the Committee on the Rights of the Child: Basic health and welfare
6B Some Major Health Indicators
7A Concluding Observations of the Committee on the Rights of the Child: Education, leisure
   and cultural activities
8A Concluding Observations of the Committee on the Rights of the Child: Special measures of protection
9A Core Principles of the Earth Charter

311
312
312
313
315
316
321
322
342
342
345
350
352
354
356
362
364
368
372
375
376
377
383
385
388
396
398
<table>
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<tr>
<th>Acronym</th>
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<td>Andhra Pradesh</td>
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<td>Anti-retroviral Therapy</td>
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<td>Annual Status of Education Report</td>
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<td>ASHA</td>
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<td>August</td>
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<td>Anganwadi Worker</td>
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<td>Budget for Children</td>
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<tr>
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<td>Coalition Against Wildlife Trafficking</td>
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<tr>
<td>CBD</td>
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DTE  Directorate of Technical Education
DTE  Down to Earth
EBB  Educationally Backward Blocks
EC   European Commission
ECCD Early Childhood Care and Development
ECCE Early Childhood Care and Education
ECCED Early Childhood Care and Education and Development
ECD  Early Childhood Development
EE   Environmental Education
EFA  Education for All
EGS  Education Guarantee Scheme
ENOC European Network of Ombudspersons for Children
EPW  Economic and Political Weekly
EU   European Union
FDI  Foreign Direct Investment
Feb  February
FEMA Foreign Exchange Management Act
FERA Foreign Exchange Regulation Act
Fig. Figure
FORCES Forum for Crèche and Childcare Services
FRO  Foreigner Registration Office
FRRO Foreigner Regional Registration Office
FYP  Five Year Plan
GAWA Guardianship and Wards Act
GDP  Gross Domestic Product
GER  Gross Enrolment Ratio
GHG  Greenhouse gases
GMI  General Measures of Implementation
GNCTD Government of National Capital Territory of Delhi
GO   Government Order
Gol  Government of India
Govt Government
GTF  Global Tiger Forum
ha   hectare
HAMA Hindu Adoption and Maintenance Act
HDI  Human Development Index
HFA  Health for All
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<td>Sample Registration System</td>
</tr>
<tr>
<td>SSA</td>
<td>Sarva Shiksha Abhiyan</td>
</tr>
<tr>
<td>SSLC</td>
<td>Secondary School Leaving Certificate</td>
</tr>
<tr>
<td>ST</td>
<td>Scheduled Tribe</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>SUCCESS</td>
<td>National scheme for incentive to Girls for secondary</td>
</tr>
<tr>
<td>$</td>
<td>Dollar (United States)</td>
</tr>
<tr>
<td>TB</td>
<td>Tuberculosis</td>
</tr>
<tr>
<td>TERI</td>
<td>The Energy and Resources Institute</td>
</tr>
<tr>
<td>TFR</td>
<td>Total Fertility Rate</td>
</tr>
<tr>
<td>TIP</td>
<td>Trafficking in Persons</td>
</tr>
<tr>
<td>TNC</td>
<td>Transnational Corporation</td>
</tr>
<tr>
<td>TNN</td>
<td>Times News Network</td>
</tr>
<tr>
<td>TNPCB</td>
<td>The Tamil Nadu Pollution Control Board</td>
</tr>
<tr>
<td>TOI</td>
<td>Times of India</td>
</tr>
<tr>
<td>TRAFFIC</td>
<td>The Wildlife Trade Monitoring Network</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Trade Related Intellectual Property Rights</td>
</tr>
<tr>
<td>U-5MR</td>
<td>Under-five Mortality Rate</td>
</tr>
<tr>
<td>UEE</td>
<td>Universal Elementary Education</td>
</tr>
<tr>
<td>UIP</td>
<td>Universal Immunisation programme</td>
</tr>
<tr>
<td>UJJAWALA</td>
<td>Comprehensive Scheme for combating Trafficking</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNAIDS</td>
<td>Joint United Nations Programme on AIDS</td>
</tr>
<tr>
<td>UNCCD</td>
<td>United Nations Convention to Combat Desertification</td>
</tr>
<tr>
<td>UNDCP</td>
<td>United Nations Drug Control Programme</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Fund</td>
</tr>
<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
</tr>
<tr>
<td>UNFCC</td>
<td>United Nations Framework Convention on Climate Change</td>
</tr>
<tr>
<td>UNFF</td>
<td>United Nations Forum on Forests</td>
</tr>
<tr>
<td>UNFPA</td>
<td>United Nations Population Fund</td>
</tr>
<tr>
<td>UNGASS</td>
<td>United Nations General Assembly Special Session</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commission for Refugee</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
</tr>
<tr>
<td>UP</td>
<td>Uttar Pradesh</td>
</tr>
<tr>
<td>UPA</td>
<td>United Progressive Alliance</td>
</tr>
<tr>
<td>US</td>
<td>United States of America</td>
</tr>
<tr>
<td>UT</td>
<td>Union Territory</td>
</tr>
<tr>
<td>v</td>
<td>versus</td>
</tr>
<tr>
<td>VCA</td>
<td>Voluntary Coordination Agency</td>
</tr>
</tbody>
</table>
Vol  Volume
WFFC  World Fit for Children
WHO  World Health Organization
WP  Writ Petition
WTO  World Trade Organization

**Unit Conversion Scale**

1 Lakh  =  Hundred Thousand
1 Crore  =  10 Million
10 Crore =  1 Billion
1. Twenty Years of CRC – General Measures of Implementation

Introduction

Ratification of the Convention on the Rights of the Child (CRC) was indeed a reiteration of India’s commitment to its children as enshrined in its Constitution. Twenty years since ratification, there have been many highs and lows. This chapter looks at the changes that have taken place with respect to the general measures taken by the Government of India (GoI) for implementing the CRC.

The chapter is divided into three parts. The first part reflects on international human rights law and procedures and India’s position with respect to them; the second is on General Measures of Implementation (GMI) that have been put in place in India; and the third part deals with critical areas of concern that remain to be addressed.

Part A

India’s status and position on international human rights law and procedures – an overview

1A.1 India’s status vis-à-vis international human rights instruments relating to or having a bearing on children’s rights

A rights-based approach implies that all individual citizens, including children, are rights-holders and the State is the primary duty bearer. The Constitution of India guarantees certain Fundamental Rights to all citizens of the country. Special laws have been enacted to ensure these, especially for children, keeping in mind that while all children have equal rights, their situations are not uniform. Further, by ratifying various international human rights instruments, India has expressed its commitment from time to time to protect the human rights of all its citizens, including children. International human rights instruments ratified by a country have a significant bearing on its national legal provisions, programmes and policies.
1A.1.1 Status of ratification of international and regional human rights instruments directly related to realisation of children’s rights

India is a signatory to several international human rights treaties. While the GoI has ratified some, it is reviewing some others for ratification. There are also some yet to be signed. Annexure 1A attempts to collate India’s status of ratification vis-à-vis various UN conventions, the Hague Conventions, ILO Conventions and some Regional Conventions. An attempt has been made to provide an exhaustive – not complete – list. The table below reflects only on the treaties directly related to children.

Table 1.1 : Status of Ratification of Important International Human Rights Instruments

<table>
<thead>
<tr>
<th>International Legal Instruments</th>
<th>Status of Ratification/Signature/Adoption</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Children</strong></td>
<td></td>
</tr>
<tr>
<td>Convention on the Rights of the Child, 1989</td>
<td>RATIFIED on 11 December 1992 with a declaration on Article 32</td>
</tr>
<tr>
<td>Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography 2000</td>
<td>SIGNED on 15 November 2004 and</td>
</tr>
<tr>
<td>Optional Protocol to CRC on involvement of Children in Armed Conflict 2000</td>
<td>RATIFIED on 16 August 2005</td>
</tr>
<tr>
<td>Amendment to article 43 (2) of the Convention on the Rights of the Child, 1995</td>
<td>SIGNED on 15 November 2004 and</td>
</tr>
<tr>
<td></td>
<td>RATIFIED on 30 November 2005</td>
</tr>
<tr>
<td></td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td><strong>Women</strong></td>
<td></td>
</tr>
<tr>
<td>Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), 1979</td>
<td>SIGNED on 30 July 1980 and</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999</td>
<td>RATIFIED on 9 July 1993 with a declaration/reservation</td>
</tr>
<tr>
<td>Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, 1995</td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td><strong>Persons with Disabilities</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td><strong>Discrimination on grounds of caste/religion/ethnicity/language</strong></td>
<td></td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965</td>
<td>RATIFIED on 3 December 1968</td>
</tr>
<tr>
<td></td>
<td>RATIFIED on 27 August 1959</td>
</tr>
<tr>
<td>International Convention against Apartheid in Sports, 1985</td>
<td>ACCEDED on 12 September 1990</td>
</tr>
</tbody>
</table>

ILO http://www.ilo.org/ilolex/english/newratframeE.htm
HAGUE http://www.hcch.net/index_en.php?act=text.display&id=25
SAARC http://www.saarc-sec.org/SAARC-Conventions/63/
<table>
<thead>
<tr>
<th><strong>Refugees and Statelessness</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Status of Refugees, 1951</td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td>Protocol to the Convention on Status of Refugees, 1967</td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td>Convention relating to the Status of Stateless Persons, 1954</td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td>Convention on the Reduction of Statelessness, 1961</td>
<td>NOT SIGNED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Child Marriage</strong></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962</td>
<td>NOT SIGNED</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Torture</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984</td>
<td>SIGNED on 14 October, 1997</td>
</tr>
<tr>
<td>Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002</td>
<td>NOT RATIFIED (despite recommendation in this regard by the CRC Committee in its Concluding Observations in India's Second Periodic Report, India has not ratified this Convention)</td>
</tr>
<tr>
<td>International Convention for the Suppression of the Traffic of the Women and Children, 1921</td>
<td>RATIFIED on 28 June 1922 with reservations on age on Article 5</td>
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</table>

<table>
<thead>
<tr>
<th><strong>Slavery and Trafficking</strong></th>
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</tr>
</thead>
<tbody>
<tr>
<td>International Agreement for Suppression of White Slave Traffic, 1904</td>
<td>Declared Applicable to India at the time of transfer to the Secretary-General</td>
</tr>
<tr>
<td>International Convention for Suppression of White Slave Traffic, 1910</td>
<td>Declared Applicable to India at the time of transfer to the Secretary-General</td>
</tr>
<tr>
<td>International Convention for the Suppression of the Traffic of the Women and Children, 1921</td>
<td>RATIFIED on 28 June 1922 with reservations on age on Article 5</td>
</tr>
<tr>
<td>Slavery Convention, 1926</td>
<td>RATIFIED in 1954</td>
</tr>
<tr>
<td>Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices of Slavery, 1956</td>
<td>SIGNED on 7 September 1956</td>
</tr>
<tr>
<td></td>
<td>RATIFIED on 23 June 1960</td>
</tr>
<tr>
<td>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1951</td>
<td>SIGNED on 9 May 1950 and</td>
</tr>
<tr>
<td></td>
<td>RATIFIED on 9 January 1953</td>
</tr>
<tr>
<td>Convention against Transnational Organised Crime, 2000</td>
<td>SIGNED on 12 December 2002</td>
</tr>
<tr>
<td></td>
<td>SIGNED on 12 December 2002</td>
</tr>
<tr>
<td></td>
<td>RATIFIED on 5 May 2011</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Labour</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eight Core ILO Conventions</strong></td>
<td></td>
</tr>
<tr>
<td>ILO Convention No. 29 (Forced Labour, 1930)</td>
<td>RATIFIED on 30 November 1954</td>
</tr>
<tr>
<td>ILO Convention No. 87 (Freedom of Association and Protection of Rights, 1948)</td>
<td>NOT RATIFIED</td>
</tr>
<tr>
<td>ILO Convention No. 98 (Right to Organise and Collective Bargaining Convention, 1949)</td>
<td>NOT RATIFIED</td>
</tr>
<tr>
<td>ILO Convention No. 100 (Equal Remuneration Convention, 1951)</td>
<td>RATIFIED on 25 September 1958</td>
</tr>
<tr>
<td>ILO Convention No. 111 Discrimination (Employment and Occupation Convention, 1958)</td>
<td>RATIFIED on 3 June 1960</td>
</tr>
<tr>
<td>ILO Convention No. 138 (Minimum Age Convention, 1973)</td>
<td>NOT RATIFIED</td>
</tr>
<tr>
<td>ILO Convention No. 182 (Worst Forms of Child Labour, 1999)</td>
<td>NOT RATIFIED</td>
</tr>
<tr>
<td>International Convention on Protection of Rights of All Migrant Workers and Members of their Families, 1990</td>
<td>NOT SIGNED</td>
</tr>
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</table>
### SOME RELEVANT HAGUE CONVENTIONS

<table>
<thead>
<tr>
<th>Convention</th>
<th>Status</th>
<th>Signed/Ratified Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Civil Aspects of International Abduction, 1980</td>
<td>NOT SIGNED</td>
<td></td>
</tr>
<tr>
<td>Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants, 1961</td>
<td>NOT SIGNED</td>
<td></td>
</tr>
<tr>
<td>Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996</td>
<td>NOT SIGNED</td>
<td></td>
</tr>
<tr>
<td>Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 2007</td>
<td>NOT SIGNED</td>
<td></td>
</tr>
</tbody>
</table>

### Regional Conventions

<table>
<thead>
<tr>
<th>Convention</th>
<th>Status</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002</td>
<td>SIGNED on 5 January 2002 at the Eleventh SAARC Summit in Kathmandu on 4-6 January 2002</td>
<td></td>
</tr>
<tr>
<td>SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia</td>
<td>SIGNED on 5 January 2002 at the Eleventh SAARC Summit in Kathmandu during 4-6 January 2002</td>
<td></td>
</tr>
<tr>
<td>Proclamation on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region, 1992</td>
<td>Adopted on 5 December 1992</td>
<td></td>
</tr>
</tbody>
</table>

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**Law Min opposed to ratifying child abduction treaty**

Press Trust Of India  
New Delhi, September 05, 2010

The Law Ministry has opposed a suggestion on signing a three-decade-old international convention against child abduction, saying it will go against Indian women married abroad in cases related to child custody following marital discord. India has so far resisted international pressure, particularly from the West, to sign the 1980 Hague Convention against child abduction. But the Ministry of Women and Child Development is now understood to be in favour of ratifying the convention.

The Law Ministry has, however, maintained its stated position that the convention puts Indian women at disadvantage.

The Women and Child Development ministry, which got an opinion on the issue from National Commission for Women, believes that Hague convention protects interests of a child, rather than that of the parents.

The Law Ministry said its stand was because the Hague Convention only stresses about the prompt return of the child to the legal guardian and not the welfare of the child.

“The trend we have monitored so far is that in a majority of cases, the father is a citizen of a foreign country. This helps him winning cases related to the child’s custody. Mothers do not enjoy legal rights in a foreign country in majority of cases and end up losing custodial battles… this puts them at a disadvantage,” a senior Law Ministry official said here.

The return of the child should be subject to best interests of the child as a rule, the official added.

The latest move follows an increase in cases of disputes among Indian couples settled particularly in the United States and the United Kingdom, leading to legal battles for custody of children.

India has so far maintained that since it was a signatory to the 1989 United Nations Convention on the Rights of the Child, ratified by 192 countries, it saw no need to accede to the Hague Convention. Only 75 countries have acceded to Hague Convention.

1A.1.2 Ratification of CRC and its Optional Protocols

Amongst the various international human rights instruments listed above, India’s commitment to its children finds strength in the ratification of the CRC in 1992.

Subsequently, India also ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 16 August 2005 and the Optional Protocol on the involvement of children in armed conflict on 30 November 2005.

The country has thus agreed to ensure all rights for all children based on the principles of non-discrimination and the best interest of the child. The CRC revalidates the rights guaranteed to children by the Constitution of India and various laws, policies and programmes emanating therefrom.

However, while acceding to the CRC, India made a declaration on Article 32 stating that there are many reasons due to which children have to work in India and that while India recognises that children have to be protected from economic exploitation, it shall progressively implement Article 32, particularly Article 32 (a), which requires the states parties to provide a minimum age for all employment.

India’s Declaration on Article 32 of the CRC\(^2\) (protection from economic exploitation and work that is hazardous to a child’s education, health or physical, mental, spiritual, moral or social development)

**Declaration**

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

1A.1.3 Application of International Law in Domestic Legislation

The judicial decisions of the Supreme Court of India support the view that international treaties create legal rights and obligations in domestic law only if incorporated in it. In other words, an international legal instrument does not automatically become applicable in India on ratification. By ratifying a convention or treaty, India commits itself to abide by it and enact national laws in consonance with it. If the international treaty is in harmony with the domestic law in letter and spirit, it is automatically part of the domestic law; however, if it is not, then the national law shall prevail until it is amended or new legislation is enacted.

Article 249 of the Constitution of India empowers the Parliament to legislate on any subject falling in any list to fulfil its international obligations.

*Ratification of CRC has a binding effect and all national laws, policies, programmes and other actions must conform with the CRC or be brought in conformity with it.*

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The CRC can indeed be invoked in the courts as has been done on many occasions in the past. For example, in *Sakshi v Union of India and Others* (AIR 2004 SC 3566, 2004 (2)), both the CRC and CEDAW were invoked. Some judgements where CRC has been invoked or referred to by the courts are given in para 1B.1.5 of this chapter.

### International Human Rights Law and Its Relation to National Law

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.

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**Part B**

**Twenty years of India’s commitment to children and the CRC – General Measures of Implementation**

### UN Convention on the Rights of the Child – An Overview

The Convention can be divided into four main parts containing 54 Articles. These are:

- **Definition and General Principles** (Article 1, 2, 3, 6 and 12)
- **Specific Rights** (Articles 7-41)
- **Implementation and Monitoring of Rights** (Article 4 and 42-45)
- **Conditions under which the CRC comes into force** (Part III, Articles 46-54)

#### The Key Principles

- **Non-discrimination** (Article 2)
- **Respect for the best interests of the child as a primary consideration** (Article 3)
- **Right to life, survival and development** (Article 6)
- **Respect for the views of the child** (Article 12)

#### Definition of the Child

The Convention defines children as all persons less than 18 years of age, unless the legal age of majority in a country is lower.

#### Specific Rights

It incorporates a whole spectrum of human rights — civil, political, economic, social and cultural. These include:

- **Name and nationality;**
1B.1 General Measures of Implementation

The State implements the CRC by making legislations, policies and programmes and investing in them adequately. These are known as the general measures of implementation.

1B.1.1 National Legal Regime

Declaring itself a Republic on 26 January 1950, India gave itself a strong Constitution that mandated fulfilment of basic human rights of all people of the country. The Indian Constitution encompasses most rights included in the CRC as Fundamental Rights and Directive Principles of State Policy.

Both the Central government and state governments can legislate to ensure these Constitutional guarantees. While some matters are subjects of both the Centre and the states, some others are exclusively state subjects or Central government subjects as per the Concurrent List, the State List and the Union List respectively, contained in the Seventh Schedule to the Constitution of India.

In meeting its Constitutional obligations, several new laws were created in independent India and some of the old ones were inherited from the pre-independence period. Post- ratification of the CRC, important child-related legislation was amended. For example,

- the juvenile justice law was amended and an attempt was made to bring it in consonance with the CRC and other international legal instruments;
- the law prohibiting use of ultrasound technology for sex selective abortions was amended to make it more stringent;
- the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act was amended to prohibit advertisements of infant and milk substitutes to encourage survival and development;
- 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, and right against torture; and
- freedom of expression, thought and association, right to have access to information and to participate in matters affecting their life.

Monitoring Implementation of Rights

Articles 42-45 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 provide expert advice or such other support and to submit reports on the implementation of the Convention in their areas.
breastfeeding until children are 2 years old;
- the Information Technology Act was amended to cover child pornography;
- children between the ages of 6-14 years got the right to free and compulsory education; and
- the list of hazardous occupations prohibiting employment of children below 14 years was expanded to cover the domestic sector, restaurants, eateries and recreational centres, etc.

India’s children are protected by a range of Constitutional provisions and laws enacted over time. Many rules too have been framed and amended and guidelines and protocols established for ensuring better implementation of the laws. Several Court interventions have also upheld children’s rights. This section highlights these legal measures and interventions.

**1B.1.2 Constitutional Guarantees**

The Constitution of India is widely regarded as the most progressive in the world and is emulated by many other countries. It provides the basis for making policies and laws, including those specifically meant for children.

The essence of the Indian Constitution is reflected in its Preamble. The Preamble embodies the essential goals of justice, liberty, equality and fraternity for each citizen. Every child born in this country is by birth a citizen, so no efforts can be spared to establish these. Though the Preamble is not a legal statute, it is an inviolable component of the Constitution and serves the purpose of being a guiding light for the overall interpretation and understanding of the Constitution; it is a powerful guiding force and no law can be made that vitiates its essence.

*Children are equal citizens. They have the same rights as those enjoyed by every adult male or female in the country. Thus, important Fundamental Rights guaranteed to all citizens, including children, are:*

- **Article 21** Right to life and personal liberty and due process of law
- **Article 22** Right to protection against illegal detention
- **Article 14** Right to equality
- **Article 15** Right against discrimination
- **Article 16** Right to equal opportunity in matters of public employment
- **Article 19** Freedom of speech and expression
- **Article 23** Right to being protected from being trafficked and forced into bonded labour
- **Article 25** Right to freedom of religion
- **Article 29** Right of minorities for protection of their interests

*Fundamental Rights specific to children:*

- **Article 21 A** Right to free and compulsory elementary education for all children in the 6 to 14 year age group
- **Article 24** Right to be protected from any hazardous employment until the age of 14 years

*Directive Principles of State Policy guiding state action in matters relating to children specifically:*

The State shall take necessary measures to:

- **Article 39(e)** protect people from being abused and forced by economic necessity to enter occupations unsuited to their age or strength;
Article 39(f) provide equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guarantee protection of childhood and youth against exploitation and against moral and material abandonment;

Article 45 provide early childhood care and education to all children until they complete the age of six years;

Article 46 protect the weaker sections of the people from social injustice and all forms of exploitation; and

Article 47 provide nutrition and standard of living and improved public health.

Enshrined under the Chapters on Fundamental Rights and the Directive Principles of State Policy, these provisions go a long way in ensuring children their basic rights. Violations of these provisions have been brought to the notice of the courts from time to time.

The Directive Principles of State Policy articulate social and economic rights that have been declared as “fundamental in the governance of the country and … the duty of the state to apply … in making laws” (Article 37). Due to some very radical and powerful interpretations by the Supreme Court of India, many of these have now become enforceable and justiciable, and are seen as part of the Fundamental Rights to which children are also entitled.

This proactive role of the judiciary has helped in enlarging the understanding and scope of rights for children through progressive interpretation of the Constitution and harmonious construction of laws. One of the best examples of this is the now-famous judgement of 1992 in the Mohini Jain Case, reinforced by the 1993 judgement in the Unnikrishnan case, where the Supreme Court read Article 45 (which earlier provided for free and compulsory education up to the age of 14 years as a Directive Principle) along with Article 21 (which guarantees Right to Life and Personal Liberty as a Fundamental Right).

Article 21 was interpreted to mean that the Right to Life and Liberty not only includes the Right to Livelihood but also the Right to Dignity, which is not possible without education. The Right to Education was thus declared part of the Fundamental Right to Life. This paved the way for the 86th Amendment to the Constitution in 2002 that guaranteed education as a Fundamental Right for 6-14 year olds, and the subsequent Right of Children to Free and Compulsory Education Act, 2009. Similarly, in the PUCL case, the Right to Food has been interpreted as part of the Right to Life, which has resulted in the move towards framing the food security Bill.

Most importantly, certain Fundamental Rights in the Constitution of India are applicable even to non-citizens. These are the Right to Equality (Article 14), the Right to Life and Personal Liberty (Article 21) and the freedom to practice and propagate their own religion (Article 25). Any violation of these rights can be remedied through recourse to the judiciary as the Supreme Court of India and various High Courts have repeatedly held that refugees or asylum seekers cannot be discriminated against because of their non-citizen status.

1B.1.3 Legislation

The Constitutional guarantees listed above are implemented through several state and national laws, many of which are indeed progressive. The key laws and legal provisions that have a bearing on children’s rights include 57 special and local laws and about 60 provisions dealing with various crimes, punishments and procedures.

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3 Miss Mohini Jain v State Of Karnataka and Ors., 1992 AIR 1858, 1992 SCR (3) 658
4 Unni Krishnan, JP and Ors. Etc. v State of Andhra Pradesh and Ors., 1993 AIR 2178, 1993 SCR (1) 594
5 People’s Union for Civil Liberties v. Union of India and Others (PUCL), Writ Petition (Civil) No. 196/2001
as contained in the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act. While all the major laws have been listed below, the list is not exhaustive as there are many more state-specific laws and rules as well as judicial precedence set through case law.

## Laws and legal provisions specifically for children

### Special Laws

<table>
<thead>
<tr>
<th>Year</th>
<th>Law Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1890</td>
<td>Guardians and Wards Act (amended in 2010)</td>
</tr>
<tr>
<td>1933</td>
<td>Children (Pledging of Labour) Act</td>
</tr>
<tr>
<td>1956</td>
<td>Women’s and Children’s Institutions ( Licensing) Act</td>
</tr>
<tr>
<td>1956</td>
<td>Young Persons (Harmful Publications) Act</td>
</tr>
<tr>
<td>1960</td>
<td>Orphanages and Other Charitable Homes (Supervision and Control) Act</td>
</tr>
<tr>
<td>1986</td>
<td>Child Labour (Prohibition and Regulation) Act</td>
</tr>
<tr>
<td>1994</td>
<td>Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (amended in 2003 to become Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act</td>
</tr>
<tr>
<td>2000</td>
<td>Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 and in 2011</td>
</tr>
<tr>
<td>2009</td>
<td>Right of Children to Free and Compulsory Education Act, 2009</td>
</tr>
</tbody>
</table>

### Local Laws

<table>
<thead>
<tr>
<th>Year</th>
<th>Law Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>Goa Children’s Act (amended in 2005)</td>
</tr>
</tbody>
</table>

### Criminal Laws

**Indian Penal Code, 1860 (IPC)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>82</td>
<td>Age of criminal responsibility is fixed at 7 years as nothing done by a child under 7 years of age is an offence</td>
</tr>
<tr>
<td>83</td>
<td>Doli incapax – Need to establish sufficient maturity of a child between the ages of 7 to 12 years with respect to a particular act of crime as nothing is an offence which is done by such a child, who has not attained sufficient maturity of understanding to judge the nature and consequences of his action</td>
</tr>
<tr>
<td>185</td>
<td>Illegal purchase or bid for property by a public servant on account of a person who does not have the legal capacity to do so by himself/herself</td>
</tr>
<tr>
<td>228A</td>
<td>Disclosure of identity of a minor victim of rape is permitted only on the written authorisation of the next of kin of the victim</td>
</tr>
</tbody>
</table>

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7 Recently, on 19 August 2011, the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) was amended further to bring it in conformity with the Mental Health Act, 1987. The amendment thus ensures that children with mental illness or addicted to drugs or with diseases such as leprosy will not be segregated from other children, unless necessary in accordance with the laws in force in this regard and on recommendation of a specialist only for a specified time for the purpose of treatment.
18. Section 293 Selling, hiring, distributing, exhibiting or circulating obscene objects to persons below the age of 20 years
19. Section 299 Offence of culpable homicide is made out when the death of a living child is caused and any part of that child has been brought forth, even though the child may not have breathed or been completely born
   Explanation 3
20. Section 305 Abetment of suicide of child (person under 18 years) or insane person
21. Sections 310 Habitual association with others for child-stealing by means and of or accompanied with murder
22. Sections 312 Voluntarily causing a pregnant woman to miscarry the and 313 unborn baby or causing miscarriage without a woman’s consent
23. Section 315 Act done with intent to prevent child being born alive or to cause it to die after birth
24. Section 316 Causing death of quick unborn child
25. Section 317 Exposure and abandonment of child under 12 years, by parent or person having charge of its care
26. Section 318 Concealing the birth of a child by secretly disposing her/his body
27. Sections 361, 362 and 363 Kidnapping (Section 361) or abduction (Section 362) of a male minor under 16 years of age or a female minor under 18 years of age out of the lawful guardianship of such minor, without the consent of the guardian and punishment for it (Section 363)
28. Section 363 A Kidnapping or maiming a minor (under 16 years in case of males and under 18 years in case of females) for purposes of begging
29. Section 366 A Procuration of minor girls (under 18 years) for illicit intercourse
30. Section 366 B Importation of girls (under 21 years) to force them into illicit intercourse
31. Section 369 Kidnapping/abducting a child under ten years with intent to Steal from its person
32. Section 372 Selling a minor (person under 18 years) for the purpose of prostitution
33. Section 373 Buying a minor (person under 18 years) for the purpose of prostitution
34. Section 375 Rape with or without consent of a girl under 16 years Rape of a girl under 15 years by her own husband
   Exception
35. Section 376 Rape by the management or staff of a children's institution or where the girl raped is below 12 years of age
   (2)(c) and (f)
36. Section 376 C Sexual intercourse by the Superintendent (in-charge) of a children’s institution with a girl living in the institution, by taking advantage of his official position or through inducement or seduction, which is not rape

**Code of Criminal Procedure, 1973 (CrPC)**

37. Section 125 Maintenance for a dependent wife and children
38. Section 98 Power to compel immediate restoration of a woman or a female under 18 years of age abducted for unlawful purpose or detained unlawfully
39. Section 160 Police officer to reach a male witness under the age of 15 years or a woman witness at their residence for purposes of investigation instead of requiring their attendance before the police officer or in the police station
Other laws that have a bearing on children’s rights and/or contain exclusive provisions for children

**Special Laws**

<table>
<thead>
<tr>
<th>No.</th>
<th>Year</th>
<th>Act Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>40.</td>
<td>1869</td>
<td>Indian Divorce Act</td>
</tr>
<tr>
<td>41.</td>
<td>1872</td>
<td>Indian Christian Marriage Act</td>
</tr>
<tr>
<td>42.</td>
<td>1875</td>
<td>Indian Majority Act</td>
</tr>
<tr>
<td>43.</td>
<td>1925</td>
<td>Indian Succession Act</td>
</tr>
<tr>
<td>44.</td>
<td>1936</td>
<td>Parsi Marriage and Divorce Act</td>
</tr>
<tr>
<td>45.</td>
<td>1937</td>
<td>Muslim Personal Law (Shariat) Application Act</td>
</tr>
<tr>
<td>46.</td>
<td>1939</td>
<td>Dissolution of Muslim Marriages Act</td>
</tr>
<tr>
<td>47.</td>
<td>1941</td>
<td>Travancore Christian Guardianship Act</td>
</tr>
<tr>
<td>50.</td>
<td>1952</td>
<td>Mines Act</td>
</tr>
<tr>
<td>51.</td>
<td>1954</td>
<td>Special Marriage Act</td>
</tr>
<tr>
<td>52.</td>
<td>1955</td>
<td>Hindu Marriage Act</td>
</tr>
<tr>
<td>53.</td>
<td>1956</td>
<td>Hindu Adoptions and Maintenance Act (amended in 2010)</td>
</tr>
<tr>
<td>54.</td>
<td>1956</td>
<td>Hindu Succession Act (amended in 2005)</td>
</tr>
<tr>
<td>55.</td>
<td>1956</td>
<td>Hindu Minority and Guardianship Act</td>
</tr>
<tr>
<td>57.</td>
<td>1958</td>
<td>Probation of Offenders Act</td>
</tr>
<tr>
<td>58.</td>
<td>1958</td>
<td>Merchant Shipping Act</td>
</tr>
<tr>
<td>60.</td>
<td>1961</td>
<td>Apprentices Act</td>
</tr>
<tr>
<td>61.</td>
<td>1961</td>
<td>Motor Transport Workers Act</td>
</tr>
<tr>
<td>62.</td>
<td>1966</td>
<td>Beedi and Cigar Workers (Conditions of Employment) Act</td>
</tr>
<tr>
<td>63.</td>
<td>1969</td>
<td>Foreign Marriage Act</td>
</tr>
<tr>
<td>64.</td>
<td>1969</td>
<td>Registration of Births and Deaths Act</td>
</tr>
<tr>
<td>65.</td>
<td>1970</td>
<td>Contract Labour (Regulation and Abolition) Act</td>
</tr>
<tr>
<td>67.</td>
<td>1976</td>
<td>Bonded Labour System (Abolition) Act</td>
</tr>
<tr>
<td>68.</td>
<td>1978</td>
<td>Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (came into force w.e.f 25 June 1987)</td>
</tr>
<tr>
<td>69.</td>
<td>1984</td>
<td>Family Court Act</td>
</tr>
<tr>
<td>70.</td>
<td>1986</td>
<td>Indecent Representation of Women (Prohibition) Act</td>
</tr>
<tr>
<td>71.</td>
<td>1986</td>
<td>Muslim Women (Protection of Rights on Divorce) Act</td>
</tr>
<tr>
<td>72.</td>
<td>1987</td>
<td>Mental Health Act</td>
</tr>
<tr>
<td>73.</td>
<td>1987</td>
<td>Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act</td>
</tr>
<tr>
<td>74.</td>
<td>1989</td>
<td>Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act</td>
</tr>
</tbody>
</table>
75. 1992 Rehabilitation Council of India Act
76. 1994 Transplantation of Human Organ Act
77. 1995 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act
78. 1999 National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act
79. 2000 Information Technology Act (amended in 2008 to include child pornography)
80. 2005 Protection of Women from Domestic Violence Act

**Local Laws**
81. 1959 Bombay Prevention of Begging Act (applicable in Delhi also)
82. 1982 Karnataka Devadasi (Prohibition of Dedication) Act
83. 1986 Andhra Pradesh Devadasis (Prohibition of Dedication) Act

**Criminal Laws**

**Indian Penal Code (IPC), 1860**

Various provisions of the Indian Penal Code would apply to children as they would to adults; it may not be useful to list all. It suffices to state here that the Indian Penal Code provides specifically for crimes such as murder, wrongful confinement and restraint, grievous hurt and injury, harbouring or hiring a person to take part in riots or such other unlawful assembly, kidnapping and abduction for various purposes, rape, sodomy, prostitution, assault, criminal force, criminal intimidation, forgery, fraud, cheating, adultery, bigamy etc., which protect children equally. Yet, some provisions require specific mention; they are listed below.

84. Sections 364 Kidnapping/abduction in order to murder
85. Section 364 A Kidnapping/abduction for ransom
86. Section 365 Kidnapping/abduction for wrongful confinement
87. Section 366 Kidnapping/abduction of a woman to compel her marriage or for illicit intercourse and use of criminal intimidation or any other method of compulsion
88. Section 367 Kidnapping/abduction for slavery or to subject a person to grievous injury
89. Section 368 Wrongful concealment or keeping in confinement a kidnapped or abducted person
90. Section 370 Import/export/removal/buying/selling/disposing/accepting/receiving/detaining any person as a slave
91. Section 371 Habitual import/export/buying/selling/trafficking/dealing in slaves
92. Section 374 Unlawful compulsory labour
93. Section 354 Outraging the modesty of a woman
94. Section 367 Kidnapping/abduction to subject a person to unnatural lust of another person
95. Section 375, 376, 376 A, 376 B, 376 D Rape, including custodial rape, rape by hospital management and staff, marital rape etc.
96. Section 377 Unnatural sexual offences
97. Section 493 Cohabitation caused by a man deceitfully inducing a belief of lawful marriage
Code of Criminal Procedure (CrPC), 1973

100. Section 51(2)  Search of a female to be conducted by a female only with strict regard to decency

101. Section 53(2)  Medical examination of a female only by a female or under supervision of a female registered medical practitioner

102. Section 164 A  Medical examination of a rape victim and the procedure to be followed, including the need to take consent of the victim for the examination

103. Section 327(2)  In camera trial of rape cases

Indian Evidence Act, 1872

There are a few provisions in the Indian Evidence Act that protect the rights of victims of sexual offences, including children.

104. Section 114 A  The age of sexual consent in rape cases is 16 years under the Indian Penal Code. This implies there can be no question of consent in rape cases where the victim is below 16 years of age. Section 114 of the Indian Evidence Act states that where a woman alleged to have been raped tells the court that she did not consent, the court shall presume no consent. This provides some relief to the 16-18 year old victims of rape.

105. Section 151  It lays down that the Court may forbid questions or inquiries that it regards indecent or scandalous.

106. Section 146 (3)  Questioning the credibility of a rape victim during her cross-examination on grounds of “immoral character” is prohibited by virtue of the proviso to Section 146 (3). This was added through an amendment in 2003 along with the deletion of Section 155 (4) that used to allow such questioning.

Amendments in the procedural law relating to rape cases

Various amendments have been made to the Criminal Procedure Code in the past decade in relation to rape cases. While the 2005 amendments have come into force, amendments made in 2008 are yet to become enforceable.

The Criminal Procedure Code (Amendment) Act 2005, which came into effect on 23 June 2006, brought the following changes:

98. Section 164 A  This section provides for medical examination of a rape victim and the procedure to be followed, including the need to take consent of the victim for the examination

99. Section 53 A  This provision allows use of reasonable force on the accused if he refuses a medical examination

The 2008 Criminal Procedure Code (Amendment) Act  On 18 December 2008, the Code of Criminal Procedure (Amendment) Bill was introduced in the Rajya Sabha. It received the President’s assent on 7 January 2009 and was published in the Official Gazette of India on 9 January 2009. However, it has not yet come into force. The relevant amendments include the following.

- Proviso added to Section 157 (1), which made it mandatory for the statement of a rape victim to be recorded by the police at her residence or a place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or close relatives or social worker of the locality.

- Amendments to Section 161 and 164 allow statements to be recorded through electronic means.
Children’s issues are part of the Concurrent List or the State List appended to the Constitution of India. For matters in the Concurrent List, both the Centre and the states can form their own laws and policies. Moreover, even on Central legislation and policies that govern children, the states have to frame their own rules to implement them.

Central Rules

Rules have been framed by the Central Government for certain Central laws. Some of the important ones relating to children are listed below.

1988 Child Labour (Prohibition and Regulation) Rules
2006 National Commission for Protection of Child Rights Rules
2007 Juvenile Justice (Care and Protection of Children) Rules
2010 Model Rules under the Right of Children to Free and Compulsory Education Act, 2009

State Rules

State Rules under the Right of Children to Free and Compulsory Education Act, 2009

The Central Model Rules on Right of Children to Free and Compulsory Education were notified in the Official Gazette on 8 April 2010. As of 1 April 2011, one year after the Right to Free and Compulsory Education came into effect, the status of rules framed by the states and union territories for implementation of this right is as follows.9

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8 There are no state rules for implementing the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1994 (as amended in 2003) apply across the country and neither the main law nor these rules require the state governments to frame their own rules.

Table 1.2: Notification of State RTE Rules

<table>
<thead>
<tr>
<th>Rules Notified</th>
<th>Central Rules Adopted</th>
<th>Draft Rules Prepared but Not Notified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh, Arunachal Pradesh, Himachal Pradesh, Manipur, Orissa, Sikkim, Chhattisgarh, Madhya Pradesh, Rajasthan, Mizoram</td>
<td>Andaman and Nicobar Islands, Chandigarh, Lakshadweep, Daman and Diu, Dadra and Nagar Haveli</td>
<td>Assam, Bihar, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Maharashtra, Nagaland, Puducherry, Punjab, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand, West Bengal</td>
</tr>
</tbody>
</table>

State Rules under Juvenile Justice Act

In 2007, the Ministry of Women and Child Development (MWCD) notified the Juvenile Justice (Care and Protection of Children) Rules, 2007 as the Central Model Rules on juvenile justice. States are required to frame their own rules conforming to the 2007 Central Model Rules under Rule 96; else, the Rules apply mutatis mutandis. The exact status of formulation of juvenile justice rules in the states as per the 2007 Central Model Rules is not available. The little information that could be gathered from various sources in this regard is as follows.

**Andhra Pradesh**
The Andhra Pradesh Juvenile Justice (Care and Protection of Children) Draft Rules, 2009 have been framed but are not yet finalised.

**Assam**
New rules were notified recently on 22 September 2011.

**Bihar**
Status is not clear as new rules have not been formulated and there is nothing in writing to suggest that the Central Model Rules ought to be followed.

**Delhi**
New rules were formulated in 2009 to be called the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009.

**Gujarat**
The Gujarat Juvenile Justice (Care and Protection of Children) Rules, 2011 are dated 14 February 2011. They were issued by the Gujarat Social Justice and Empowerment Department.

**Haryana**
Haryana Juvenile Justice (Care and Protection of Children) Rules, 2009 have been approved according to a newspaper report dated 22 August 2009. However, the official website of the Haryana Government continues to suggest that the rules are dated 2002.

**Jharkhand**
The state has adopted the Central Model Rules of 2007.

**Karnataka**
The Juvenile Justice (Care and Protection of Children) Karnataka Rules, 2010 are in place.

**Kerala**
The state rules have not been revised and neither have the Central Model Rules of 2007 been adopted. In 2009, while dealing with the question of whether a woman was required to surrender her child before the CWC as per the Central Model Rules of 2007, the Kerala High Court ruled that the state was not bound by the central law.

**Madhya Pradesh**
New state rules were notified on 3 October 2008.

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Maharashtra
Old rules amended to be called the Maharashtra Juvenile Justice (Care and Protection of Children) Amendment Rules, 2011.

Orissa
Old Rules amended to be called the Juvenile Justice (Care and Protection of Children) Orissa Amendment Rules, 2009.

Rajasthan
New rules were notified on 13 May 2011.

Tamil Nadu
The Central Model Rules are being relied upon in Tamil Nadu in the absence of revised state rules. In 2008, the Madras High Court directed the state government to revise the draft rules. In the absence of revised rules, in January 2011, while dealing with a serial blasts case, when the petitioner pleaded that he was a juvenile as per the records required to be relied upon under the 2007 juvenile justice central model rules, the Madras High Court followed the central model rules in its decision.

Uttar Pradesh
According to the inspection of juvenile homes undertaken in Uttar Pradesh by virtue of the 10 February 2011 resolution of a High Court Committee chaired by Justice Vineet Saran, the state is following the Central Model Rules in the absence of formulation of the new state rules. However, there is no official circular in this regard.

West Bengal
New state rules are dated 2009.

Table 1.3: Rules for the various State Commissions for Protection of Child Rights

<table>
<thead>
<tr>
<th>S. No.</th>
<th>State</th>
<th>Year in which the rules were framed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Assam</td>
<td>Rules are yet to be notified</td>
</tr>
<tr>
<td>5.</td>
<td>Goa</td>
<td>Goa Commission for Protection of Child Rights Rules, 2010, notified on 4 November 2010</td>
</tr>
<tr>
<td>10.</td>
<td>Punjab</td>
<td>Information not available on rules though the Commission has been set up</td>
</tr>
</tbody>
</table>

Source: http://www.ncpcr.gov.in/scpcr.htm

14 A copy of the report is available with HAQ: Centre for Child Rights.
State Rules framed under the Child Labour (Prohibition and Regulation) Act, 1986

Here again, the status of rules framed by the states for implementation of the Child Labour (Prohibition and Regulation) Act is not known for all the states. The information available from various Central and state government websites is as follows.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>State</th>
<th>Year in which the rules were framed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bihar</td>
<td>1995</td>
</tr>
<tr>
<td>2.</td>
<td>Delhi</td>
<td>1988</td>
</tr>
<tr>
<td>3.</td>
<td>Goa</td>
<td>1994</td>
</tr>
<tr>
<td>4.</td>
<td>Gujarat</td>
<td>1994</td>
</tr>
<tr>
<td>5.</td>
<td>Haryana</td>
<td>1988</td>
</tr>
<tr>
<td>6.</td>
<td>Karnataka</td>
<td>1997</td>
</tr>
<tr>
<td>7.</td>
<td>Kerala</td>
<td>1993</td>
</tr>
<tr>
<td>8.</td>
<td>Madhya Pradesh</td>
<td>1993</td>
</tr>
<tr>
<td>9.</td>
<td>Meghalaya</td>
<td>As of 17 June 2011, Meghalaya is yet to notify the rules</td>
</tr>
<tr>
<td>10.</td>
<td>Orissa</td>
<td>1994</td>
</tr>
<tr>
<td>11.</td>
<td>Punjab</td>
<td>1997</td>
</tr>
<tr>
<td>12.</td>
<td>Rajasthan</td>
<td>Follows the Central Rules dated 1988</td>
</tr>
<tr>
<td>13.</td>
<td>Tamil Nadu</td>
<td>1994</td>
</tr>
<tr>
<td>14.</td>
<td>West Bengal</td>
<td>1995</td>
</tr>
</tbody>
</table>

1B.1.5 Important Judgements

There are several judgements of the Supreme Court of India and Delhi High Court in the area of child rights quoting or invoking the CRC, and many others from various courts upholding children’s rights under different laws. The section that follows provides a brief overview of a few cases invoking or quoting the CRC and other international human rights instruments related to children; others have been discussed or quoted in different parts of the report.

Court cases where the CRC and other international instruments have been invoked or cited

*Ajay Goswami v Union of India (AIR 2007 SC 493):* The matter brought forth the question pertaining to the freedom of speech and expression under Article 19 (1) (a) enjoyed by the newspaper industry, which was not maintaining a balance with the requirement of the protection of children from harmful and disturbing materials. By way of this petition, the petitioner requested the Court to direct the authorities to strike a reasonable balance between the Fundamental Right of Freedom of Speech and Expression enjoyed by the press and the Government’s duty to protect vulnerable minors from abuse, exploitation and harmful effects of such expression, being signatory to the CRC and the Universal Declaration of Human Rights. The petitioner requested the Court to direct the concerned authorities to provide for classification or introduction of a regulatory system for facilitating climate of reciprocal tolerance.

The Court held that there were self-regulatory mechanisms that were followed by the press. It stated that it was necessary that the publication must be judged as a whole and news items, advertisements or passages should not be read without the accompanying message purported to be conveyed to the public. Hence, the petition was dismissed.
**Gaurav Jain v Union of India (MANU/SC/0789/1997):** A public interest litigation (PIL) was filed before the Supreme Court, who had to decide the following questions.

- What are the rights of prostitutes’ children?
- How can they be segregated from their mother and others and protected?
- How can they be cared for and rehabilitated?
- How should prostitution be eradicated?
- What sustenance can flesh trade victims be provided?

The Court referred extensively to the UN Declaration on the Rights of Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice along with the UDHR and the CEDAW in support of its decision. The Court issued several directives for creating juvenile homes for the rehabilitation of child prostitutes and neglected children.

**Brindavan Sharma v State (CRL. A. 927/2002):** This case discloses the plight of the three children in a present case where their father was convicted for murdering his wife, the mother of the three children. The children were left destitute and virtually orphaned. The girl who is the eldest was living with her maternal grandfather and the two boys were put up at the Arya Orphanage. The two sons who were examined in the Court stated that the minute they reach the age of majority, they would be asked to leave the orphanage. In a situation where both the children were nearing the age of 18 years soon, the court was of the view that it was necessary to secure some kind of financial support to such victims of crime. The Court quoted the CRC along with the Indian Constitution while observing that it cannot be a helpless and mute spectator in such cases.

It stated that apart from the mandate of Articles 21 and 39 of the Constitution of India, this Court is duty bound to recognise the country’s obligation to its responsibilities and duties under the CRC 1989. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. It also observed that the need to extend particular care to the child has been stated in the

- Geneva Convention on the Rights of the Child, 1924;
- Declaration of the Rights of the Child adopted by the UN General Assembly on 20 November 1959 and recognised in the Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights (in particular Articles 23 and 24);
- International Covenant on Economic, Social and Cultural Rights (in particular Article 10); and in the statutes and relevant instruments of specialized agencies and international organisations concerned with children’s welfare.

It further bears in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” The Court went on to quote Articles 2.2, 8.1, 12.1, 12.2 and 39 of the CRC.

Accordingly, in consonance with the above mandates, the Court issued a notice directly to the Ministry of Social Justice and Empowerment, Government of India and the Secretary, Ministry of Women and Child Development to consider the framing of a scheme and provision of appropriate funds to benefit victims of crime, especially children, and set up a procedure to help hapless victims of both the crime and the punishment.

**Sakshi v Union of India (AIR 2004 SC 3566):** Sakshi, an NGO focusing on violence against women, petitioned the Supreme Court of India to declare that “rape” under India’s criminal rape law (Indian Penal Code, or IPC, Section 375) includes all forms of forcible penetration. Sakshi claimed that the current interpretation of the law, limiting rape to forcible penile/vaginal penetration only, violated both (1) the Indian Constitution and (2) India’s international commitments under instruments such as the CRC and the CEDAW. One of the main questions was regarding the definition of rape. The Court upheld the existing definition of rape as forcible penile/vaginal penetration only, refusing to include other forms of penetration within the ambit of rape as defined under
A strong policy framework forms the basis for developing plans of action, programmes and schemes as well as law reform.
Nine critical policy documents relate to or have a bearing on children’s rights. Some of these have been translated into action plans, programmes and schemes. These are listed below.

1B.2.1 Policy Documents

Policy documents specifically for children
- 1974 National Policy for Children (under revision)
- 1986 National Policy on Education
- 1986 National Policy on Child Labour
- 2003 National Children’s Charter

Other policy documents having a bearing on children’s rights
- 1988 National Policy for the Mentally Handicapped
- 1993 National Nutrition Policy
- 2002 National Health Policy
- 2003 National Youth Policy (the first policy was formulated in 1988; the 2003 policy is currently under revision)
- 2006 National Policy for Persons with Disabilities

National Policy for Children, 1974


National Charter for Children, 2003

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

The Charter reiterates the commitment of the Government of India to the cause of the children in order to see that no child remains hungry, illiterate or sick. Underlying this Charter is the intent to

- awaken the community’s conscience to protect children from all forms of abuse while strengthening the family, society and the nation,
- address the root causes that negate the healthy growth and development of children and
- to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood.

1B.2.2 Plans of Action for Children

Plans of Action for children have come to receive importance fairly recently. These are formulated both at the national and at the state level.
National Plans of Action

The various national plans of action for children\(^{15}\) that India has formulated in the past two decades are listed below.

1992  National Plan of Action for children


1998  National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children\(^{16}\)

2005  National Plan of Action for Children

2005  National Plan of Action for Children (NPAC) Affected by Human Immunodeficiency Virus (HIV)/Acquired Immuno Deficiency Syndrome (AIDS)\(^{17}\)

2005  Action Plan for the Inclusive Education of Children and Youth with Disabilities

A National Plan of Action for Children (NPA) was released in August 1992,\(^{18}\) following which India acceded to the Convention on the Rights of the Child in December 1992. The NPA for Children set quantifiable goals to be achieved by 2000 in the priority areas of health, nutrition, education, water, sanitation and environment. The NPA for the Girl Child (1991-2000) aimed at the removal of gender bias and enhancing the status of girl child in the society to provide them equal opportunities for their survival, protection and development. Both the Plans of Action adopted an inter-sectoral approach in achieving sectoral goals laid down in the Action Plans in close uniformity with the major goals of “Health for All”, “Education for All” etc.

The National Plan of Action of 1992 comprised goals and objectives not just for children but women as well.\(^{19}\) In fact, it also contained a section on “Children and Environment” (Section VIII).

In the year 2002, action for preparing a fresh National Plan of Action for Children was initiated by inviting comments and inputs from all the concerned ministries/departments at the Central level, state governments and union territory administrations, government institutions involved in welfare and development of children, NGOs and voluntary organisations, social workers and experts. As an outcome of this exercise, the National Plan of Action for Children, 2005\(^{20}\) was introduced in the Parliament to achieve the targets set by the Constitution of India and the World Fit for Children document adopted by the UN General Assembly at its 27th Session\(^{21}\) on 10 May 2002.\(^{22}\) At this UN Session, after negotiations lasting about a year and a half, fresh quantitative and qualitative goals for children for the present decade were set by consensus. These related to survival, health and nutrition, early childhood care and education and child protection. Accordingly, the 2005 National Plan of Action for Children generally includes goals, objectives, strategies and activities for improving nutritional status of children, reducing IMR and MMR, increasing enrolment ratio and reducing dropout rates, universalisation


\(^{17}\) ibid. p 283


\(^{19}\) ibid. Part IX, Women, p 29


\(^{21}\) ibid.

of primary education, increasing coverage for immunization etc. This is an important Plan of Action because it has included child budgeting and child participation for the first time.

Eight major parameters of the Plan are being regularly monitored at the Prime Minister's level. These parameters include reduction of infant mortality rate (IMR), child mortality rate (CMR), maternal mortality rate (MMR), universal access to safe drinking water and sanitation, elimination of child marriage, elimination of disability due to poliomyelitis and reduction in proportion of infants infected by HIV/AIDS.

To monitor the progress of the implementation of the National Plan of Action for Children, 1992 and National Plan of Action for the Girl Child, 1992, Inter-Ministerial/Inter-Departmental Coordination Committees were set up both at the central and state levels.\textsuperscript{23} The third and fourth CRC periodic report of Government of India states, “the National Plan of Action for the Girl Child has been merged into the NPAC, 2005, which includes goals, objectives, strategies and a time plan for the empowerment of the girl child”.\textsuperscript{24}

**State Plans of Action for Children**

The States are required to form their own State Plan of Action for Children. The 2007 National Report of Government of India on World Fit for Children reported that about 13 States have already prepared their Action Plans.\textsuperscript{25} Research carried out for preparing this report reveals that 17 states have had some plan of action for children in place. These include Assam, Arunachal Pradesh, Bihar, Delhi, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Orissa, Punjab, Rajasthan, Tamil Nadu and West Bengal (see Annexure 1B for details). Only Orissa and Bihar formulated their Plans of Action for Children after the National Plan of Action, 2005 was formulated. Karnataka and Kerala had prepared their action plans in 2004 and 2003 respectively and set goals to be achieved by 2010. Since their plans were formulated a year or two prior to the 2005 National Plan of Action, they did not reformulate them after 2005. However, as time passed, Karnataka got into action to draft a new action plan for children for the period 2011-2020, which is yet to be finalised.

Further, as per a 1995 report of the Government of India, the governments of Karnataka, Madhya Pradesh, Tamil Nadu and Goa have formulated State Plans of Action for Girl Children.\textsuperscript{26}

In 2008, the Government of Bihar formulated “Astitva”, the Bihar Action Plan for preventing and combating trafficking of human beings, and rehabilitating victims and survivors of trafficking.\textsuperscript{27} Even more recent is the Bihar government’s State Plan of Action for Elimination, Release and Rehabilitation of Child Labour.\textsuperscript{28} Karnataka too has a plan of action to deal with the Devadasi tradition (the practice of dedicating girls to gods and goddesses).\textsuperscript{29}

\begin{enumerate}
\end{enumerate}
1B.2.3 Children in the Five Year Plan Documents

Children’s issues started receiving greater attention in India’s planned development efforts from the Seventh Five Year Plan onwards. This was the five-year period preceding India’s ratification of the CRC. It therefore becomes crucial to look at the course of planning for children in the Seventh Five Year Plan period and the period of planned development after the CRC’s ratification in 1992 in terms of planned development for children. There is a clear shift in the approach to children’s issues with effect from the Eighth Five Year Plan. To begin with, over the years, the semantics has changed and the language of the CRC has come into the approach to planned development for children. Generally, there has been greater stress on setting monitorable targets and assessing the impact of various interventions and on convergence and coordination between ministries and departments, in addition to expansion of critical services.

The Seventh Five Year Plan, 1985-1990 did not have a separate section for children, though it did have a chapter on “Socio-Economic Programmes for Women”, which covered some of the concerns of children, especially the girl child. The other child-related issues covered were education, health and social welfare, for which the stated objectives were to improve the quality of life and to cater to the special needs of vulnerable sections like children, women and the disabled through organised and sustained development activities. The Seventh Plan had a small paragraph on child welfare within the chapter on social welfare (13.25). The Seventh Plan continued the strategy of promoting early childhood survival and development through programmes in different sectors, important among these being Integrated Child Development Services (ICDS), universal immunisation, maternal and childcare services, nutrition, pre-school education, protected drinking water, environmental sanitation and hygiene and family planning. The ICDS continued to be the main integrated national programme for early childhood survival and development.

The Eighth Five Year Plan, 1992-1997 had a separate section on child development in its chapter on social welfare. Human resources development being the major focus of the Eighth Five Year Plan, policies and programmes relating to “child survival, protection and development” were accorded high priority with emphasis on family and community based preventive services to combat high infant and under-5 child mortality and morbidity. The Eighth Plan viewed the development of children as an investment in the country’s future besides improving the quality of life of future generations. Therefore, it accorded high priority to family/community-based preventive services in combating the problems of infant and child mortality and morbidity. Efforts were also made to enhance the capabilities of families, especially those of the mothers to look after the basic health, nutritional and emotional needs of children in the 0-6 age group. In this process, the Eighth Plan recognised the “girl child” as an important target group and demanded the government’s attention to her development and to the fight against the prevailing gender discrimination. Being inter-sectoral in nature, development of children was seen as cutting across various sectors like health, nutrition, education, labour, welfare and women’s development. The Eighth Plan also recognised the need to address child abuse and juvenile justice.

The Ninth Five Year Plan, 1997-2002 reaffirmed its priority for the development of early childhood as an investment in the country’s human resource development through inter-ministerial strategies. The strategy aimed at

- placing the young child at the top of the country’s developmental agenda with a special focus on the girl child;
- instituting the National Charter for Children;
- ensuring that no child remains illiterate, hungry or lacks medical care;
- ensuring “survival, protection and development” through the effective implementation of the two National Plans of Action – one for children and the other for the girl child;
acknowledging the first six years as critical for the development of children, and therefore greater stress on reaching children below two years; and

continuing to lay a special thrust on the three major areas of child development, viz. health, nutrition and education.

The Tenth Five Year Plan, 2002-2007 set certain monitorable targets for women and children, including

- all children in school by 2003;
- all children to complete five years of schooling by 2007;
- reduction in gender gaps in literacy and wage rates by at least 50 percent by 2007;
- reduction in the IMR to 45 per 1000 live births by 2007 and 28 by 2012; and
- reduction of MMR to 2 per 1000 live births by 2007 and to 1 per 1000 live births by 2012.

The other objectives of the Tenth Plan included arresting the decline in the child sex ratio, increasing the representation of women in premier services and in the Parliament and universalisation of ICDS. It stated that, in particular, the intra-household disadvantages faced by women and children need to be recognised and redressed. It recognised heterogeneity within groups, acknowledged multiple discriminations and suggested pilot interventions to tackle them. The aim of these schemes, pilots and the Plan in general was not just to meet the monitorable targets but also to develop a new paradigm, wherein women and children found place within all sectors, ministries, departments and schemes.

The Eleventh Five Year Plan, 2007-2012 had a section called “Child Rights” for the first time in the history of planned development in India with a chapter entitled “Towards Women’s Agency and Child Rights”. Although child rights is yet to become a full fledged chapter in Five Year Plans, the Eleventh Plan indeed made a leap in finally deciding to move away from the language of welfare to rights as also providing a distinct section to children’s rights, if not a full chapter. The Eleventh Five Year Plan states that the development of children is at its centre. There was a paradigm shift in the Plan’s approach to children: it strove to create a protective environment that will ensure every child’s right to survival, participation and development. It recognised the need for investing in preventive aspects of protection, i.e. strengthening families to ensure that children do not fall out of the social security and protective net. The Plan also attempted to address the various challenges and problems that children confront as well as the need for convergence between ministries and states. In addition, it stressed on a review by every ministry/department of its policies, programmes, services, laws, budgets and procedures to examine how it can incorporate and integrate better development and protection of children. For the first time, it included a section on child budgeting, thereby recognising and affirming the importance of budgets as an important mechanism for both monitoring and affirming the realisation of child rights. While the Plan document talked about advising each sector to take up child budget analysis and publish reports on the progress of child indicators, this remains a challenge.

1B.3 Programmes and Schemes

A decadal analysis of the government’s budget from a child rights’ perspective undertaken by HAQ: Centre for Child Rights in 2000 found 120 budgeted programmes and schemes of the Central government for children, operational through 13 ministries. Now this number is 73, largely because many schemes have been merged, while a few have been completely closed down or replaced by some other new scheme. The reasons for closures and mergers are not given in the budget documents and are often not easily available in the annual reports of the ministries either.
This list does not include programmes like the National Mental Health Programme or drug de-addiction and rehabilitation programmes and other such schemes as these are not specifically for children nor do they have specific child-related objectives. In addition, there are several schemes of the state governments for children, which are not possible to list in this report.

In the 2010-11 budget of the central government, there are 73 programmes and schemes relating to children. These include:

**Survival and Health**
1. Kalawati Saran Children’s Hospital, New Delhi
2. Manufacture of Sera and Vaccine BCG Vaccine Laboratory, Guindy, Chennai
3. Grant to Pasteur Institute of India, Coonoor
4. Child Care Training Centre, Singur
5. Reproductive and Child Health Project (includes RCH Flexible Pool)
6. Routine Immunisation Programme
7. Pulse Polio Immunisation Programme
9. Indira Gandhi Sahyog Yojana (Conditional Maternity Benefit Scheme)

**Development**
10. Integrated Child Development Services
11. ICDS-World Bank IV Project
12. Contribution to UNICEF
14. Rajiv Gandhi National Crèche Scheme for the children of working mothers (previously named Day Care Centres)
15. Conditional cash transfer scheme for girl children with insurance cover – commonly referred to as the Dhanalakshmi scheme
16. Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG)
17. National Children’s Board
18. Universal Children Day
19. Institution of National Awards to Individuals and Institutions for Child Welfare
20. Innovative Work on Women on Children
21. National programme for youth and adolescent development
22. National Nutrition Mission
23. Integrated Education in Nutrition
24. Provision for social welfare in the North-East Region and Sikkim – Child Welfare
**Education**

**Elementary Education (HRD)**
25. Strengthening of Teacher Training Institutions
26. Mahila Samakhya
27. National Bal Bhavan, New Delhi
28. Mid Day Meal Scheme (Nutritional Support to Primary Education)
29. Sarva Shiksha Abhiyan
30. Scheme for Providing quality Education in Madrasas (SPQEM)
31. Scheme for Infrastructure in Development in Minority Institutions (IDMI)

**Secondary Education (HRD)**
32. National Council for Educational Research and Training (NCERT)
33. Kendriya Vidyalaya Sangathan
34. Navodaya Vidyalaya Samiti
35. Rashtriya Madhyamik Shiksha Abhiyan (RMSA)
36. Scheme for setting up 6000 model schools at the block level as a benchmark of excellence (from 2009-10 there was an allocation in 2008-09 for construction of New Model Schools)
37. Information Communication Technologies
38. Inclusive Education for the Disabled at Secondary Education (IEDSS)
39. National Institute of Open Schooling
40. Access and Equity
41. Central Tibetan Schools Society Administration
42. Vocationalisation of Education
43. National scheme for incentive to Girls for secondary education (SUCCESS)
44. Scheme for construction and running of hostels for girl students of secondary and higher secondary schools
45. Appointment of Language Teachers
46. National Means-cum-Merit Scholarship Scheme for studying in Classes 11-12 (less the amount from Social Infrastructure Development Fund)
47. Other programmes (support to joint Indo Mongolian School at Ulaanbaatar and national awards to teachers)

**Elementary and Secondary Education (Other Ministries)**
48. Post-matric scholarship schemes for the Scheduled Castes
49. Girls’ hostels for the Scheduled Castes
50. Boys’ hostels for the Scheduled Castes
51. Pre-matric scholarship schemes for the Scheduled Castes
52. Upgradation of merit of Scheduled Caste students
53. Pre-matric scholarship schemes for the Backward Classes
54. Post-matric scholarship schemes for the Backward Classes
55. Boys' and girls' hostels for the Backward Classes
56. Ashram schools in Tribal Sub-plan Areas
57. Scheme of PMS Book Bank and Upgradation of Merit of Scheduled Tribe Students
58. Schemes of Hostels for Scheduled Tribe Boys and Girls
59. Pre-matric scholarship for minorities
60. Post-matric scholarship schemes for minorities
61. Physical education grants to National Cadet Corps/public residential schools

**Protection**

62. Shishu Griha Scheme (erstwhile Homes for infant and young children for promotion of in-country adoption)
63. Integrated Scheme for Street Children
64. Scheme for welfare of working children and children in need of care and protection
65. Scheme for Prevention and Control of juvenile social maladjustment
66. Central Adoption Resource Agency (CARA)
67. National commission for Protection of Child Rights
68. Integrated Child Protection Scheme (ICPS)
69. Short Stay Home
70. Swadhar
71. Comprehensive Scheme for combating Trafficking (UJJAWALA)
72. Relief to and rehabilitation of rape victims
73. Child Labour Cell (Improvement in Working Conditions of Child/Women Labour) – commonly referred to as the National Child Labour Project (NCLP)

**1B.4 Mechanisms for Realisation of Rights of Children**

**1B.4.1 Ministries**

There are nine ministries catering to the needs of children in a substantial way. Other ministries that have taken a few initiatives are the Ministry of Home Affairs and the departments of atomic energy, nuclear power, industrial policy promotion, telecommunications and posts. These have taken small steps in the field of education by giving scholarships or setting up institutions or instituting rewards for children of their staff or other groups of workers in some of their areas of operation. However, the nine main ministries are listed below.

1. Ministry of Women and Child Development
2. Ministry of Health and Family Welfare
3. Ministry of Human Resource Development, Department of Education
4. Ministry of Labour and Employment
Separate Ministry for Women and Children

The Department of Women and Child Development was set up in 1985 as a part of the Ministry of Human Resource Development to give much-needed impetus to the holistic development of women and children. With effect from 30 January 2006, the Department was upgraded to a Union Ministry under the independent charge of the Minister of State for Women and Child Development. Largely, this consolidated two major child rights issues – early childhood care and child protection – under one ministry. However, specific programmes continue to remain with different ministries, such as on elimination of child labour, programmes and schemes for disabled children, children affected by HIV/AIDS, schemes for protection of children belonging to the Scheduled Tribes and Scheduled Castes and other minority communities.

1B.4.2 Other Institutions/institutional mechanisms set up for implementation and/or monitoring of programmes and schemes

- National Institute of Public Cooperation and Child Development (NIPCCD)
- National Institute for Social Defence (NISD)
- Central Adoption Resource Agency (CARA) and State Adoption Resource Agencies (SARAs), one in each state
- National Council of Teacher Education (NCTE)
- National and State Councils for Educational research and Training (NCERT and SCERTs)
- National Institute of Open Schooling (NIOS)
- National and State Commissions for Protection of Child Rights (NCPCR and SCPCRs)
- Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs)
- Special Juvenile Police Units at district level
- State and District Child Protection Units under ICPS
- Childline, a toll free helpline for children
- National Rehabilitation Council
- Family Courts
- Children’s Courts (designated only in Delhi so far)
- Child care institutions and protective homes, including adoption agencies

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30 Ministry of Women and Child Development, Government of India, About Us. Available at: http://wcd.nic.in/
The National and State Commissions for Protection of Child Rights

The National and State Commissions for Protection of Child Rights

The Commissions for Protection of Child Rights Act, 2005 (Act No. 4 of 2006) and the amendment to it in 2006 (Act No. 4 of 2007) deals with the establishment of Commissions (both at the Centre and States) and the creation of children’s courts to look into matters affecting children’s rights.

Accordingly, the National Commission for Protection of Child Rights, a statutory body of Government of India, was set up in March 2007 to protect, promote and defend child rights in the country. Recent information available on the website of the National Commission for Protection of Child Rights (NCPCR) mentions constitution of the State Commissions in 12 of the 35 states and union territories. These are Assam, Bihar, Chhattisgarh, Delhi, Goa, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan and Sikkim.

Information received from the Centre for Child and the Law, National Law School of India University (CCL NLSIU), Bangalore suggests that NGOs have approached the High Court and obtained directions for establishment of the SCPCR. In January 2011, the Jharkhand High Court directed the State Government to constitute the SCPCR in the State within a month. Similar directions have been issued to the Uttar Pradesh government, the Manipur government and the Haryana government by the Allahabad High Court, the Gauhati High Court (Imphal bench) and the Punjab and Haryana High Court, respectively. Andhra Pradesh and Gujarat are reported to be thinking of setting up a Joint Commission for Women and Children or vesting the already existing State Commission for Women with the additional mandate of child rights. News reports suggest that Gujarat has already taken this step in April 2011.

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33 Public Interest Litigation (PIL) no. - 11109 of 2011 at Allahabad High Court. Order, Available at: http://elegalix.allahabadhighcourt.in/elegalix/StartWebSearch.do
34 HC directs setting up of child commission, Huelyen News Service 11, January 2011 at http://www.e-pao.net/GP.asp?src=12...180111Jan11 accessed on 22.6.2011
36 CCL-NLSIU, Submission to the National Commission for Protection of Child Rights on the Status of the State Commissions for Protection of Child Rights, 22 June 2011
The Act provides the Commission(s) with the authority to investigate into matters relating to law and policy affecting children, and to make recommendations for changes (section 13). The Commission(s) has/have been empowered to examine all factors that inhibit the enjoyment of rights of children. The Commission(s) has/have been authorised to look into international treaties and look into the implementation of these instruments, particularly the CRC, to undertake and promote research in the field of child rights and spread child rights literacy among various sections of the society (by publication, media and seminars). The Commission(s) has/have also been authorised to inspect or cause to be inspected any institution established by the government or voluntary organisations that are operating as juvenile homes/short stay homes/observation homes/rehabilitation homes etc. to inquire into complaints or take suo motu action. The Commission is required to be informed by children's views, undertake investigations on concerns expressed by children, produce and disseminate information on child rights and promote incorporation of child rights into school curriculum, teacher's training and training of other personnel dealing with children. In addition, the Right of Children to Free and Compulsory Education Act, 2009 requires the National and State Commissions for Protection of Child Rights to monitor the implementation of the Act. By virtue of Supreme Court and Delhi High Court orders, the NCPCR has also been given additional responsibilities from time to time. For instance, the NCPCR constituted a committee to formulate a detailed action plan for strict enforcement and implementation of the Child Labour (Prohibition & Regulation) Act (CLPRA), 1986 and other related legislation pursuant to the Order of Hon’ble High Court of Delhi dated 24 September 2008 issued in the WP (Crl.) 2069/2005, WP(C) 4125/2007 and WP(C) 4161/2008. In December 2009, the Delhi High Court had set up an NCPCR committee to probe into
the death of children in Asha Kiran, a home for mentally retarded children in Delhi.\textsuperscript{41} Similarly, the Supreme Court of India had directed the NCPCR to inquire into cases of child trafficking in March 2010.\textsuperscript{42}

### 1B.5 Coordination and Monitoring

The National Coordination Group on the Rights of the Child (NCG) was formed in 2004 to coordinate and monitor implementation of the CRC and other national and international instruments related to child rights. The NCG was first reconstituted in April 2005 and then again in October 2007.

The National and the State Commissions for Protection of Child Rights also have a mandate to monitor implementation of child rights.

In fact, the Right of Children to Free and Compulsory Education Act requires the National and State Commissions to “examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation” and “inquire into complaints relating to child’s right to free and compulsory education”.\textsuperscript{43}

On juvenile justice matters, the Supreme Court of India has asked all the High Courts to

- designate a High Court judge to oversee the condition and functioning of the remand/observation homes;
- expedite the matter with the state governments for setting up of the Juvenile Justice Boards wherever they have not yet been set up; and
- nominate a Judge to make periodical visits to the juvenile homes and suggest remedial measures for betterment of the conditions of the juvenile homes and the inmates”.\textsuperscript{44}

Some programmes and schemes too have inbuilt coordination mechanisms. For instance, the National Child Labour Projects are to be coordinated by district collectors through district level committees consisting of a representative from the departments of education, health, social welfare, NGOs etc.

In addition, monitoring is built into various laws and programmes or schemes of the government.

### 1B.6 Data Collection and Management

The CRC Committee has in both its Concluding Observations on India stressed the need for disaggregated data on all child rights indicators. The various government sources of information from where data relating to children can be accessed are listed below.\textsuperscript{45}

- The Census of India – provides disaggregated decadal data on demographic indicators, birth and death rates, marriage, literacy, children out of school, child labour and work participation rates by industrial category and some forms of disability.

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\textsuperscript{42} Supreme Court directs NCPCR to probe children trafficking Available at: http://headlinesindia.mapsofindia.com/crime/human-trafficking/supreme-court-directs-ncpcr-to-probe-children-trafficking-43808.html

\textsuperscript{43} Section 31 (1) (a) and (b), Right of Children to Free and Compulsory Education Act, 2009, Ministry of Law and Justice (Legislative Department), Gazette of India Notification, 27 August 2009

\textsuperscript{44} Chief Justices’ Conference 2006 and 2009, Response from Additional Registrar and CPIO, Supreme Court of India to an application filed under the Right to Information Act by Pratidhi (Dy No.1548/RTI/09-10/SCI, dated 17 April 2010

Sample Registration System – birth and death rates, birth and death registration levels, fertility rates, infant mortality rate, neonatal mortality, child mortality and maternal mortality.

District Level Household Survey – measures progress on reproductive and child health indicators and services, including child marriage.

National Family Health Survey – provides data on several health indicators, including child marriage and birth registration.

National Nutrition Monitoring Bureau carries out periodic nutritional surveys.

National Annual Educational Statistics – provides data on all levels of education, from pre-primary to higher secondary, particularly on enrolment ratios, drop-out rates, teacher-pupil ratio, number of schools and school infrastructure.

District Information System for Education (DISE) – provides annual district and sub-district level school data on enrolment, dropout, retention at different levels of schooling, number of teachers, school management, number of schools, school infrastructure, learning and achievement levels.

National Sample Survey Organisation – carries out sample surveys on certain socio-economic indicators such as poverty levels, employment, health and education.

Annual Surveillance of HIV – monitors and tracks the prevalence, spread and trends of HIV/AIDS, awareness and behavioural patterns related to HIV/AIDS as well as identification of high-risk groups.

National Crime Records Bureau – tracks crime registered in India and disposal of cases, including those relating to children, both as victims of crime and as children who come in conflict with the law.

In addition to these, the MWCD is working on a web-based child-tracking portal as part of its Integrated Child Protection Scheme. The all-India level data on a number of in-country and inter-country adoptions is available on the website of the Central Adoption Resource Authority (CARA), which has also launched CARINGS, a web-based portal for use by adoption agencies only. The portal is meant to provide information on children declared legally free for adoption as well as prospective adoptive parents registered with the agencies.

Moreover, different ministries carry out research studies at different points of times on certain child rights indicators. For example, in 2007, the MWCD carried out a national study on child abuse. In 2005, the Ministry of Human Resources Development carried out a survey of out-of-school children. In the states too, different departments carry out different surveys and research studies. In Delhi, for example, the Ministry of Law and Justice commissioned two studies in 2010 on the functioning of the juvenile justice boards and the child welfare committees in Delhi respectively.

Some studies are carried out by agencies like the National Institute of Public Cooperation and Child Development (NIPCCD) and the NCPCR.

Besides, research studies, fact findings and social audits are supported or carried out by UNICEF, UNDP, UNODC and other international and national NGOs, which add to the information base on various child rights indicators.
1B.7 Training and Capacity Building

The NIPCCD functions under the aegis of the MWCD, as a nodal resource agency entrusted with the responsibility of training and capacity building of government functionaries from various departments and NGOs on child rights, child protection, early childhood care and child development. It operates through a national office in Delhi and regional offices in Lucknow (for the northern region), Bangalore (for the southern region), Indore (for the western and central regions) and Guwahati (for the north east and eastern regions).

The VV Giri National Labour Institute has been organising training and capacity building programmes on the child labour issue for both government functionaries and NGOs.

In addition, various judicial and police academies have been carrying out trainings of police, judges, members of child welfare committees and juvenile justice boards and other such bodies set up for protection of children. The UNICEF country office and state offices too have collaborated with the national and state judicial academies, police academies and state departments to organise training and capacity building programmes and interfaces between stakeholders on crucial child rights issues. With the launch of the ICPS in the Eleventh Five Year Plan and all states signing a memorandum of understanding (MoU) with the Centre for implementing the scheme, the demand for training on child protection in general and juvenile justice, child abuse, child marriage, child labour etc., in particular, has increased.

Several NGOs act as a resource agency on child rights out of their own commitment and provide training to both government and non-government actors on various child rights issues.

1B.8 Resources

Budget for Children

The MWCD has been undertaking an analysis of the budget for children since 2003. This was a time when budget analysis had been established as a monitoring tool by civil society groups that analysed the national budget in the context of specific issues such as education or special groups of people such as *dalits* and children.46 Drawing upon the existing civil society initiatives on child budget analysis, the then Department of Women and Child Development announced at a national meeting in October 2005 that it would undertake a child budget analysis for the Centre as well as the states. Since, then it has been a regular feature of the MWCD.

As a policy commitment, child budgeting thus found space in both the National Plan of Action, 2005 and the Eleventh Five Year Plan documents.

Moreover, in 2008-09, as an outcome of advocacy by civil society organisations, the Finance Bill included a separate expenditure statement on children (Statement No. 22). This has since become a regular feature in the Finance Bill and is presented to and passed by the Parliament every fiscal year.

The share of children in the Union Budget has gone up by 4.3 percent in the twenty-year period between 1990-91 and 2011-12. Currently, it is 5.03 percent.

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46 Some of the organisations that have undertaken national level budget analysis in different contexts include DISHA (in Ahmedabad, Gujarat); Centre for Budget and Policy Studies (in Bangalore, Karnataka); Centre for Budget Studies (in Mumbai, Maharashtra); Tamil Nadu People’s Forum for Social Development (in Chennai, Tamil Nadu); Centre for Budget and Governance Accountability (in Delhi); and HAQ: Centre for Child Rights (in Delhi).
Between 1990 and 1998, out of the total Union Budget expenditure, the actual spending on children increased by 1 percent (from 0.6 percent in 1990 to 1.6 percent in 1998). The decadal average of spending on children went up from about 2 percent of the total Union Budget during 1990-2000 to a little over 4 percent during 2001-2010.

There is no regular pattern of increase or decrease in the children’s share in respective state budgets. Data from some states for 2001-02 to 2008-09 is as follows.

- Andhra Pradesh – increase of 3.5 percent (it was 15.85 percent in 2008-09)
- Orissa – increase of 2.3 percent (it was 14.99 percent in 2008-09)
- Himachal Pradesh – decrease of 4.65 percent (it was 10.79 percent in 2008-09)

Budgetary allocations and expenditure for children in the Union Budget in the past decade are as shown in Fig. 1.1, 1.2 and 1.3.

Recognizing that children under 18 constitute a significant percentage of the Indian population, the Government is committed to their welfare and development. This statement reflects budget provisions of schemes that are meant substantially for the welfare of children. These provisions indicate educational outlays, provisions for the girl child, health, provisions for child protection, etc.

— Ministry of Finance, Government of India, Expenditure Budget, Volume I, 2008-09

“We will score another ‘first’ this year. A statement on child related schemes is included in the budget documents and Honourable Members will be happy to note that the total expenditure on these schemes is of the order of Rs. 33,434 crore.”

— Finance Minister, Budget Speech, Budget 2008-2009
The average share of budget allocation for children in the Union Budget between 2000-2001 and 2008-09 was 3.75 percent.

1B.9  Reporting on Implementation of the Rights of the Child

As India ratifies international legal instruments, it also commits itself to monitoring their implementation and to reporting on them periodically.

1B.9.1  Reporting on World Fit for Children +5

The year 2007 marked the mid-decade point for the Plan of Action of “A World Fit for Children”. The Plan of Action is a commitment by world leaders from more than 180 countries to protect and promote children’s rights.

Through its MWCD, the Government of India reported on its progress in achieving the World Fit for Children goals at a follow-up to the Special Session on Children on 11 and 12 December 2007. The report was prepared in collaboration with the concerned ministries and departments involved in children’s issues at the Union level and all the state governments/union territory administrations to take action for gathering information to enable the MWCD to prepare an analytical report as per the UN requirement. The ministries/departments and the state governments/union territory administrations were provided with UN guidelines to prepare their information with participation of civil society, NGOs and other agencies involved in children’s issues. They were requested to use their own methodology as per their local needs and requirements in gathering information by involving all concerned and to furnish it to the MWCD for preparing the National Report.47

1B.9.2  Reporting to the Committee on the Rights of the Child

India ratified the CRC on 11 December 1992. The Convention came into force on 11 January 1993. Subsequently, in 2005, India also ratified the two Optional Protocols to the CRC. The Optional Protocol on sale of children, child prostitution and child pornography was ratified on 16 August 2005 and came into force

Source: Detailed demands for grants of various Ministries, 2000-01 to 2008-09

\[\text{Fig. 1.3: Expenditure in BfC as percentage of Union Budget}\]


Table 1.5: India’s status on CRC and the Reporting Process

<table>
<thead>
<tr>
<th>Reporting by Government of India</th>
<th>Due Date</th>
<th>Date of submission</th>
<th>Symbol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Report</td>
<td>10 January 1995</td>
<td>19 March 1997</td>
<td>CRC/C/28/Add.10</td>
</tr>
<tr>
<td>First Periodic Report</td>
<td>10 January 2000</td>
<td>10 December 2001</td>
<td>CRC/C/93/Add.5</td>
</tr>
<tr>
<td>Third Periodic Report</td>
<td>10 January 2005</td>
<td></td>
<td>Government of India missed the due date. As an exceptional measure, a consolidated third and fourth periodic was due before 28 May 2008. Missing this date, a new date was set out as 10 July 2008. The combined report was submitted only as recently as September 2011. Awaited</td>
</tr>
<tr>
<td>Fourth Periodic Report</td>
<td></td>
<td></td>
<td>Government of India later set out to submit the report before 10 July 2008. The combined report was submitted in September 2011. Awaited</td>
</tr>
</tbody>
</table>

Optional Protocol on sale of children, child prostitution and child pornography
Date of ratification/accession – 16 August 2005
Date of entry into force – 16 September 2005

<table>
<thead>
<tr>
<th>First Report</th>
<th></th>
<th>Submitted in September 2011</th>
<th>Awaited</th>
</tr>
</thead>
</table>

Optional Protocol on children in armed conflict
Date of ratification/accession – 30 November 2005
Date of entry into force – 30 December 2005

<table>
<thead>
<tr>
<th>First Report</th>
<th></th>
<th>Submitted in September 2011</th>
<th>Awaited</th>
</tr>
</thead>
</table>

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The first-ever report on the two Optional Protocols of the CRC has also been submitted recently in September 2011, along with the third and the fourth combined periodic report on CRC. The CRC Committee is yet to acknowledge the receipt of these reports on record.

Part C

Gaps and Challenges

Many milestones and yet lots to be achieved! There is no doubt that India’s performance on the General Measures of Implementation (GMI) has improved over the years. However, there are concerns that must be addressed to ensure child-sensitive governance and proper implementation of laws, policies and programmes. Some of the major concerns shared by various stakeholders have been discussed in this third and final part of the chapter.

1C.1 Need to harmonise domestic law with international human rights obligations

In the Concluding Observations on the second periodic report of India (CRC/C/93/Add.5), the CRC Committee has appreciated adoption of the Constitution (86th Amendment) Act, 2002 providing for free and compulsory education to all children 6-14 years old and adoption of the 2003 amendment to the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. However, it has expressed its concern over domestic legislation, particularly religious and personal laws governing family matters, not being in conformity with the provisions and principles of the CRC. The Committee recommended that the State party:

(a) Scrutinize carefully existing legislative and other measures, including religious and personal laws, both at the federal and state levels, with a view to ensuring that the provisions and principles of the Convention are implemented throughout the State party;

(b) Ensure the implementation of its legislation and its wide dissemination*.

While India has made commendable progress in improving its legislative framework for ensuring children’s rights, there are challenges that remain in the application and scope of the laws as well as their implementation.

The most imperative need of the hour is to revive the process of drafting a Uniform Children’s Code that clearly establishes the rights recognised, promoted and protected by the government and that lays down the principles for evolving child jurisprudence, harmonising the existing laws and identifying gaps where further amendments or law making is required.

For example, a great need is being felt to ensure that children of all communities are treated equally and do not suffer discrimination merely on grounds of varying customary laws and practices. While the Constitution of India guarantees freedom of religion and its practice, there is a need to harmonise personal and customary laws with international human rights obligations. The absence of a uniform children’s code leaves family matters such as marriage, divorce, adoption and succession to the interpretation of the personal laws of different communities.

Similar concerns need to be addressed in states and regions that are governed by special legal provisions and regulations to ensure that rights of children in these areas are guaranteed.
1C.2 Strengthening Law and Policy formulation and reform

The need for a Uniform Children’s Code or Bill of Rights to provide the basis for law and policy formulation has been established in the previous section. What is also needed is a national policy that sets the framework for law making and legislative reform. The National Policy for Children, 1974 is outdated. The absence of a revised national policy implies the lack of a guiding document that could go a long way in addressing the existing gaps in legislation and could help in strengthening both the substantive and procedural aspects of laws meant for protecting children’s rights.

A “child impact assessment” must also precede the formulation and reform of all laws and policies. Unfortunately, this has been the most neglected part of the law and policy making processes. The proposed Protection of Children against Sexual Offences Bill, 2010 was a result of a national study on child abuse undertaken by the MWCD in 2007 and laid down a good practice to be followed. A similar process should be adopted even for laws such as the proposed Mining and Mineral Development and Regulation Bill, 2011 that is pending with the Parliamentary Standing Committee. Such a law must draw upon a child impact assessment to address issues concerning children and mining.

While laws and policies need to be sensitive to the various cultural and ethnic practices of the people, it also needs to be ensured that this does not result in the State succumbing to cultural relativism. Adherence to human rights principles can help achieve this objective.

Another concern requiring attention is the need for a national law to provide for refugees in a systematic and uniform manner. Writing on India’s policies towards refugees, Tapan K Bose is of the view that India has followed “a programme of humane treatment of refugees”, though “there is still an absence of uniform treatment of different refugee groups with respect to refugee rights, resulting in discrimination in terms of assistance and opportunities”.

It was only after India submitted its initial report to the CRC Committee in 1997 that legislative and policy reform gained some impetus. While many laws have been amended, amendments with respect to some others have been awaited for long; a few others are in the pipeline.

Some of the laws that came into existence after 1992 were not really an outcome of efforts at improving the implementation of CRC but of various civil society campaigns and advocacy (not necessarily those working with children). For example, enactment of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT Act) to check sex selective abortion and female foeticide was a clear result of several years of campaigning by women’s rights activists and health groups. The call for amendment to it in 2003 also saw proactive contributions from the child rights movement, which in many ways strengthened after the submission of India’s initial report to the CRC Committee in 1997.

Laws that have been amended post ratification of the CRC can be found in section 1B.1.3 on “Legislation” within section 1B.1.1 on “National Legal Regime”. A few important laws pending amendment include

- Immoral Traffic Prevention Act, 1956;
- Child Labour (Prohibition and Regulation) Act, 1986;
- Transplantation of Human Organs Act, 1994;

Amendment in the criminal laws to address sexual violence, abuse and exploitation (the rape law in particular);

Registration of Births and Deaths Act, 1969; and

Laws relating to disability are currently being amended in line with the Convention on the Rights of Persons with Disabilities, 2006.

Many of these proposed amendments have been in the pipeline for years; for instance, the Immoral Traffic Prevention (Amendment) Bill has been on the anvil since 2006. Very recently, on 5 May 2011, India ratified the Convention on Transnational Organised Crime and its Optional Protocol to Prevent, Suppress and Punish in Trafficking Persons, Especially Women and Children. This calls for putting in place immediately a law defining human trafficking, especially child trafficking, covering all its forms and purposes and providing for measures to ensure prosecution of traffickers.

On the amendment to the Child Labour Act, there is no news, although civil society has been demanding that the government

- define “child labour” as labour by children below 18 years of age,
- make child labour a cognisable offence,
- consider all child labour as hazardous since it deprives children of their childhood,
- at least add agriculture and household industry to the list of hazardous sectors of employment thereby prohibiting employment of children in this sector,
- amend the child labour laws in the light of the Right to Education guaranteed by the Constitution of India etc.

The Transplantation of Human Organs (Amendment) Bill, 2009 was introduced in the Lower House of the Parliament on 18 December 2009 to amend the Transplantation of Human Organs Act, 1994. The objective of the amendment is to protect the vulnerable sections of the society from being exploited commercially by unscrupulous elements and check trafficking of persons for organ transplant. The report of the Department-related Standing Committee on Health and Family Welfare was presented on 4 August 2010. The Bill is still under consideration.

While the Criminal Law Amendment Bill, 2009 seeking reform in the law on sexual assault against women has disappeared from public discussion and can no longer be found on the website of the Home Ministry, the Protection of Children from Sexual Offences Bill, 2011 was tabled in the Rajya Sabha (Upper House of the Parliament) on 23 March 2011.

In 2005, the MWCD announced a Bill on offences against children. Civil society actors have since engaged in several discussions amongst themselves and sought wider consultations and transparency from the MWCD before any finalisation of their proposals. After 2005, following a long silence of over three and a half years, the NCPCR organised a meeting on 19 January 2009 to discuss the erstwhile Bill. The need for a law to deal specifically with sexual offences against children came into focus at this meeting. At the same time, the Home Ministry put up a draft on its website inviting comments on the Criminal Law Amendment Bill, 2009 to deal with sexual offences against women, children and same sex persons. Shortly thereafter, the Law Ministry

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announced the draft of a Bill on Sexual Offences against Children, only adding to the confusion. Eventually, the MWCD proceeded with finalising the latter; now called the **Protection of Children from Sexual Offences Bill, 2011**, it is lying with the Parliamentary Standing Committee for Human Resources Development for discussion. Civil society organisations that had sought a hearing from this Committee are in the process of being invited for a discussion.

Given that India is yet to ensure 100 percent registration of all births, the Registrar General of India is working towards making amendments in the RBD Act to make the process simpler. It proposes to increase the normal period of registration and the period for late registrations without an affidavit. It is seeking to enhance the accountability of the administration by making it mandatory to submit an annual report to the state assembly and the Parliament. Registration-deficient states and union territories will be specifically mentioned. The amendments also recognise the difficulties faced by children in difficult circumstances, such as street children, children of migrants and adopted children who do not have any proof of residence or birth. A committee formed under the chairpersonship of the Registrar General of India has examined the provisions and made recommendations after consultations with state governments and the concerned central ministries /departments. The concurrence of the Department of Legal Affairs, Ministry of Law has been obtained on the proposed amendments and a proposal is under finalisation for seeking government approval and further legislative action.

It is learnt the MWCD is planning to amend the Juvenile Justice (Care and Protection of Children) Act, 2000 further. A committee has been set up in this regard. This is an urgent need today to ensure that the law is based on the principles of diversion and is restorative in the true sense. Moreover, a lot of diversionary measures that were incorporated into the 2007 Central Model Rules on juvenile justice need to become part of the main law.

Registration of marriages is not compulsory across the country. Different states have taken their own measures in this regard. The need for a national law ensuring compulsory registration of marriages has been voiced repeatedly.

### 1C.3 Need to ensure formulation of state rules

Attempts made at collecting information on various state rules brought to light the fact that states are lagging far behind on the framing of rules for implementation of various national laws. A period for framing of rules must be part of every law or Central Rules and must become an indicator for monitoring compliance.

Rules have not been framed in most states and union territories even for age-old legislations like the Child Labour (Prohibition and Regulation) Act. Some other states have been progressive in framing their rules. For example, Tamil Nadu is currently trying to frame rules under the Right of Children to Free and Compulsory Education Act, 2009 that go even beyond the parent statute. Such measures are a welcome step as long as the rules do not go against the spirit of the main law. Similarly, states like Karnataka have used their rule-making power to go beyond the Central Model Rules on Juvenile Justice to address issues related to children affected by natural calamities. Its effort has guided the Government of Gujarat’s recent rules on juvenile justice.

Moreover, state rules are not always sensitive to the cultural ethos, even though framed by the states themselves. At the national consultation held for finalisation of this report, participants pointed out that the rules framed under the juvenile justice law in Mizoram overlooked the strong community network and existing

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57 **Staff Reporter**, The Hindu, E-paper, Need to advocate birth registration, Saturday, 12 May 2007. Available at: http://www.hindu.com/2007/05/12/stories/2007051210260400.htm

58 **Count every child because every child counts** promoting universal birth registration in India, Plan India, www.plan-international.org
community level protective mechanisms, and instead promoted the setting up of statutory institutions under the law, resulting in unnecessary institutionalisation of children at risk.

Despite impetus being given to establishing child protection systems, the rules on juvenile justice are also not in place in many states. The lack of a systematic database in this regard only adds to the confusion about which rules are being followed in the states and the Union. Further, although states are statutorily required to follow the 2007 Central Model Rules on juvenile justice in the absence of state rules, they do not necessarily do so. In Rajasthan, for instance, until May 2011, when the state finally framed the new rules on juvenile justice, the old rules were being followed in violation of the legal requirement. Similarly, Bihar has neither framed new rules nor issued an order or circular to follow Central Rules.

Table 1.6: State Commissions for Protection of Child Rights without Rules

<table>
<thead>
<tr>
<th>S. No.</th>
<th>State</th>
<th>Year in which the Commission was set up</th>
<th>Year in which the rules were framed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Assam</td>
<td>04 Mar 2010</td>
<td>Rules are yet to be framed</td>
</tr>
<tr>
<td>6.</td>
<td>Gujarat</td>
<td>The Commission is merged with the Gujarat State Commission for Women</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Kerala</td>
<td>Not yet constituted</td>
<td>In July 2011, the rules of the Kerala State Commission for Protection of Child Rights Rules, drafted by the Centre for Child and the Law, National Law School of India University, Bangalore, were discussed and given a final shape by experts(^{59}), but they are yet to be notified.</td>
</tr>
<tr>
<td>12.</td>
<td>Punjab</td>
<td>15 Apr 2011</td>
<td>Information not available</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Commission has been set up on paper. The Chairperson and Members are yet to be appointed.</td>
<td></td>
</tr>
</tbody>
</table>

Source: http://www.ncpcr.gov.in/scpcr.htm

Unfortunately, the trend seems to have been one of setting up implementation mechanisms without formulating the state rules that ought to govern such matters. Establishment of the state commissions for protection of child rights is a case in point.

Of the 12 states that have set up the Commission for Protection of Child Rights, only three, viz. Chhattisgarh, Delhi and Orissa, framed the requisite rules prior to setting up these bodies. Since Gujarat has merged children’s issues into the state Commission for Women, no rules were framed for the children’s commission. Even in progressive states like Karnataka, the Commission came into being on 3 July 2009 while the rules were framed only in 2010. The absence of rules before setting up the commissions can affect the functioning of such bodies and also makes it difficult for the state government to assign the requisite staff and infrastructure to the commission, thus affecting its efficacy.

1C.4 Need to build linkages with other non-child specific national laws and policies

While special laws and policies are needed to address the special situations of children because of their age and vulnerability, it is critical to see the relationship between all important national policies and child rights. The most common and obvious policies are those related to development, land resources, industry and mining, employment etc. When all communities are affected by forest, agricultural and infrastructure policies, children too are impacted. Changing land use patterns that take away land from food-crops results in fall in nutrition levels as does the access to forest resources that communities have been dependent on. The current state of malnutrition of children bears testimony. Farmer suicides as a result of agricultural priorities renders children orphan or destitute, pushes the family into penury and forces children to go to work, in the absence of state mechanisms to take care of them. Some policies and laws that affect children are as follows.

Draft National Tribal Policy, 2006

The Draft National Tribal Policy was prepared by the Ministry of Tribal Affairs for the tribal communities that seek to accelerate the socio-economic development of Scheduled Tribes while maintaining their distinct culture. This policy continues to be in the form of a draft since 2006. The policy lays stress on their socio-economic empowerment and documentation of rich traditional practices and the wisdom contained in tribal cultures. The draft policy addresses the problems of poverty, health, sanitation, environmental hygiene, nutrition and displacement in tribal communities by appropriate measures and provides a strong and effective relief and rehabilitation system to ameliorate the miseries of the tribal people. This policy is important for programmes addressing the needs of tribal children in the country and to ensure reduction in disparities faced by them, compared to other children.

Forest Rights Act, 2006

One could well ask how the forest law is related to children. Over the years, one can see connections. Apart from the loss of access to forest resources or eviction from traditional habitats, children are often apprehended for trespassing into reserved areas. In the absence of any information or knowledge on how they are to be treated, they are meted the same treatment as adults; instead, they need to be treated as children in conflict with the law and produced before the Juvenile Justice Board.

In December 2006, the GoI passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act to recognise the rights of the tribals over their forestland. The Ministry of Law and Justice published the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
in the Gazette of India on 2 January 2007. This legislation marks the first time in India’s history that a law has been passed recognising the rights of forest communities.

However, it has been found that tribal communities continue to face eviction from their traditional habitat under the Forest Conservation Act, 1980.

On 13 March 2007, as many as 118 Adivasi families were evicted by the Forest Department from a reserve forest at Saralpara under Haltuagao Forest Division in Kokrajhar district of Assam. The Government of Assam failed to provide them any alternative resettlement. On 19 April 2007, the Government of Madhya Pradesh tried to evict tribal families from forestland at Ghateha village in the Rewa district of Madhya Pradesh. The State government had served notice to about 3,000 tribals who were allegedly encroaching on the forestland. When the tribals tried to resist the eviction drive, the police opened fire on them, injuring many, including women and children.60

Unorganised Workers’ Social Security Act, 2008

The Unorganised Workers’ Social Security Act was passed in a great hurry, amidst a strong demand from civil society actors for dialogue and debate in the Parliament on the Bill and transparency in the process of its formulation. As a result, it has many loopholes that inadvertently lead to the denial of social security to workers in the unorganised sector – either because they do not fall into the category of persons “below poverty line” as defined by the government or they are unpaid women workers who are not covered in the definition of “home-based work”. Moreover, one of the apprehensions expressed vis-à-vis this law is that there is no definition of the term “family”. It is feared that this can lead to variations in the understanding of the term and can affect the coverage of all the children in a family under the social security schemes and programmes that may come up in the future, as “family” is usually construed as a unit comprising husband, wife and two children.61

Land Acquisition, Resettlement and Rehabilitation Bill, 2011

While tribals constituted only 8 percent of the total population at the 1991 Census, they comprised 55.1 percent of the 8.54 million displaced people in India between 1950 and 1990. The majority of the displaced people were not rehabilitated. A survey released in December 2007 by ActionAid and the Indian Social Institute stated that over 1.4 million people have been displaced from their homes in Andhra Pradesh, Chhattisgarh, Orissa and Jharkhand in the past 10 years and that 79 percent of them are tribals.62 As the Indian economy booms, it requires more land and resources. The potential victims of displacement are once again tribals and dalits. Experiences of dislocation, urban and rural, have shown that state and project authorities often make little effort to ensure that the rights of the displaced are protected. Because children in displacement situations are more vulnerable than adults, they may need greater attention and support, but this has never been the case. The Parliamentary Standing Committee on Rural Development invited comments on 11 February 2008 from NGOs on the Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation and Resettlement Bill, 2007 by 22 February 2008 – a very short time for NGOs to share their comments on the Bill.63

As with all generic laws and policies, there was no special recognition accorded to children except to mention educational institutions as part of the social impact assessment and orphans in the list of vulnerable persons.

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60 Asian Indigenous and Tribal Peoples Network, Who are the Scheduled Tribes of India? State of India’s Indigenous and Tribal Peoples- 2008, p 27
62 The Hindustan Times, 79 percent land oustees tribals, 20 December 2007
In a letter to Shri Raghuvansh Prasad, the then Minister for Rural Development, the NCPCR Chairperson had pointed out that a review of the status of children in areas of displacement due to development programmes as well as disasters and conflicts shows that most rehabilitation programmes do not take into account the impacts on children. An impact assessment on children and their access to entitlements is called for because displacement can lead to the violation of the rights of children in relation to their access to nutrition, education, health and other facilities, and this assessment has to be gender- and age-specific.64

Meanwhile, the new Land Acquisition, Rehabilitation and Resettlement Bill, 2011 (Bill No. 77 of 2011) has been introduced in the Lok Sabha on 7 September 2011.65

The Right to Information Act, 2005 (RTI)

The Right to Information Act received the assent of the President on 15 June 2005. It is a powerful tool to secure access to information under the control of public authorities and to promote transparency and accountability in the working of every public authority. Any citizen can make an application under this law to seek information. While most people, including children, are not even aware that children can file an RTI application, there are a few reports from Uttarakhand, Karnataka and Delhi of children using the RTI Act. Unfortunately, there is no readily available documentation on children’s experiences with using this law. In fact, it is yet to be assessed if children are able to easily use and access the benefits of the law. Meanwhile, several activists have filed RTI applications seeking information relating to children’s rights and their implementation.

Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

Enhanced punishment and protection of child victims of communal violence are provided for in this Bill. Activists argue that the Bill not only fails to secure justice for victims of communal violence but also makes it more difficult to secure accountability of public officials. Even though the Bill provides for women police officers of the state to record information relating to the commission of a scheduled offence against women or children, it is silent on the matter of sexual violence in communal situations and does not recognise the right to justice of the victim or the survivor of communal violence.66

National Health Bill, 2009

The National Health Bill, 2009 has been an outcome of several consultations. The Jan Swasthya Abhiyan, the Indian chapter of the People’s Health Movement, had a major role in lobbying for and preparing the grounds for the draft bill. “The Bill has been lying in cold storage with the chapter on financial memorandum yet to be completed. In a situation where the health needs of the people are dependent largely on the unregulated private sector, where there is gross underinvestment in health, where the rate of decline of either infant or maternal mortality has been slow, where there has been a resurgence in communicable diseases, the belief that a credible public health system is the need of the hour is getting increasing recognition.”67 The Bill is a progressive step inasmuch as it addresses questions of equitable entitlements to essential health facilities, goods, drugs, services and conditions for all, especially vulnerable and marginalised groups. It also mandates similar access to food, safe water, housing and sanitation, and seems to recognise the social determinants

64 National Commission for Protection of Child Rights, In focus, vol 1 no. 4
of health. The Bill has a direct relationship with children’s right to life, survival and development. Any delay amounts to violation of children’s right to health as much as of all citizens in general.

**Prevention of Torture Bill, 2010, as passed by Lok Sabha**

The Bill was passed by the Lok Sabha and referred to the Select Committee of the Rajya Sabha on 31 August 2010 and the Committee presented its report on 7 December 2010. The objective of the Bill is to increase the punishment to those involved in the incidents of torture and to specify the time limit for taking cognisance of the offence of torture. After a serious lobbying and advocacy effort by child rights organisations, the Bill in its present form contains provisions relating to children that were missing earlier. However, the cause of disagreement is the GoI’s effort to grant immunity to public servants from criminal action without an inquiry by the concerned minister/department and prior sanction from the concerned authority.

**Mines and Minerals (Development and Regulation) Bill, 2011**

The Bill was introduced in the Rajya Sabha (Upper House of the Parliament) on 23 March 2011. Its objective is to repeal the existing Mines and Minerals (Development and Regulation) Act, 1957 and replace it with a new Act based on the policy guidelines in the National Mineral Policy. The Bill was sent to the Department-related Parliamentary Standing Committee on Labour for examination and report by 15 June 2011. Discussions on the Bill have included child rights groups for the first time after a report was published on children and mining in 2010.

*Equally important laws in the making that need to be looked at from a child rights lens are the Food Security Bill, Right to Health Bill, MGNREGA and various other employment, mining, industry and environment laws.*

**1C.5 Need to ensure transparency and increased participation of civil society, including children, in law and policy-making processes**

Yet another urgent and important need is to ensure a democratic process for formulation of laws, policies and schemes, as well as the process of developing the Five Year Plans. Mechanisms to institutionalise participatory and inclusive processes need to be put in place that enables the voices of children and civil society to be heard and acted upon. In a decentralised form of governance, drafting of laws, policies, plans and programmes should ideally be an inclusive process with participation of the Panchayati Raj Institutions (PRI) also. In fact, the PRIs should be strengthened and encouraged to join such processes.

The government’s engagement with civil society actors in processes relating to law and policy making has seen ups and downs, depending on the openness and willingness of the bureaucracy and both the political parties in power and in the opposition. Indeed, the beginnings of a consultative process were made with the formulation of the National Plan of Action for Children, 2005. Between 2005 and 2008, engagement with civil society in law and policy formulation was at its peak. Nation-wide consultations were held or views invited

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68 HAQ: Centre for Child Rights, *Submission made to the Select Committee on Prevention of Torture Bill, 2010*, 5 October 2010. Available at: www.haqrc.org
from civil society groups for the 2006 amendment to the Juvenile Justice (Care and Protection of Children) Act, 2000 and subsequently for making the rules. However, the open process that was initiated for working on the Bill on Offences against Children died subsequently with a change of the personnel in charge in the MWCD. Only after the Protection of Children against Sexual Offences Bill, 2010 was tabled in the Rajya Sabha did it become known to the civil society in its current form and shape. Several committees with representation from the civil society were set up to frame the 2011 CARA guidelines, though what was finalised negated most civil society inputs.

The Right to Education was incorporated into the Constitution of India amidst great apprehensions on the content of the Bill. The case with the Right of Children to Free and Compulsory Education Act of 2009 was similar.

While the CRC mandates consultations with children in decisions concerning them, this is rare and negligible when it comes to law making. Even a clear and detailed section on child participation in the National Plan of Action for Children, 2005 has not been able to ensure this.

Consultations held with children clearly pointed out the virtual lack of knowledge among children about laws, policies and programmes meant for ensuring their rights. While children knew of some legal provisions and programmes, such as those relating to the law banning child labour, the Right to Education, Mid Day Meal Scheme and establishment of Anganwadis for children in the 0-6 year age group, they were not at all familiar with the names of the laws and programmes or the detailed provisions.

1C.6 Need to ensure proper implementation of existing laws and policies

Poor implementation of laws and policies has allowed children to remain vulnerable and face violation of their basic rights. There are many factors responsible for poor implementation of laws and policies, ranging from loopholes within the law/policy, lack of general awareness about the law/policy among people to the lack of investment of adequate human and financial resources.

A financial memorandum must become part of every law to ensure commitment of resources for its implementation. Most laws lack such a commitment, and voices seeking inclusion of a financial memorandum in the law have gone unheard.

The movement that made education a Fundamental Right is a case in point for the need to have an inclusive, consultative and transparent law making process as well as the inclusion of a financial memorandum in every law. Child rights activists and educationists across the country had unanimously demanded the inclusion of a financial memorandum to the 93rd Constitutional Amendment Bill, which later became the 86th Constitutional Amendment Act of 2002 guaranteeing 6-to-14-year-old children the Right to Education. Although the voice was heard and a financial memorandum was included in the amendment, the amount committed for implementation of this Constitutional obligation was far lower than the recommendations by the Government’s own committees.

Finally, the Right of Children to Free and Compulsory Education Act was passed in 2009 without a financial memorandum to it. A 2010 National Social Watch report remarks: “…and so the issue of sharing the requisites costs between the centre and the states has been a contentious one. With regard to financing the Act, there is no clarity on who will take the lead, the centre or the states. The Act acknowledges this reality….”

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One of the results of poor implementation of laws, lack of structures and mechanisms to ensure proper implementation, adequate staff and other resources is the low rate of prosecution and conviction under most laws relating to women and children.

Here are some examples of laws that have not worked – even after amendments (where they have taken place).

**Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, as amended in 2003**

On 20 September 1994, the Parliament enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (the PNDT Act), which came into force in 1996 with the framing of the rules. This law failed, as new techniques for sex determination came into use, pre-conception sex selection remained unaddressed, monitoring of clinics and doctors was poor and penal provisions were ambiguous and very weak and the law penalised women for sex determination without addressing the patriarchal social milieu.

In the 11 years of existence of the PNDT Act, the first conviction of a doctor came about only in March 2006. When these issues were brought to the notice of the Supreme Court in CEHAT and Others v Union of India and Others, the court ordered a change in the law. It was amended in 2003 and renamed the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PC&PNDT Act). At the same time, certain amendments were also brought about in the Rules of 1996 (which came into effect from 14 February 2003) in view of the Supreme Court’s observations to ensure the Act’s effective implementation. This law’s main purpose is to ban the use of sex-selection techniques before or after conception and the misuse of pre-natal diagnostic techniques for sex-selective abortions and to regulate such techniques.

**Some anomalies and problems that remain**

Punishment for those seeking support of technologies such as ultrasound test for sex-determination is imprisonment of up to three years and fine of up to Rs 50,000 on the first offence. On the second and repeated offences, the term of imprisonment is up to five years and the fine is up to Rs 1,00,000. On the other hand, punishment for doctors and technical assistants is much lower – imprisonment up to three years and fine only up to Rs 10,000 on the first offence; on the second and repeated offences, the term of imprisonment is up to 5 years and the fine is up to Rs 50,000.

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The Tapas Majumdar Committee set up in 1999 estimated that an additional investment of Rs 137,600 crore would need to be made over a 10-year period to bring all out-of-school children into the school system (not parallel streams) and enable them to complete the elementary stage (Class 8). This meant an average investment of Rs 14,000 crore a year, which, in 1999, amounted to 0.78% of GDP, i.e., 78 paise out of every Rs 100 India earned. However, the Financial Memorandum to the Constitution (93rd; later it became the 86th) Amendment Bill, 2001 then being debated in Parliament, stated that a sum of Rs 98,000 crore would be required over a 10-year period to implement the right to education for children in the age-group 6-14 years. This worked out to Rs 9,800 crore a year on an average (0.44% of GDP in 2002-03), 30% less than that estimated by the Tapas Majumdar Committee. In reality, however, the sum required is much more.

Most ultrasound clinics are now registered, but this has not prevented them from continuing with sex determination tests. The fact that private clinics are allowed to function is a reflection of the government’s inability to cater to the health needs through the public health system. Increased privatisation of health will make it even more difficult to hold private providers accountable.

There are 30,000 registered ultrasound clinics spread all over the nation. Almost a million sex selective abortions take place in India annually, which points to the fact that at least 10,000-20,000 or more of the 30,000 clinics are either openly or covertly carrying out sex determination tests. Only 300 prosecutions (mainly for non-registration) have taken place so far and only one conviction.\(^{73}\)

Despite amendments, the All India Conference of State Secretaries of Health and Women and Child Development Departments, DGPs and NGOs held at Vigyan Bhawan in New Delhi on 11 August 2005 concluded that “no significant impact of the Act has been felt at the grassroots level because of the difficulties associated with the implementation of the Act”.

It was also noted at the Conference that there is an urgent need to increase the staff strength of the PNDT cell to 1000, of which 600 officers should be deputed to each district and 300 should monitor various districts from the centre. The budget for the PNDT cell needs to be increased to Rs 2000 million to ensure effective implementation of PNDT Act.\(^{74}\)

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Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act, 1971 was amended in 2002 and new rules framed in 2003 to prevent the continued use of abortion as a means for eliminating the child. These amendments were based on the recommendations of the “expert group committee” formed in 1997 and on the suggestions of the National Women’s Rights Commission (as a measure to prevent cases of “female foeticide”) along with the experience gained in the implementation of the MTP Act.\(^{75}\) While it was established as illegal in 1971 to abort a healthy foetus, particularly that of a girl child, the amendment of 2002 established strict guidelines as to where and by whom medical termination of pregnancies may be carried out, and imposed severe punishments, including rigorous imprisonment of two to seven years, on those who violate the Act.\(^{76}\)

There is little information available by way of documentation of evaluation of the implementation of this Act after the amendment. The ground reality is that female foetuses continue to be aborted and in fact at a much higher rate, given the fall in sex ratio at birth.

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74 Ibid.
75 Dr. Mukesh Yadav, Associate Professor Department of Forensic Medicine and Toxicology, MM Institute of Medical Sciences & Research, Mullana, Ambala, and Dr. Alok Kumar, Lecturer, ASCOMS & Hospital, Sidhra, Jammu-180017, *Medical Termination of Pregnancy (Amendment) Act, 2002: An answer to mother’s health & ‘female foeticide’*, JAFM, 2005 : 27 (1). ISSN 0971-0973.
Registration of Births and Deaths Act, 1969

The national legal framework for registration is the Registration of Births and Deaths Act 1969 (RBD Act). Registration services are decentralised, spreading across 28 states and 7 union territories with more than 200,000 registration centres. The RBD Act made reporting and registration of births and deaths compulsory.

However, the value of birth registration is often neglected in Indian communities in the face of problems that are immediate and tangible. It is often seen as nothing more than a legal formality, with little relevance for the development of the child, including access to healthcare and education services. As a result, there is a lack of support for birth registration from national and local authorities and little demand from the public, who remain unaware of its importance. The government needs to overcome this challenge through awareness programmes and by making birth registration not just compulsory but also simple.

Another problem in India is that birth registration does not necessarily ensure a birth certificate. In the present system, the birth certificate is issued only when the record of birth is shown to the issuing authority and an application is made. Issuing birth certificates at the time of registration would help, especially in rural areas where people find it difficult to make a second journey to the municipality/panchayat where their child was born. Currently, people have to make several visits, spend several hundred rupees and lose workdays to get a birth certificate.

Although birth registration is decentralised, the CRC had recommended to India in its Concluding Observations dated February 2004 that steps such as the establishment of mobile registration offices and registration units in schools and health facilities be taken. It further recommended that the State party seek technical assistance from, among others, UNICEF and UNFPA. Currently, in India there are no systems established for setting up of mobile registration offices. Such a move will help mothers who go to their natal family for delivery as the birth of their newborn can be registered by a mobile unit.

Guardianship laws

In our overwhelmingly patriarchal 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.

The custody laws too favour the father and grant the mother the status of a caretaker. Mothers can only be custodians if for any reason fathers are unable to be guardians.77

Various Supreme Court judgements have declared that the mother is as much a child’s natural guardian as the father, boosting the principle that the parent who can provide better care of the child and love should have custody. Yet, the situation on the ground is different. Personal laws govern matters of maintenance, custody, adoption and other matters regarding the family environment. The government has been wary of amending personal laws, and many provisions remain that do not serve the best interests of the child.

77 The father is the natural guardian of the child under the Hindu Minority and Guardianship Act (1956); the mother has priority as a guardian only if the child is younger than five years old. However, the mother is considered the natural guardian for a child born out of wedlock. Under Muslim Law, the father is the sole guardian of the child though the mother has custodial rights. Shia Muslims give the mother custody over the male child up to the age of two years and the Hanafi School extends the upper age limit to seven years. However, all Muslim sects and schools of thought maintain that the custody of the girl child should be with the mother until puberty.
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.

**Adoption**

There is no law that clearly lays down adoption procedures but for the Hindu Maintenance and Adoption Act, which governs Hindu children, and the Juvenile Justice law, which provides for adoption as a form of alternative care for children in need of care and protection. The Supreme Court judgement in *Lakshmikant Pandey v Union of India* led to the establishment of the CARA, which has failed to check illegal adoptions. In fact, it has even failed to provide data on children awaiting adoption and adoptive parents in the waitlist. The CARA guidelines have been weak and have had no force in checking illegal adoptions and sale of babies in the name of adoption.

While the number of children being given in foreign adoptions has dropped, the number of domestic adoptions is not very encouraging either. However, a fair assessment would be possible only if the CARA would provide statistics on number of parents and children in waiting (see chapter 5 of Volume II of this report on “Family Environment and Alternative Care” for details).

It is important to note that babies are sold every day in the name of adoption. While one of the reasons could be the cumbersome adoption process, the most important reason is that there are no checks on illegal sourcing of children. Hospitals are out of the purview of CARA and so are many orphanages that are not registered as an adoption agency or a childcare institution under the juvenile justice law.

A check on adoption agencies has only been possible through civil society action and with the intervention of courts. Yet, a lot needs to be done as babies disappear from hospitals and adoption agencies.

CARA has meanwhile drafted a new set of guidelines, notified on 24 June 2011. The drafting of these guidelines took more than three years. Given that these are only guidelines and do not have a binding force, the likelihood of their violation remains. Moreover, the new guidelines are not sensitive to the needs of disabled children, as the primary thrust seems to be on getting rid of children with special needs at the earliest possible. In the name of finding such children a permanent family, the government has abdicated its responsibility towards treatment of even minor correctible disabilities in orphaned, abandoned and surrendered children who are put up for adoption.

The judgement in *Geetha Hariharan and Another v Reserve Bank of India* (1999) 2 SSC 228 and *Vandana Shiva v 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!
Inter-country adoptions are still governed by the Guardianship and Wards Act, 1890 and the final adoption takes place only in the country of the adoptive parents. Often the follow-up is weak and many adopted children have come back in search of their roots or with complaints of mal-treatment. Illegal sourcing for inter-country adoption, which fetches huge amounts of money to an adoption agency, is well documented by now.

**Prohibition of Child Marriages, 2006**

Despite repealing the old law and enacting a new one, child marriages continue unabated. Stringent provisions and punishments in the law are not a deterrent, as implementation remains poor. The Child Marriage Prohibition Officers have several other tasks and are unable to check child marriages, which often receive political patronage.

**Child Labour (Prohibition and Regulation) Act, 1986**

While the child labour law is yet to be amended, there have been additions from time to time to the list of hazardous occupations and processes where employment of children below 14 years of age is prohibited. After years of campaign by civil society groups and activists, the government banned employment of children as domestic workers and in *dhabas* (roadside eateries), restaurants, hotels, motels, tea-shops, resorts, spas or other recreational centres w.e.f 10 October 2006 (Gazette Notification of 3 June 2008 No.S-27019/1/93-CL). Similarly, in May 2008, the government added “dancing” to the list of prohibited occupations/ processes. At present, employment of children in 65 occupations and 15 processes is prohibited. While a total ban eliminating distinction between hazardous and non-hazardous employments in the case of children is still a dream, the present efforts are insufficient to ensure prosecution of offenders.

What is even more disconcerting is that because the laws dealing with child labour are weak – a bailable offence with a minimum of three months and a maximum of a year’s imprisonment or/and a fine of Rs 10,000 extending to Rs 20,000 – the implementation of the law remains tardy. Taking recourse to the choice given, in almost all cases the employers are let off with a fine.

The government is yet to implement the CRC Committee’s recommendation that the Child Labour Act, 1986 be amended so that government schools and training centres are no longer exempt from prohibitions on employing children. The CRC Committee also recommended that agriculture and other informal sectors be included under the Child Labour Act, the Factories Act be amended to cover all factories or workshops employing child labour and the Beedi Act be amended so that exemptions for household-based production are eliminated; the government is yet to implement any of these.

The CRC Committee’s recommendation to India to withdraw its declaration on Article 32 of the Convention seems to have been ignored. In fact, in the light of enactment of the law guaranteeing free and compulsory education to all children aged 6-14 years, the child labour law, policy and schemes are left with no meaning and should not be required at all. As the current child labour law allows regulation of child labour in some sectors, it is violative of the Fundamental Right to Education guaranteed under Article 21A of the Constitution of India.
The very right of children to survival and health is at stake due to the poor implementation of its schemes on health. In all this, the girl child is the worst sufferer.

Most importantly, the State is abdicating its responsibility for implementing critical services in favour of the private sector. In the public private partnership (PPP) model, once private agencies submit the utilisation certificates for the grants they receive from the state, there is little or no accountability and no mechanisms to monitor their work. This is a cause for worry. Participants at the national consultation held for finalisation of this report during 20-22 October 2011 were of the view that selection of NGOs and monitoring of scheme implementation must be stringent. The criteria for selection must be transparent and information in this regard should be available in the public domain.

Grants-in-aid to NGOs to provide services to children are far less than what the government spends for similar services. While on the one hand NGOs are being brought in as service providers because they can provide better services, on the other hand they are expected to achieve better results on lower budgets. Perhaps one of the reasons for shifting service implementation to NGOs is the lack of a will to invest adequately in children’s rights.

Furthermore, the lack of a proper needs assessment in consultation with children often results in unwanted initiatives or renders important initiatives ineffective. Mechanisms to involve children in the making of plans and schemes need to be explored.

**Poor performance on health**

There is no specific law in India that deals with the right to health, nor is it yet a Fundamental Right, unless read along with the Right to Life (Article 21). Article 39 of the Constitution of India, however, upholds that children are to be provided opportunities and facilities to develop in a healthy manner.

India is a signatory to the Health for All (HFA) declaration and the Millennium Development Goals (MDG). However, India’s performance to ensure the provisions of HFA and MDG is yet to be realised.

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

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

Public health expenditure is hovering around 0.9 percent of GDP in India, which is lower than the average of low-income countries and even Sub-Saharan Africa, and well below the average of 2.8 percent for low- and middle-income countries and the global average of 5.5 percent.78

Among the child-specific schemes in the health sector, there is none to address problems of mental health of children or drugs and substance abuse among children. Moreover, while children’s nutrition is a responsibility of the MWCD, there are nutrition-related programmes of the Ministry of Health and Family Welfare also. The focus of MWCD is largely on the nutrition of 0-to-6-year-old children and adolescent girls. Clearly, boys are left out. Over-nutrition issues among urban children of wealthy families also remain unaddressed.

**Fate of schemes for the Girl Child**

The first policy document on children, i.e. the National Policy for Children, 1974, which is applicable even today, does not even mention the girl child anywhere.

India’s ratification of the CRC came through in the SAARC Decade of the Girl Child, 1991-2000. India’s National Plan of Action for the SAARC Decade focused on the three major goals of survival, development and protection of the girl child in India. It was only in the first year of the decade that some money was spent to meet this commitment. There was no expenditure incurred at all between 1992-93 and 1996-97.79 A mid-decade review on the implementation of the Plan of Action for the SAARC Decade of the Girl Child was conducted in October 1996 in India, where the priority areas were concerns under health and nutrition; education and literacy; and marriage and motherhood. After the mid-decade review, the issue of a girl child’s right to be born and her survival did not figure in the list of concerns on which the heads of state or government expressed their determination to accelerate efforts.

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Analysing the change in the situation of girls in India in the decade since Beijing and Cairo, the India Alliance for Child Rights (IACR) writes: “In June 2000, the UN published the Beijing plus Five Outcome Decisions and Document. It is worth recalling what it had to say about girls. A little of what it listed in ‘achievements’ had been secured for girl children in India; almost everything it listed as ‘obstacles’ applied to the Indian situation.”

Over the years, various schemes have been introduced at the Centre and in the states by way of conditional cash transfers to uplift the status of the girl child and ensure her protection and development. The Balika Samriddhi Yojana was launched by the Central Government in 1997 with the specific objective of changing the community’s attitude towards the girl child and ensuring her survival, education and, only on attaining majority, marriage. The scheme was revised in 1999, by which Rs 500 used to be deposited in a bank or post office account in the name of the girl child when she was born and an annual scholarship amount deposited in the account when she went to school, with the accumulated amount payable only after she attained majority and if she remained unmarried until then. The states already had similar schemes doing fairly well. With the Centre forcing down this scheme, the situation changed as the states had to invariably wait for grants from the centre, which delayed matters and affected the implementation of the scheme. The allocation for this scheme showed full utilisation only in its first year; subsequent expenditure figures showed under-utilisation.

In the Tenth Plan, the government had decided to transfer this scheme to the state governments. Therefore, the 2002-03 budget showed zero allocation initially. This was later revised during the year to an allocation of Rs 1.80 crore (18 million) in the Revised Estimates. In 2003-04, the Budget Estimates for this scheme suddenly showed a steep increase to Rs 13.50 crore (135 million), with a drastic fall in the Revised Estimates of that year. In 2004-05, only Rs 0.03 crore (300,000) was earmarked for it. This scheme has been a clear example of lack of serious thinking, analysis and coordination within the government.

**Politicos hijack girl child scheme**

Pathan Afzal Babu, TNN, Mar 12, 2010, 03.38 am IST

HYDERABAD: In yet another case of politicians misusing government schemes to reap electoral dividends, it has become known that more than one-third of the beneficiaries of the Girl Child Protection Scheme are bogus. Taken aback by the extent of the fraud doctored by politicos, the women development, child and disabled welfare department has suspended the scheme and will revive it only after weeding out the bogus beneficiaries.

The girl child protection scheme was launched by late chief minister Y S Rajasekhara Reddy on International Women’s Day on March 8, 2005. Under the scheme, a single girl child of a (BPL) family earning not more than Rs 20,000 per annum in rural areas and Rs 24,000 in urban areas will be given Rs one lakh after she reaches the age of 20. The beneficiary can utilise this money for her education, employment or marriage.

In case of two girl children, both would be entitled to get Rs 30,000 each after they attain the age of 20, besides Rs 1,200 per annum as scholarship from class IX to class XII. As per the guidelines of the scheme, the first priority would be given to families having a single girl child in the age group of 0-3 years as of April 1, 2005. The second priority was for families having two girl children but the second child should not be more than 3 years of age as of April 2005. In case of a disabled girl child, those who were 18 years of age or less as of May 2008 were eligible for the scheme.

According to sources, in all the districts, influential politicians bulldozed the officials to enrol the beneficiaries from the list submitted by them. “Under pressure from politicians, the district officials had no choice but to register the names given by politicians as beneficiaries. It was only later that they found out that most of these families had submitted fake income certificates as well as immunization certificates doctored to show the beneficiaries as eligible as per the guidelines of the scheme.”

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Many schemes that were designed to promote the value of the girl child have not really contributed to any improvement in the status of the girl child. Clearly, there is a need to make an impact assessment, including assessment of reasons for failure of such initiatives. What is also needed is attention to the falling sex ratio in the 15-18 age group. The sex ratio for adolescents in the 13-19 age groups declined from around 898 girls to 1000 boys in 1981 to 884 girls in 1991. In 2001, the sex ratio in the age group 10-19 years was 882 females per 1000 males, lower than the sex ratio of 927 females per 1000 males in the age group of 0-6 years.\textsuperscript{81} It was 902 for younger adolescents aged 10-14 years and 858 for older adolescents aged 15-19 years.\textsuperscript{82} According to Census 2001, there are 225 million adolescents in the age group of 10-19 years, comprising nearly one-fifth of the total population (21.8 percent) of India. Often enough, the sex ratio among adolescents is overlooked in planning and intervention. If nothing else, the government’s own statistics should ring a warning bell.

**Early Childhood Care, Nutrition and Development still far from reality**

The GoI’s main programmes for ensuring early childhood care and development has been the ICDS and the provision of crèche-cum-daycare services.

Despite the intervention of the Supreme Court, the ICDS is yet to be universalised. Crèches are not available in all work places, although the existing labour laws stipulate such a provision. The issue is discussed in greater detail in Chapters 5 and 6 of Volume II of this report.

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Although the ICDS programme has been in place for more than three decades, it has failed to make a significant dent on child malnutrition. Different studies show that there are many gaps in both the design and the implementation of OCVDS. These include low coverage, neglect of children under two years of age -- the most important age group for any intervention on malnutrition -- no pre-school activities, poor quality of supplementary nutrition, corruption and leakages in supply of SNP, centralized system of planning and procurements, overburdening of _anganwadi_ workers, irregular training and monitoring, absence of proper infrastructure and complete lack of focus on support services such as counselling (for nutrition and breast feeding).

*Source: Centre for Budget and Governance Accountability, National Social Watch Coalition and Wada Na Todo Abhiyan, How inclusive is the Eleventh Five Year Plan? People’s Mid-Term Appraisal, A Review of Selected Sectors, Second Edition, March 2010*

In addition to the lack of an adequate number of creches and daycare centres is the issue of the multiple tasks expected of and poor remuneration offered to an Anganwadi Worker (AWW). The ICDS caters to the health and pre-school education needs of children from birth to six years of age and to the health and nutrition needs of pregnant women, nursing mothers and adolescent girls. An AWW is expected to meet all these roles and now also to learn to identify disability among children to ensure that such disability is detected early. “Today in India, about 2 million _anganwadi_ workers are reaching out to a population of 70 million women, children and sick people. _Anganwadi_ workers are the most important and oft-ignored essential link of Indian healthcare.”\textsuperscript{83} Their low honorarium and very poor motivation have been reported every now and then. A report by FORCES-Tamil Nadu states: “The ILO defines a part-time worker as ‘an employed person whose normal hours of work are less than normal hours of work of comparable full-time workers’. On the contrary, the job responsibilities of Anganwadi workers are more than [that of] full-time workers (time from 7 am to 4 pm). There are no

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\textsuperscript{82} Advocacy Kit on Adolescence Education Programme (AEP), Draft, Ministry of Human Resource Development and NACO. Available at: http://www.nacoonline.org/upload/NACOnAction/Advocacy%20Kit.pdf

Service Rules unlike other categories of Government employees. They are governed by ad hoc Government Administrative Orders, which are modified periodically and erratically. But Disciplinary Action for acts such as poor preparation of food, lack of attention in food distribution, contaminated food, insufficiency of food etc., in the form of withheld increment, adverse remarks, recovery of salary, transfer to distance places, and termination of services which are Disciplinary Action for permanent Government Employees is applicable to them.\(^84\)

Another very important issue that requires decision is which ministry/department should be responsible for providing early childhood education. While the Right of Children to Free and Compulsory Education Act, 2009 of the Ministry of Human Resource Development requires state governments to provide for pre-school education, the fact remains that pre-school education is still part of ICDS, which is implemented by the MWCD. Participants at the national consultation held during 20-22 October 2011 to finalise this report expressed the need for a National Policy on Early Childhood Care, Education and Development (ECCED), which should clarify, amongst other issues, matters regarding the administrative authority responsible for pre-school education.

FORCES, a national network of organisations and individuals concerned with issues relating to women working in the unorganised sector and care of their children, have been making a demand for a maternity and child care code to ensure that all laws with implications for children have provisions on crèches and maternity entitlements.\(^85\)

In 2006, the MWCD planned to introduce a law for provision of crèches by all establishments employing 20 or more women and day care facilities by all schools. A small group comprised of officials from the Ministry and NGO representatives was set up to work upon a draft of this proposed Crèche Bill called the "Crèches and Day Care in all Establishments and After School Care Services in Educational Institutions for Young Children Bill". This initiative seems to have been stalled despite some consultations on it during 2006-07. The implementation of a law like this is already in question keeping in mind that the employers are more likely to get rid of women employees than provide crèches for their children. In other words, such laws will also require strengthening the labour laws and their implementation to ensure that women are not discriminated against in matters relating to employment.

**Right to Education comes with glaring gaps**

The 86th Constitutional Amendment, which made education a fundamental right for children aged 6 to 14 years in 2002, was a very significant move. Yet, it was disappointing in many ways. It took away the right of 3-to-6-year-olds to pre-school education, which was earlier seen to be part of the Right to Education. Secondly, by converting early childhood care and education into a Directive Principle for the State to follow, the 86th Amendment violated the Unnikrishnan judgement that recognised it as part of children’s right to life. Thirdly, by laying down that the Right to Education for 6-to-14-year-olds would be conferred according to the procedure established by law, it left the form and structure of the Fundamental Right to be decided by the national and state governments. This provision has not been found in any other Fundamental Right guaranteed by the Constitution to the people of this country.

The schemes for implementing the Right to Education have many drawbacks. To begin with, the very approach to ensure enrolment and keep the schools running even if it implies using unqualified para teachers requires


\(^{85}\) Information provided by FORCES at the national consultation on “Twenty Years of CRC: A Balance Sheet”, (CRC20BS), 20-22 October, 2011, New Delhi.
revision. Further, the expenditure on education is seen to increase either due to an increase in teachers’ salary or to investment in building and equipment that lie unused or lack the infrastructure required for use. A significant portion of the education budget now is being collected through a consumer cess levied on various services (see chapter 7 in Volume II of this report on “Education and Leisure” for details).

### Right to Protection suffers from serious setbacks

In the Eleventh Five Year Plan, the MWCD introduced the ICPS, a flagship programme covering all areas of child protection to which India stands committed. The scheme was based on the recognition of “glaring gaps in the infrastructure, set-up and outreach services for children”. These gaps, which continue to exist even now, include

- poor planning and coordination,
- low coverage,
- poor infrastructure,
- inadequate resources,
- serious service gaps and
- poor understanding of child rights and the lack of a child-friendly approach.

India is now getting into the Twelfth Five Year Plan, and it was only recently in 2011 that 33 out of the 28 states and 7 union territories signed an MoU with the Central Government for implementation of the ICPS. Clearly, the budget for ICPS remained unspent and was reduced each year (see chapter 8 in Volume II of this report on “Special Protection Measures” for details).

Infrastructural gaps are evident in the fact that the Supreme Court on 22 January 2010 was forced to order that both CWCs and JJBs have to be set up in every district ([Bachpan Bachao Andolan v Union of India](http://wcd.nic.in/), Writ Petition (Civil) No. 51 of 2006]). The order has not been complied with yet. Moreover, the experience of civil society actors monitoring implementation of the juvenile justice law is that selection of members to the JJBs and CWCs is not a transparent process.

Besides institutional care, the juvenile justice law also seeks to provide for alternative forms of care for children such as adoption, foster care, sponsorship and after care (for those above 18 and below 21 years of age and in need of care and protection). The alternative forms of care are yet to gain popularity within the government and therefore, besides adoption, very little effort is made to place children in such alternative forms of care. There is no national sponsorship programme or foster care programme in India. Some state governments have initiated their own foster care programmes, which are very inadequate in terms of their outreach as also follow-up after placement of children in foster care.

The most important aspect of ICPS, which was formally recognised in the design of the scheme, was that of prevention. Clearly, the role of various ministries/departments is necessary in order to prevent families to fall out of the social security and protective net. Yet, the convergence of services and coordination between the ministries/departments remains a serious challenge as their lack often reduces prevention-related programmes to awareness drives. As the MWCD and its counterpart in the states lack the convening power necessary to ensure coordination and convergence, most child protection goals remain a delusion.

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Another flagship programme that has failed to show results is the National Child Labour Project (NCLP). The NCLP provides only day schooling, whereas rescued children need residential schooling facilities that help in bridging the education gap and linking the child to mainstream education.

The Ministry of Labour and Employment admits that there are two million children engaged in hazardous occupations. Yet, the Annual Report of the Ministry of Labour and Employment, 2008-09 shows that ever since the NCLP came into existence in 1998, only 0.48 million working children have been mainstreamed to regular education under the said scheme while there are 9000 NCLP schools\(^\text{87}\). Clearly, the NCLP has failed to take care of the problem.

While trafficking of children is recognised as a serious problem in the country, there are virtually no programmes for addressing issues of prevention, protection and rehabilitation of the victims. Those that exist are limited to pilot schemes such as Ujjwala, and are only for girls trafficked for commercial sexual exploitation. Large-scale trafficking of both girls and boys for labour remains unaddressed both in law and in action.

**Protection for the disabled is inadequate in the existing protection laws**

Despite several measures taken to ensure inclusive education and remove discrimination against disabled persons, much remains to be achieved. Children with mental disability suffer the most. There is a shortage of special schools for them. Autistic children are refused admission. Slow learners get no assistance in school and end up facing severe disciplinary action. Public spaces are not disabled-friendly. It is rather sad that even our courts are not disabled-friendly and our criminal procedures have nothing contained therein to ensure procedures that help a disabled victim child during investigation and trial, e.g. ensuring expert help while talking to such a child for investigations as well as at the time of recording of evidence, cross-examination and the like. There are no specific guidelines for the medical examination of a disabled child who is a victim of sexual abuse, neither is there any special relief assistance for such children.

According to participants at the national consultation held for finalisation of this report, the current capacities of the national and state governments are very limited to address the needs of the physically and mentally disabled and challenged children. Far greater and concerted efforts need to be put in.

**Rights of non-citizen children residing in India remain unprotected in practice**

There is a need to strengthen and extend the protective framework of the laws for the children of foreigners residing in India and refugee children born in India. Although entitled to basic human rights guaranteed in the Constitution of India, they are unable to enjoy them in practice. The UN High Commission for Refugees (UNHCR) too has been asking for this. As a progressive nation, India must ensure all rights to all children residing in the country irrespective of their nationality. India presently hosts refugees from various countries – Afghanistan, Bangladesh, Tibet, Sri Lanka, Iran, Iraq, Palestine, Burma, Somalia, Ethiopia, Sudan, Liberia, to name a few. The National Plan of Action, 1992 for the first time referred to refugee children as children in difficult circumstances.\(^\text{88}\) The National Plan of Action for Children, 2005 also recognised the need to protect the rights of refugee children and sought to address their needs of education, shelter and reintegration. Yet, violation of their rights continues. “Since the government does not issue ‘residence permits’ to all refugees, they are unable to open bank accounts, rent houses and set up a business. Moreover, Indian educational institutions do not admit refugees. As a result, young refugees are unable to pursue their academic careers”.

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\(^\text{87}\) CACL and CACT, *National Social Audit of Ban on Employment of Children in Domestic Sector and Dhabas and Eateries* and National Public Hearing, 30 April 2010, New Delhi.

says Tapan K Bose.\textsuperscript{89} It is clear that there is no legal framework under the Indian constitution to determine the status of refugees and the Government of India has dealt with the refugees \textit{ad hoc}. Repatriation usually takes place without ascertaining the voluntariness of individual refugees. The problem is worse for children who are victims of cross-border trafficking or are illegal migrants. Even today, many languish in detention facilities in India. This is particularly true of Bangladeshi children, who are neither accepted by their own country not provided requisite and timely assistance from the Government of India to be reunited with their families.\textsuperscript{90} “Many trafficked children are arrested and booked as ‘illegal migrants’ under India’s Foreigners Act 1946 and treated as perpetrators, when they should be identified and treated as victims under the Immoral Traffic Prevention Act 1956 (ITPA) and other legal instruments.”\textsuperscript{91}

\textbf{1C.8 Need for greater impetus to put in place certain critical measures of implementation}

The National Policy for Children, 1974 is outdated. While the MWCD has initiated a process to revise the national policy, it has been far too long a wait for children. In the absence of a policy framework, planning for children suffers.

The National Plan of Action for Children, 2005 is also outdated and needs revision. However, it must be based on the revised National Policy for Children and, therefore, the need to expedite formulation of a revised policy becomes all the more pressing.

Meanwhile, many states have failed to put in place measures that would ensure proper implementation of laws and policies.

For instance, most states and union territories are yet to formulate their \textit{State Plan of Action for Children} based on the National Plan of Action for Children, 2005. There is no readily available updated information in this regard, although a 2007 report of the MWCD puts the figure at 13.\textsuperscript{92}

According to the Mid-Term Appraisal of the Ninth Five Year Plan, “… the State Governments of Andhra Pradesh, Arunachal Pradesh, Bihar, Goa, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and NCT of Delhi have formulated their own State Plans of Action”. These were based on the earlier National Plan of Action for Children, 1992.

On the other hand, collation of information available from various state websites suggests that 17 states have at some point had a State Plan of Action for Children and that most of these are outdated (see Annexure 1B). Only three states – Bihar, Gujarat and Orissa – seem to have drawn up a Plan of Action for Children after the National Plan of Action for Children, 2005 was formulated.

The Karnataka and Kerala Plans last up to 2010 and are dated 2003 and 2004 respectively. Karnataka has


drafted a new action plan for the period 2011-2020; this awaits finalisation. According to newspaper reports, a draft was prepared by Sattva Consulting Private Limited with support from UNICEF. It is reported to have been rejected by child rights activists because of several inadequacies. However, as the state government was open to rework the action plan, a consultative process was initiated and a news report suggests that the draft is likely to be ready by 2012.93

Understandably, information collected in the course of the CRC20BS (balance sheet of 20 years of the CRC) exercise from various sources in different parts of the country reflects confusion even among civil society actors on the existence of a State Plan of Action for Children.

The 1992 Plan of Action did not provide for specific actions on the issues of child participation, children affected by HIV/AIDS, child trafficking, sexual exploitation and child pornography, children in conflict with law, and early childhood care and development. However, it did contain a section on children and the environment; which was converted into a full chapter in the subsequent 2005 Plan.

As regards the National Plan of Action for the Girl Child, clearly, the states did not feel the need to have a state plan for the girl child and, finally, the National Plan of Action for Girl Children was merged with the National Plan of Action for Children in 2005. The falling sex ratio in various age groups only calls for a focused approach and a specific plan of action aimed at empowering girl children.

The 2003 Charter has come under criticism from child rights activists for a number of reasons. Primary among them is the fact that its legal status is not clear. It does not override and “is in place of” the National Policy for Children, 1974 that pre-existed the CRC. That it does not mention at all or draw upon the Convention is also being commented upon. When questioned on this at the presentation of India’s second periodic report at the CRC Committee, the head of the Indian delegation said that it had the “basic essence” of the Convention.

Among some of the other implementation measures that are lacking is the requirement of the establishment of committees in every district under the PC&PNDT Act to monitor hospitals and private clinics responsible for misuse of ultrasound technology for sex selective abortions. These are lacking both in number and effectiveness.

In 2007, the Central Government had come out with model rules on juvenile justice. The state governments were supposed to have set up their own rules based on the model rules.

However, only eight states – Assam, Delhi, Gujarat, Haryana, Karnataka, Madhya Pradesh, Rajasthan and West Bengal – have framed their own rules based on 2007 Central Model Rules on juvenile justice. Jharkhand, Uttar Pradesh, Kerala and Tamil Nadu seem to be following the central model rules of 2007. For other states, the status is not very clear. Being one of the first steps in the implementation of the ICPS, it has become imperative to ensure that the states do not abdicate this responsibility of framing the juvenile justice rules or at least officially declare that they choose to follow the central model rules.

With increasing numbers of children going missing every years, it becomes imperative to ensure that all institutions providing shelter to children are registered under the juvenile justice law. Unfortunately, while the

93 Nandini Chandrashekar, Draft on child welfare gets stick, Deccan Herald, Bangalore, 29 September 2011. Available at: http://www.deccanherald.com/content/194627/draft-child-welfare-gets-stick.html
juvenile justice law makes registration of such institutions compulsory, it does not provide for action that can be taken if institutions fail to do so. The law and the rules on juvenile justice require an urgent amendment to ensure that the objectives are met. Moreover, other laws under which residential institutions and facilities for children are being registered need to be brought in harmony with the provisions of the juvenile justice law in order to ensure application of minimum standards of care and protection across the country. These include for example, the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960.

1C.9 Need for setting up agencies like the National and State Commissions for Protection of Child Rights in accordance with Paris Principles relating to the status of national institutions (General Assembly resolution 48/134) and the CRC Committee’s General Comment No. 2 on national human rights institutions

The Paris Principles and CRC Committee’s General Comment No. 2 on national human rights institutions stand violated in the
- absence of rules governing selection of members to the National Commission;
- manner in which state commissions have been established without formulation of rules;
- very process that has been followed for selection of the chairpersons and members;
- inadequacy of funds and staff at the disposal of the commissions; and in the
- lack of autonomy to function as an independent body.

Paris Principles
Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation.

The first NCPCR was constituted in 2007 with a chairperson and only two of the six members. Unfortunately, the selection of the members was not accorded the seriousness that it deserved, which led to the filing of a Public Interest Litigation (PIL) challenging the appointment of two NCPCR members who did not fulfil the eligibility criteria.

The second Commission was constituted in May 2010, with only a chairperson in place until 22 November 2010. The members were selected and appointed amidst great criticism regarding the selection process and lack of transparency. A PIL on the selection of members to the National Commission is pending in the Delhi High Court.

The Act and the rules that govern setting up of the National and State Commissions for Protection of Child Rights do not lay down the rules for selection of members to these bodies. In other words, both the Act and rules made thereunder need an urgent amendment. In 9 out of 12 states where the state commissions exists, the commissions were established without formulation of rules meant to govern both the establishment and the functioning of these bodies.

94 Special Correspondent, Shantha Sinha gets second term as NCPCR chairperson, The Hindu. Available at: http://www.thehindu.com/news/national/article427683.ece
While the Delhi State Commission was set up in September 2008 with a chairperson and four members, Madhya Pradesh and Rajasthan have only notified the commissions but not appointed the members. Goa has also adopted the Goa State Commission for Children Rules, 2004. However, the selection of the members in the states too has been questioned. For example, all the members of the Rajasthan State Commission also hold other government offices. One of the members of the Maharashtra State Commission was also on its selection panel – a clear violation of ethical, transparent and accountable governance. In October 2010, the Chairperson of the Madhya Pradesh State Commission for Protection of Child Rights was in the news for having shown utter disregard for poor children. According to her, the horoscopes of children in nutrition centres should be verified by a Brahmin priest and if the priest opines that the child will grow into a good citizen, it must be provided treatment, while the rest can be left to their fate, as the government cannot spend on them. There has been no action against her yet. Such anomalies speak seriously about the government’s intention to ensure a transparent, independent, autonomous and accountable body with powers to ensure action in case of violations of children’s rights. Unfortunately, these bodies seem to serve the interests of people with political influence instead those of children.

**Child panel head says priest to decide if child needs nutrition, kicks up row**

Himanshi Dhawan, TNN, Feb 9, 2011, 03.45 am IST

NEW DELHI: “My suggestion is to appoint a Brahmin priest in each of these centres and require the priest to verify the horoscope of every child brought to the centre. After studying a child’s horoscope if the priest is of the opinion that the child will grow into a good citizen of this country, it must be provided treatment at the centre. For the rest, I would say, let us leave them to their fate ....”

This statement allegedly made by Madhya Pradesh’s child rights panel chief Justice Sheela Khanna to tackle malnutrition has raised the hackles of activists. They have demanded that the National Commission for Protection of Child Rights (NCPCR) take action against Khanna. NCPCR chairperson Shanta Sinha has written to the state commission asking for a response adding that if true the remarks were “obnoxious” and flouts child rights.


Detailed report available at:


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95 Department of Women and Children, Notification 2-61(1)-97/Icds/637(A)
Moreover, these commissions are budgeted as a programme or scheme of the MWCD or its corresponding department in the states. This affects their autonomy and hampers the critical role of the commissions to monitor the performance of the states with respect to effective implementation of child rights.

The recent advertisement by the Department of Women and Child Development, Government of NCT Delhi inviting applications for the position of chairperson and members to the Delhi Commission for Protection of Child Rights shows a clear bias in favour of retired government servants and against public figures who are appointed to the commission. It clearly states in Clause 2 (d): “In case of retired government servants, the pay will be fixed in accordance with the prevailing orders i.e. last pay drawn minus pension. In case of public figures, the amount will be Rs 25,000 per month consolidated for the Chairperson and Rs 20,000 per month consolidated for each Member”. This was the case even when the first commission was constituted in Delhi.

The Centre for Child and the Law, National Law School of India University (CCL NLSIU), Bangalore, has undertaken a project on Justice to Children through Independent Human Rights Institutions in partnership with UNICEF India. The findings of this project are tabulated in Annexure 1C. In addition to the lack of transparency in selection and appointment of the chairperson and members and inadequate remuneration and allowances or no provision for remuneration in the rules, the findings of the CCL NLSIU and research undertaken in the course of preparing this report highlight the following critical problems in the functioning of the commissions.

**Vacancies filled by serving government servants/bureaucrats who man the commission as an additional charge** – The Rajasthan and Orissa commissions are manned by government servants in service, which is contrary to the spirit and the provisions of the legislation. Moreover, the commissions become an additional charge of the concerned bureaucrat and lose autonomy.

**Unfilled vacancies and lack of adequate and suitable staff** – Ensuring a full commission has been a challenge right from the national to the state commissions. The National Commission, as mentioned above, is serving its second tenure and has never been a complete commission. Delhi, Karnataka, Chhattisgarh, Orissa and Sikkim have less than six members. In fact, the Delhi Commission has to be reconstituted as the first term is over. Punjab and Assam are yet to appoint members.

The staff is also reported to be inadequate. The chairperson has little say in the matter of recruitment of staff. Some of the commissions have been managing with the help of consultants. In some states, the governments...
have not provided funds for appointment of consultants and the commission is being run entirely with the help of deputed staff, some of whom are also holding dual charge.

**Lack of financial powers** – Financial independence of the commission is undermined, especially in Madhya Pradesh and Chhattisgarh, where the financial powers vest with the secretary in charge of the concerned government department.

**Joint commission** – While Andhra Pradesh is still contemplating having a joint commission for women and children, Gujarat has gone ahead and taken a leap. These practices are in violation of the Paris Principles related to the Status of National Institutions, 1993 and other international standards. They also result in ineffectiveness of the commissions in ensuring implementation of children’s rights.

**Lack of adequate infrastructure** – In some places, members work from their homes due to lack of adequate infrastructure. Investment in necessary physical infrastructure, office equipments, computers and internet connections, website, vehicles etc. is lacking.

**Appointment of member secretary** – In many cases, the secretaries do not hold full-time position with the commission as they have been given this portfolio as an additional charge. This affects the day-to-day management of the commission, which is meant to be under the charge of a member secretary equivalent to the rank of a secretary to the state government.

**Annual reports** – According to an NCPCR official, the NCPCR has tabled its Annual Reports for the years 2007-08 and 2008-09 before the Parliament; these are available on its website. The Annual Report for the year 2009-10 is with the MWCD and will be tabled in the winter 2011 session of Parliament. However, it is not known if the Action Taken Report of the Government has been tabled alongside. The annual reports of the state commissions along with the action taken report of the state governments have not been tabled in the concerned legislative assemblies. Moreover, these reports are not made available in the public domain.

**Lack of official coordination and clarity of roles between the NCPCR, SCPCRs and other statutory institutions** – There is an urgent need for an official coordination protocol between the NCPCR and the SCPCRs; various children’s commissions and other human rights institutions at the national and state level; and children’s commissions and other statutory institutions such as the CWCs and JJBs. There has been confusion in the past in dealing with complaints that are marked to both the National Commission and the concerned state commission or in cases where the commissions have ordered inquiry into matters pending with the CWCs and JJBs. Similarly, there is no clarity on the overlapping roles of the various commissions such as the NHRC, NCW and NCPCR and their state counterparts.

### 1C.10 Coordination and monitoring remain a challenge

The National Coordination Group (NCG) has existed only on paper, as there have only been a few meetings here and there. After reconstitution in April 2005, it met twice in June 2005 and then in December 2005. The agenda under discussion was child health, which was left mid-way for the group to be reconstituted again in October 2007. Since then, the NCG has met only once to discuss a list of indicators prepared by the MWCD on the eight specified parameters chosen by the Office of the Prime Minister of India for monitoring the implementation of the National Plan of Action for Children, 2005.

There is very little coordination and cooperation between the different ministries that are part of the NCG; hence, getting all on board together has not been possible even for the MWCD, which is the nodal ministry
responsible for this. While the NCG is at the national level, there is a need for a similar mechanism in the states and at the district level too.

The Five Year Plans have reiterated the need for improving coordination between ministries and departments and for convergence of services. However, they have failed to establish the process and the methodology that would ensure better coordination.

Child rights organisations that participated in the national consultation for finalisation of this report hold that it is difficult to monitor progress on children’s rights in the states in the absence of state action plans for children and state rules under various laws.

Monitoring formats for various programmes and schemes are unfortunately designed only for quantitative analysis; often, the qualitative analysis is left out. For instance, there are no provisions for monitoring the qualitative aspects of the NPAC objectives and goals. Moreover, linking monitoring of the national plan to the state plans as envisaged is not possible as not all states have a plan of action for children.96

The process of monitoring programmes and schemes is often not clearly spelt out in policy documents; neither are protocols and guidelines well articulated for an impact assessment and monitoring exercise. The periodicity of impact assessments is also not clear and is thus left to the wisdom of the administrative departments.

1C.11 Data collection and access remain inadequate and a challenge

Accurate data is vital to providing a more realistic foundation for truly assessing the scale of the problem and following it up with better-prescribed policies and appropriately funded schemes and programmes. However, even after 20 years of the CRC and repeated recommendations of the CRC Committee to India, getting accurate and reliable data on children remains a challenge, especially at the district level.

One of the major goals of the NPAC was to build a comprehensive system for data collection and analysis. The goal is yet to be achieved.

This Plan will be regularly monitored at the national, state and district levels, to assess progress towards the goals and targets. A comprehensive system would be developed and operated to collect and analyze disaggregated data on children, based on age, gender, cultural and socio-economic grouping, and special needs and circumstances. Disaggregated data and analysis would be used to assess progress in achievement of child rights goals. A range of child-focused research will also be supported to gather data and understanding in areas where information on the situation is inadequate.

Source: National Plan of Action for Children, 2005

Problems with the existing data includes non-availability of disaggregated data for all child rights indicators, e.g. child participation and all forms of disability amongst children; non-availability of district level data; duplication of data; and lack of updated information. The Census data, being a household survey, is most reliable. However, since it takes place once in 10 years, the data becomes redundant over a period. The sample surveys indeed cannot be fully relied upon and can only be treated as projections or estimates. Moreover, the use of differing methodologies by different sources on the same issue or indicator results in conflicting information. Thus, we continue to see not only inadequate data but also conflicting data from various government sources.

1. **Birth registration:** The Government’s apathy in the importance of birth registration is reflected in the availability of data on birth registration. Different sources suggest different levels of both births as well as death registration. For example,

   a. The most recent available data from the Ministry of Home Affairs indicates that India’s overall birth registration rate in 2007 is 74 percent, a 5 percentage point increase on the previous year.

   b. In 2007, the MHFW-sponsored National Family Health Survey (NFHS) III found that 41.5 percent of Indian children aged 0-4 are registered.

   c. For the same period, a survey carried out by the Office of the Registrar General of India (ORGI) indicated that 62.5 percent of children were registered, a difference of approximately 20 percentage points.

   d. Moreover, much of the available data is not disaggregated by gender, which makes it difficult to highlight the specific situation of girls in relation to birth registration. This data needs to be available at the district level as well for more efficient micro-planning.

2. **Child labour:** While India is known to have the highest number of child labourers in the world, getting an exact number is nearly impossible. Due to differing definitions and methods of estimation, there are varying estimates of the number of working children in the country. Two main sources of official information, the National Sample Survey Organisation (NSSO) and the Census of India, provide different estimates. Neither has a specific definition of child labour.

<table>
<thead>
<tr>
<th>Source</th>
<th>Number of Working Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 National Census</td>
<td>12.6 million (5.2%)</td>
</tr>
<tr>
<td>Ministry of Labour and Employment</td>
<td>2 million in hazardous industries *</td>
</tr>
<tr>
<td>National Sample Survey</td>
<td>2000 16.4 million (6.5%)</td>
</tr>
<tr>
<td>2006 UNICEF report**</td>
<td>35 million (14%)</td>
</tr>
<tr>
<td>Various NGOs***</td>
<td>60-115 million</td>
</tr>
</tbody>
</table>

   **Sources:** 2001 Census, NSSO 2000, UNICEF, Ministry of Labour
   * Figure provided by the Ministry of Labour and Employment, Government of India.

3. **Health:** The NFHS and the District Level Household and Facility Survey (DLHS) remain the most comprehensive source of information on various health-related issues. In addition, there is the Sample Registration System that also covers certain health indicators, although the data obtained either is for some sample areas in the different states or confined to a few sample states only, as in the case of maternal mortality. There are problems in the data produced by both NFHS and DLHS. Some of these include:

   a. Both are based on sample surveys.

   b. The NFHS does not compute data for union territories.

   c. While some information is available on mortality rates, immunisation, some of the diseases like respiratory diseases, anaemia, diarrhoea, polio etc, there is no data available on the broad range of diseases that children suffer from across the country. For example, we do not know how many children in the India suffer from cancer, diabetes or even thalassaemia, or any other preventable or non-preventable or even life threatening diseases. How many died of polio?

   d. Children with HIV/AIDS are particularly discriminated against; yet, the NFHS does not provide information on HIV/AIDS infected children in the 0-14 age group.
Some other information sought by child rights groups and women’s rights groups is gender-segregated data on incoming outdoor patients, which is often lacking.

At the same time, while data on low birth weight, underweight, wasting and stunting is available and is taken into account to make assessments on malnutrition, there is no data on malnourishment as such. Stunting and wasting are results of malnutrition, and therefore cannot be taken as data on malnutrition per se. An underweight child below the age of three years could also possibly be counted again in the enumeration of data for stunting or wasting.

4. **Education:**
   a. Out-of-school children: Various sources have differing figures when it comes to out-of-school children. While the Census does have data on this, the DISE does not.
   b. Access to girls’ toilets is known to be a factor in the school retention rates of the girl child. Looking at the raw data provided by the DISE, it seems that there is significant double counting in those two categories, which is perhaps hindering a true assessment of how inclusive schools are for the girl child.

5. **Protection:** Violence against children has been increasing over the years, with more reports of violent crimes being reported every day. The main source of data on crimes in India is the “Crime in India” report by the National Crime Records Bureau (NCRB), Ministry of Home Affairs. However, several shortfalls remain:
   a. This data is available only at the national level and only reflects incidences of crimes that have actually been reported.
   b. While the NCRB does give a breakdown of child marriage, it does not break down the data for child labour and trafficking under the ITPA Act (See Table 1). In fact, offences under the CLPRA and PC&PNDT Act have never been enumerated.
   c. Many states maintain their own data on offences related to children that just are lumped under “other crimes”. Disaggregated data remains a challenge.

6. **Child Labour:** Enumeration of child labour is seldom reliable. While the Labour Departments maintain one set of data based on the number of children rescued and on those in the centres established under the NCLPs, the CWCs maintain data on the number of child labour cases they receive and dispose of. Children rescued by the Labour Department must be accounted for in the database of the CWCs also, as they are responsible for their rehabilitation. However, the records of the Labour Department and the CWCs seldom match. Clearly, not all children rescued by the Labour Department are produced before the CWCs, and not all child labourers produced before the CWCs are necessarily rescued by the Labour Department. The lack of coordination between the two structures is bound to defeat any attempts at setting up a child tracking system. Moreover, it is quite possible that a child is counted twice.

7. **Child marriage:** There are different data sources and data collection methodologies; therefore, it is hard to calculate the actual prevalence of child marriage in India. While the DLHS gives data for 2007-08, this is based on information collected from people who were between 20-24 at the time of the survey and married before they turned 18 (National Family Health Survey III-2005-06 also uses the same method). Both are based on sample surveys. The Census of India also gives data for ever-married children.

8. **Adoption:** Despite being brought to the notice of CARA and the Ministry repeatedly, access to following data remains a challenge
   - state-wise data on number of children declared legally free for adoption;
   - the number of prospective adoptive parents registered with various adoption agencies in the states and in the waiting, and attempts made to place them in adoption anywhere in the country; or
   - the number of children sent to another state for adoption.
Similarly, there is no national or state-level data on the number of disabled children declared legally free for adoption and placed in in-country adoption and inter-country adoption. “CARINGS”, a web portal created by CARA, has also failed to address this need. CARA’s claim that there are fewer children available for adoption and more parents in the waiting needs to be backed with evidence. It is often stated that there are no Indian parents anywhere in the country to adopt disabled children. Such claims too need to be backed up with evidence, which is only possible if there is systematic and regular assessment in this regard and the information is put out in the public domain without compromising on the privacy and confidentiality of children and the adoptive parents.

9. India has yet to have one uniform definition of “child”. Labour laws claim 14 years of age, the Juvenile Justice Act claims 18 years and the marriage laws prohibit marriage of girls younger than 18 and boys younger than 21. Such confusion is also reflected in the few sources of data that are available. There is wide inconsistency in the way data is “lumped” for the various age groups of children in India.
   a. NFHS HIV/AIDS related data for adolescents and the DLHS health data are aggregated into the 15-19 year age group.
   b. The Census remains a good source for much data, especially broken down to the district level. However, there is a huge variation in the breakdown of the age groups for which data is provided.
      i. Disabled population data gets lumped into the 0-4 year, 5-9 year and 10-19 year groups.
      ii. Child marriage: Data provided is for the “less than 10-years”, 10-11 year, 12-13 year, 14-15 year, 16-17 year, and 18-19 year age groups.

Other concerns relating to data collection and access are as follows.

- Information that should be in public domain is often not made available and the Right to Information (RTI) Act has to be used even to obtain data that may be required for sociological and socio-legal research.
- Using the RTI law for monitoring state performance has not been well received by the Government. Experiences of RTI activists therefore suggest that even in responding to RTI applications, the required information is often not shared — either the application is passed on from one department to another, therefore delaying the information required, or inadequate information and data is shared.
- Participants at the national consultation held in the course of finalising this report are of the view that data collection process is not scientific; often, surveyors go without adequate training on data collection, and many times at the cost of children. For example, schoolteachers are routinely involved in carrying out the decennial Census, which is at the cost of their teaching time. When instructions are given to carry out such surveys over weekends or other non-working days, teachers do not appreciate it at all; this affects the quality of data collected. Interestingly, the Right of Children to Free and Compulsory Education Act, 2009 states: “No teacher shall be deployed for any non-educational purposes other than the decennial census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.”
- The need for a centralised MIS/child tracking system was recognised by the MWCD in the Eleventh Five Year Plan. However, progress in this regard is slow. At the same time, the district and state system of data collection must converge effectively at the national level.

In October 2010, YaR (Young at Risk) Forum India displayed its Homelink software cum web portal at a National Workshop on Child Tracking System organised by the MWCD and held at the NIPCCD, New Delhi. Homelink Child MISS (Management Information System and Services), a biometric-inclusive product, is under construction with additional features to accommodate the requirements of the ICPS and the JJ Act 2000. This could well be used in all the Child Welfare Centres effectively.

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97 Section 27, Right of Children to Free and Compulsory Education Act, 2009, Ministry of Law and Justice (Legislative Department), Gazette of India Notification dated 27 August 2009.
The Homelink software system and network maintains a comprehensive and integrated database of all children in the care of the organisation through all its institutional and outreach programmes. It offers a search mechanism for tracking runaway or missing children and thus facilitates their rehabilitation. Homelink has set up software – Homelink 3.9 – and a national website on missing children at http://www.homelink.in/ or http://www.missingchildsearch.net/. All information regarding children can be updated through the software tool, categorising them in groups such as new child, comeback child, home/institutional placement, etc. All the services the child has received can also be updated. Parents as well as the public find it convenient to register complaints regarding missing children on http://www.missingchildsearch.net/.

Besides NGOs, the government-run children’s homes in Kerala and Madhya Pradesh are utilising this software for data management of children and staff. It tracks a child from the point of entry into the child protection system to exit and also the form of rehabilitation. Thus, it provides a systematic and regular assessment of children’s situation and enables database management and aggregated and disaggregated data at institutional, district, state and national levels.

- Homelink was initiated with financial support from UNICEF to meet the need of developing a child tracking system. Government should look at such experiments and adopt them nationally, with modification wherever necessary. For instance, tracking a child at the school level is necessary to know how many drop out and where they go. The role of the PRIs is critical in establishing grass roots level tracking systems. Gram Panchayats are supposed to provide updated information about the villages they cover, number of people, males, females etc. The information board simply needs to be expanded to include children and provide information of child deaths, child migration, missing children etc. Such information can be collated at the block, district and state level and fed into the national MIS system on a monthly or quarterly basis. With the establishment of district child protection units under the ICPS, the task should become easily implementable.

**Government’s responses to some of the inadequacies**

Even the Government has acknowledged the inadequacies in education. The inconsistency in enrolment data forced the Comptroller and Auditor General to make the following comment.

> The Ministry, however, did not establish a system of reliable and consistent data capture from the states. Neither was there any system of cross verification of the correctness of enrolment figures reported by the state governments. The data of enrolment collected from the states were inconsistent with the data maintained by the Ministry, which indicates unreliable data capture.

*Source: Comptroller and Auditor General of India. Report No. PA 13 of 2008. Performance Audit on National Programme for Nutritional Support to Primary Education (mid-day meal scheme)*

**Health Minister admits lack of data on children infected and affected by HIV/AIDS**

While it is estimated that India has 2.5 million persons living with HIV/AIDS, there is no data available regarding the number of infected and affected orphans and vulnerable children. In the absence of such data, there is no defined strategy and interventions under National AIDS Control Programme - Phase II (NACP II, 1999-2006).

*Source: LSSQ 343, 16 April 2008. Response of Dr. Anbumani Ramadoss, the Minister of Health and Family Welfare Question to a Question asked by Adv. Suresh Kurup (CPI) and Shri Suravaram Sudhakar Reddy (CPI)*

No nationwide survey has been conducted to estimate the number of children/orphans infected with HIV.

*Source: LSSQ 73, 22 Oct. 2008. Response of Dr. Anbumani Ramadoss, the Minister of Health and Family Welfare Question to a Question asked by Shri Gowdar Mallikarjunappa Siddeswara (BJP) and Dalpat Singh Paraste (BJP)*
In the health sector, the Health Minister admits lack of data on children infected and affected by HIV/AIDS.

Similarly, although it is by now fairly well established that about 10 percent of the population across the world is disabled, data on children with disabilities and care facilities that they can access has been the most difficult to find.

In 2004, the CAG report noted that, “the Ministry did not possess any reliable data on the numbers and categories of disabled in the country, which was essential to estimate the resource requirements and facilitate the preparation of a well-considered action plan”. It also said that adequate measures had not been taken for prevention of disabilities through early detection, awareness campaigns and training of staff of Primary Health Centres.

1C.12 Training and capacity building

It should suffice to state that there is a huge demand for training and capacity building as the government takes new initiatives. The agencies to meet this demand are not adequately equipped with knowledge, skills, infrastructure and resources.

At the same time, there is a lack of training materials to cater to the needs of specific groups. This is more visible in the case of children, who fail to find information and communication materials in the different languages they speak and in a simple and understandable format. This need was evident in the consultations held with children in the course of this audit.

Assistance from NGOs and other competent agencies must be taken to meet the training and capacity building needs as for awareness building and enhancing community participation. Presently, grants-in-aid are given to NGOs for service delivery, research and developing training and IEC materials. The scheme of grants-in-aid therefore needs to be extended to training and capacity building programmes, campaigns, child participation initiatives and other areas requiring creative interventions.

1C.13 Resources

Within the budget for children, of all sectors, the education budget has always been the highest, while child protection has received the least attention. This is so despite the introduction of a comprehensive scheme on child protection in the Eleventh Five Year Plan.

In the education budget, a significant proportion of the resources are being raised through a cess imposed on all services. In 1966, the Kothari Commission had recommended investment of 6 percent of GDP on primary education. Even today, this recommendation remains unmet. In fact, public spending on overall education and not just elementary level was reported at 3.23 percent of GDP in 2009-10.98

As far as is concerned, public spending on health has been only around 0.9 percent of GDP. The share of central/union government in public spending on health in the overall is a mere 0.25 percent of GDP. It is nowhere near the present government’s target of 3 percent of GDP or the WHO recommendation of 5 percent of GDP.99 Many health schemes are externally aided with funds received through multilateral agencies and bilateral donors, as well as some of the new donors such as the European Union. The post-1990 period saw the launching of several new projects by both multilateral and bilateral donors. This period saw the lead role

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98 Centre for Budget and Governance Accountability, Union Budget 2010-11: Which Way Now? Response to the Union Budget, Serial No. C 1, Education.
99 Centre for Budget and Governance Accountability, Budget Track, Volume 8, Track 2, August 2011, p 8
of the World Bank in providing credit for numerous health, nutrition and reproductive health projects. Of the DFID’s portfolio, 45 percent is focused on major national programmes such as Sarva Shiksha Abhiyan (SSA), National AIDS Control Programme, Polio Eradication and Reproductive and Child Health (RCH-II). The DFID has upscaled their grants for India, which will be GBP 300 million by 2008.

While 80 percent budget of the MWCD goes to ICDS, it is still not adequate to meet the demand of early childhood care, nutrition, education and development of children in the 0-6 age category as well as nutrition needs of pregnant mothers and adolescent girls. Although this also implies a cut on funds for the other programmes of the MWCD, the need of the hour is to invest on all rights for all children adequately, without compromising on one or the other.

Child protection has been the least attended sector and continues to be so. The average expenditure on child protection was 0.01 percent of the total Union Budget expenditure in 1990-91, going up marginally to 0.03 percent in 2006-07. Spending has always been less than the allocated budget.

The demand for inclusion of a child budget component in the budget of every ministry/department remains unaddressed. It is hoped that such a move will improve coordination amongst ministries and departments and will help resolve issues of duplication if any. Moreover, a commitment towards children will be ensured from all quarters, thereby mainstreaming children’s concerns into all development agenda.

1C.14 Need for Improved Reporting and Monitoring

The GoI and NGOs spent the initial years after the CRC was ratified in spreading awareness about it with technical assistance from the UNICEF India Country Office. The Convention was printed in many languages and widely disseminated. Gradually, a child rights movement evolved in the country. While efforts at raising awareness about the Convention continue, India’s reporting has often been delayed.

As a requirement of the CRC, India was supposed to have submitted its initial report to it upon two years of ratification of the Convention. Subsequently, periodic reports have to be submitted every five years. For some reason, there has been confusion regarding the India’s periodic CRC reports. For reasons best known to the GoI, the Initial Report has come to be referred to as the first periodic report, and therefore what is actually the first periodic report gets treated as the second periodic report and so on.

The due date for submission of the Initial Report was 10 January 1995. However, the report was submitted only on 19 March 1997, after a delay of more than two years.

The subsequent periodic reports too have been marked by delays. The second report (which is actually the first periodic report) was submitted on 10 December 2001, while it was due on 10 January 2000.

The third report, due on 10 January 2005, was not submitted. It was decided that the third and the fourth reports would be combined into one by 28 May 2008 and submitted before 10 July 2008, but they were

submitted only in August 2011. While these are being referred to as the third and fourth combined “periodic” reports, they are actually the second and third combined periodic reports.

In January 2003, the Committee had decided that when the second periodic report is due between one and two years following the dialogue with the Committee, the State party shall be requested to submit that report combined with the third one. The Committee receives many reports every year; therefore, there is a delay between the submission of a State party report and its consideration by the Committee. To reduce the delay, the Committee urged the State party to submit its consolidated second and third report 18 months before its due date. This rule also applies *mutatis mutandis* when a similar situation occurs with the third and fourth periodic reports.\(^{104}\)

The first reports on the two Optional Protocols were due in September 2007 and January 2008. The GoI had requested to be allowed to submit these reports along with the combined Third and Fourth Periodic report on CRC together in July 2008.\(^ {105}\) In other words, these reports too have been delayed.

Moreover, consultations with children in the preparation of the country reports have been a mere lip service. India country reports in the past have failed to state if children were consulted and how.

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**Children’s Participation in India’s Reporting on CRC**

In 2010, the Class 8 NCERT social science books for children have incorporated a “Children’s Bill of Rights” (see Annexure 1D) to educate children about their rights as contained in the Convention on the Rights of the Child. However, while sharing this information, the document fails to inform children about India’s reporting process on the CRC and children’s role in it. Children’s right to participation in decisions concerning them is clearly understated, once again reflecting on the lack of a political will in this regard.

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**1C.15  Need to comply with the recommendations in the Concluding Observations on India**

While some recommendations of the CRC Committee in the two sets of concluding observations on India have been complied with, many are under way or require greater attention; many still remain. The section below highlights these. For reference, Annexure 1E details a list of Concluding Observations on “General Measures of Implementation”.

**1C.15.1  Recommendations that have been complied with**

- A revised National Plan of Action for Children was adopted in 2005 through a consultative process, based on a child rights approach, covering all areas of the Convention, the MDGS and the World Fit for Children declaration and plan of action. It committed to investing the necessary resources as well as to the goal of ensuring inter-sectoral coordination and convergence (CRC/C/15/Add.115/D.1/para 15 and under CRC/C/15/Add.228/D.1/para 16).

- The NCPCR is established with the mandate to regularly monitor and evaluate progress in the implementation of the Convention and to receive and address complaints of violations of child rights, including with respect to the security forces. However, there are several concerns with respect to staffing, resources


and issues related to the autonomy of the Commission, as listed above. In many ways, therefore, it is not in accordance with the Paris Principles relating to the status of national institutions (General Assembly resolution 48/134) and the Committee’s general comment No. 2 on national human rights institutions (CRC/C/15/Add.115/D.1/para 19 and CRC/C/15/Add.228/D.1/para 18).

- Human rights education, including the rights of the child, is now included in school curricula class 7 onwards as part of the social science textbook (CRC/C/15/Add.228/D.1/para 24 (d)).

### 1C.15.2 Measures underway

- Efforts are being made continuously to ensure full compatibility of legislation with the Convention, taking due account of its general principles (CRC/C/15/Add.115/D.1/para 11).

- Need for intersectoral coordination and cooperation at and between Central, state and local levels of government is recognised in all policy and planning documents, though in practice the goal is yet to be achieved. The present measures are inadequate and have at times led to confusion in the roles of various state actors as well as the Centre and the states instead of enhancing coordination between them. Efforts in this direction need to be reviewed periodically (CRC/C/15/Add.115/D.1/para 15 and CRC/C/15/Add.228/D.1/para 14).

- Some steps are being taken to develop a child tracking system. However, the efforts are still far from realising the goal of a comprehensive system for collecting disaggregated data to assess the progress achieved in the realisation of children’s rights and to help design policies to implement the Convention (CRC/C/15/Add.115/D.1/para 17 and CRC/C/15/Add.228/D.1/para 22).

- Supervision of private service delivery organisations does take place, though it does not look at the qualitative aspects of the services. Monitoring and supervision is limited to procuring utilisation certificates and statements of accounts from private service providers. A system of registration and authorisation of service providers does not exist for all services. In most cases where such requirements exist, there are no procedures for taking action against non-registration or authorisation. This is true in the case of many critical services such as institutional care, agencies receiving abandoned and surrendered children, providing day care for 0-6 year olds etc. (CRC/C/15/Add.228/D.1/para 20).

- There has been an improvement in engaging with NGOs and civil society throughout all stages of the implementation of the Convention, including policy-making, at the national, state and local levels, and in the drafting of future periodic reports. However, consultative processes sometime remain mere tokenism and involvement of the community and children remains a challenge. Being a continuous process, consultation with and involvement of NGOs and civil society in policy formulation will remain a measure under way and must be a transparent process (CRC/C/15/Add.115/D.1/para 23 and CRC/C/15/Add.228/D.1/para 20).

- Dissemination of information regarding the implementation of the Convention among children and parents, civil society and all sectors and levels of government has remained poor. Most families in India are not aware of the Convention. Greater efforts are required (CRC/C/15/Add.115/D.1/para 25).

- Training programmes on the provisions of the Convention for all professional groups working with children (i.e. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers) are not systematic. Different bodies design different programmes and the Convention as such does not always form part of the curriculum (CRC/C/15/Add.115/D.1/para 25 and CRC/C/15/Add.228/D.1/para 24 (c)).

- Review of legislative and other measures, including religious and personal laws, to ensure implementation of the provisions and principles of the Convention has been a continuous process CRC/C/15/Add.228/D.1/para 10(a).
Mechanisms for supervision of private service delivery organisations have been built into various laws. However, there is very little supervision and monitoring on the qualitative aspects of the services being provided. It is limited to procuring utilization certificates and accounts statements. System of registration and authorization of service providers does not exists for all services and in most cases where such requirements do exist, no procedures are set in place for taking action against non-compliance. This is true in the case of many critical services such as institutional care, receiving abandoned and surrendered children, providing day care for the 0-6 year olds etc. (CRC/C/15/Add.228/D.1/para 20)

1C.15.3 What remains

- Implementation of legislation and its wide dissemination is an ongoing process. In fact, one of the biggest challenges before the country is ensuring implementation of laws (CRC/C/15/Add.228/D.1/para 10 (b)).
- There is still no uniform code for children (CRC/C/15/Add.115/D.1/para 11).
- Allocation of resources, both human and financial remains inadequate despite an increase in the central government’s budget for children over the years (CRC/C/15/Add.115/D.1/para 13 and CRC/C/15/Add.228/D.1/para 12 (a)).
- There is no support provided to local authorities or efforts at building their capacities for implementation of the Convention as such. Being implementing bodies, local authorities are engaged in the implementation of programmes and schemes meant for children, though often without a child rights perspective and understanding (CRC/C/15/Add.115/D.1/para 15).
- India is yet to develop ways to establish a systematic assessment of the impact of budgetary allocations on the implementation of child rights and to collect and disseminate information in this regard (CRC/C/15/Add.115/D.1/para 21 and CRC/C/15/Add.228/D.1/para 12 (b)).
- Resources made available to the national human rights institutions, including the NHRC, the NCW, and the Scheduled Castes and Scheduled Tribes Commission and now the National and State Commissions for Protection of Child Rights are not adequate for strengthening the capacity and effectiveness of these institutions (CRC/C/15/Add.115/D.1/para 13).
- Not all the State Commissions for Protection of Child Rights are in place and therefore evaluating progress in the implementation of the Convention at the state and local levels stands affected (CRC/C/15/Add.115/D.1/para 19).
- Distribution of resources at the central, state and local levels is not appropriate, as often it is not according to the need and achievements in the past. The flow of funds from the centre to the local level takes long and therefore many goals remain unachieved (CRC/C/15/Add.115/D.1/para 21).
- Efforts at children's rights education, including initiatives to reach those vulnerable groups who are illiterate or without formal education, have been made with technical assistance from UNICEF and other UN agencies and by NGOs on their own. However, government initiative in this regard has not been adequate and IEC materials that could help children understand their rights under different international and national laws, and give them information about various government programmes and schemes, including on how to access them, are lacking (CRC/C/15/Add.115/D.1/para 25 and CRC/C/15/Add.228/D.1/para 24 (b)).
- India is yet to withdraw the declaration made to Article 32 of the Convention (CRC/C/15/Add.228/D.1/para 8).
- While the National Charter for Children was adopted, it compromises on a child-rights-based approach and fails to cover all the rights and principles of the Convention. The Charter needs to be revised (CRC/C/15/Add.228/D.1/para 16).
Involvement of Parliamentarians and community and religious leaders in programmes to eradicate customs and traditions that impede the implementation of the Convention is not systematic. Sporadic efforts are made with the help of UN agencies and NGOs. Reports of political and religious leaders organising mass marriages for girls and boys belonging to the poorer sections, where children too are married off, call for attention. Similarly, the spate of honour killings and falling sex ratios require greater efforts at reaching out to political and religious leaders (CRC/C/15/Add.228/D.1/para 24 (b)).

The curricula for teacher training needs to be more comprehensive to include all aspects of children’s rights, especially as reports of discrimination, corporal punishment and sexual abuse in schools pour in (CRC/C/15/Add.228/D.1/para 24 (d)).

1C.16 Need to strengthen the MWCD and the corresponding Departments in the states

Even though a separate MWCD has been set up to look at children’s issues, it continues to be seen as an administrative unit of governance dealing with a “soft” issue. It is therefore not accorded the same seriousness and stature as those dealing with commerce, infrastructure, home or even finance. Even within the social sector, it remains largely relegated to a position lower than others such as education or health or labour.

Experience has shown that despite efforts, the MWCD has not been able to converge with other ministries – cooperation received is very low. It takes longer for this ministry to get a law or policy accepted and passed, as the documents have to travel to other related ministries, which do not take children’s issues seriously.

In the states too, the corresponding departments need to be strengthened. Moreover, there is no uniformity in the country with respect to the nodal department meant to be responsible for planning and implementation of children’s programmes and schemes. In some states, the responsibility lies with the Department of Women and Child Development; in some others, it is with the Department of Social Welfare. The nomenclatures for these departments also vary. While in a federal structure of governance states have the autonomy to set up their own administrative mechanisms, some uniformity on the structure, functioning and resources made available would help eliminate confusion regarding the role and mandates of different departments in the states. This would make clear whom to approach for what and would ensure comparability in terms of budgets of the concerned departments, their performance and achievements.

All organisations and children who have been part of the CRC20BS exercise in fact propose a separate Ministry on Child Rights both at the national level and in the states.

1C.17 Complaint mechanism under CRC in case of a state party’s failure to comply with the CRC obligations

The CRC is the only international human rights treaty that calls for mandatory reporting but does not have a communications or complaints procedure. However, children and their representatives can use the mechanisms established under some of the other international human rights treaty bodies in case of violation or neglect of certain rights. Such treaty bodies include the

- Committee on the Elimination of Racial Discrimination (CERD),
- Human Rights Committee on Civil and Political Rights (CCPR),
- Committee against Torture (CAT),
- Committee on the Elimination of Discrimination Against Women (CEDAW) and the
Committee on the Rights of Persons with Disabilities (CRPD), which may receive complaints from individuals alleging to be victims of violations under the respective treaties.

The CAT, CEDAW and CRPD can also undertake inquiries in cases of grave or systematic violations of the treaty in question.

A group of agencies are campaigning for a communications/complaints mechanism to the CRC procedure that would provide children a legal mechanism and remedies at the international level. Organisations supporting this campaign include World Vision International, Save the Children UK, Save the Children Sweden, Save the Children Norway, the Global Initiative to End All Corporal Punishment of Children, CRIN, Kindernothilfe, the World Organization Against Torture (OMCT), SOS-Kinderdorf International and the European Network of Ombudspersons for Children (ENOC) and Plan International.

At its 11th session, on 17 June 2009, the Human Rights Council adopted resolution A/HRC/RES/11/1 [E F S A C R] by which it decided to establish an Open-ended Working Group to explore the possibility of elaborating an Optional Protocol to the CRC to provide a communications procedure complementary to the reporting procedure under the Convention.

At its 13th session, on 24 March 2010, the Council adopted resolution A/HRC/RES/13/3 [E F S A C R] by which it decided to extend the mandate of the Working Group until the 17th session of the Council. It also decided to mandate the Working Group to elaborate an optional protocol and requested the Chairperson of the Working Group to prepare a proposal for a draft optional protocol.

A Draft Optional Protocol was supposed to be ready for submission to the Human Rights Council in June 2011. Unfortunately, the GoI has not been part of these discussions held in this regard so far.

**Conclusion**

Having assessed the situation vis-à-vis the General Measures of Implementation, it becomes imperative to look at the situation of children and the progress made in the past 20 years against various child rights commitments enshrined in the CRC. The next two chapters in this volume throw light on the definition of the child and the general principles of CRC respectively, followed by chapters that attempt at analysing the situation of children, as mentioned earlier.

Tables highlighting the progress made on various Concluding Observations of the CRC Committee form part of the balance sheet presented in Volume III of this report.
2. Definition of the “Child”

Introduction

Article 1 of the Convention on the Rights of the Child (CRC) defines “child” as a person below the age of 18 years. While it allows States parties to follow different age definitions, it also requires them to conform to this definition as far as possible to ensure all rights for all children.

<table>
<thead>
<tr>
<th>Article 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the purposes of the present Convention, a “child” means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.</td>
</tr>
</tbody>
</table>

This chapter attempts to consider the various age definitions of “child” as contained in different legal and policy documents and share the concerns that remain. Accordingly, the chapter is divided into two parts.

Part A

Definition of the Child – Age Variations under Different Legislations and Policy Documents

Defining “child” uniformly as a person below the age of 18 years in both legal and policy documents has great ramifications in terms of investing in all rights for all children.

2A.1 Minimum legal age defined under national legislation

There is a general understanding of a minimum legal age for various legal purposes in Indian law, such as the age at which a child can enter into a legal contract, the age of majority, minimum age of criminal liability, age of
marriage, minimum age for getting a driving license, minimum age for consumption and purchase of alcohol, etc. The table that follows lists the different ages that apply in different legal contexts.

<table>
<thead>
<tr>
<th>Legal Purpose</th>
<th>Boys</th>
<th>Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacity to enter into a legal contract</td>
<td>18 (According to the Indian Contract Act, 1872, a person below the age of 18 years has no capacity to enter into a legal contract)</td>
<td>18 (According to the Indian Contract Act, 1872, a person below the age of 18 years has no capacity to enter into a legal contract)</td>
</tr>
<tr>
<td>Age of majority</td>
<td>18 (The Indian Majority Act, 1875 lays down 18 years as the age of majority for all, unless the personal laws follow a different age)</td>
<td>18 (The Indian Majority Act, 1875 lays down 18 years as the age of majority for all, unless the personal laws follow a different age)</td>
</tr>
<tr>
<td>Beginning and end of right to free and compulsory education</td>
<td>Right to free and compulsory education begins at age 6 and ends at age 14</td>
<td>Right to free and compulsory education begins at age 6 and ends at age 14</td>
</tr>
<tr>
<td>Marriage</td>
<td>21</td>
<td>18</td>
</tr>
<tr>
<td>Sexual consent</td>
<td>Not defined</td>
<td>16 (Section 375 of the Indian Penal Code) in general and 15 in case she is married</td>
</tr>
<tr>
<td>Conscription into the armed forces</td>
<td>There is no conscription in India</td>
<td>There is no conscription in India</td>
</tr>
<tr>
<td>Voluntary enlistment in the armed forces</td>
<td>16 (A person is allowed to take part in active combat only at the age of 18 as per the Army Headquarters Regulations)</td>
<td>16 (A person is allowed to take part in active combat only at the age of 18 as per the Army Headquarters Regulations)</td>
</tr>
<tr>
<td>Conscription into the armed forces</td>
<td>There is no conscription in India</td>
<td>There is no conscription in India</td>
</tr>
<tr>
<td>Participation in hostilities</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Age for driving a vehicle</td>
<td>18 (The Motor Vehicles Act, 1988 does not allow a person under the age of eighteen years to drive a motor vehicle in any public place)</td>
<td>18 (The Motor Vehicles Act, 1988 does not allow a person under the age of eighteen years to drive a motor vehicle in any public place)</td>
</tr>
<tr>
<td>Legal drinking age</td>
<td>The legal minimum age to purchase liquor ranges from 18 in some states to 25 in others.</td>
<td>The legal minimum age to purchase liquor ranges from 18 in some states to 25 in others.</td>
</tr>
</tbody>
</table>

**Admission to employment or work, including hazardous work, part-time and full-time work**

<table>
<thead>
<tr>
<th>Act</th>
<th>Boys</th>
<th>Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Labour (Prohibition and Regulation) Act, 1986</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Apprentices Act, 1961</td>
<td>14 (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)</td>
<td>14 (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)</td>
</tr>
<tr>
<td>Mines Act, 1952</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>Merchant Shipping Act, 1958</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Motor Transport Workers Act, 1961</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Apprentices Act, 1961</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Bidi and Cigar Workers Act, 1966</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Plantation Labour Act, 1951</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>----------------------------</td>
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<td>----</td>
</tr>
<tr>
<td>Factories Act, 1948</td>
<td>14 (A child below 14 years of age is not allowed to work in any factory. An adolescent between 14 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorised medical doctor but cannot be employed for more than four and a half hours)</td>
<td>14 (A child below 14 years of age is not allowed to work in any factory; an adolescent between the ages of 14 and 18 can be employed in a factory only if she obtains a certificate of fitness from an authorised medical doctor but cannot be employed for more than four and a half hours)</td>
</tr>
<tr>
<td>Minimum age of criminal responsibility</td>
<td>7 (Nothing is an offence committed by children below seven as per Section 82 of IPC; Section 83 of IPC contains doli incapax provisions for children between 7 and 12, based upon a child's attainment of sufficient maturity of understanding to judge the nature and consequences of his/her conduct)</td>
<td>7 (Nothing is an offence committed by children below seven as per Section 82 of IPC; Section 83 of IPC contains doli incapax provisions for children between 7 and 12, based upon a child's attainment of sufficient maturity of understanding to judge the nature and consequences of his/her conduct)</td>
</tr>
<tr>
<td>Juvenile justice</td>
<td>18 (Under the Juvenile Justice (Care and Protection of Children) Act, 2000, care and protection is ensured to all children below 18 years of age. Children in conflict with law are also defined as those below 18 years of age).</td>
<td>18 (Under the Juvenile Justice (Care and Protection of Children) Act, 2000, care and protection is ensured to all children below 18 years of age. Children in conflict with law are also defined as those below 18 years of age).</td>
</tr>
<tr>
<td>Deprivation of liberty, including by arrest, detention and imprisonment, inter alia in the areas of administration of justice, asylum seeking and placement of children in welfare and health institutions</td>
<td>There is no age limit for deprivation of liberty because all citizens have the right to protection of life and personal liberty as per Article 21 of the Constitution of India</td>
<td>There is no age limit for deprivation of liberty because all citizens have the right to protection of life and personal liberty as per Article 21 of the Constitution of India</td>
</tr>
</tbody>
</table>

Based on the recommendations of the CRC Committee (reproduced in Annexure 2A), the Government of India (GoI) took the following measures on some issues pertaining to the legal age of children and minimum age standards.

- Amendment to the juvenile justice law in the year 2000, defining a child as a person up to the age of 18 years, thereby ensuring that boys and girls under 18 are not tried as adults if they come in conflict with the law and are assured necessary care and protection when required.

- Amendment to the Child Marriage Restraint Act of 1929 (now called the Prohibition of Child Marriage Act, 2006) to move beyond mere restraint on child marriages towards prohibition and greater punishment for breach of its provisions and better enforcement of minimum age standards.

- Proposed Protection of Children against Sexual Offences Bill that has been tabled in the Parliament (Rajya Sabha) and is under discussion. The Bill is gender-neutral and hence seeks to provide protection to both girls and boys against sexual offences and also provides for 16 years as the age of sexual consent for both boys and girls. It also takes care of the Law Commission of India’s recommendation to raise the age of sexual consent of girls from 15 years to 16 years regardless of marriage.106

The Goa Children’s Act has also been a positive step as it is the first and the only state legislation that defines “child” and provides for children’s rights.

In addition, the GoI has been considering a review of the definition of the child in the light of Article 1 of the CRC. This exercise was referred to the Law Commission of India as part of a comprehensive review of the Code of Criminal Procedure, the Indian Evidence Act and the Indian Penal Code. The GoI has sought more time to remove anomalies in the definition of the child. Additional Solicitor General Indira Jai Singh has said that the anomalies in different laws are being examined.107

2A.2 Definition of the child in various policy documents

The National Plan of Action for Children, 2005 (NPAC) is the only policy document that adheres to the principles and provisions of the CRC in terms of the definition of “child”. The NPAC makes a big leap in recognising children as persons younger than 18 and in committing itself to ensuring all rights for all children.

Part B

Areas of Concern

2B.1 Definition of the child – a critical analysis of progress in past 20 years

The CRC defines “children” as persons below the age of 18 years.

In the past 20 years of implementation of the CRC, India has received feedback from the CRC Committee to bring uniformity in the age limits set under various laws in conformity with CRC principles.108 Even this one recommendation under the section on “definition of the child” in the first set of Concluding Observations dated 23 February 2000 remains unmet. On the other hand, there are some specific recommendations of the Committee on setting a minimum age for various purposes such as sexual consent and employment and on increasing the age for criminal responsibility. Not all have been complied with as elaborated below.

(a) The age of criminal responsibility remains at a low of seven years despite the CRC Committee’s recommendation in both its Concluding Observations on India to raise the age on the basis of internationally accepted norms.109

(b) Neither is there a definition of “child” or “child labour” in any of the existing laws dealing with this problem nor has the minimum age of employment been fixed despite recommendations made by the CRC Committee in this regard in both the sets of Concluding Observations on India.110 Employment of children below 14 is prohibited only in certain hazardous occupations and processes under the Child Labour (Prohibition and Regulation) Act, 1986 while the the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 provides punishment for employing or procuring for employment children younger than 18. This causes further confusion in the application of child labour laws. Another problem requiring consideration is that a child younger than 14 may work under regulated conditions in occupations and processes that are not “hazardous” under the Child Labour (Prohibition and Regulation) Act but it cannot enter into a legal contract for employment under the Indian Contract Act, 1872. This restricts realisation of children’s rights under various labour legislation.

There is no minimum age of sexual consent for boys in the present laws. Until the proposed law is amended

108 CRC/C/15/Add.115/paras 26, 27
109 CRC/C/15/Add.115/paras 26, 27, 79, 81 dated 23 February 2000 and CRC/C/15/Add.228/paras 78, 80(a) dated 26 February 2004
110 CRC/C/15/Add.115/paras 65 and 71 dated 23 February 2000 and CRC/C/15/Add.228/paras 72 and 73 (d) dated 26 February 2004
or the proposed Protection of Children against Sexual Offences Bill is passed and enforced, boys who are victims of sexual abuse will have to continue to suffer. Moreover, in the present law, the age of sexual consent for girls has been fixed at 16 years in the context of rape, which is stated to have taken place only when there has been penile penetration of the vagina. In the context of other forms of sexual abuse not necessarily as grave as rape, it is not clear if the age of sexual consent for girls will apply. This goes against CRC principles and UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

(c) The Right to Education guaranteed by Article 21 A of the Constitution of India is also limited to children in the 6-14 age group. As a result, it is difficult to ensure complete education for all children up to the age of 18. Disabled children suffer specifically as their right to inclusive education is limited to the age of 14.

The National Policy for Children, 1974 made a commitment to work towards guaranteeing the right to education to all children up to the age of 14. The 1992 National Plan of Action for children was silent on age. The 2005 National Plan of Action committed to work towards ensuring free and compulsory education and universalisation of right to education for all children up to the age of 18. Yet, the Right of Children to Free and Compulsory Education Act, enacted in 2009, was restricted to children in the 6-14 age group. Thus, in the absence of a clear definition of “child”, the Ministry of Women and Child Development's attempts at ensuring all rights for all children below 18 years of age remain unmet.

The lack of a definition of “child” and uniformity in age standards causes other problems that cannot be ignored.

- By and large, the Census of India treats children as persons below the age of 14 years. Enumeration of data for each age is restricted to population totals. Therefore, on other indicators it is difficult to find data for 18-year-olds, who invariably are clubbed in the 15-19 age category. Also, age categories vary for different indicators. For instance, age categories used for providing data on child marriage are less-than-10-years, 10-11, 12-13, 14-15, 16-17 and 18-19 but the age categories for enumerating disabled children are 0-4, 5-9 and 10-19. As a result, for most data relating to children, assessment of the real picture becomes difficult. This is a clear result of the lack of definition of “child” in the policy framework.

- While the age of majority under the Indian Majority Act is 18, the variation in the age of majority when left to personal laws is the biggest hurdle in ensuring all rights for all children. For example, children belonging to communities that allow child marriage cannot enjoy the rights that their peers from other communities enjoy. Similarly, despite amendments to the juvenile justice law providing for adoption of all orphaned, abandoned and surrendered children, the absence of a secular law on adoption denies children belonging to certain communities alternate care and the right to a family environment.

- Laws on the age definition – relating to child labour, education and juvenile justice – need harmonisation urgently. Children in need of care and protection, including street and working children and children in conflict with law, are often school dropouts. Therefore, protection and rehabilitation of children up to the age of 18, as provided for under the juvenile justice law, can only be possible if the right to education is extended to all children up to the age of 18 and if the child labour law is amended to prohibit employment of all children below the age of 18. Moreover, confusion emanating from the different age groups of child labour dealt with under the juvenile justice law and the child labour law, as mentioned above, need to be resolved.
The National Commission for Women and Delhi Commission for Women had filed petitions in 2007 before the Supreme Court highlighting the contradictions in various laws in the definition of “child”. The commissions contended that the variation in the age-based definition of “minor” or “child” in different laws impeded the dispensation of justice, particularly in cases relating to girls younger than 18 who marry an adult man or elope with one.

2B.2 Need to define the child in policy framework

It is well established that the very absence of a definition of “child” leads to differential treatment of children and the denial of their rights. Defining the “child” in policy framework should thus become the basis for formulation and implementation of all laws and programmes for children. Efforts in this direction have been far from adequate.

Given that different laws serve different purposes, a minimum legal age needs to be provided in accordance with the objectives of the law. However, this does not take away the need for a uniform definition of “child”. For instance, the age of sexual consent need not necessarily be 18 years simply because a child has come to be defined as a person below the age of 18. The two issues are not the same. Specific and special provisions can be built into the law for dealing with matters involving sexual consent of 16-18 year olds, but this will only happen if “child” is clearly defined and there is a general acceptance that rights of all children below 18 years need to be safeguarded. Similarly, the age of criminal responsibility cannot be equated with the age laid down in the definition of “child”, as the former serves a very different purpose. Yet, if the age of criminal responsibility is to be viewed in the light of the definition of the child as contained in the CRC, then attempts will have to be made to raise it, as has been recommended by the CRC Committee in its Concluding Observations on India’s Initial Report.

In terms of policy commitments, the National Policy for Children, 1974 is outdated and there is no other policy document that defines “child”. Although the 1992 National Plan of Action for Children (NPAC) reaffirmed India’s global commitments to children, including the CRC, it did not define the “child” or aim to bring uniformity in the definition under different laws. It was only in 2005 that children were recognised as persons below the age of 18 and the NPAC committed itself to ensure all rights for all children below 18 years. Even in 2004, when the National Children’s Charter was adopted, there was no attempt made at defining “child” or at reviewing and harmonising the varying age definitions as much as possible.

While the GoI committed itself in the NPAC to ensuring rights of all persons below the age of 18 years, it has failed to bring this change across all laws and policies concerning and/or impacting children’s rights. This is also a result of the lack of a definition of “child” in policy framework.

Conclusion

Although uniformity in the different legal ages defined under different laws has been debated time and again and harmonising these differences is a progressive exercise, there can be no doubts on the need for a uniform definition of “child” in the national policy framework.

113 CRC/C/15/Add.115/paras 26, 79, 81 dated 23 February 2000 and CRC/C/15/Add.228/paras 78, 80(a) dated 26 February 2004
3. **General Principles**

**Introduction**

Articles 2, 3, 6 and 12 of the Convention on the Rights of the Child relate to the General Principles of the Convention, these being – non-discrimination, best interests of the child, survival and development and respect for views of the child. This chapter throws light on India’s reporting on the general principles, status of their implementation and areas that have been overlooked. The focus of the chapter is the principle of non-discrimination as the principles of survival and development, best interests of the child and respect for the views of the child are covered in detail in different parts of all other chapters of Volume II of this report. Also, the CRC Committee in its Concluding Observations on India’s first two reports has concentrated largely on the principle of non-discrimination and respect for the views of the child.

Presented in two parts, this chapter looks at the progress made on the Concluding Observations of the CRC Committee and national legal and policy commitments, and goes on to highlight the status of General Principles and Government of India’s (GoI) reporting on it.

**Part A**

**Progress on the Concluding Observations - A quick glance**

In its Initial Report, the Government of India (GoI) merely accepted discrimination on the grounds of caste, gender and disability and listed India’s Constitutional guarantees ensuring right to equality and non-discrimination as well as affirmative action taken by way of supportive laws, policies and programmes. The principle of respect for the views of the child was unfortunately passed off virtually in one paragraph, stating how Indian society believes in certain discipline in life and respect for elders. There was nothing in the report on the guiding principle of survival and development of children.

The second report, i.e. the first periodic report and the third and fourth combined report, elaborate on these, especially the various General Measures of Implementation put in place to ensure compliance with the guiding principles of CRC. In fact, the third and fourth periodic report also responds to the CRC Committee’s Concluding Observations on India and hence covers many more facets of discrimination as well as details on other principles.

**3A.1 Progress on Concluding Observations made by the CRC Committee**

Progress on the recommendations of the CRC Committee to India on General Principles has been rather dismal (see Annexure 3A for a detailed list of recommendations). To begin with, very few concerns and
recommendations of the CRC Committee have been addressed. Secondly, the progress on those addressed has been rather slow and inadequate.

3A.1.1 Recommendations that have been complied with

**Non-Discrimination**

- Steps to abolish “untouchability” and action against related abuse (CRC/C/15/Add.115/ para 31 and CRC/C/15/Add.228/ para 28).

- Affirmative measures to advance and protect vulnerable groups (CRC/C/15/Add.115/ paras 28, 31 and CRC/C/15/Add.228/ para 28).

- Comprehensive public education campaigns to prevent and combat gender discrimination (CRC/C/15/Add.115/ para 31 and CRC/C/15/Add.228/ para 30, 34 (a), (b) and (c)).

3A.1.2 Measures underway

**Non-Discrimination**

- Steps to ensure the implementation of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (CRC/C/15/Add.228/ para 34 (a)).

- Massive awareness campaigns and necessary measures, including imposing sanctions, to end the practice of selective abortions and female infanticide (CRC/C/15/Add.228/ para 34 (b)).

**Respect for Views of the Child**

- Initiatives to increase child participation by the establishment of children’s councils, associations and projects in several states and districts – *this is largely done by NGOs and seldom with support from the government* (CRC/C/15/Add.228/ para 36).

3A.1.3 What remains

**Non-Discrimination**

- To address the widely disparate levels of enjoyment of the rights in the Convention by children living in certain states, rural areas and slums (CRC/C/15/Add.115/ para 28 and CRC/C/15/Add.228/ para 25).

- A review and reorientation of budgetary provision for programmes targeting the most vulnerable groups – *this has not been addressed in the context of disabled children and children in conflict areas* (CRC/C/15/Add.115/ para 29 and CRC/C/15/Add.228/ para 26).

- Full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the 1993 Employment of Manual Scavengers Act (CRC/C/15/Add.115/ para 31 and CRC/C/15/Add.228/ para 28).

- Enforcement of protective laws (CRC/C/15/Add.115/ para 33 and CRC/C/15/Add.228/ para 30).

- Mobilisation of political, religious and community leaders to eradicate discriminatory traditional practices and attitudes and to assist the government in such efforts (CRC/C/15/Add.115/ para 33 and CRC/C/15/Add.228/ para 30).

- Set out specified goals and timetables for all existing and future special temporary programmes to evaluate their implementation and impact (CRC/C/15/Add.228/ para 32).
Develop special programmes based on children’s needs and rights rather than on sex, caste or tribe or any other characteristic that may result in unjustifiable discrimination (CRC/C/15/Add.228/ para 32).

Take necessary measures for the implementation of the National Plan of Action for the Girl Child and enforcement of protective law (CRC/C/15/Add.228/ para 30).

Undertake gender impact studies when planning programmes relating to economic and social policies (CRC/C/15/Add.228/ para 34 (c)).

Inclusion of specific information in the next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking account of the Committee’s General Comment No. 1 on article 29, paragraph 1, of the Convention (aims of education) (CRC/C/15/Add.228/ para 35).

Respect for Views of the Child

Need for legal provisions guaranteeing children’s participation in civil proceedings affecting their rights and well being (CRC/C/15/Add.228/ para 36, 37 (a)).

Bringing a change in the traditional attitudes towards children’s participation in society, especially girls (CRC/C/15/Add.228/ para 36, 37 (a)).

Capacity development and provision of educational information to parents, teachers, government/administrative officials, social workers, the judiciary, children themselves and society at large on the right of children to have their views taken into account, on how to facilitate expression of informed decisions by children, and how to give consideration to their views (CRC/C/15/Add.115/ para 35 and CRC/C/15/Add.228/ para 37 (b)).

Promotion of respect for the views of children, especially girls, within the family, schools, institutions, as well as in judicial and administrative proceedings (CRC/C/15/Add.115/ para 34, 35 and CRC/C/15/Add.228/ para 36, 37 (b) and (c)).

Regular review of the extent to which children’s views are taken into consideration, including their impact on policies and programmes (CRC/C/15/Add.228/ para 37 (c)).

3A.2 National commitments: shifting of goals

The guiding principles of the CRC are actually what the Constitution of India guaranteed way back in 1950. Every citizen has the right to equality, right against discrimination, right to life and freedom of expression. However, the various national commitments that relate to these guiding principles are very generic in natures. There are virtually no targets and timelines fixed against the goals sought to be achieved through these policy and legal commitments. The only exception to this are three goals laid down under the National Plan of Action for Children, 2005 (NPAC, 2005), which have fallen short of the targets set out.

Targeted Goals under NPAC, 2005

- To eliminate child marriages and ensure 100 percent registration of marriages by 2010
- To stop the growth of HIV/AIDS and sexually transmitted infections by 2010
- To reduce the proportion of infants infected with HIV by 20 percent by 2007 and by 50 percent of all such children by 2010
Many goals get repeated in various plans and policies yet they seem far from complete realisation. For example, in the Tenth Five Year Plan there were two goals that seemed achievable. But these too could not be achieved.

**Tenth Five Year Plan – the two achievable goals**

- Integrate disabled children into mainstream education through universalisation of education with a barrier-free environment.
- Develop teaching material and instruction medium in tribal languages/dialects up to primary level.

A detailed list of the various legal and policy commitments and goals set thereunder is given in the table below.

<table>
<thead>
<tr>
<th>Legal and Policy Commitments</th>
<th>Target/ Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution of India</td>
<td>Article 15: …Not discriminate against any citizen…(3) Nothing in this article shall prevent the state from making any special provision for women and children.</td>
</tr>
<tr>
<td></td>
<td>Article 39: …that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.</td>
</tr>
<tr>
<td></td>
<td>Article 45: Provision for early childhood care and education to children below the age of six years…The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.</td>
</tr>
<tr>
<td></td>
<td>To assist children affected by one or more disabilities, having no access to proper rehabilitative services…to lift up the status of those more marginalised.</td>
</tr>
<tr>
<td></td>
<td>To remove the gender bias and to improve the status of the girl child in society so as to provide her with equal opportunities for her survival and development to her full potential.</td>
</tr>
<tr>
<td></td>
<td>To ensure the equality of opportunity, special assistance shall be provided to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas.</td>
</tr>
<tr>
<td>National Plan of Action for Children, 2005</td>
<td>To universalize early childhood services to ensure children’s physical, social, emotional and cognitive development.</td>
</tr>
<tr>
<td></td>
<td>To assure equality of status of girl child as an individual and a citizen in her own right through promotion of special opportunities for her growth and development.</td>
</tr>
<tr>
<td></td>
<td>To stop sex selection, female foeticide, and infanticide.</td>
</tr>
<tr>
<td></td>
<td>To eliminate child marriages and ensure 100% registration of marriages by 2010.</td>
</tr>
<tr>
<td></td>
<td>To ensure survival, development and protection of the girl child and to create an environment where in she lives a life of dignity with full opportunity for choice and development.</td>
</tr>
</tbody>
</table>
To promote within the family, community, schools and institutions, as well as in judicial and administrative proceedings, respect for the views of all children, including the views of the most marginalized, especially girls, and facilities their participation in all matters affecting them in accordance to their age and maturity.

To ensure the right to development as well as a recognition of special needs and care and protection to children with disabilities who are vulnerable, such as, children with mental illness, severe mental impairment, children with disabilities from poor families, girl children with disabilities and others.

To stop the growth of HIV/AIDS and sexually transmitted infections by 2010

To reduce the proportion of infants infected with HIV by 20 per cent by 2007 and by 50% of all such children by 2010

To make all children aware of their rights and provide them with opportunities to develop skills to form and express their views build self esteem, acquire knowledge, form aspirations, build competencies in decision-making and communication, and gain confidence which will empower them to become actively involved in their own development and in all matters concerning and affecting them.

To empower all children as citizens by promoting their participation in decisions that affect their lives, the lives of their families and communities and the larger society in which they live.

To ensure right to development with dignity and equality creating an enabling environment where children can exercise their rights, enjoy equal opportunities and full participation in accordance with the UN Convention on the Rights of the Child, the Persons with Disability Act, National Trust Act and other laws dealing with child rights in India.

The strategy of educational development during the next decade of planning takes into account various emerging factors like the provisions of the Persons with Disabilities Act, 1995

After the enactment of the Disabled Act 1995, the education of the disabled up to age 18 has become a legal obligation. Though efforts have been made to provide educational facilities to this special group, these are not commensurate with the tremendous needs.

In order to provide access to drop-outs, working children, girls, migratory population and other similar categories, alternative education will be provided through institutional arrangements.

A new scheme called “Free Education for Girls” will be devised and implemented in a time-bound manner.

To ensure easy and equal access to education for women and girls through the commitments of the Special Action Plan of 1998

To initiate steps to eliminate gender bias in all educational programmes

To institute plans for free education for girls up to college level, including professional courses

Special attention to be paid to the already identified low female literacy pockets and to the women and the girl children belonging to the socially disadvantaged groups viz. SC, STs, OBCs, Minorities, Disabled, etc. as they still lag behind the rest of the population with the lowest literacy rates ranging between 5 and 10 per cent, while the national average of female literacy stands at 39.3 per cent in 1991.

Special efforts will be made to prevent disabilities through supplementary nutritional feeding for both children and expectant / nursing mothers, early detection and timely intervention

Ongoing scheme of the Integrated Education for the Disabled Children (IEDC) to be further expanded during the Ninth Plan to meet the growing demand for these types of schools, especially in the context of enacting the P.D. Act, 1995, ensuring equal opportunities for the disabled. In this regard, special attention will be paid to those districts which have poor, or no, educational facilities of Integrated Education.

The emerging threats from Drug and Psychotropic Substances as well as HIV/AIDS to Street Children will receive special attention.
| Tenth Five Year Plan, 2002-07 | - To view girl’s education as a major intervention for breaking the vicious intergenerational cycle of gender and socio-economic disadvantages  
- Emphasized improvement of the educational status of disadvantaged groups, including Schedules Castes (SC) and Schedules Tribes (ST), girls and disabled children and the removal of regional disparities.  
- To promote preventive approach to malnutrition and disability-intervention as early as possible and across the life-cycle, focusing on the younger children, under 3 years of age, the adolescent girls, expectant and nursing mothers.  
- Prevent disabilities through early detection, timely immunization, dietary corrections, supplement both macro and micro nutrients to children and expectant and nursing mothers  
- Integrate disabled children into mainstream education through universalization of education with a barrier-free environment.  
- Efforts to be made towards developing teaching material and instruction medium in tribal languages/dialects up to primary level  
- Describes ‘Children in Difficult Circumstances’ as street children, working children, child sex workers, child drug-addicts; children in conflict with law; children with disabilities; children with HIV/AIDS; children whose parents are in custody and suffering from HIV/AIDS, Tuberculosis, Leprosy; children affected by various disasters (natural and man-made); children affected by national and international conflicts, viz. political refugees, war victims, internally displaced and children whose families are in crisis, including those belonging to broken families.  
- To ensure appropriate depiction and presentation of children’s concern in all fora, including the media, to change the societal attitudes in favour of the girl child and the children in difficult circumstances/exploitative conditions.  
- A National Policy and Charter for Children as well as a National Commission for Children will be set up to protect and safeguard the rights of children |
| Eleventh Five Year Plan, 2007-12 | - Ensuring survival of the girl child and her right to be born  
- Ensuring that women and children living with HIV/AIDS receive medical care, including antiretroviral treatment.  
- Support institutions with larger student population of SCs, ST’s and OBC’s, minorities and physically challenged.  
- Support to the SCs, STs, OBCs, minorities, physically challenged, and girl students with special scholarships/fellowships, hostel facilities, remedial coaching, and other measures  
- Focus on Prevention of Girl Child Abuse, Exploitation and Violence, Prohibition of Child Marriage, reaching out to the marginalized and most vulnerable (Child workers, Eliminating Child Trafficking, Commercial Sexual Exploitation of Children, Child Pornography, Child Sex Tourism, HIV/AIDS-Infected/Affected Children, social integration of Children in Conflict with Law, Special provisions for children in distress/difficult circumstances (including children of prisoners), the need to see disability as a child protection issue, and simplifying adoption issues and preventing unscrupulous practices |
Part B

Status of Implementation of General Principles

3B.1 Non-discrimination (Article 2)

<table>
<thead>
<tr>
<th>Article 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s, parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability, birth or other status.</td>
</tr>
<tr>
<td>2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians or family members.</td>
</tr>
</tbody>
</table>

The Constitution of India guarantees equality to all citizens along with the right against discrimination on grounds of caste, gender, religion, language or ethnicity and the right to special and affirmative action for the weaker sections, including women, children, the disabled, dalits and other minorities. These commitments are reaffirmed by India’s ratification of various international legal human rights instruments, especially the Convention on the Elimination of All Forms of Racial Discrimination, 1965 (CERD); Convention on the Elimination of All Forms of Discriminations Against Women, 1979 (CEDAW); Convention on the Rights of Persons with Disabilities, 2006; and the CRC.

Over the years, intolerance towards diversity has increased across the world, and India too stands affected. Indeed, it has been a challenge for a huge and diverse country like India to implement the Constitutional guarantee against discrimination. While India’s policy and legal framework for protection of the right to non-discrimination is strong, in practice there is still much to be achieved, especially at a time when society has witnessed disintegration of the social fabric and witnessed several economic and social upheavals.

There can be no doubts that children are the worst sufferers of discrimination in any form whatsoever. They suffer not only when their families and communities are discriminated against but also because they are “children”. The very fact of being a child renders them vulnerable to the power exercised by adults on them at various stages of their life and in all settings. Discrimination on grounds of caste, class, gender, religion, ethnicity, language, medical condition etc. only adds to their woes.

India’s first two country reports on the CRC acknowledged certain forms of discrimination that children continue to face on account of caste, religion, gender and disability. Children affected by HIV/AIDS finds mention in the chapter on General Principles only in the recent third and fourth combined periodic report. For the first time, the third and fourth periodic report also carry details regarding status of children belonging to religious minorities, other than issues regarding protection of children under various personal laws.

All the country reports provide a list of measures taken to deal with various forms of discrimination. On the other hand, the alternate NGO reports to the CRC Committee reveal a worsening situation for children belonging to certain vulnerable groups. The first set of alternate reports included information relating to discriminations faced on account of religion and HIV/AIDS, as also the place of residence/work, such as children in conflict
areas, street children, children engaged in rag picking etc. A comparison of the government reports and the alternate NGO reports shows the government’s failure to explain the poor and inadequate implementation of measures taken so far and to acknowledge all forms of discriminations against children. It also denies racial discrimination and civil and ethnic conflict.

The 2004 Concluding Observations of the CRC Committee on India’s second report required the Government of India to include specific information in its next periodic report on the measures and programmes undertaken to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking account of the Committee’s General Comment No. 1 on article 29, paragraph 1, of the Convention (aims of education). The third and fourth combined periodic report completely denies the existence of problems of racism, racial discrimination, xenophobia and related intolerance in India. This is despite the world being aware of the Gujarat carnage and the attacks on Christian missionaries and tribal Christians in Orissa by Hindu fundamentalists. There have also been allegations of racial discrimination in employment by the youth from Mizoram. In fact, racial discrimination against the indigenous people of the North East is not unknown.

The outdated 1974 National Policy for Children did not mention the girl child, though it provided for special consideration for SCs and STs and rehabilitation of the “handicapped”.

There is no doubt that India has come a long way in terms of semantics when it comes to issues of discrimination. Words like “untouchability” and “harijan” are no longer in use. While many institutions set up for the disabled continue to be referred to as institutes for the handicapped, in policy the term “handicapped” has been replaced by “disabled” or the “physically and mentally challenged”. Words like “prostitutes” too are used sparingly in the case of children and when used, it is primarily for the lack of a term that best reflects their situation. With “victims”, the term “survivors” has also come to be used in programmes aimed at rehabilitation.

Some of the institutional mechanisms set up since 1992 with respect to the scheduled castes, scheduled tribes, religious minorities, the girl child, disabled persons, persons affected by HIV/AIDS are as follows:

The statutory National Commission for SCs and STs came into being on 12 March 1992, after the Constitution (65th) Amendment Act, 1990. Consequently, after the Constitution (89th) Amendment Act, 2003, as per notification dated 19 February 2004, the erstwhile National Commission for SCs and STs was replaced by two Commissions, viz. National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST).

In 1992, the Parliament of India passed the National Commission for Minorities Act and the first Statutory National Commission for Minorities was set up on 17 May 1993. Vide a Gazette notification issued on 23rd October 1993 by Ministry of Welfare, Government of India, five religious communities viz. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities.

The Office of the Chief Commissioner for Persons with Disabilities was set up under the Ministry of Social Justice and Empowerment by virtue of Section 57 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995.

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116 Information downloaded from the websites of the respective commissions - http://ncsc.nic.in/index2.asp?id=160 and http://ncst.nic.in/index2.asp?id=423&sublinkid=246&langid=1

117 Information downloaded from the website of the commission – http://ncm.nic.in/Genesis_of_NCM.html

118 Information downloaded from the website of the Office of the Commissioner for Persons with Disabilities - http://www.ccdisabilities.nic.in/page.php
The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. of India).\textsuperscript{119}

In 1992 India’s first National AIDS Control Programme (1992-1999) was launched and the National AIDS Control Organisation (NACO) was constituted to implement the programme.\textsuperscript{120}

At the same time, several programmes and schemes have come into existence to promote nutrition, education and protection of children belonging to such vulnerable groups, a list of which is part of the 74 programmes and schemes listed in Chapter 1 of Volume II of this report on General Measures of Implementation.

### 3B.1.1 Caste and Racial Discrimination

Unfortunately, for the special commissions on SCs, STs and minorities, children have not been a concern.

The October 2003 alternate report sent by the Asian Centre for Human Rights to the Committee on the Rights of the Child on India’s first periodic report highlighted ineffectiveness of the SCs and STs (Prevention of Atrocities) Act, 1989 and the special courts set up under this law. The report carried an analysis of cases registered and dealt with under the said law between 1999 and 2001, showing an increase in the trend. Similar analysis and sentiments have been expressed by dalit rights groups from time to time.

#### Crimes against SCs and STs – 1999-2007

“As per NCRB reports, 67% of cases during 1992-2000 and 64.9% during 2001-2007 were not registered under SC and ST (PoA) Act. Out of registered cases, in 84.4 % cases wrong provisions were applied to conceal heinous, inhuman and violent nature of the atrocities”.


\textit{Available at: http://idsn.org/fileadmin/user_folder/pdf/New_files/India/SCST_Positionpaper_final.pdf}

According to the National Coalition for Strengthening SCs & STs (PoA) Act, the Act needs to be amended to cover changing patterns of atrocities. It further points out that other forms of discrimination that need to be added to the said law as punishable offences include employment of a child in any occupation prohibited under the Child Labour (Prohibition and Regulation) Act 1986; employment of any person for manual scavenging; dedicating a SC/ST woman as a \textit{Devadasi}; and discrimination in \textit{Anganwadis}, mid-day meals and educational institutions. The coalition highlights that tribal children in conflict areas are the worst affected.\textsuperscript{121}

#### Targeting of children:

“Children are not just at risk from the violence of insurgent groups. Children and juveniles are routinely arrested and detained under repressive emergency laws. In Manipur, for example, evidence suggests that children and youths arrested by security forces are subjected to torture, some even “disappear” while in custody. In addition, children have witnessed to their mothers being sexually abused and raped by the security forces.”


\textsuperscript{119} Information available on the website of the National Commission for Women - http://ncw.nic.in/frmAboutUS.aspx

\textsuperscript{120} Information available on the NACO website – http://www.naconline.org/About_NACO/

According to a legislative brief prepared for the Parliamentarians by the Centre for Legislative Research and Advocacy, “Tribal groups are the worst sufferers from malnutrition and hunger. They live in agriculturally depressed areas, remote from roads, and the reach of administration and government programmes is weakest there. Programme implementation has deteriorated everywhere in India, but more so in tribal areas.”

Moving with the goal of inclusive growth, the Draft Approach Paper to the Twelfth Five Year Plan also acknowledges the need to focus on improving the situation of children belonging to vulnerable groups. Some highlights from the paper in this context are:

- “A system needs to be put in place to see that poor children are admitted in neighbourhood private schools against the 25 percent earmarked seats under RTE and are not deprived of the MDMS.
- Scholarship schemes for Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs) and Minorities have enabled many students from these sections to continue their education. Greater effort is needed, however, to improve enrolment ratios and to reduce drop rates especially for girl children among SCs, STs, OBCs, and Minorities.
- …there are groups within the SC and ST populations, like Primitive Tribal Groups and De-notified and Nomadic Tribes, as also internally displaced people, who continue to be under-covered. We must consciously include them while making provisions for sub-centres and anganwadis. Manual scavengers are the most severely disadvantaged among these groups. The Government had committed to eradicate this heinous practice and provide them sustainable rehabilitation by the end of the Eleventh Five Year Plan. This unfulfilled commitment needs to become priority for fulfillment during the Twelfth Five Year Plan.”

Some common features of poverty in India:

Poverty is concentrated in the poorer states such as Uttar Pradesh, Bihar and Jharkhand, which account for 27 per cent of the country’s population but 30 per cent of India’s poor lived there in 1973-74, which increased to 41 per cent by 2005.

Three quarters of the poor live in rural areas and depend on agriculture.

There has been hardly any decline in poverty for the scheduled tribe households: almost half of them continue to be below the poverty line. Although poverty amongst Scheduled Castes has declined from 46 to 37 per cent during 1993-2004 (Planning Commission 2008), the caste systems confines those from lower castes to a limited number of poorly paid, often socially stigmatized occupational niches from which there is no escape.

Many states, in the northern and western parts of the country, are characterized by long standing and deeply entrenched social inequalities associated with gender.

Poverty is connected with vulnerability and shocks, compounded by general uncertainty with respect to livelihood and life.

Source: Centre for Legislative Research and Advocacy (CLRA), Call to Action: Hunger, Under-nutrition and Food Security in India, CLRS Policy Brief for Parliamentarians, Policy brief series: No. 7; 2009 February.

Available at: http://www.clraindia.org/include/Hunger.pdf

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3B.1.2 Gender biases

The issues that have figured in various government reports with respect to gender discrimination relate to sex ratio, child marriage, dowry, nutrition and education of girls. India’s initial report to the CRC committee expressed concern at the adverse sex ratio but found factors like access of girls to health care and nutrition to have greater consequence on their status. Today, the sex ratio has fallen to an appalling low in all age categories. The 1991 Census recorded 927 females for every 1000 males. In 2001, the overall sex ratio stood at 933; it increased marginally to 940 in 2011. However, the child sex ratio (0-6 years) has fallen to an all-time low of 914 females per 1000 males.

<table>
<thead>
<tr>
<th>Year</th>
<th>Sex ratio in age Group 0-6 years</th>
<th>Overall sex ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>976</td>
<td>941</td>
</tr>
<tr>
<td>1971</td>
<td>964</td>
<td>930</td>
</tr>
<tr>
<td>1981</td>
<td>962</td>
<td>934</td>
</tr>
<tr>
<td>1991</td>
<td>945</td>
<td>927</td>
</tr>
<tr>
<td>2001</td>
<td>927</td>
<td>933</td>
</tr>
<tr>
<td>2011</td>
<td>914</td>
<td>940</td>
</tr>
</tbody>
</table>

Source: Census of India 2011

Poor implementation of the PC&PNDT Act has been elaborated in Chapter 1 of Volume II of this report on General Measures of Implementation. The law cannot improve the situation when the biases are strong and more among the wealthy and educated persons, including doctors who are meant to follow the law.

In its 2004 Concluding Observations for India, the CRC Committee has recommended that necessary measures be taken for the implementation of the National Plan of Action for the Girl Child and for enforcement of protective law. In the third and fourth combined report the government reports that the said Plan was merged with the National Plan of Action for Children, 2005. This is despite a continued need for specific focus on the issues concerning girl children, which includes increasing numbers of female foeticide and infanticide, increasing crimes against girls, a spate of honour killings, falling levels of nutrition amongst adolescent girls as well as the falling sex ratio amongst the adolescent population of the country.

The draft report of the Ministry of Women and Child Development’s Sub-group on Girl Child in the Twelfth Five Year Plan shows a clear gender bias on various fronts.

- **Child mortality (under 5 mortality rate)** – It is 70 per 1000 births for boys but 79 per 1000 births for girls.
- **Under nutrition** – As per NFHS 3 data on under nutrition in children below 5 yrs, 42 percent of boys and 43 percent of girls are undernourished. The five states with the highest percentages of undernourished girls are Madhya Pradesh (61 percent), Jharkhand (55 percent), Bihar (58 percent), Chhattisgarh (47 percent) and Gujarat (45 percent).
- **Anaemia among adolescents (15-19 years)** – Only 30 percent of boys and 56 percent of girls in the 15-19 age group is anaemic.
- **Immunisation (12-23 months)** – In the 12-23 month age group, 55 percent of boys and 52 percent of girls is fully immunised.
- **Education** – According to DISE figures 2009-10, the gender parity index is 0.94 at the primary level and 0.93 at the upper primary level. The percentage of out-of-school girls has declined from 7.9 percent (2005)
to 4.6 percent (2009). The drop-out rate is highest among adolescent girls mainly from the SC and ST communities.

The situation of child marriages, which was reported to be prevalent in rural Rajasthan, Uttar Pradesh, Bihar and Madhya Pradesh in the Government of India’s first report to the CRC Committee (dated 1997), remains a concern even in 2011. In fact the states of West Bengal and Jharkhand get added to the list of worst performing states on the subject. Child marriages need to be addressed as a child protection issue. However, as a strategy, both the government and UN agencies and international NGOs working in India find it best to address child marriage as a health issue. Unfortunately, when all other health indicators with respect to the girl child are poor, little can be achieved by continuing to see it as a health concern only.

Despite amendments to the Hindu Succession Act in 2005, girls get no share in the ancestral property. Tenancy laws which apply to agricultural land are such that women in many states are unable to inherit such land. Women’s property rights have not figured in any of the CRC reports from Government of India.
Improved enrolment of girls in schools has not helped as retention beyond elementary level remains a challenge.

Violence against girls, especially sexual violence has increased over the years.

While there is bias against girls, the stereotypes fail to ensure protection for boys, who are socialized to keep silent even when they suffer, as crying for help is not a sign of masculinity. Therefore, boys are unable to report abuse and have no voice to seek justice.

A disabled girl child belonging to a socially and economically backward community suffers multiple discrimination.

3B.1.3 Discrimination against the disabled

There has been a significant improvement in terms of enumeration of disabled persons through the Census and enactment of laws and policies to protect the rights of disabled persons. However, implementation of programmes aimed at inclusion, especially inclusive education, remain a cause of concern. Our schools, hospitals, courts, police stations, shelter homes, markets and other public places are yet to have ramps and other provisions needed to improve access to these places for the physically challenged.

Protection of disabled children is the worst as the investment in providing care, treatment and protection is low. For the mentally challenged, the situation is grave as there is very little understanding on the subject. Child Welfare Committees dealing with disabled children in need of care and protection and even heads of institutions providing care and shelter to children fail to make a distinction between children who are mentally retarded, mentally ill and mentally disabled. Efforts initiated at training *Anganwadi* workers on disability too are inadequate. The Planning Commission’s August 2011 Draft Approach Paper for the Twelfth Five Year Plan highlights the need to prioritise “mental health services, including psychosocial care and counselling, in settings of transition due to migration, areas of conflict and disturbances, especially in the North-East Region (NER) and Jammu and Kashmir (J&K) and in areas of natural disasters/calamities”.

India’s second report to the CRC Committee acknowledges discrimination against disabled children and their need for adequate means of survival, access to a social safety net, equal opportunities for education and development of their potential to the maximum. The recent third and fourth combined report of 2011 identifies expansion of the scope of the PWD Act, 1995, to include all forms of disability as a key action point. However, it fails to mention mental disability in its chapter on General Principles.

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124 Ibid.
The programmes and schemes for the disabled are generally related to providing aids and equipments or special education. The Tenth Plan goal to ensure integrated education for the disabled children as part of universalisation of education is still a distant dream, and more so when the goal of 100 percent enrolment is yet to be achieved.

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**Education of disabled children in India - Excerpts**
Joseph Gathia
Sat, Jun 21, 2008 14:20:54 IST

... India has some 40 to 80 million persons living with disability, it is estimated that about 30 per cent of them are children below the age of 14 years. India is one of the few countries in the world where 90 per cent of disabled children do not receive any form of education.

World over the education for disabled children is in disarray. Disabled children make up a third of the 77 million children worldwide who are excluded from education - equivalent to twice the number of children living in Britain.

... Poverty in India means many families have to make choices about which of their children they can afford to send to school. Parents of children with disabilities have even more difficult choices, as they struggle to pay for medical treatment, special equipment and transport.

Despite their social, religious, economic, political and geographical differences, most Indians consider disability as part of "karma".

... In Indian psyche, disability is still considered a punishment for sins of previous birth.

... Despite all odds, some progressive steps have been taken in India. In keeping with demands for a more inclusive system of education in India, the government promises to include disabled children in all its educational programmes.

There are more than 3,000 special schools in India today. Of them, 900 are schools for the hearing impaired, 400 for children with visual impairment, 700 for those with locomotor disabilities, and 1,000 for the intellectually disabled.

More than 50,000 children with disability are enrolled in the Integrated Education for Disabled Children, a government-sponsored programme.

While the Sarva Shiksha Abhiyan (SSA) has made a concerted effort to promote the inclusion of children with special needs, the system faces challenges in identifying these children and responding to their needs. Only around 1 per cent of funds under SSA are spent on inclusive education. And, the budget for educating children with mild to moderate disabilities in regular school settings has not increased commensurately, since the focus on inclusive education began in the 1970s.

A few schools have resource rooms and employ special education teachers to help retain children with special needs in their system. Sadly, these facilities are found in very few cities.

Since there are almost no special schools or special educational services in rural India, integrated education for children with special needs is provided by default in the village schools.

Government policy, legislative actions, schemes and provisions for the disabled give the impression of a state that is committed to human rights and equal opportunities. But the ground reality is quite different. The disabled children continue to be neglected and marginalised, with the onus of care on the family rather than the community. India needs to shift from the medical model of intervention to community rehabilitation of the disabled.

There is a need for a holistic approach on this issue. We need to change the education system to make it accessible to all children and prepare the society – the parents, friends and employers to provide support to the disabled children.

Although India has a growing disability rights movement and one of the more progressive policy frameworks in the developing world, a lot more needs to be done in implementation and getting the basics right. Let us teach parents how to become an effective advocate for their child. A primary goal such advocacy skill of parents is to empower them to be more effective and knowledgeable about legal provisions and schemes. Informed, supportive parents are better able to make rational decisions for their child.

The seeds of “inclusive education” are sown, in a society where the disabled have very little opportunity to be integrated. This indicates that task is going to be tough.

3B.1.4 Children affected by HIV/AIDS

To reiterate, issues of discrimination against children affected by HIV/AIDS were not addressed in the first two CRC reports of Government of India. Unfortunately, even the Concluding Observations of the CRC Committee on India’s first two reports did not list HIV/AIDS related discrimination as a concern.

India’s third and fourth periodic report on CRC deserves appreciation for highlighting the issue in its chapter on General Principles, though it is sad to find the government giving up on the possibility of dealing with it on grounds of difficulties in assessing the extent of the problem: “There is no unified system of tracking episodes of stigma and discrimination among service providers (education, health, etc.), the possibility of knowing the exact scope of the problem is limited.”

While attempts are being made to address issues of care and treatment of children affected by HIV/AIDS, discrimination against such children continues unabated.

Chapter 8 in Volume II of this report carries more details on HIV/AIDS related discrimination faced by children of the country.

3B.2 Best interests of the child

The initial 1997 India country report on CRC acknowledged the failure of the personal laws to protect the best interests of children like the “length of maintenance (Muslim Law), custodian-ship of the mother (Hindu Law), caste-related identity (Hindu Law) and denial of adoption to non-Hindus” and identified these as concerns which would need to be addressed more comprehensively. It also identified “illegitimacy of children” as being against the principle of equality and dignity of children. The second country report on the CRC failed to touch upon these issues and concentrated on the decisions of the courts in keeping with the principle of best interest of the child while dealing with matters relating to guardianship and custody and maintenance of children. In the chapter on family environment and alternative care, the second report showed concern over ensuring the best interest of children of mothers living in prison as under-trial prisoners or convicts. It laid down some of the measures taken toward rehabilitation of orphaned and destitute children in non-institutional care options, such as adoption, foster care and sponsorship in accordance with the principle of best interest of the child. The General Principles chapter in the third and fourth combined report is elaborate in many respects except on the principle of best interests of the child, on which it merely makes a passing remark. It lays down some of the relatively recent but significant steps taken to ensure adherence to the principle of best interest of the child in policy, law and action. These include the formulation of the NPAC, 2005 which gives paramount consideration
to the stated principle, the establishment of the NCPCR and changes brought about in the juvenile justice law. While in policy the principle of best interest of the child is well accepted, in praxis it remains a concern. In fact, in the name of following this principle, courts and other judicial and quasi-judicial bodies have often ended up subjecting children to trauma and agony.

<table>
<thead>
<tr>
<th>Experiences of an NGO providing legal aid to children</th>
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</thead>
<tbody>
<tr>
<td>A Juvenile Justice Board in Delhi recently denied a minor victim of rape access to the documents lying with the Board on grounds of protecting the privacy of the minor accused. The nine-year-old rape victim was left with no option but to approach the Delhi High Court for necessary intervention to help her access the papers she needed to file an appeal against the order of the Board.</td>
</tr>
<tr>
<td>In another instance, a minor victim of incest was sent back to her family by a Child Welfare Committee in Delhi to live with her abuser and tormentor as the child could not bear to live in horrible conditions of institutional care where she was kept for a few months. The absence of a better alternative forced her to decide to go back home and her decision was accepted as being in compliance with the principle of respect for the views of the child and the best interest of the child.</td>
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</tbody>
</table>

There is a longstanding need to develop handbooks for practitioners on the principle of “best interests of the child” based on a documentation of experiences of children and NGOs working with them.

### 3B.3 Respect for the views of the Child

<table>
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<tr>
<th>Article 12</th>
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</thead>
<tbody>
<tr>
<td>1. States Parties shall assure to the child who is capable of forming his or her own views 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.</td>
</tr>
<tr>
<td>2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.</td>
</tr>
</tbody>
</table>

The first country report on CRC did not pay much attention to the principle of respect for the views of the child and passed it off by saying that the Indian society believes in disciplining children and ensuring that they continue to respect their elders.

In the second report or the first periodic report, the government had mentioned initiatives taken to increase child participation by the establishment of children’s councils, associations and projects in several states and districts. This, however, is largely done by NGOs with technical assistance from UNICEF and other international NGOs. The government is yet to establish such forums and spaces for children.

The insertion of a chapter on “child participation” in the NPAC, 2005 with a commitment of budget for its implementation was a positive step, but it failed to take off the ground for sheer lack of a political will and insight.

Similarly, putting in place the NCPCR and other such mechanisms has not ensured children’s participation in matters affecting them.

Certain innovations were brought into the juvenile justice law through the 2007 Central Model Rules, such as making it mandatory for every institution providing care and protection to children to facilitate establishment of
a children’s committee and ensure representation of children in the management committee of the institution. These have not been implemented. The recommendation of the CRC Committee to review measures taken to give consideration to children’s views and assess the impact of such measures has been ignored completely.

### 3B.4 Life, survival and development

<table>
<thead>
<tr>
<th>Article 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. States Parties recognize that every child has the inherent right to life.</td>
</tr>
<tr>
<td>2. States Parties shall ensure to the maximum extent possible the survival and development of the child.</td>
</tr>
</tbody>
</table>

Over the years, as with other General Principles, reporting on the principle of survival and development too has improved. The Initial Report did not bother to throw light on this principle at all. The second report dealt with it more in the context of health issues such as IMR, falling sex ratio, nutrition related anaemia etc. Surprisingly, however, it did show concern over non-reporting of child deaths and hence “unsatisfactory” registration of child deaths.

While the third and fourth periodic report covers issues of child mortality, accidents, suicides, crimes against children and natural disasters, like the other reports it has left out the threat to life and loss of life faced by children and their families in the conflict areas. In fact, there is no acknowledgement of conflict in the report and hence very little recognition of the problems faced by children in these areas.

Chapters 4, 6 and 8 of Volume II of this report on Civil Rights and Freedoms, Basic Health and Welfare and Special Protection Measures respectively, deal with children’s right to life, survival and development in greater detail.

### Conclusion

In this chapter, the emphasis was to reflect on the GoI’s reporting on General Principles and action taken on the relevant Concluding Observations of the CRC Committee. As mentioned earlier, General Principles apply to all rights spelt out in the Convention and are therefore covered in all chapters of this report. The chapters that follow relate to the specific sets of rights, the next one covering civil rights and freedoms.
4. Civil Rights and Freedoms

Introduction

Civil and political rights are immediate rights, to be implemented without any delay. They have been guaranteed to all citizens, including children, by the Constitution of India. This chapter attempts to put together a situational analysis on children’s civil and political rights as enshrined in the Convention on the Rights of the Child (CRC), 1989.

The chapter is divided into two parts. The first part presents a glimpse of the progress made on relevant national and international commitments. The second part analyses the situation of children in the last 20 years against various articles of the CRC pertaining to civil rights and freedoms.

Part A

Progress on the Concluding Observations - A Quick Glance

In its Initial Report, the Government of India (GoI) had stated that in the matter of civil rights and freedoms, the laws of the country stand in line with the global human rights movement and the CRC. India’s ratification of the CRC in 1992 generated renewed concern regarding the policies and priorities, obligations and commitments vis-a-vis children. The First Periodic Report (the second in the series) reported on implementation article-wise. The third and the fourth combined periodic country report on CRC makes an attempt to address the various concerns and recommendations contained in the Concluding Observations of the CRC Committee.

An attempt is made in Annexure 4A of this volume to look at the progress made by India on the Concluding Observations from the Committee on the Rights of the Child, following submission of two country reports in 1997 and 2004. India is also under the obligation of certain other UN conventions it has ratified that affect the realisation of children’s civil rights and freedoms. Therefore, the relevant Concluding Observations made by the Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, and the Human Rights Committee are also presented in Annexure 4A.

4A.1 Progress on Concluding Observations made by the CRC Committee

It is sufficient to state here briefly that while some positive steps have been taken on the Concluding Observations of the CRC Committee for protection of children’s civil and political rights and some others are under way, many remain unmet.

4A.1.1 Recommendations that have been complied with

- The CRC Committee in its Concluding Observations on the 1997 country report (CRC/C/15/Add.115 dated 23 February 2000) had recommended amendment to Sections 53 and 54 of the Code of Criminal Procedure (CrPC) to make medical examination, including age verification, mandatory at the time of detaining children. This is not required as the juvenile justice law in the country provides for a medical age verification process to be undergone only on exhausting the possibilities of accessing documentary evidence on age. It has been widely accepted that this is a more child-friendly procedure. Similarly, amendments to the juvenile justice law and related rules have been a positive step in ensuring streamlining of the police procedures relating to detention of children as recommended in the Concluding Observations (CRC/C/15/Add.115/ paras 38, 39 and 40).

- Judicial inquiry in cases of alleged rape, death or injury of persons in police custody is mandatory and investigative bodies have been established in this regard (CRC/C/15/Add.115/ para 40).

- Recommendation to ban corporal punishment in schools is taken care of by incorporating a provision banning physical and mental harm to children in schools under the Right of Children to Free and Compulsory Education Act, 2009 (CRC/C/15/Add.228/ paras 44 and 45).

- Cruelty against children by persons in whose charge they are is a punishable offence under Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 (CRC/C/15/Add.115/ paras 39, 40, 41 and CRC/C/15/Add.228/ paras 42, 43 (b)).

4A.1.2 Measures under way

- Review of the Registration of Births and Deaths Act, 1969, in order to simplify the birth registration procedures and make the system more accessible has been in the pipeline for long. (CRC/C/15/Add.115/ para 36, 37 and CRC/C/15/Add.228/ paras 38, 39).

- Training and awareness-raising measures as regards registration in rural areas need a boost (CRC/C/15/ Add.115/ para 37 and CRC/C/15/Add.228/ para 39).

- The Prevention of Torture Bill, 2010 has been referred to a Parliamentary Standing Committee by the Rajya Sabha on 31 August 2010 (CRC/C/15/Add.115/ paras 38, 39, 40 and CRC/C/15/Add.228/ paras 42, 43).

- Protection of Children from Sexual Offences, 2010 has been passed by the cabinet and was tabled in the Rajya Sabha on 23 March 2011. It is yet to become a law (CRC/C/15/Add.115/ paras 38, 39, 40 and CRC/C/15/Add.228/ paras 42, 43).
Efforts to train law enforcement personnel on the human rights of children are underway, though very inadequate (CRC/C/15/Add.228/ para 43 (d)).

4A.1.3 What remains

- Registration of all births and establishment of easily accessible mechanisms such as mobile registration units, birth registration units in schools, etc. remains a challenge (CRC/C/15/Add.115/ paras 36, 37 and CRC/C/15/Add.228/ paras 38, 39).

- No measures have been taken to provide nationality to Pakistani refugee and Mohajir children residing in India (Rajasthan and Andhra Pradesh, respectively) even though the third and fourth combined CRC periodic report of the GoI, 2011 states that the Citizenship Act, 1955 allows foreign nationals to get Indian citizenship if they meet the criteria (CRC/C/15/Add.228/ para 41).

- No compensation is paid to people who have been victims of custodial abuse (CRC/C/15/Add.115/ para 40).

- Physical and psychological recovery and social integration of child victims of torture and/or ill-treatment has received very little attention (CRC/C/15/Add.228/ para 43 (e)).

- Amendment to the Juvenile Justice Act to provide for complaints and prosecution mechanism for cases of custodial abuse of children, including abuse in detention centres. Even while Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) regards cruelty against children by persons having their charge as a special offence, the punishment is only up to three months and the offence is non-bailable. The provision has no deterrent effect and complaints mechanisms and procedures are not clearly spelt out. Moreover, government servants cannot be arrested in such an event unless prior permission is taken (CRC/C/15/Add.115/ para 40 and CRC/C/15/Add.228/ para 43 (b)).

- Amendment in Section 197 of the CrPC and Section 43 of the Police Act, which provide immunity for action against law enforcement officials when complaints of custodial abuse or illegal detention are alleged are yet to take place (CRC/C/15/Add.115/ para 40).

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is yet to be ratified (CRC/C/15/Add.115/ para 41 and CRC/C/15/Add.228/ para 43 (a)).

- Corporal punishment is yet to be prohibited in in the family and in institutions (CRC/C/15/Add.228/ paras 44, 45).

4A.2 National Commitments: Shifting of Goals

An analysis of various national commitments reveals that there are no targets and timelines fixed with respect to India’s legal and policy commitments concerning children’s civil rights and freedoms, except in the case of the Right to Name and Nationality. Moreover, there has been a shifting of goals with respect to ensuring 100 percent birth registration.

Some of the goals that were set by the country in various policy documents regarding civil rights and freedoms are listed in Table 4.1.
<table>
<thead>
<tr>
<th>Legal and Policy Commitments</th>
<th>Target/Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constitution of India</strong></td>
<td>Article 5 states that at the commencement of this Constitution, every person who has his domicile in the territory of India and&lt;br&gt;(a) who was born in the territory of India; or&lt;br&gt;(b) either of whose parents was born in the territory of India; or&lt;br&gt;(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India. Article 19 (1) guarantees all citizens the right to—&lt;br&gt;(a) freedom of speech and expression;&lt;br&gt;(c) form associations or unions.&lt;br&gt;Article 21 prescribes that no person shall be deprived of his life or personal liberty except according to procedure established by law.&lt;br&gt;Article 25 states that all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.</td>
</tr>
<tr>
<td><strong>Registration of Births and Deaths Act, 1969 (RBD Act)</strong></td>
<td>Important landmark that made the registration of births, deaths and stillbirths compulsory across the country. The Act provides for a uniform law across the country on the registration of births and deaths and makes reporting and registration of all births and deaths compulsory. Implementation of the Act is the responsibility of the state governments that can frame rules on the basis of a model set of rules provided by the Central Government (Registrar General, India).</td>
</tr>
<tr>
<td><strong>National Policy for Children, 1974</strong></td>
<td>Lays down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development.</td>
</tr>
<tr>
<td><strong>National Population Policy, 2000</strong></td>
<td>Achieve 100 percent registration of births, deaths, marriage and pregnancy</td>
</tr>
<tr>
<td><strong>National Charter for Children, 2003</strong></td>
<td>Emphasises GoI’s commitment to children’s right to name and nationality.&lt;br&gt;All children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.&lt;br&gt;Every child shall have the freedom to seek and receive information and ideas. The State and community shall provide opportunities for the child to access information that will contribute to the child’s development.&lt;br&gt;The State and community shall be responsible for formulating guidelines for mass media in order to ensure that children are protected from material injuries to their well-being.&lt;br&gt;All children shall enjoy freedom of association and peaceful assembly, subject to reasonable restrictions and in conformity with social and family values.</td>
</tr>
<tr>
<td><strong>National Plan of Action, 2005</strong></td>
<td>Achieving 100 percent civil registration of births is one of the key priority areas out of the 12 identified by the NPAC for utmost and sustained attention in terms of outreach, programme interventions and resource allocations. The targets are to be achieved by 2012.&lt;br&gt;Protect all children against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, pornography, corporal punishment, torture, exploitation, violence and degrading treatment.&lt;br&gt;Address survival development, protection and participation rights of children in difficult circumstances.&lt;br&gt;Promote child participation to empower them as citizens and make all children aware of their rights and provide them with the opportunities to develop skills to form and express their views.</td>
</tr>
<tr>
<td><strong>Tenth Five Year Plan, 2002-07</strong></td>
<td>Ensure 100 percent registration of births by the end of the Tenth Five Year Plan period.</td>
</tr>
</tbody>
</table>
Under the National Population Policy, 2000, India set itself the goal to achieve 100 percent registration of births, deaths, marriages and pregnancies by 2010. The deadline shifted to 2007 under the Tenth Five Year Plan and finally to 2012 under the National Plan of Action for Children, 2005. The situation as reflected below clearly suggests that even the 2012 deadline cannot be met.

**Part B**

**Situation of children’s civil rights and freedoms (Articles 7, 8, 13, 14, 15, 16, 17 and 37(a))**

**4B.1 Name & Nationality (Article 7)**

<table>
<thead>
<tr>
<th>Article 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.</td>
</tr>
</tbody>
</table>

Birth registration is considered the first step in providing an identity to the child both as an individual and as a member of society, as the birth register is the first legal document in which the name of the child gets entered along with the parentage.126

The registration of births and deaths in India was made compulsory under the *Registration of Births and Deaths (RBD) Act, 1969,* which makes it necessary to register every birth within 21 days of its occurrence.

Prior to this Act, there was a great diversity in the legal provisions for registration of births and deaths in the country. Different Acts were enforced in different parts of the country at different times and there were many acts in force in different areas even in a single state. The RBD Act, 1969 thus replaced these diverse laws and unified the system of registration throughout the country and made reporting and registration of births and deaths compulsory. It provided for a statutory authority at the centre and in each state. It enabled the Central Government to promote uniformity and comparability in registration and compilation of vital statistics, leaving scope for the states to develop an efficient system of registration suited to regional conditions and needs.

<table>
<thead>
<tr>
<th>What should be registered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Ensuring the right to a name and nationality and to know one’s parents, implies that registration should, as a minimum, include the child’s name, sex, date and place of birth, and the name, address and nationality of both parents. While a person’s name may be their most distinctive ‘mark’ of individuality – a right recognised in the CRC – additional data, such as family ties and nationality, promote the child’s right to legal protection by parents and by the state.”</td>
</tr>
</tbody>
</table>

*Source: Innocenti Digest No. 9, March 2002, UNICEF*

Table 4.2: Birth Registration of Children under 5 by State (NFHS-3)

<table>
<thead>
<tr>
<th>State</th>
<th>Urban</th>
<th>Rural</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>59.3</td>
<td>34.8</td>
<td>41.1</td>
</tr>
<tr>
<td>North</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delhi</td>
<td>61.9</td>
<td>67.6</td>
<td>62.4</td>
</tr>
<tr>
<td>Haryana</td>
<td>75.3</td>
<td>70.5</td>
<td>71.1</td>
</tr>
<tr>
<td>Punjab</td>
<td>76.7</td>
<td>76.9</td>
<td>76.8</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>38.3</td>
<td>10.8</td>
<td>16.4</td>
</tr>
<tr>
<td>Uttrakhand</td>
<td>56.1</td>
<td>32.4</td>
<td>38.4</td>
</tr>
<tr>
<td>Central</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>76.2</td>
<td>72.3</td>
<td>73.0</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>37.3</td>
<td>27.5</td>
<td>29.7</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>22.7</td>
<td>3.2</td>
<td>7.1</td>
</tr>
<tr>
<td>East</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>13.7</td>
<td>4.7</td>
<td>5.8</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>21.8</td>
<td>6.0</td>
<td>9.1</td>
</tr>
<tr>
<td>Orissa</td>
<td>62.8</td>
<td>56.1</td>
<td>57.0</td>
</tr>
<tr>
<td>West Bengal</td>
<td>85.4</td>
<td>73.2</td>
<td>75.8</td>
</tr>
<tr>
<td>Northeast</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>49.4</td>
<td>26.8</td>
<td>32.4</td>
</tr>
<tr>
<td>Assam</td>
<td>67.4</td>
<td>40.0</td>
<td>43.0</td>
</tr>
<tr>
<td>Manipur</td>
<td>40.4</td>
<td>26.6</td>
<td>30.4</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>66.1</td>
<td>38.8</td>
<td>43.3</td>
</tr>
<tr>
<td>Mizoram</td>
<td>94.6</td>
<td>92.1</td>
<td>93.3</td>
</tr>
<tr>
<td>Nagaland</td>
<td>43.8</td>
<td>35.0</td>
<td>36.9</td>
</tr>
<tr>
<td>Sikkim</td>
<td>93.3</td>
<td>84.2</td>
<td>85.7</td>
</tr>
<tr>
<td>Tripura</td>
<td>843</td>
<td>72.8</td>
<td>74.4</td>
</tr>
<tr>
<td>West</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goa</td>
<td>95.3</td>
<td>93.9</td>
<td>94.7</td>
</tr>
<tr>
<td>Gujarat</td>
<td>88.4</td>
<td>84.0</td>
<td>85.6</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>84.5</td>
<td>76.2</td>
<td>80.0</td>
</tr>
<tr>
<td>South</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>49.4</td>
<td>35.6</td>
<td>40.3</td>
</tr>
<tr>
<td>Karnataka</td>
<td>72.3</td>
<td>49.8</td>
<td>58.3</td>
</tr>
<tr>
<td>Kerala</td>
<td>91.0</td>
<td>87.5</td>
<td>88.6</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>90.3</td>
<td>81.9</td>
<td>85.8</td>
</tr>
</tbody>
</table>

Over the last few years, there have been discussions on the need to amend the Act in efforts to simplify and streamline the birth registration process and to ensure greater compliance of the Act.\(^{127}\)

"Every year, according to the Office of the Registrar General of India (ORGI), around 7.6 million out of 26.2 million newborns in India do not get registered”.\(^{128}\) Registration itself is decentralised to India’s states and union territories. The RBD Act makes it mandatory to provide the first copy of the birth certificate free of charge.

*In theory, India’s registration system provides a good basis for the consistency of concepts, definitions, classifications and tabulations across the various sources of vital statistics, but in reality we are nowhere close to achieving universal registration.*

State disparities in registration coverage vary from over 100 percent to as low as 30 percent.\(^{129}\)

Corruption, inaccessibility, ignorance, frame of mind and cultural factors remain a hurdle in ensuring registration of all births. It is not understood or valued as the fundamental right of a child. For families relentlessly struggling to make ends meet, birth registration remains a low priority. Its value as a proof of birth and that it may be the passport to most other services and opportunities is often overlooked.

There has also till now been a general apathy by the government to ensure registration and resultant lack of knowledge amongst the general masses.

This apathy gets reflected in the available data on birth registration. For example, the most recent available data from the Ministry of Home Affairs indicates that India’s overall birth registration rate in 2007 is 74 percent, a 5 percent increase on the previous year.\(^{130}\) However, significant variations can exist between datasets for the same period.\(^{131}\)

For example, in 2007, the National Family Health Survey (NFHS)-3 sponsored by the Ministry of Health and Family Welfare found that 41.5 percent of Indian children aged 0-4 are registered,\(^{132}\) while for the same period a survey carried out by the Office of the Registrar General indicated that 62.5 percent of children were registered, a difference of approximately 20 percentage points.\(^{133}\)
The Initial Report cited the Report on the Vital Statistics in India (1987) that showed that coverage of births by the registration system was 100 percent only in six states and three of the union territories. It then dwelt on the need to make registration mandatory and the production of birth certificates as a pre-requisite for getting admission into school and ration cards.

In 2003, India’s First Periodic Report to the Committee on the Rights of the Child (i.e. the second one in the series) placed the birth registration rate at 54 percent, roughly halfway between the two figures from 2005. The 2011 third and fourth combined periodic report quotes the National Family Health Survey (NFHS)-3 data, according to which 41 percent of children under five years of age have their births registered and only 27 percent of children under five years of age have a birth certificate.

Before that, in the year 2000, a survey by UNICEF and the Ministry of Women and Child Development reported that only 34.7 percent of children aged below five had been registered. Yet in 1990, data from India’s National Commission on Population indicated that the birth registration rate was 47.7 percent, 13 percent higher than the rate UNICEF would report ten years later.

Clearly, reliable data remains a challenge. A Report by the International Development Law Organization (IDLO) suggests that “while it is theoretically possible that birth registration rates really did drop by 13 percent in the ten years from 1990 to 2000, the more likely explanation is that the drop was partially because one or both of the survey results did not accurately reflect the real situation”. Moreover, much of the available data is not disaggregated by gender, which makes it difficult to highlight the specific situation of girls in relation to birth registration.

According to the Annual Report of the Ministry of Home Affairs for the year 2009-2010, “States that report a significant increase in birth registration are Uttarakhand (8.6 percent), Madhya Pradesh (7.7 percent), and Andhra Pradesh (4.0 percent) and there is a marginal increase in level of registration of births in Rajasthan (1.7 percent), West Bengal (1.7 percent) and Gujarat (1.2 percent) over the previous year”.

<table>
<thead>
<tr>
<th>Level of Registration (%)</th>
<th>States/UTs</th>
</tr>
</thead>
<tbody>
<tr>
<td>90-100</td>
<td>Goa, Himachal Pradesh, Kerala, Meghalaya, Mizoram, Nagaland, Punjab, Tamil Nadu, West Bengal, Chandigarh, Delhi and Puducherry, Gujarat, Haryana, Karnataka, Sikkim and Daman and Diu</td>
</tr>
<tr>
<td>Below 50</td>
<td>Bihar, Jharkhand and Uttar Pradesh</td>
</tr>
</tbody>
</table>

When seen in absolute numbers, around 11.7 million live births were registered with the Registrar General of India across the country between 2002 and 2005 (see figure below).\textsuperscript{140}

Also, in terms of absolute numbers, female birth registration in rural areas was higher than in urban areas (see Figure 4.1). As is the case with most interventions on rights, there has been a gender disparity in birth registration too, with the gender-wise break-up of this data (as far as absolute numbers are concerned) showing that more male than female births were registered in both urban and rural areas.

Not surprisingly, the reporting on birth registration to the UN Committee reflects the gaps in both intent and implementation. For example, the First Periodic Report (in 2001) did not say what practical efforts had been made since 1996-97 to improve civil registration and in particular, birth registration, and with what result. Nor did it provide an accurate present registration figure. It simply stated that the Office of the Registrar General also issued guidelines in 1999 facilitating the registration of destitute children taken in adoption from orphanages and other placement agencies. While it mentioned that there were 200,000 registration units and 100,000 local registrars in the country, it did not report what they do or why they cannot record all births.

To sensitise people on the need for birth registration and to ensure better compliance, the National Campaign on Birth Registration\textsuperscript{141} was launched in November 2003 throughout the country by the then President of India. The aim was to issue birth certificates to all children born during the 10 years prior to this launch. This campaign was taken up in three phases. About 37.3 million birth certificates were issued across states in the first phase (November 2003-March 2005) and about 26 million in the second phase (April 2005-October 2007).\textsuperscript{142} There is however, no information available on the third phase, not even in the 2011 Government of India’s third and fourth combined periodic report on the CRC.

Although a number of initiatives have been taken by government, civil society and international development agencies to increase birth registration rates, significant barriers remain.\textsuperscript{143} These include views amongst some sections of the community and government that birth registration is not a pressing development priority;

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{fig41.png}
\caption{Number of Live Births Registered between 2002-2005}
\end{figure}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
Year & Rural Male & Urban Male & Total Male \\
\hline
2005 & 3659854 & 3126503 & 2801069 \\
2004 & 3612683 & 3137497 & 3176239 \\
2003 & 3629225 & 317367 & 3543587 \\
2002 & 3569854 & 3222236 & 2820191 \\
\hline
\end{tabular}
\caption{Number of Live Births Registered between 2002-2005}
\end{table}

\textsuperscript{140} Office of the Registrar General of India.
\textsuperscript{141} National Campaign on Birth Certificates, eCENSUS India, Issue 18: 2003. Available at: http://www.censusindia.net/
\textsuperscript{143} UNICEF India, Why is Birth Registration Important? Available at: http://www.unicef.org/india/child_protection_1629.htm. See also Birth Registration, A Background Note by Arun Serrao and Sujatha B. R. Community Development Foundation, Bangalore. Available at: http://www.ilpnet.org/news/BWWorkshop/BirthRegistration_Background.pdf. pp 15-16
registration procedures that can be time-consuming (including travel time to the point of registration); and a lack of government capacity at the local level to effectively implement birth registration policies. 144

The National Population Policy, 2000 had laid down the objective of achieving 100 percent registration of births, deaths, marriage and pregnancy by 2010.145 Clearly, the objective has not been achieved. The current system is ridden with loopholes. Birth certificates are issued only when a record of birth is shown and a subsequent application is made. Since most births happen at home, rural folks from far-flung areas do not register as they cannot afford the cost of travel.

While the nodal authority for registration is the Registrar of Births and Deaths, the actual issuing of birth certificates lies with the municipal body or panchayat. Also, too many people have been given the responsibility of reporting a birth such as Anganwadi workers, ANMs, PRIs etc. and all of them belong to different departments which lack coordination.146 This allows for many slips and consequent blame game. Reduction of administrative roadblocks and multiple agencies will help ensure better registration and issuance of birth certificates too.

### MAKING EVERY CHILD COUNT IN THE STREETS OF KOLKATA

Paving the way for urban deprived children to access health and education services, protection against abuse and improve planning and monitoring of urban development, 50,000 birth certificates were issued to marginalised and socially disadvantaged children by the Kolkata Municipal Corporation at a ceremony here today. In a one-of-its-kind endeavour led by the Kolkata Municipal Corporation, government departments, UNICEF and partner NGOs, the birth certificates were issued to children born in Kolkata’s underprivileged neighbourhoods. For the over 700 underprivileged children and representatives of 74 NGOs present at the event, it was a moment of joy and fulfilment of a long cherished dream of making every child on the streets of the city of joy count.

In mid 2005, the Kolkata Municipal Corporation, UNICEF and a group of 74 NGOs led by City Level Programme of Action (CLPOA) had joined hands to identify children who were eligible but not registered in Kolkata. Once the children were identified, the Department of Health and Family Welfare, Government of West Bengal, agreed to reduce the late fee for registration of births of urban deprived children from Rs. 100 to a nominal 50 paisa. The office of the Registrar General of India also demonstrated flexibility by relaxing the requirements for late registration by allowing group affidavits in place of individual affidavits by each child.

Providing 50,000 urban deprived children with birth certificates is just the first step. There are still thousands of children for whom innovative ways will have to be devised to reach the target of registering all births. The policy changes have, nonetheless, served to show the way for other unregistered children in Kolkata and perhaps other cities to get counted.

West Bengal has been doing very well in terms of birth registration. The state has taken a giant leap in registration of births by decentralising the powers of registrar to Gram Panchayats, thereby maximizing the reach (the state has a total of 3,357 rural registration units and 137 urban registration centres) of this service to people. Consequently, the current rate of registration of births in the state has reached above 97 percent. The joint endeavour in Kolkata is a significant step in the advancement of rights of the most vulnerable children and in achieving the national goal.

*Source: Innocenti Digest No. 9, March 2002, UNICEF*

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144 ibid.
4B.1.1 Deprivations faced by children due to lack of a birth certificate

Lack of a birth certificate affects every other right. Girl Child Protection Schemes like Ladli Yojana in Delhi also make it compulsory for a child to have a birth certificate in order to access benefits of the scheme. This in itself keeps many girls away from the benefits of the scheme. Some such situations are presented below.

**Deprivation of liberty due to lack of a birth certificate**

Although there are no statistics on how many cases of children in conflict with law are transferred from adult courts to Juvenile Justice Boards after age verification, there can be no doubts that several minors are sent to jails and adult prisons due to lack of authentic source of verification of age. In Delhi, response to an RTI application revealed that between 2010 and 2011, two children in conflict with law were shifted from the Central Jail to an NGO-run observation home for boys housing 7-to-16 year olds. Clearly, boys younger than 16 could not have looked over 18 to be put into a jail. Also, there may have been several others who have not found any legal aid to help them take up the matter of their age in the regular courts where their cases may be pending trial. Lawyers providing legal aid at Juvenile Justice Board-I in Delhi suggest that the number of transfer of cases from adult courts to the Board is increasing. Clearly, not only does lack of reliable documentary proof of age in the case of such boys lead to deprivation of liberty, the ends of justice too stand defeated. Even the 2007 Juvenile Justice Rules under the Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006, lists a birth certificate issued by a municipal authority or panchayat as the last option amongst other forms of documentary evidence to be looked at for establishing the age of a child in conflict with law. The government is indeed well aware that most children who come into the juvenile justice system would not have their births registered.

147 Response to an RTI application filed by Aditya Kumar vide letter F.No. 61 (RTI)/24/DD (CPU)/DWCDF/2011/ 31332
Access to Right to Education and other protection schemes without a birth certificate

Prior to enactment of the 2009 Right of Children to Free and Compulsory Education Act, reports of children being denied admission for lack of a birth certificate were rampant. The situation after this law was enforced is yet to be assessed. Schedule 14 of this Act provides for a number of documents that could be considered by the school authorities at the time of admission so that all children gain easy access to primary education. While many states are yet to frame the rules under this law, orders have been issued from time to time to schools to admit children without birth certificates on an affidavit signed by their parents.

No birth certificate, so school turns away girl
Kinnari Patel, CNN-IBN
Updated Jun 16, 2008 at 06:14pm IS

Surat: A little girl in Surat, who was found abandoned at a garbage dump two years ago, has been denied admission by a school because she doesn’t have a birth certificate.

Abandoned when she was a baby, the girl has been brought up by a couple that rescued her from a garbage dump two and a half years ago.

Two-and-a-half year old Palak would love to go to nursery school, but her foster parents - Rekha Pradip

Patel simply cannot find a school that would take her...

...“We want to admit the child, but government rules say a birth certificate is a must,” Chanchalben Sevaliya, Principal of Nutan Vidya Sankool, says. For the moment though, Palak’s is getting lessons at home from her parents.

Source: Innocenti Digest No. 9, March 2002, UNICEF

According to Jeebanjyoti Mohanty, Assistant Manager, Programme Management, Deepalaya, “The Bill unquestionably depicts a positive sign, but even after it got a green signal from the government of India, the Schools still have similar issues that they had before the bill was passed. For instance, in Delhi itself there are many underprivileged children whose parents don’t have proper documents like birth certificate etc and in turn are being denied the right to get education.”

4B.1.2 Nationality and Citizenship of Refugees in India

The issue of nationality and citizenship of refugees in India and hence their access to basic services remains an unresolved matter and one of concern. An amendment to India’s nationality law in 2003 provides that children born to an Indian parent in India with one foreign “illegal” parent will not receive citizenship, increasing the risk of statelessness. Addressing the rights and interests of refugee children, the Supreme Court of India has reiterated on several occasions India’s obligations under contemporary international law based both on the provisions of the Constitution and on the international instruments to which India is a party.

For example, the issue of denial of the right to nationality to the Chakma and Hajong children has been unresolved for a very long time. About 30,000 Chakmas and Hajongs from the Chittagong Hill Tracts of the

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148 Mission Education. Available at: http://www.deepalaya.org/node/319
150 V Vijakumar, Protection of Refugee Children in India. Available at: http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/21254/19925
area known as East Pakistan (now Bangladesh) migrated to India and settled in Arunachal Pradesh. Children of these migrants have not been granted the right to nationality.

In *National Human Rights Commission v State of Arunachal Pradesh*\(^{152}\), the Supreme Court of India very clearly established the rights of Chakma refugee children born in the state of Arunachal Pradesh for citizenship. The Court observed that:

*By virtue of their long and prolonged stay in the state, the Chakmas who migrated to, and those born in the state, seek citizenship under the Constitution read with section 5 of the Act (Citizenship Act, 1955). By refusing to forward the applications of the Chakmas to the Central Government, the Deputy Collector is failing in his duty and is also preventing the Central Government from performing its duty under the Act and the Rules.*

"Now numbering some 65,000, many Chakmas have the right to citizenship and to vote, but the government has systematically denied them access to social, economic, and political rights to which they are entitled".\(^{153}\) In another matter, *Digvijay Mote v Government of India and others (W.P. No. 354/1994, Karnataka High Court)*,\(^{154}\) the High Court of Karnataka directed the state government to continue supporting a school that was run by an NGO for refugee children from Sri Lanka. "In spite of all these decisions, it is interesting to note that no specific reference has been made by any party to a dispute, or by the courts about the international obligations India has undertaken under Article 22 of the Convention on the Rights of the Child. A much closer analysis in this regard would reveal that many other provisions of the Convention on the Rights of the Child have also been ignored."\(^{155}\) Provisions like Article 2 on non-discrimination, Article 7(2) on registration of birth, and Articles 20, 26, 28, 29, 31, 35, and 39 have not been taken into consideration in dealing with one or more refugee groups in India".\(^{156}\)

Indeed, very little progress has been made to ensure birth registration of refugee children. For example, "over a hundred thousand Punjabi refugees fled to Jammu and Kashmir from neighbouring Sialkot district of Punjab province (now in Pakistan) in 1947 during the partition. Until now, they have not been granted citizenship. The descendents of these stateless people continue to be denied nationality".\(^{157}\) A Plan International Report informs that a girl trafficked from Nepal into a brothel in India was not traced by the police because she had "no proof of her age, nationality or even her existence".\(^{158}\)

The section on refugee children in the First Periodic Report indicates that India has not moved on the recommendations made by the CRC Committee after the Initial Report. The impact on children being clubbed with refugees in general should be further examined. The report however has a detailed section on the different categories of refugees that enter India or currently live in India and the services the government provides to them.

The report states that the situation of refugees in India generally depends upon the extent of protection they receive from either the GoI or the United Nations High Commission for Refugees (UNHCR). Only certain

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\(^{153}\) India, The International Observatory on Statelessness. Url: http://www.nationalityforall.org/india


\(^{155}\) ibid.

\(^{156}\) ibid, p 55.

\(^{157}\) India, The International Observatory on Statelessness. Url: http://www.nationalityforall.org/india

categories of refugees are recognised by the Indian Government and therefore entitled to rehabilitative measures. Those that are not recognised are taken care of by the UNHCR in Delhi.

However, India is yet to ratify the 1951 Convention on the Status of Refugees and its 1967 protocol. The non-ratification of the 1951 Convention and 1967 Protocol by the Government of India has led to political arbitrariness in dealing with fleeing humanitarian refugees. The grant of “refugee status” is at the discretion of the political authorities. There is no legal framework under the Indian constitution to determine the status of refugees and the Government of India has dealt with the refugees ad hoc.\(^{159}\)

A large number of refugees, asylum seekers, trafficked persons and cross-border migrants, including children, have been charged under Section 14 of the Foreigners Act for illegal entry into India. As the Foreigners Act, 1946 contains no special category of protection for the “refugees” regarding their well-founded fear of persecution, the refugees can be refouled even if they face torture and death in their countries of origin.\(^{160}\)

The only group of refugees for whom there is a clear system are the Tibetans. Tibetan children, who entered India up to 1959, are entitled to rehabilitation benefits as temporary refugees in India. Children born till 1987 to Tibetans who entered India up to 1959 are also entitled to rehabilitation benefits as temporary refugees in India. Tibetans who arrived in India till 30 May 2003 are classified in a separate category of Long Term Stay and issued Registration Certificates by Foreigner Regional Registration Offices/Foreigner Registration Office (FRROs/FROs). Tibetans have been allowed to enter India after 30 October 2002 on Special Entry Permits (SEP) issued by the Embassy of India in Kathmandu, and registration and certificate for Tibetan children born in India can be obtained from the concerned FRRO/FRO.\(^{161}\)

Participants at the National Consultation held for finalisation of this report unanimously voiced that rights cannot be denied to refugees, asylum seekers, trafficked persons, unaccompanied minors who cross borders and such other persons, in the name of national security. Repatriation of trafficked children and unaccompanied minors too needs to be carried out humanely, keeping in mind the best interest of children and their dignity and self-respect.

The concerns listed in this section have also been raised in Section 1C.7 of Volume II, Chapter 1 on General Measures of Implementation.

### 4B.2 Freedom of Expression (Article 13)

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<th>Article 13</th>
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<tr>
<td>1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.</td>
</tr>
<tr>
<td>2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (order public), or of public health or morals.</td>
</tr>
</tbody>
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The Constitution of India irrespective of age provides for freedom of speech and expression under Article 19 (a). The National Plan of Action for Children, 2005 has included child participation as one of its components. However, platforms set up by the government for children’s participation in issues concerning them are few and selective.

According to a recent South Asia report of Save the Children International, “unfortunately, often children’s participation remains mere tokenism or is done only as part of formalities rather than fostering long-term partnerships where input and recommendations are valued and acted upon”.  

Consulting children for the periodic reports to the CRC Committee began only during the preparation of the First Periodic Report of the GoI. This too was done in an unorganised manner and hence remained mere tokenism. It was indeed even more disheartening to find child representatives from all South Asian countries except India at the 2005 South Asia Conference on the UN Study on Violence against Children, held in Islamabad. Most children’s consultations on CRC reporting have been organised by NGOs for preparing the alternate reports.

The understanding of freedom of expression becomes limited to only political expression and extends only to issues of the village/city governance at large. Though appreciable, there has to be a wider perception on the freedom of expression.

India adopted the decentralised form of governance with the 73rd and 74th Constitutional Amendment in 1993, but these lower levels of governance do not have scope for children’s representation, nor are they mandated to provide for a platform for children to express their views. Goa, Karnataka and Kerala are the only exceptional Indian states where the Gram Panchayats (village level local self-governance institutions) are mandatorily required to provide children a platform to voice their concerns. In Goa, it is a statutory requirement to involve children in the Village Child Committees constituted by every Gram Panchayat/Municipal Corporation (Sub-Sections 8 and 9 of the Goa Children’s Act 2003). In Karnataka, vide an administrative order of the Government of Karnataka, it is mandatory for every Gram Panchayat to hold special children’s Gram Sabhas (Children’s Assemblies). A total of 45,262 Bal Sabhas (Children’s Neighbourhood Groups) with 7.9 lakh (790,000) children have been formed in urban and rural areas of Kerala under Kudumbashree, a Poverty Eradication Mission of the Government of Kerala.

In some states, NGOs have initiated consultations with children at Gram Panchayat Levels, though unfortunately no continuity is maintained. It is part of a funded project for most NGOs and they tend to stop the programme as and when they run out of funds. The exercise mostly consists of a couple of meetings with children who respond to questions regarding the functioning of the governance bodies and if they meet their expectations.

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162 Heiberg, T. et al. Stepping up Child Protection - An assessment of Child Protection Systems from all countries in South Asia, including reflections from Central Asia, Save the Children Save the Children Sweden, Regional Office for South and Central Asia, 2010.

163 ibid.

Besides the Goa regulation, another law that provides a platform for children’s participation in matters concerning them is the Juvenile Justice (Care and Protection of Children) Act 2000 (as amended in 2006) and the rules made thereunder in 2007. This law provides for the constitution of a Children’s Committee in every institution housing children in need of care and protection and children in conflict with law. Although mandatory, most states have failed to meet this obligation and there has been no reporting from the states on this aspect at any consultative platform set up by the government for preparation of the CRC third and fourth periodic reports either. In Delhi, such children’s committees do exist in the institution, but only on paper. The institutions are averse to the idea and therefore make no attempts to make these committees functional.

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**Children have a say in the Gram Sabha (Village Council) meeting…**

As per the Odisha Government rules, holding a Gram Sabha (Village Council) meeting six times a year to discuss issues concerning the village is a mandatory process. In addition the Collector (Head of the Administration in the District) and Sarpanch (Village head) can call meetings in case of an emergency. 15th August 2009, the day of Indian Independence, was a little unusual as children of two Gram Panchayats, namely Khusuda and Nachinda in Bhogari Block of Balasore District of Odisha, participated in the Gram Sabha (Village Council) meetings to demand for roads to the village schools.

PECUC, an NGO has facilitated the organisation of children into Sisu Sabhas (Child Rights Club) in 18 villages of Bhograi block in Balasore. Before the Gram Sabha, volunteers from the NGO discussed with children various issues related to child rights, current topics, issues pertaining to their own village and school, etc.

The children gradually started questioning how the problems of their locality can be solved and what they can do in this regard. They got the idea of Gram Sabha where they have a right to participate, even if they do not vote. So the children of the two afore mentioned Gram Panchayats met and discussed common points that could be raised in the Gram Sabha and chalked out plans in this regard.

Prior to the Gram Sabha meeting, the Field Coordinator of PECUC informed members of the concerned Gram Panchayat about children’s participation in the Gram Sabha.

In Khusuda Gram Panchayat children put forth the following issues:-
- road communication to the school
- immunisation not done in proper process
- no electrification in Village Dobadia
- reconstruction of school building at Krushnapur UP school
- develop strategy in village level to face disaster
- proper drainage
- supply of drinking water.

In Nachinda the issues raised were:-
- creation social forestry in village
- develop strategy in village level to face disaster
- No road communication to the school
- proper drainage
- supply of drinking water

In both the cases the Sarpanches were astonished seeing the courage of children. All the members present praised the steps taken by children. The Sarpanches promised to consider the issues.

The effort of children brought colour when the road connecting to school in Ramdeichak in Khusuda was constructed. Similarly, in case of Nachinda the Sarpanch along with the children planted trees in the open areas as part of social forestry.

*Source: Information provided by PECUC, Orissa. Available at http://pecuc.org/archive/617199664_annualreport2009.pdf*
The Orissa Rules on the Right to Education Act also require children to be on the School Management Committee. This is rather unusual and certainly most welcome.

To sum up, the Freedom of Expression that the average child enjoys in the villages and urban habitations where the poor majority live is still undefined.

Some NGOs have in fact engaged with the disadvantaged and vulnerable children on several occasions such as to help them put their views across at the World Social Forums, in preparation of alternate reports to the CRC Committee, facilitating children’s participation in the village level gram sabhas or interactions with the gram panchayats, involving children in public hearings on child labour and public campaigns against child trafficking and such other issues affecting their lives.

Children are not provided adequate information that could enable their participation and help them exercise their right to freedom of expression in an age-appropriate manner.

Even on the initiatives mentioned in the First Period report such as the setting up of the National Centre of Films for Children and Young Persons, or children’s page in newspapers, or children’s day on the radio or other mass media, the question remains as to what proportion of children have benefited from these. By no means has it been made sure that information produced by such institutions reaches all children.

### 4B.3 Freedom of Conscience, Thought and Religion (Article 14)

<table>
<thead>
<tr>
<th>Article 14</th>
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<tbody>
<tr>
<td>1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.</td>
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<tr>
<td>2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.</td>
</tr>
<tr>
<td>3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.</td>
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</tbody>
</table>

The right to choose and follow one’s religion has been guaranteed by the Constitution of India and also upheld in the CRC. However, as with most other countries in the world, children follow the same religion that the family preaches and have no other choice. Children’s freedom of practicing religion was upheld by the Supreme Court in the Jehovah’s Witnesses case in 1986 *(Bijoe Emmanuel v State of Kerala* (1986) 3 SCC 615).

In its report to the CRC Committee on Child Rights, India stated that the Government is committed to establishing a civilised, humane and just civil order that does not discriminate on grounds of caste, religion class, colour, race or sex. *A series of Freedom of Religion Acts, which in effect restrict freedom of religion, have been enacted in many States of India.* In practice, the Freedom of Religious Acts applies while converting to Christianity and Islam and not while converting to Hinduism, Buddhism, Jainism or Sikhism. In 2002, the state government of Tamil Nadu adopted Prohibition of Forcible Conversion of Religion Act 2002 along the lines of the Acts in Orissa, Madhya Pradesh and Arunachal Pradesh. However, there have been reports of several outbreaks of civil strife and violence stemming from religious and caste hostility in the past years.

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The children of any of those groups and communities perceive such freedoms at risk. This places on the State a continuing responsibility to accord equal worth to all of India's people and to protect the national credo of "unity in diversity" not by condoning that any group in society should have to buy peace and toleration through subservience but that all should enjoy these freedoms without fear.

### In their own voice

"Nobody has ever asked us how we feel."

"I am 14 years old. I stay in the hostel. I too stayed in the jungle along with other boys. I feel angry and sad both. I also feel like revenge. I don’t feel anything has changed in two years and our life is still revolving around violence. Earlier, everything in the hostel was very good and well-organised but then, everything was damaged. The church is destroyed, so I can’t do my prayers. They took away the windows and doors. No mosquito net now, no fans, furniture, toilet, water mother, they broke everything. There is no dispensary so we don’t get treatment for malaria. We don’t play football or volleyball like before. We have even stopped going out of the hostel."

"I am saying all this for the first time and I am feeling relieved. Nobody has asked us before how we feel."

James Dhimal, Class 7, St. Vincent ME School, Mondsore

Excerpt from Kandhamal's Forgotten Children A Status Report, A Study by HAQ: Centre for Child Rights New Delhi

Despite reports of religious conflict and intolerance from different parts of the country, the Government of India in its first periodic report discusses the problem in one page and makes little reference to the problem. In the third and fourth periodic report of 2011 too, there is just a paragraph on the subject referring to the first periodic report, wherein abolition of sati and creation of a wakf board are the only additional measures listed out other than constitutional guarantees. There have been reports on recruitment of children into militant outfits funded and supported by different religious sects; sometimes the children are required to do so by the school in which they are studying.

The impact of religion on a child’s education is very apparent. “Almost all the existing studies on determinants of school participation and attainment in India today acknowledge socio-religious differences in the population and document the profile of educational achievement by caste, religion and gender, albeit largely as a by-product”. Studies indicate that whilst gap in school enrolment between Hindus and Muslims has been reduced, it has actually widened in completion of school.

### 4B.4 Freedom of Association and Peaceful Assembly (Article 15)

**Article 15**

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

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This civil and political right is directly linked to children’s right to participate in decisions that concern them. Various associations such as the Nehru Yuvak Kendra Sangathan, Bharat Scouts and Guides, Bal Bhavan Society etc. were cited as examples of steps taken by the government for the promotion of freedom of association and peaceful assembly in the first periodic country report. There has been no mention of older children in the workforce, although Indians aged 15 and above can unionise.173

In the 2011 third and fourth combined periodic report of the government on CRC, it is reported that the Ministry of Panchayati Raj (MoPR) launched a nation-wide campaign in collaboration with the Nehru Yuva Kendras called the Panchayat Yuva Shakti Abhiyan in 2006-07 to harness the energy of youth for grassroots development and democracy through Panchayati Raj Institutions (PRIs). This is indeed appreciable, although very few children and NGOs working with children know about it. The report further informs that “under this Abhiyan, composition and meetings of core committee are held; State-level sammelans, District-level sammelans, and Gram Sabha Sashaktikam Abhiyans are also organised. Till date, State-level sammelans have been organised in the States of Mizoram, Arunachal Pradesh, Andhra Pradesh and Kerala. A core committee meeting was held in Rajasthan”.174

As stated previously, some initiatives on forming of village level assemblies have been successful due to NGO interventions. In Goa, Karnataka and Kerala, the state governments have replicated the processes that were initiated by NGOs to involve children in regular local public decision-making and governance.

Unfortunately, while there are plenty of initiatives taken up by NGOs to promote children’s participation, they have not always been replicated. In Karnataka, NGO “Concerned for Working Children” and child workers’ union “Bhima Sangha” set up Makkala Panchayats, elected children’s councils, in several villages “as a parallel government of children working closely with village councils” to address children’s issues, and successfully lobbied for action to improve children’s social and physical environments, using education, empowerment, and political persuasion.175 In Tamil Nadu, the concept of “child friendly villages” was introduced and a model Gram Sabha was organised by the Federation of Children Movements for Right to Participation, Tamil Nadu and Puducherry. The significant objective was to advocate the importance of ensuring child participation in local governance with the bureaucracy and public.176 But again, the short-term objectives most often do not supplement the long-term result of ensuring child participation.

The literature available on child participation in India suggests that most of the work has been focused on either inclusion of children’s views in the democratic process of the country (by constituting Bal Panchayats, Bal Sansads etc.) or promoting children’s representation through group actions (by encouraging youth clubs, child labour federating children’s associations etc).

Instances of suppression of voices of children and use of force by the police against children assembling together in protest are not unknown. Police caning of school children organising together a protest to demand for construction of roads leading to their school and also police firing at Tibetan students who were protesting peacefully during the visit of former Chinese Prime Minister Li Peng in Agra and Delhi on Sunday, 14 January 2001 are only two such examples reported by the ACHR in its alternate CRC report submitted in 2003. 177 The

most recent examples of attacks on women and children in protest are those of restraint exercised during the protest against POSCO in June 2011 for forcibly acquiring people’s land and then during the Anna Hazare led anti-corruption campaign. In the protests against POSCO in Orissa, the administration tried to find an excuse for its action by saying that people were adequately warned not to involve women and children in the protests. The fact is that children also wish to state what they feel about being dislocated and, practically, they could not have been left behind at home while their parents protested.

Villagers protest at POSCO’s $12 bln India project
Sat Jun 11, 2011 11:47am EDT
By Jatindra Dash

BHUBANESWAR, India, June 11 (Reuters) - About 2,000 villagers protested against POSCO’s (005490.KS) planned $12 billion steel plant on Saturday, with women and children forming a human ring around the site.

...About 500 policemen were deployed to try to control the protesters, roughly half them women and children.

“We will maintain maximum restraint,” a senior police official, who did not wish to be identified, told Reuters.

Locals, who say the POSCO mill will deprive them of their forest-based livelihood, have refused to budge.

“We will not allow them to enter into the site. We will continue our protest peacefully,” Prasant Paikray, a protester, said. “We will fight this battle until last breath,” he said…


4B.5 Protection of Privacy (Article 16)

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<th>Article 16</th>
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<tbody>
<tr>
<td>1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.</td>
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The right of a child to privacy is closely connected with its right to protection – from violence, stigmatisation, unsafe spaces, etc. Therefore, it is not limited to a “separate bedroom” although it is popularly understood as such. It is in this light that the first periodic report also acknowledged the scope for improvement in medical and legal counselling provided to child victims of sexual abuse and exploitation.

There is numerous legislation besides the Indian Constitution that provides for the protection of rights to privacy and confidentiality of children who are either victims of crime or in conflict with the law. There are special provisions to prohibit the disclosure of their identity. This includes the provisions in the Indian Penal Code, the Juvenile Justice Act and the Goa Children’s Act 2003, besides several Supreme Court interpretations which require the media or any source to abstain from disclosure of the names of such victims.

Despite these, there are several areas of concern that remain when we address this right to privacy. The first issue is regarding disclosure of the identity of victims of rape and abuse. While the country has seen an increase in reporting on child abuse and issues relating to children, it has also in many cases inadvertently led to violation of their right to privacy and confidentiality.

Although such instances are now decreasing, those who report the event forget that while reporting crime involving rape, abduction or kidnap of women, or sexual assault on children and infants, or “forcible marriage”, the names, photographs or other particulars of the victims leading to disclosure of their identity should not be
published, or they must be masked. After several protests from activists and petitions to the Press Council of India, newspapers now give different names for children who come in contact with law (both victims and those alleged to have committed an offence) and put in a note saying name changed. However, the visual media is still not always that careful.

Section 21 of the JJ Act prohibits publication of name, address or school of any child in conflict with law or child in need of care and protection in newspapers, magazines, news-sheets or visual media.

The protection of child witnesses and their right to privacy is yet another matter of concern as there is no law for it. For example, as soon as the blasts in Connaught Place in Delhi occurred, everyone saw on television and knew about the 11-year-old balloon seller who was the sole witness and who helped the police in preparing sketches of suspected bombers, thereby compromising his safety. Unfortunately, child witnesses are denied this protection under the JJ Act or any other law. In taking a holistic view of the right to privacy, there is a need to link it to children’s right to be protected from further harm.

**4B.6 Access to Appropriate Information (Article 17)**

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<th><strong>Article 17</strong></th>
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<tr>
<td>States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.</td>
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<tr>
<td>To this end, States Parties shall:</td>
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<tr>
<td>(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;</td>
</tr>
<tr>
<td>(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;</td>
</tr>
<tr>
<td>(c) Encourage the production and dissemination of children’s books;</td>
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<tr>
<td>(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;</td>
</tr>
<tr>
<td>(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.</td>
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While every child has the right to information enabling them to make informed choices and take on responsibilities, this information must be age-appropriate and considerate of children’s developmental capacities. It is also closely linked to the right to be able to make an informed choice on the basis of information, and yet there needs to be a caution based on the availability of information on the internet etc. Access to information is also closely linked to children’s right to be protected from harm, abuse and exploitation once they are empowered with the relevant information. The most important vehicle of this is of course education.

The first periodic report when reporting on this right, had concentrated on access to mass media and film festivals. It made no reference to the content or information received by children through the school and non-formal education, extended education or attention given to children by social development outreach activities of the government. All children have the right to know their basic rights and their position in the society. High incidence of illiteracy and ignorance among the deprived and underprivileged children prevents their accessing information about themselves and their society.179

This has been acknowledged by the GoI in the overview section of the Eleventh Five Year Plan on the status of children: “In spite of legislations in the past, children have no right to be heard in either administrative or judicial processes. This limits their access to information and to choice, and often to the possibility of seeking help outside their immediate circle.”180 Disappointingly, but not surprisingly, following this, the document remains silent on how it hopes to ensure this right to the children.

Despite enactment of the Right to Information Act (RTI), children are unable to use it adequately as they have very little information in this regard. While the 2011 third and fourth combined periodic report of the government on CRC mentions the RTI Act, it does not state how children are using the law and what is being done to help children use it. 181 In fact, children are unaware of most laws and their rights as child-friendly materials are lacking. Fortunately, the NCERT civics textbook has started covering some rights class VII onwards, such as right to equality, right to health, education and against gender discrimination. The laws however need to be demystified for both children and their parents.

Another unresolved issue remains unchecked flow of inappropriate information through television, radio, etc. Concerns raised over use of children as young as only a few months old in reality shows made the National Commission for the Protection of Child Rights (NCPCR) send a notice to the TV Channel, which resulted in a court case.182 Following the case, NCPCR conducted an inquiry and provided its observations and recommendations in the matter. However, inappropriate content broadcast still continues and there has been no follow-up or action taken on the recommendations that were made by the NCPCR.183 Unregulated content on the internet and its free availability further amplifies the situation. With varying legal regimes, jurisdictional issues and standards of obscenity applied as well as varying degrees of care to be exercised, this area is a legal quagmire.184

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180 Planning Commission of India, How Inclusive is the Eleventh Five Year Plan? People’s Mid Term Appraisal, A Review of Selected Sectors, March 2010, p 159.
182 NDTV Imagine Limited and Another v. Union of India and Another, W.P(C) 12142/2009 and Civil Miscellaneous Petition No.12335/2009.
4B.7 Right not to be subjected to Torture or Other Degrading Treatment and Punishment (Article 37)

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(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 last resort and for the shortest appropriate period of time;

(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 persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(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 right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment did not find any place in the initial report. In the first periodic report the government prepared a half-page response which claimed that “there is no widespread incidence of victimisation in the country”.

The report refers to the NGO campaigns in support of Article 37 (a) but fails to explain why these campaigns were held if there was no widespread incidence of victimisation. The country report fails to identify that maltreatment can take place within the household, neighbourhood and school, and measures to detect and address these forms of violence are inadequate. The scope of the JJ Act in addressing these forms of violence is also limited.

Press reports in newspapers as well as fact-finding by NGOs tell of children facing torture and violence in the government’s custodial homes. The fact is that there are several children who continue to be arrested and kept in police custody or lodged in adult jails. According to the response received from Jail No. 7, Tihar Jail, New Delhi, 113 children were transferred from the said jail to respective observation homes between October 2010 and August 2011.

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186 Chechu Hansda was arrested in 1999 for being involved in the murder of the Australian Missionary Graham Staines and his two sons and was kept in police custody for three months as his parents were too poor to pay for his bail. He was then sentenced to imprisonment and lodged in jail until the NGOs protested, after which he was moved to a Special Home.

There has been no reflection on the degrading treatment which includes the routine humiliation of “out-groups” such as dalits and maiming of children for begging in the country report. There have been reports of children as young as 14 year-olds being tortured by Indian soldiers in the North-Eastern State of Manipur.\(^{188}\) Children have also suffered sexual violence at the hands of the armed forces.

Inquiry reports that follow escape of juveniles from observation homes often reveal routine violence, sexual abuse, deprivation of food, lack of hygiene and sanitation etc.\(^{189}\) In a specific reply in the Parliament on 7 July 2009, the then Minister of State for Home Affairs stated that there is no separate data maintained for children killed in custody.\(^{190}\) Even today such data is not available. Since neither the government nor the NHRC records custodial deaths of children, precise figures are not available.

Cases of forceful detention, harassment, assault, verbal and physical abuse on children continue to be reported.


\(^{189}\) Asian Centre for Human Rights, Orissa: Juvenile Fleeing From Torture and Abuse, New Delhi, 6 October 2010.

Even after numerous reports from all over the country, it was surprising that the Prevention of Torture Bill, 2010 did not contain any specific provisions to protect children. Child Rights Groups advocated for inclusion of atrocities against children in the Bill. One of the main recommendations was to enhance the definition of “torture” under the law to include intimidation, coercion, instigation, and wilful neglect and other cruel, inhuman or degrading treatment or punishment (Section 3). Further, it was suggested that the punishment prescribed in the Bill needs to match the gravity of the offence. The limitation clause was another area where some changes were suggested. The limitation period is fixed at six months (Section 5) but children who are in custodial or care institutions have no access to legal aid or anyone to complain to. Indeed, it has been found that complaining leads to even more torture and punishment for the child, and hence children tend to keep quiet. A six-month limitation clause means that children cannot ever seek justice under this law. Another provision that was worrisome was the one requiring previous sanction for prosecution of government employees (Section 6). Further, the Prevention of Torture Bill lacks a victim-oriented perspective. It contains no measures to protect victims for reprisals, and no enforceable right to reparations, including rehabilitation, for victims of torture. The Bill in its current form falls short of meeting the national as well as the international human rights standards.

In 2000, the first set of Concluding Observations on India’s initial CRC report, recommended that India should ratify the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. According to the 2011 third and fourth combined period report of the government on CRC, India is still in the process of ratification of the said Convention and the matter is being examined by a Parliamentary Committee. Moreover, having considered the recommendations from the civil society groups, the concerned Parliamentary Standing Committee, while defining “Torture” has included “Torture of Children in any form” (3 d) in the definition and it will be a punishable offence as and when the law is enacted. According to the amended Bill, any torture committed by a public servant shall be punishable with imprisonment for a term not less than three years and up to 10 years and shall also be liable to a fine not less than Rs 1 lakh (100,000). Another change in the present Bill is that the definition of “public servant” has been widened to include officers in government-run educational institutions, companies and organisations. Further, stringent punishment for acts of torture, including life imprisonment or death sentence for death caused by torture in custody, has been proposed. The provision of stringent punishment would also be applicable to employees of government-run schools if found guilty. The Bill, though not enacted yet, has been conceived to create an environment to ratify the UN Convention against Torture and other Cruel, Inhumane and Degrading methods of treatment or punishment and is intended to “humanise” the administration of the country’s criminal justice system.

The CRC Committee in General Comment No. 8 (2006) had reflected upon the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment. It suggested change in terms of legislative measures, educational measures and through monitoring and evaluation. The Right of Children to Free and Compulsory Education Act, 2009 bans physical and mental harassment and cruelty against children, though it does not use the term “corporal punishment”. Moreover, in July 2002, the Central Board of Secondary Education (CBSE) issued instructions to principals of all schools to totally ban corporal punishment. Yet, children continue to suffer at the hands of their teachers. In private schools, the teachers are not even qualified to teach. Growing stress amongst adults is generally increasing incidence of corporal punishment and effective campaigns have become a must for bringing in positive disciplining measures.

Some other forms of degrading and inhuman treatment that need discussion in this particular chapter include domestic violence, custodial rape and the treatment of children in conflict areas.

191 For more information log on to www.haqcrc.org and visit the HAQ Blog.
193 ibid.
Domestic Violence

Many cases of domestic violence do not get recorded and enumerated as the perpetrators are invariably those meant to protect children. Traditionally, the Indian society is a fairly conservative society, where children continue to be treated as extensions of their parents. Thus, what the parents or caregivers do for them or to them is often perceived as beyond any questioning. Studies have thrown light on the need to protect children from abuse even at home only in recent times, breaking the myth of home being the safest haven.

Children continue to be victims of domestic violence and there is little respite for them as the Domestic Violence Act limits itself to marital violence or where children are affected due to marital conflict between their parents. “When India passed a law on Domestic Violence in 2005, it failed to address domestic violence against children. Children suffer both direct and indirect violence and abuse at home.” 194 Various reports of severe violence to – and even the killing of – children in the home by their parents or guardians continue. Child sacrifice continues unabated. Apprehension of increase in such cases cannot be ruled out. More and more people today are looking for solace and seeking solutions to their problems in rituals and superstition. The media too is responsible for promoting such practices as a large number of private channels broadcast programmes showing acceptance for violation of children’s human rights.

Neglect is one of the most common forms of violence. Though boys and girls suffer different forms of neglect, the root of the problem lies in patriarchy and gender discrimination. Boys are not supposed to cry out for help and therefore suffer neglect. Girls are anyway not considered important. Such stereotypes continue to plague the Indian society. Another invisible form of domestic violence is when children see their mothers suffering as victims. “Little has been done to recognise and address the harm done to a child’s psyche as silent spectators of brutal beatings and violence in the family.”195  The problem does not end here – parental ambition vis-à-vis their children, adds to their sufferings. Cases of children being brutally beaten up or killed for non-performance at school or in academics, sports and entertainment competitions get reported every now and then. “Corporal

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Father held for champ’s death – Tales erupt of a history of brutality

On Monday, Deepak allegedly hurled a hard object at his son when he was leaving a practice game of table tennis at home as he was feeling unwell. Deepak had a history of punishing his son whenever the sub-junior champ would lose a table tennis match.

The father’s act of fury on Monday felled Biswadeep, leaving the boy writhing in pain on the floor. Even then, Deepak refused to act ... Papia finally rushed her son to hospital, only for him to be declared dead, having succumbed to “internal injuries”. “The boy could have been saved if his father had summoned a doctor in time,” said superintendent of police Gupta, adding that Deepak was even known to lash his son with electric wires.

Tales of parental pressure and brutality poured out on Tuesday. Arun Kumar Kar, president of the local Niranjan Pally Colony Committee, said: “You cannot imagine how he used to torture Biswadeep. Last winter, he had tied him to a lamp post and beat him mercilessly till we intervened. We were not harsh on him as he had been diagnosed with cardiac ailments and had even got a pacemaker implanted.”

Another neighbour, Raghu Das, recounted how last year, Biswadeep had run away to his house and sought shelter for two days, fearing his father’s fury following a defeat in a table tennis tournament. ...

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195 ibid
punishment” is lawful in the home in India, meaning that children have very little legal protection from domestic violence.

Children’s rights to life, survival, development, dignity and physical integrity within the family have always been a neglected area. The 2006 UN Study on Violence against Children observed: “Eliminating and responding to violence against children is perhaps most challenging in the context of the family, considered by most as the most ‘private’ of private spheres”.196 Governments are under the obligation to ensure all rights for all children, including their right to a loving, caring and safe family. “Due to lack of legal provisions to deal with neglect, abuse and violence against children at home, many such forms of violence do not ever get enumerated”.197

In its approach towards building a protective environment for children, the Ministry of Women and Child Development recognises the need for mapping areas to identify potentially vulnerable families and families with risky behaviour, where children are more vulnerable or likely to come into vulnerable situations, and for strengthening the families and family environment.198

The Integrated Child Protection Scheme (ICPS), which was formally accepted by the Planning Commission of India and the Ministry of Finance for the Eleventh Five Year Plan, aimed at integrating element of prevention into programmes such as National Rural Employment Guarantee Scheme (NREGS), Self Help Groups (SHGs), Public Distribution System (PDS), health, child day care, education etc. to strengthen families and reduce child neglect, abuse and vulnerability. Unfortunately, the scheme is yet to take off and the five-year budget of Rs 1,000 crore (10 billion) for a period of five years is certainly not adequate to meet the aims and objectives of ensuring a protective environment for all children.199

**Custodial Rape**

It goes without saying that if children are not always safe in the family, they are not safe in the hands of the state either. Sexual abuse of children both boys and girls in institutions is well documented.200 Besides sexual abuse in custodial institutions, rape by police too has been on the rise. On 13 February 2009, a minor girl was allegedly raped by Sadhu Ram, Station House Officer at the Manendergarh Sadar police station in Rohtak district of Haryana. On 2 March 2009, a 16-year-old girl was allegedly gangraped by three police personnel including a Sub Inspector in Panna District of Madhya Pradesh.201 Similar news came from Kanpur, Uttar Pradesh in February 2008, when three Railway Protection Force personnel allegedly raped a minor.202

The proposed Protection of Children from Sexual Offences Bill, tabled in the Rajya Sabha on 23 March 2011, lays down certain provisions under the chapter titled "Aggravated Forms of Sexual Assault".203 Under this chapter, sexual assault, including rape by a person identified as a police officer, is counted as an aggravated form of sexual assault and therefore has more stringent provisions for punishment.204 It is still a matter of time that the Bill gets adequately discussed with civil society actors and receives the final approval to be transformed into law. While changes in law and its implementation seem slow to come by, there are certain categories of children who are worst affected by custodial violence and need immediate attention. Communal violence too

204 ibid.
has seen violence against girls of certain communities.\textsuperscript{205} The other situation that demands attention is that of children living in conflict areas.

**Children in Conflict Areas**

Almost 19 out of 28 states of India face internal armed conflicts characterised by gross violations of international human rights and humanitarian laws by both security forces and armed opposition groups.\textsuperscript{206} These internal conflicts have affected large sections of the population and have had a particularly detrimental effect on children. Children have been attacked directly in conflicts and have been recruited by warring parties, both state and insurgent groups, as child soldiers. Children growing up in conflict become vulnerable to abuse and exploitation, are forced into labour because the family falls into distress and even grow up to be violent themselves.\textsuperscript{207}

There have been reports of children being recruited as child soldiers in Orissa\textsuperscript{208} and also children as young as 14 years old being in the frontline as combatants for Naxalites.\textsuperscript{209} The Salwa Judum and the government security forces are also involved in the recruitment of children in hostilities.\textsuperscript{210} The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which was ratified by the GOI on 30 November 2005, urges State parties to ensure that persons who have not attained the age of 18 years are not compulsorily recruited into the armed forces. However, it is clear that the state government of Chhattisgarh has been “recruiting or using” persons below 18 years of age in hostilities.\textsuperscript{211}

Children also frequently become injured and are killed during attacks in conflict areas. There have been instances of children being killed in the ethnic violence that took place in Nandigram, West Bengal,\textsuperscript{212} Chhattisgarh,\textsuperscript{213} Jammu & Kashmir,\textsuperscript{214} etc.

In an effort to protect the children in these areas, the NCPCR came out with a policy document titled “Protection of Children’s Rights in Areas of Civil Unrest”, which laid down certain draft guidelines and recommendations to different Ministries and state government departments that deal directly or indirectly with children’s rights and welfare.\textsuperscript{215} Unfortunately, the NCPCR has failed to recognise the gravity of the situation by not acknowledging it as armed conflict and describing it as civil unrest.

Various other forms of torture, including abuse and exploitations such as child labour, child marriage, corporal punishment, female foeticide and trafficking are being dealt with in detail in separate chapters of Volume II of this report.

\textsuperscript{205} HAQ: Centre for Child Rights, Still Out of Focus: Status of India’s Children, 2008, p 151
\textsuperscript{206} Asian Centre for Human Rights, No Succour for the victims of the armed opposition groups in India, 10 May 2006. Available at: http://www.achrweb.org/Review/2006/124-06.htm
\textsuperscript{207} Ibid.
\textsuperscript{211} Ibid.
\textsuperscript{212} People’s Tribunal on Nandigram, Executive Summary of the Report, 26-28 May, 2007. Available at: http://www.labournet.de/internationales/in/peoplestittribunal.pdf
\textsuperscript{214} Asian Centre for Human Rights, No Succour for the victims of the armed opposition groups in India, 10 May 2006. Available at: http://www.achrweb.org/Review/2006/124-06.htm
Conclusion

Many aspects of civil rights and freedoms remain uncovered in India’s country reports to the CRC. Children in domestic settings, street children and children in conflict areas need special attention. As children’s rights are indivisible, many of the issues covered in this chapter are also discussed in detail in other chapters of Volume II of this report according to their thematic focus.
5. **Family Environment and Alternative Care**

**Introduction**

Children have a right to family care, love and affection. But not all are able to enjoy this right for various reasons beyond their control. Some others are deprived of family environment due to state action or inaction. This chapter explores several questions (though not necessarily in the same order) - Who are the children without parental care and what is their situation? Have adequate efforts been made at strengthening families to take care of their children? In the absence of a family, what alternative care settings are available and how do they function? Can children be removed from a family setting if necessary? Who decides this and on what basis?

Progress made on the Concluding Observations of the CRC Committee and a look at the relevant national legal and policy commitments highlights the measures taken for ensuring children their right to family environment and alternative care.

As with other thematic chapters, this chapter too is divided into two parts.

**Part A**

**India’s Status and Position on International Human Rights Law and Procedures - An Overview**

The Initial Report of the Government of India began by citing the CRC and reiterating that in India children traditionally form an essential part of the family unit. It stated: “The child rearing process during infancy has by and large been laissez-faire with flexible rules and restrictions. Kindness to the young ones is an essential element of child-care. Within the folds of the large joint families, children grow under the charge of multiple caretakers.” It further quoted religious texts, including the ancient philosopher Manu, and stated that the principles for family environment have been laid down in the culture and tradition of the country.

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Other issues touched upon in the Initial Report included children’s right to maintenance, right of a child to both parents, inadequacy of the guardianship and custody laws, establishment of family courts, provision for crèches under the Factories Act and other labour laws, illegal transfer and non-return of children (parental abduction), need for greater focus on care and protection of children in disaster situation, the service delivery system as established to process adoptions, problem of destitution and problems faced by street children.

The First Periodic Report – or the second report in the series – began by stating that “the family is perceived as a unit of two or more persons united by the ties of marriage, blood, adoption or consensual unions, generally constituting a single household, and interacting and communicating with each other.” It is considered the basic unit of society to meet the needs of the individuals and those of other societal institutions and went on to state how it is defined under the Civil Procedure Code, 1908.218

It acknowledged the fact that India is a large and culturally diverse country but has a fairly well-developed, strong base on matters related to family. It highlighted the plurality of forms of families, which varies with class, ethnicity and individual choices. The first periodic report also identified the challenges in the family structure. It stated that the family was turning into the smallest unit of human association that is essential for procreation. It reiterated “Family relations in India are governed traditionally by religious and personal laws, and added that the separate personal laws of major religious communities determine how they function.” It then gave some details on how the family structures are changing due to changes in the socioeconomic conditions. Interestingly, the first section was on the need for counselling because of the changing family relationships and reported on how family courts have been established in 19 states and union territories219 to deal with marital stress.

The first periodic report the covered more or less the issues mentioned in the initial report and provided additional information on the measures taken to deal with them. The issue of children of women prisoners was left out, but concern was expressed over the problems faced by Indian migrant families due to restrictions imposed by the host countries that make it difficult for children to unite with their family abroad. The report noted that India was not a signatory to the Hague Convention on the Civil Aspects of International Abduction, 1980. It touched on the issues of destitution, abuse and neglect, including physical and psychological recovery and social re-integration, and mentioned the establishment and expansion of child helpline and a National Advisory Board (NAB) on juvenile justice to advise the Government on matters relating to the implementation of the Juvenile Justice Act, 1986 including the quality of infrastructure and staff available under the Act.

The recent third and fourth periodic report also deals with the same issues. On illegal transfer and non-return of children, i.e. parental abduction, it states that India is still in the process of examining the concerned Hague Convention for ratification. With respect to difficulties faced by children in unifying with their parents abroad, the report mentions simplification of emigration procedures after creation of the Ministry of Overseas Indian Affairs (MOIA) in 2004, decentralisation of the emigration process and efforts being made at making amendments in the Emigration Act, 1983. Amidst other additional issues listed in the report are the process of examining the ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance’, adopted in November 2007, provision of crèches under the MGNREGS, responsibility of the states to initiate individual and group sponsorship interventions, increase in child abuse and crimes against children and a proposed bill to deal with offences against children.

The need for a Uniform Adoption Law applicable to all persons irrespective of their religious backgrounds spelt out in the initial report remains unaddressed. While the initial report mentioned sponsorship support to

219 ibid, p 105.
even children with single parents, the third and fourth periodic report suggests that sponsorship is left to the
states. India does not have a national sponsorship programme or guidelines to promote sponsorships. The
need for strengthening state-level machinery to monitor placements in adoption or alternative care institutions
was voiced in the initial report of 1997. Although addressed in terms of creation of State Adoption Resource
Agencies (SARA) under the new Integrated Child Protection Scheme (ICPS), delay in implementation of the
scheme has affected monitoring of adoptions at the state level. In fact, enactment of the Protection of Women
from Domestic Violence Act (PWDVA), 2005 has been a positive development. It ensures maintenance to
children, including those born of a live-in relationship. This does not find a mention in the report in the chapter
on family environment and alternative care.

**5A.1 Progress on Concluding Observations made by the CRC Committee**

Having made a brief assessment of various country reports submitted to the CRC Committee, an attempt is
made to present an assessment of India's compliance with the Concluding Observations of the CRC Committee
(see Annexure 5A for Concluding Observations), and the national policy and legal commitments.

While several positive steps have been taken to ensure children their right to family environment and alternative
care, there are still several areas requiring urgent attention. Unfortunately, the CRC Committee has restricted
its observations to the issue of adoption and abuse, neglect and psychological recovery. One recommendation
on parental responsibility was included in the 2004 Concluding Observations, and the Government's response
to that in the third and fourth combined periodic report of 2011 has been a reference to the Supreme Court
judgement recognising the mother too as a natural guardian.

Most concerns and recommendations are a repeat in the two sets of Concluding Observations for India,
suggesting lack of compliance. The combined third and fourth periodic report too does not address these
recommendations adequately.

**5A.1.1 Recommendations that have been complied with**

**Adoption**

- Ratification of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-
country Adoption (CRC/C/15/Add.115/para 43).

- Review of the legal framework for domestic adoption and formulation of new guidelines by the central
authority, to implement the 1993 Hague Convention (CRC/C/15/Add.228/para 49 (a)).

**5A.1.2 Measures Underway**

**Abuse and neglect, including physical and psychological recovery and social re-integration**

- Legislative measures to prohibit all forms of physical and mental violence, including corporal punishment
and sexual abuse in the family, in schools and in institutions. The Right of Children to Free and Compulsory
Education Act, 2009 bans corporal punishment and sexual abuse in schools. Section 23 of Juvenile
Justice (Care and Protection of Children) Act, 2000 as amended in 2006 recognises cruelty against
children by persons having their charge as a cognisable offence. The Protection of Children against Sexual
Offences Bill is under discussion in the Parliamentary Standing Committee (CRC/C/15/Add.115/para 45
and CRC/C/15/Add.228/para 51 (a)).
Public education campaigns and other appropriate measures concerning the negative consequences of ill-treatment of children have been undertaken and the need is continuous. Most such programmes are undertaken by NGOs (CRC/C/15/Add.115/para 45 and CRC/C/15/Add.228/para 51 (b)).

Strengthening programmes and facilities for the care, recovery, rehabilitation and reintegration of victims. Current efforts are inadequate and need to be scaled up. Most such facilities are run by NGOs. While they need to be held accountable, they also need support from the government to provide decent facilities (CRC/C/15/Add.115/para 45 and CRC/C/15/Add.228/para 51 (e)).

The need for training parents, teachers, law enforcement officials, care workers, judges, health professionals and children themselves in the identification, reporting and management of cases of ill-treatment, using a multidisciplinary and multi-sectoral approach is far greater than the efforts being made (CRC/C/15/Add.228/para 51 (f)).

Most efforts at promoting positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools are being made by NGOs. Teacher training is very inadequate, as positive disciplining techniques are not being used. For parents, government needs to build such programmes into the mandate of the Parent-Teachers’ Associations and the School Management Committees that have representation of parents also (CRC/C/15/Add.115/para 45).

5A.1.3 What remains

Adoption

- Uniform adoption law in India and effective measures to monitor and follow up placement within the State party and abroad (CRC/C/15/Add.115/para 42, 43 and CRC/C/15/Add.228/para 49 (c)).

- Review of the legislative framework for domestic and inter-country adoption. The JJ Act provides for adoption of children in need of care and protection. However, procedures therein are incomplete and a lot is left to CARA Guidelines. The legislative framework hence needs to be reviewed (CRC/C/15/Add.115/para 43).

- Registration and control of adoptions carried out by agencies that are not accredited (CRC/C/15/Add.228/para 48).

- Extension to the whole territory the application of the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act 2000 (CRC/C/15/Add.228/para 49 (b))

Parental Responsibility

- While recognition of mother as a natural guardian came through by virtue of intervention of the Supreme Court in Githa Hariharan v Bank of India, 18 February 1999, no measures have been taken to ensure necessary change in law as also the implementation of the judgement (CRC/C/15/Add.228/paras 46, 47).

Abuse and neglect, including physical and psychological recovery and social re-integration

- Establish effective procedures and mechanisms to receive, monitor and investigate complaints, including intervention where necessary. The current procedures are not child-friendly. Children’s courts meant to be established under the Commissions for Protection of Children’s Rights have not been set up in all states. Delhi is the only exception, where too they are not fully functional (CRC/C/15/Add.115/para 45 and CRC/C/15/Add.228/para 51 (c)).

- Investigate and prosecute cases of ill-treatment, ensuring that the abused child is not victimised in legal proceedings and that his/her privacy is protected. Immunity to public servants often affects proper investigation and prosecution of offenders serving the government. Court procedures are not child-friendly and despite various Supreme Court and High Court Judgements regarding victim protection and witness
assistance, as well as guidelines framed by the National Human Rights Commission on dealing with cases of child sexual abuse, courts fail to ensure victim protection (CRC/C/15/Add.228/para 51 (d)).

5A.1.2 National Commitments: Shifting Goals

The focus of the 1992 National Plan of Action for Children was on institutional care and there is no mention of alternative care, even though children were given in adoption/guardianship under the Hindu Maintenance and Adoption Act and the Guardianship and Wards Act. Indeed, we have come a long way since then. Subsequent policy documents and plans lay thrust on promoting adoption and streamlining the adoption process. The goals regarding day care facilities and pre-school education for children in the 0-6 year age group are yet to be achieved fully. In fact, the problem of day care needs to be addressed in the context of more and more women coming into the unorganised sector, as has been discussed in detail in the chapter.

Overall, no targets and deadlines have been set and the goals are so generic in nature that monitoring progress becomes difficult.

A glimpse at the goals laid down under certain policies and plans regarding family environment and alternative care spells out the need for setting monitorable targets.

<table>
<thead>
<tr>
<th>Legal and Policy Commitments</th>
<th>Target/Goal</th>
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<tbody>
<tr>
<td>National Policy for Children, 1974</td>
<td>Policy of the state to provide adequate services to children both before and after birth to ensure full physical, mental and social development within the normal family, neighbourhood and community environment.</td>
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<td></td>
<td>In organising services for children, efforts be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment.</td>
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<td>Amendment in existing laws to ensure paramount consideration to the interest of children while dealing with legal disputes between parents or institutions.</td>
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<td>Special care facilities for the physically and mentally disabled.</td>
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<td>Priority in programme formulation for nutrition for infants and children in the pre-school age along with nutrition for nursing and expectant mothers; maintenance, education and training of orphan and destitute children; crèches and other facilities for the care of children of working or ailing mothers; and care, education, training and rehabilitation of handicapped children.</td>
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<tr>
<td>National Policy on Education, 1986</td>
<td>Focus on Early Childhood Care and Education; need for interventions for the crucial 0-6 age group</td>
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<td>National Plan of Action, 1992</td>
<td>Expansion of early childhood development activities including appropriate low-cost family and community based interventions</td>
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<td></td>
<td>Provision of day care centres for pre-school children and infants</td>
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<td></td>
<td>Improved protection of children in especially difficult circumstances by building linkages between existing child care institutions and communities.</td>
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<td>Special measures for street children to ensure their care and protection.</td>
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<td>Special provisions for the disabled children who are neglected, abandoned or rendered destitute, involving community in the rehabilitation of the disabled children, providing residential facilities for children with profound mental retardation or cerebral palsy, and providing for vocational training, care and protection, maintenance, treatment and rehabilitation for such children.</td>
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<tr>
<td>National Plan of Action, 2005</td>
<td>Empowering families for shared parenting and nurturing responsive childcare. Providing nutrition security for the family with special attention to children’s access to adequate nutrition. Educating parents, communities and schools to create a healthy environment for the growth and development of children. Providing day care and crèche facilities to parents in rural and urban areas and ensuring crèches at working places so that all young children of working women receive essential care and protection while women work. Strengthening of family and family based systems to enable care and protection of children with disability, including creating awareness and a positive view of children with disability through campaigns by the National Trust and its centres. Providing infrastructure facilities and supporting non-governmental organisations for maintaining destitute and orphan children with a view to rehabilitating them through in-country adoptions, thereby providing the child with a family environment. Enhancing awareness regarding adoption, foster-care and sponsorship and putting systems, including programmes and schemes in place to facilitate these. Providing temporary shelters and in some cases institutional care for street and other children in exploitative circumstances, in partnership with NGOs and community based organisations. Developing a system of identification, investigation, reporting, follow-up and referral of children at risk within and outside homes/institutional care. Preventing destitution and exploitation of children by ensuring the outreach of all care, protection and developmental programmes for all children. Facilitating early repatriation of children in institutions to families thereby promoting/encouraging de-institutionalisation of children. Ensuring quality institutional and alternative care to promote protection and development of children in conflict with law. This would include ensuring implementing the JJ Act and that all institutions, housing or care facilities and protective services where children live, meet established international standards and upgrade and expand existing services; basic infrastructure such as water and sanitation, recreational and sports facilities are upgraded; juvenile offenders are rehabilitated in a child-friendly environment through both institutional and non-institutional facilities; and, sensitizing parents, care givers and community on harmful effects of offences committed by juveniles. Creating quality foster care and other alternative services for care and protection of victims who need to be removed from the home/institutions where they are being abused. Undertaking research to identify the nature and magnitude of all forms of child sexual abuse and exploitation with a view to improve policy and interventions for the safety and protection of children. Setting up Crisis Intervention Services and Centres with adequately trained personnel to deal with child victims of abuse. Review, revision and enactment of laws for prohibition and prevention of child abuse and punishment of offenders. Providing assistance to voluntary organisations to organise temporary shelters for the victims of trafficking, to facilitate repatriation to their homes, provide assistance during trial, and for rehabilitation of the victims Eradicating harmful, traditional or customary practices that lead to trafficking of women and children for sexual exploitation.</td>
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| **Creating a legal provision to ensure that an HIV positive child is not deprived of his dignity, liberty and rights, including right to property.**  
Support and promote community based care for children affected by HIV/AIDS and ensure their access to shelter and services on an equal basis with other children.  
Partnership with parents, families, educators and health-care providers in programmes for reducing the risk of HIV/AIDS.  
Promoting Community based approaches at National and State level to enable non-relation adoption/ fostering of children (without separation of siblings) orphaned by HIV/AIDS within the community itself wherever possible.  
Promoting within the family, community, schools and institutions, as well as in judicial and administrative proceedings, respect for the views of all children, including the views of the most marginalised, especially girls, and facilitate their participation in all matters affecting them in accordance to their age and maturity.  
Promoting access to parents, families, legal guardians, caregivers to a full range of information and services to promote child survival, development, protection and participation.  
| **Tenth Five Year Plan, 2002-07**  
Ensuring that the employers fulfil their legal obligations towards their women workers in extending child care facilities, maternity benefits, special leave, protection from occupational hazards, allowing formation of women workers’ associations/unions, legal protection/aid etc.  
Placing of orphaned/abandoned children in adoption as the most ideal and permanent form of rehabilitation of these children.  
Enabling larger numbers of orphaned children to find a loving home through expansion of CARA and its facilities that can provide information about children available for adoption as also of VCAs that can help locate suitable families for these children.  
Priority be given to promote in-country adoption.  
Encouraging adoption of certain categories of children like older children, mildly disabled children, siblings etc. through sensitisation and awareness generation to transform the traditional mind-set and perceptions of adoptive families.  
Streamlining and simplifying adoption procedures to reduce the time-frame between identification of a child as eligible for adoption and the ultimate placement of a child in its adoptive home.  
Encouraging possibility of foster care for children yet to be placed in adoption and developing a model set of guidelines and safeguards for the child placed in foster care.  
Strengthening monitoring and evaluation mechanism of CARA and the Indian Embassies abroad to update records, facilitate home visits and provide computerised documentation facilities.  
CARA to conduct training, sensitisation, awareness generation and dissemination of knowledge for different agencies connected with adoption of children such as the judiciary, police, medical professionals, social institutions etc.  
| **Eleventh Five Year Plan, 2007-12**  
The Eleventh Plan acknowledges that the inadequacy and cumbersome nature of procedures and laws has been addressed through the juvenile justice law of 2000. It seeks to promote adoption under the juvenile justice law so as to ensure the adopted child the same status as that of a biological child.  
It aims to strengthening capacity of families and communities, police, judiciary, teachers, PRI representatives, bureaucrats, and other implementation personnel who deal directly with children.  
Under the Integrated Child Protection Scheme it endeavours to building capacities of all those in contact with children on a continuing basis. Thrust is to be given on strengthening the family’s capabilities to care for and protect the child by capacity building, family counselling, and support services and linking it to development and community support services. |
Part B

Situation of children’s right to family environment and alternative care (Articles 5, 18 (para 1-2), 9-11, 19-21, 25, 27 (para 4) and 39))

5B.1 Parental Guidance & Responsibility (Articles 5 and 18)

<table>
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<th>Article 5</th>
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<tr>
<td>States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.</td>
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<th>Article 18</th>
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<td>1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.</td>
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<td>2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.</td>
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The Initial Report highlighted that the year 1994 was declared as the ‘year of the family’ and stated that the government had taken a number of steps to focus on ‘child in the family’ but failed to identify what these steps were. It quoted the Juvenile Justice Act of 1986 for dealing with children found in situations of social maladjustment, delinquency or neglect.

In the First Periodic Report (the second in the series), it was stated that the family in India was in consonance with the flexible definition of family in the CRC, which includes kinship and community arrangements. Then it went on to explain that the normative family composition types in India are the extended/joint family and elementary/nuclear family. In many rural areas, the traditional joint family system is still very strong, where a child grows in the company of his/her own siblings, cousins and grandparents. It also identified some emerging trends of formation of some alternate family and household compositions. In 2009, the UN came out with the ‘Guidelines for Alternative Care of Children’ that laid emphasis on the importance of family and alternative care.220

Literature on parental responsibility is scarce in India. In 2005, a written submission to the CRC Committee on the General Day of Discussion on Children without Parental Care stated: “The mother is the one that takes the nurturing role all through the day, while the father assumes a caring playful one for a brief period.”221 The submission further said that “as the child passes the toddler stage, however, demonstrative affection is less evident and the father becomes more distant too. Soon and abruptly, in most traditional and low-income

families, childhood is replaced by a precocious assumption of adult and gendered roles, with the parents becoming more of taskmasters than caring adults. At such times, there are many chances of disruption and trauma that can lead to a child either running away or being sent away from home to work as domestic labour or in hotels and other establishments.”

This situation has not changed over the years. The third and fourth combined periodic report of 2011 in fact recognises this and spells out a range of measures taken to strengthen families and assist parents in fulfilling their responsibilities. Unfortunately, the report fails to present an analysis of the situation and many of the response mechanisms listed out have failed to deliver. While counselling parents is mentioned as a component of various schemes, this is rare.

Lack of parental care within the household is also an important issue. “Even in families that are considered well knit and the children cared for, there is often corporal punishment, strict expectations of appropriate behaviour, and no scope for recreation or individualism. The denial of parental care is not unknown in better-off families. Though less common, here, the problems are exceedingly high expectations and non-countenance of the maturing child’s tendency to independence and individuality.”

This is an issue that has been left untouched by all government reports to the CRC Committee.

Some initiatives that can go a long way in helping families fulfill their responsibilities towards their children better in all situations are programmes that help parents enhance their parenting skills, provision of crèches for children of working mothers and disaster preparedness programmes that equip families with information and skills to cope in such times and take care of their children.

Moran, Ghate and Van der Marwe (2004) define “parenting programmes” as follows.

> “Parenting support program is any intervention for parents/caregivers aimed at reducing risks and promoting protective factors for their children, in relation to their social, physical and emotional well-being.”


In India, developing parenting skills has come to light more in the context of early childhood care and development. Under the Integrated Child Development Services (ICDS), a pictorial parent advocacy booklet has been developed, focussing on the rights of children, developmental characteristics of children aged 3-6 years, and activities which parents can do with their children in order to optimise their development. Hands to Hearts International (HII) has Early Childhood Development (ECD) training programmes for India’s ICDS workers, village parents, crèche teachers, and orphanage caregivers focussing on actions any caregiver/parent can take regardless of resources or literacy.

Such well conceived initiatives need to be modified and extended to help parents deal with their adolescent children as well. Problems of adolescents are least understood. Indeed, most Indian families have not learnt to provide their growing children the space for airing their views and listening to them. Culturally, this is seen as being against the norms of raising children and is one of the biggest challenges in reaching out to teenaged children. The United Nations Office on Drugs and Crime (UNODC) has developed materials on “Evidence-

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222 Ibid.
223 Ibid.
Based Family Skills Training Programmes”, which can be adapted to the Indian situation. The GoI certainly needs to seek technical assistance from UNODC in India and other agencies like UNICEF, UNDP, UNESCO, UNHCR and WHO for initiating parenting skill development programmes across the country that help parents learn to deal with all age groups of children better. Similar programmes can also be developed for children, class five onwards, to strengthen parent-child bonding. These could become part of the school curriculum.

In September 2005 in its General Discussion on Children without Parental Care, the CRC Committee noted that “acting on the basic premises that children do not develop properly outside of a nurturing ‘family’ environment and that parents need a decent chance to raise their children, the State parties should develop, adopt and implement, in collaboration with the civil society, i.e. with non-governmental organisations, communities, families and children, a comprehensive national policy on families and children, which supports and strengthens families”.

In 2007, the ICPS created scope for implementing programmes that can provide children a protective environment and prevent them from falling out of the social security and safety net. Unfortunately, the scheme is yet to take off properly and analysis shows no funding for specific interventions on family preservation and counselling.

It is important to recognise that parental guidance cannot work for families struggling to make a living. Several factors are responsible for the inability of the poor to fulfill their parental responsibilities. With both men and women migrating to urban areas in search of jobs, children are often left behind in the villages with old parents who cannot fulfill all the parental responsibilities. On the other hand, when children are carried along, their safety and security is not guaranteed at the worksites or even the illegal makeshift homes in which such families live in the cities. In 2010, The Times of India, a national daily, highlighted the death of a two-year-old girl Varsha, daughter of a construction worker, who was crushed to death under the wheels of a truck while her parents were at work late in the evening at Jawahar Lal Nehru stadium in August.

Source: After Delhi’s disgrace, the shame: Child labourers pictured working on construction sites in frantic effort to get Commonwealth Games stadiums ready, Mail Online. Available at: http://www.dailymail.co.uk/news/article-1314976/COMMONWEALTH-GAMES-2010-Child-labourers-pictured-working-construction-sites.html


Ninety-two percent of India’s total workforce is engaged in the unorganised sector and hence denied any social security measures available to those in the organised sector. For women in the unorganised sector, the situation is even worse, as there are no crèches for their young ones and certainly no maternity benefits.

The initial report discussed various legal policies and programming provisions for parenting and cited laws that require setting up of crèches for children in work facilities, such as the Factories Act of 1948, Mines Act of 1952, Plantations Act of 1951 etc. A report by Forum for Crèche and Childcare Services (FORCES) submitted to the CRC Committee for the General Day of Discussion on “Implementing Child Rights in Early Childhood” on 17 September 2004 suggests the number of crèches under existing crèche schemes to be about 23,000. However, the requirement was reported to be “800,000 crèches to cater to approximately 220 million women working in the informal sector and in dire need of child care services.”228 Another report by FORCES suggests that the total number of crèches set up under the Central Government’s Assistance to Voluntary Organisations for Crèches for Children of Working/Ailing Mother Scheme was 12,470, catering to about 350,000 children.229 According to the 2009-10 Annual Report of the Ministry of Women and Child Development, as on 30 November 2009 about 31,718 crèches were sanctioned, benefitting about 792,950 children. Clearly, there is still a shortfall of 768,282 crèches going by the requirement of 800,000 crèches projected by FORCES and acknowledged by the Ministry of Women and Child Development.230 In fact, there is no information on how many of the sanctioned crèches are actually operational.

In the third and fourth combined periodic report, the government claims to have provided for childcare facilities/crèches at worksites under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) for five or more children below the age of six. A survey carried out in Tamil Nadu in 2008 revealed an urgent need for crèches at the work sites under NREGA.231 Most states are not providing such benefits under MGNREGS.

It is well documented, known and acknowledged that statutory provisions for maternity entitlements under the Maternity Benefits Act and the Employees State Insurance Act apply only to women working in the organised sector, who constitute only 17 percent of the total women workforce.232 The third and fourth periodic report takes pride in stating that the maternity leave entitlement has been increased for government employees from 135 days to 180 days to provide for special leave for childcare. Moreover, the Central Government can, through a notification, increase the medical bonus to be received by a woman from her employers to a maximum of Rs 20,000 as against the earlier ceiling of Rs 1,000. On the other hand, for the unorganised and self-employed women workers, certain conditional maternity benefit schemes have been introduced at the central, state and local levels. The centrally sponsored schemes include the National Maternity Benefit Scheme (NMBS), launched in 2001 and renamed the Janani Suraksha Yojana (JSY) in 2005 and the Indira Gandhi Matritva Sahyog Yojana (IGMSY), introduced in October 2010.233 Similar schemes have been in implementation in Tamil Nadu, Andhra Pradesh, Karnataka, Kerala and Gujarat.234 However, reports suggest poor implementation. A Supreme Court order dated 11 November 2007 mentions that “the number of beneficiaries under JSY in

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228 FORCES, The Status of the young Indian child, Submission by FORCES, India, to the CRC Day of Discussion on “Implementing Child Rights in Early Childhood”. Available at: http://www.crin.org/docs/resources/treaties/crc.37/Discussion.asp
232 ibid.
235 ibid.
2006-07 was only 2,620,000 i.e. 45.5 percent and in the year 2005-06 this was as low as 570,000 i.e. 10 per cent. Except for the states of Andhra Pradesh, Jammu and Kashmir, Rajasthan, Madhya Pradesh, Assam, Orissa and Mizoram, where more than 75 percent of the eligible beneficiaries seem to have been reached out to, the performance of this scheme has been very poor in all the other states.” 236 With respect to schemes in the states too there have been reports of corruption, delay and misuse, and poor outreach. These schemes have also been criticised on grounds of limiting their benefits to only those women who follow the two-child norm, as most women do not have control over their reproduction. 237 Limiting the scope of the schemes to people below the official poverty line or women with two children only is a serious issue to be looked into. Unless the target is shifted to the unorganised sector workers for receiving adequate support from the government, children’s right to care and protection in a family setting will continue to be violated.

5B.1.1 Separation from Parents

Children may be deprived, temporarily or permanently of parental care for a wide range of reasons including the illness, death or imprisonment of parents, separation due to migration or armed conflict, the removal by judicial authorities in keeping with the principle of the child’s best interest, detention of the child, or following the child’s own initiative to leave home. There are several child headed households in India today, which have received no specific attention from the government. According to the Commonwealth Games Citizens for Workers, over 48 construction workers died and another 98 suffered serious injuries in a series of mishaps at construction sites during 2008-09. Just as the Games left many children without a parent, increased mining activity has also been taking its toll on children and their families.

In many cases, children are abandoned or relinquished voluntarily by their parents who believe they are unable to offer their children adequate care. 238 On the other hand, there may be times when it is necessary to separate children from their parents, especially where parents are abusive or where children are a witness to marital violence and estranged relationship between their parents.

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237 ibid
needs of such children. This was achieved by including a whole section on “Children in Need of Care and Protection” under which it created mechanisms to find alternative care for such children. Indeed, India is the only country in the world that has attempted this within its JJ system.

Although these children were covered under the earlier Children’s Act, 1960 as well as the Juvenile Justice Act, 1986, the current law attempted to ensure non-stigmatisation of such children by introducing the concept of “children in need of care and protection” instead of the denomination of “neglected juveniles”. This was because the word juvenile has come to be viewed synonymously as offender or a child who has committed an offence.

Children without parents suffer from lack of parental care and often suffer institutionalisation for a large spell of their lives unless alternative care arrangements are made. The suffering increases due to additional stigma, ostracisation and discrimination in the case of AIDS-affected orphans, children of leprosy patients and other contagious diseases and the mentally and physically challenged.

Critics therefore express doubts about the inclusion of the category of children in need of care and protection in the juvenile justice law. Experience has shown that the system still remains custodial in nature. In effect, it brings more children into the criminal justice framework. Thus, even children who have committed no offence but are deprived of parental care and shelter routinely end up in the formal justice system in India, supposedly for their own good. And since often the care system resembles the prison system, children prefer to remain out of it, surviving anywhere, even on the streets, resulting in a vicious cycle of neglect and criminalisation. Indeed, the failure of the legal and administrative machinery to respond to their needs of care and protection often sends them back and forth between the two systems.

Guardianship and Custody

While talking about separation from parents, legal issues of guardianship and custody also need to be considered carefully. India’s initial report to the CRC Committee also discussed various personal laws regarding guardianship and custody of a child. It gave details on the procedure followed in different courts regarding maintenance, custody and access. Unfortunately, because of the existence of different personal laws for matters relating to guardianship and custody, it becomes difficult to develop a comprehensive national policy on family and children. The Supreme Court judgement in Githa Hariharan v Bank of India dated 18 February 1999 declared that the mother is as much a child’s natural guardian as the father, boosting the principle that the parent who can provide better care of the child should have custody. However, the statutes have not been amended to incorporate this change. With the different personal laws that are to be applied in case of matrimonial disputes, the courts would rule that the father is considered the natural guardian if they were guided by the principles of the Hindu Adoption and Maintenance Act. In the case of the Muslim personal law, it would differ not just from the Hindu law cited before but also if the petitioners were Shia or Sunni. For example, among Sunnis, the custody of the girl child remains with the mother until the age of seven, while it is until the age of two under the Shia law until the child is weaned. In the absence of the father, male relatives get preferential rights for custody. The personal laws tend to be gender-insensitive. The custody laws favour the
father and grant the mother the status of a caretaker. Mothers can only be custodians if for any reason fathers are unable to be guardians.242

The combined third and fourth periodic report reiterates what is stated in the first periodic report on the issue of guardianship and custody. It says: “In matters concerning guardianship and custody of children, the courts have given several judgements in preference/consideration of the best interest of the child.”243 The courts tend to favour the principle of welfare of the child and the normal course of action is to give the custody of the child to one parent with visitation rights to the other. Often, this happens even if the child clearly and continuously states that she/he prefers to be with a particular parent and does not wish to see the other parent. A rights-based approach requires not just ensuring that a child is able to grow with love and affection of both the parents but also in listening to the child and following child-friendly procedures while deciding on custody matters. In reaching the decision, often children are subjected to repeated visits to the courts, counselling and a process that is not conducive to their growth and development. For a school-going child, all this implies missing school. Moreover, the parent seeking custody of the child knowingly or unknowingly puts the child under the pressure to fare well at school thinking that it could help to prove that she/he is a good parent and capable of raising the child well. The approach to the issue of “best interest of the child” is often value-loaded and the courts are not sensitive enough to such problems faced by the child. More than the child, perhaps the parents require counselling. The approach often enough shifts back to the welfare mode in custody matters. NGOs suggest that there is a need to review the policies and the existing legal framework in the rights perspective vis-a-vis family/community and state, and need to set certain non-negotiable indicators for determining the best interest of the child.244

Poverty-induced Separation

There are many cases where parents themselves give up their child due to economic condition and that results in their inability to look after and provide for the child’s needs. Often enough, when their situation changes for the better, they wish to get their child back. In fact, one of the biggest criticisms of the judgement of the Supreme Court of India in Lakshmikant Pandey v Union of India has been that the court allows parents to “surrender” their own children and closes the doors for various forms of alternative care and state assistance that could help children remain with them. Family strengthening is of utmost importance so that such children are retained in the family instead of being forced into separation for reasons that could be provided for and dealt with through state support.

There are several models that can be looked at and replicated to help children remain in their family than face abandonment or surrender, or be forced to run away from home, or get separated in any other way. The family strengthening programme of SOS Children’s Villages, India is one such example.

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


244 India Alliance for Child Rights (IACR), Written submission to the UN Committee on the Rights of the Children for the 2005 Day of General Discussion, Children Without Parental Care, The Indian Context-2005, Report from Indian NGOs, p 11. Available at: http://www.crin.org/docs/resources/treaties/crc.40/GDD_2005_IACR_Indian_Context.pdf
The way to prevent separation of children from their parents due to economic reasons is to

- identify and link vulnerable families to the various poverty eradication, income generation and unemployment reduction programmes;
- extend social security benefits to people in the unorganised sector;
- make public health care accessible and affordable;
- improve the situation in the agricultural sector;
- strengthen small scale and cottage industries;
- ensure proper rehabilitation and resettlement for families facing displacement or eviction; and
- take such other measures that can go a long way in protecting children’s today for a better future.

5B.2 Children Deprived of Family Environment (Article 20)

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or who in his or her own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, Kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.
The initial report began the section on children deprived of family environment by stating that the Ministry of Women and Family Welfare has been implementing the scheme for children in need of care and protection to take care of and rehabilitate abandoned, neglected, orphaned homeless children. In the first periodic report, it noted that the radical changes in India’s socio-cultural and economic environment have affected marginalised children. It identified them as children in need of care and protection. The 2011 third and fourth periodic report fails to provide estimates but recognises that a large proportion of children in India are destitute, orphan and without parental support and presents a set of legal, policy and programmatic measures taken by India to improve their situation.

For the purpose of discussion in this chapter, children deprived of family environment and needing alternative care include:

- street children,
- children facing abandonment and destitution,
- railway children,
- children orphaned due to HIV/AIDS,
- children of prisoners,
- children affected by natural disasters and
- trafficked children.

**Street Children**

India is a house to millions of street children. There are two categories of street children. One is children on the street, i.e. children who are on the street, but have families to whom they go back to at the end of the day or at most times. The other is children of the street, i.e., children who are street dwellers, meaning that they earn and live on the streets all the time – night and day. When they should be learning to read and write, they are forced into the workforce. While this phenomenon is by no means new, globalisation and economic liberalisation have in some instances aggravated the vulnerability of children and led to there being more children both on the street and of the street. Unfortunately, there are no reliable statistics available for this, but these children are victims of abuse and exploitation every day.

The Integrated Programme for Street Children provides for shelter, nutrition, health care, education and recreational facilities and seeks to protect them against abuse and exploitation. The scheme for welfare of working children in need of care and protection also includes street children in the target group. The government has opened up child lines that operate day and night to reach out to all children in need of care and protection.

The Badhte Kadam is an association of street children who have been voicing their concerns on public platforms. The NGO Forum for Street and Working Children has been involved in advocating for better living conditions and treatment of street children with the government. Young at Risk and Ashray Adhikar Abhiyan (Delhi) and Childline services run by agencies such as Butterflies, Balprafulta, Don Bosco Ashalayam, Salam Balak Trust, Saathi, etc. cater to the needs of street children in many ways, including provision of shelters. However, they feel often that the government’s budget for operating such services is very inadequate.

Recognising their vulnerability, street children have been listed as Children in Need of Care and Protection under the Juvenile Justice Act 2000. The protection that they avail is to be placed in a government/NGO run home and have access to shelter, clothes and food. Other than the Juvenile Justice Act, the National Policy for Children and National Plan of Action also include provisions for street children. The government has also
designed specific schemes for street children, which are inadequate compared to the visible numbers of children living on the streets.

**Railway Children**

India has the second largest rail network in the world. Children who run away from their homes both willingly and unwillingly use the railways to travel to other destinations. The train therefore becomes the primary mode of transportation and the railway junctions become home. Street children move between cities in trains frequently landing at major junctions. Research shows that they make railway platforms their homes mostly because they were either scolded/beaten by parents or were in search of work. These children spend a large part of their day at the platform and some also sleep in the railway premises during the nights. Since most of them are alone and without any adult care, they easily become prey to various forms of abuse and exploitation, such as money being taken away or physical abuse, sexual abuse, meted out by the older boys, police or their employers. These children are picked up by the Railway Police who are not well oriented on the Juvenile Justice Act and treat children like adult criminals. The NCPCR has held several meetings with child rights activists and various NGOs to draft guidelines to protect the rights of children on railway platforms. The group discussed various problems of these children like use of drugs, physical abuse by the Railway Police Force (RPF), lack of shelters, problems of identification and rehabilitation, lack of health care facilities and vulnerability to HIV and AIDS. Meetings were held during October and November 2010 with over 25 NGOs and the railway children themselves. The NCPCR has framed a set of recommendations for the administration, police and other actors to follow.

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**Figure 5.1: Railway Children Survey Report 2009-2010**

Source: Bringing positive change in the lives of Children...Railway Children India Annual Report, 2009-2010 pg.9

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246 Bringing positive change in the lives of Children...Railway Children, India. Annual Report, 2009-2010. p.9.

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Children orphaned due to HIV/AIDS

There are no statistics available for children (aged 0-17 years) orphaned by AIDS, although a 2003 World Bank briefing paper reported India to have the largest number of AIDS orphans of any country in the world. The report further cautioned that “this number is expected to be more than double in five years, and the proportion of orphaned children will remain exceptionally high until 2020 or 2030.” The World Bank estimates suggest that the number of children in India orphaned by AIDS is approaching 2 million.

The most critical issue is one of care and protection of these children. As far as alternative care is concerned, adoption of children orphaned due to HIV/AIDS has not been possible in India. In response to a question raised in the Parliament of India during the Monsoon Session of 2008, the then Health Minister acknowledged: “While the policy under the National AIDS Control Programme Phase 3 is to encourage adoption of infected/affected children due to HIV/AIDS, keeping in view the possibility of none being available to take care of such children, setting up of 10 Community Care Centres has been approved ….”

In 2007, while announcing the Draft CARA Guidelines on Adoption of Indian Children without Parental Care, the Women and Child Development Minister stated that the Centre will make HIV/AIDS test mandatory for all children admitted by the adoption agencies. The 2011 Guidelines provide for specialised adoption agencies to have facilities for children with special needs including children affected or infected by HIV/AIDS.

It has been well documented repeatedly that even institutions refuse to keep children who are HIV-positive. As expected, most adoptive parents ask for a HIV test of a child before they adopt. In 2008, Andhra Pradesh was reported to have shown a drop in adoptions as many abandoned children were found to be infected with HIV.

Foster care in any case has not been promoted in India and there is no National Foster Care Programme. A report suggests that foster care for non-related children affected by AIDS “is rare throughout India and discrimination against such children makes the prospect of fostering them less likely.”

In such a situation, community care is indeed the best solution, though very little attempt has been made in this regard when compared to the magnitude of the problem. In addition, reports question the absence of financial support for families and communities providing care and protection to HIV/AIDS-affected orphans and destitute children while the government continues to invest in institutional care for them. Community care and rehabilitation for children affected by HIV/AIDS is being provided by NGOs, though often the financial support they receive for such programmes is inadequate. Sponsorship programmes for HIV/AIDS affected children placed under community care programmes could go a long way in ensuring the objectives of community care.
According to a report, there are about 30 NGOs directly working with AIDS orphans in India. Many of these work with several other implementing organisations. These organisations have brought forth many models and good practices which can be replicated, provided necessary investments are made by the government. The August 2008 World Bank Report on HIV/AIDS in India clearly points to a “variety of UN partners and bilateral donors” supporting related HIV/AIDS projects. However, what portion of this goes for care and protection of children orphaned by AIDS is not known. It would not be surprising to find such investment to be the least. Indeed such measures will also have to be built into a law and a policy to safeguard AIDS affected orphans, which is currently lacking, as also their implementation.

Scourge of HIV/AIDS hits adoptions

HYDERABAD: In what is certainly bad news, adoptions have reduced drastically in the city with 60 per cent of the abandoned children turning out to be human immunodeficiency virus (HIV)-positive.

According to the records of the women and child welfare department, of the 125 children who were abandoned in the city and the surrounding districts of Ranga Reddy and Nalgonda, and who were potential candidates for adoption, 64 tested HIV-positive. Children not adopted are sent to non-governmental organisations (NGOs) and orphanages where medical care is given to them. However, not many are adopted as most families do not want HIV-positive children.

Due to the stigma related to HIV/AIDS, the adoption rate of abandoned children has reduced from 40.3 per cent in 2007 to 36.7 per cent in 2008. “Most couples are not interested to adopt a child with a disease. In most cases, they want healthy babies to be taken into their family fold,” an officer from the Women and Child Welfare Department told TOI. Children who have diseases are given to organisations which have good medical facilities.

Also, most children abandoned are girls whose adoption rate is less than that of the boys.

“Many parents from abroad demand a health certificate for babies whom they are about to adopt. Such health-conscious people are not receptive to ideas which are related to care for HIV/AIDS,” one of the clearance officers said.

The NGOs which are working with HIV-positive children are also worried about the emerging scenario. “Many children who are brought to the organisation do not survive. They die at a very young age. This could be one of the reasons why many people are not coming forward for adoption of HIV-positive babies,” founder and care taker of NGO Care and Share, Carol Faiser said.

Care and Share, Vijayawada, has as many as 60 HIV-positive babies in their charitable homes and get at least 10 every six months. The organisation facilitates adoption of children by Italian nationals. Health experts in the field said once the children survive beyond a certain age, they have a better chance of turning negative.

“Babies may be born HIV-positive because antibodies are passed on from an HIV-positive mother to the foetus, but they may turn negative either due to anti-retroviral therapy or their bodies develop resistance to the virus,” a health expert with Apsacs said.

But then who is going to explain all this to couples interested in adoption?


Children of Prisoners

Children below the age of 5 years are allowed to live in the jails with their mothers. Thereafter, they have to be separated.

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256 ibid.


What happens to them once they are out of the care of their mothers? Who looks after them? The situation is worse when both parents and indeed all adults of the family are in prison, as is seen to be the case in arrests under the dowry law, for murder due to family feuds, during communal riots, at the time of raids in red light areas and crackdown on insurgent groups. Apart from the stigma of being children of convicts, these children bear the additional burden of no parental care.

The children of prisoners find no mention in the Initial report submitted by India. While there is some discussion about them in the first periodic report, it is confined to children who are living in prisons with their mothers. For no fault of theirs, these children are forced to lead a life of confinement. There has been no analysis of the situation of children of prisoners who are living outside the jails; no schemes address their rights.

The National Commission for Women had recommended in 1996 that infant care facilities like crèches and the ICDS project be established/run in each prison/custodial home for proper care and development of children accompanying women inmates. This was based on their observations regarding number of infants and children accompanying their mothers in the prisons and facilities for childcare. They found childcare facilities in only two jails. Going by the findings of the Planning Commission study, *Children of Women Prisoners in Jails: A Study in Uttar Pradesh in 2003*, there is a need to pay attention to the increase in the number of children accompanying their mothers in jails. The study found that while in 1997 only 34 children were found living with their mothers in jails, in 2003 there were 135 such children. Thus, on an average 6 young children are living in a jail in Uttar Pradesh. The number of young children in jails has increased by 297.06 percent in the corresponding period.

The study recommended that basic facilities like crèche, *Anganwadi* centre, primary education centre, recreation etc. should be ensured in each jail. If not possible, at least proper arrangement for such facilities may be ensured through involvement of local reputed NGOs and government officials. Prison administration has to be made more sensitive and responsive to the problems of the children of women prisoners. It was also suggested that the jails should be provided sufficient resources to ensure care, nourishment, protection, welfare and development of young children living with their mothers in jails.

Further it was said that the Juvenile Justice Act should be amended to include the young children of women prisoners so that these neglected children can derive benefits of the Act for their care, protection, development and rehabilitation.

According to the latest estimates published by the NCRB, 406 women convicts with their 484 children and 1,363 women undertrials with their 1,639 children were reported to be in prisons in the country at the end of 2008.

In response to a public interest litigation dealing with undertrial prisoners, the Supreme Court carried out an in-depth examination of the issue and gave extensive directions with regard to the children of women prisoners, in a judgment delivered on April 13, 2006. The court took note of various provisions in the Constitution as well as laws enacted for the benefit of children. Noting that the age up to which female prisoners are allowed to keep their children varies from two to six years under various state laws, the Supreme Court has laid down

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262 *RD Upadhya v State of AP*, 2006 (4) SCALE 336
a uniform guideline applicable to all prisons in the country. This includes:

- Female prisoners will be allowed to keep their children with them in jail until they attain the age of six years.
- After the age of six, the child will be handed over to a surrogate, in accordance with the mother’s wishes, or put in an institution run by the social welfare department.
- Children above the age of six must be put in an institution in the same city as the prison and must be allowed to meet the mother at least once a week.
- In case a female prisoner dies leaving behind a child, the district magistrate must arrange for the child to be properly looked after, either by a concerned relative or a responsible person, or put into a social welfare department home.
- The children in jails should be provided with adequate clothing suitable to the local climate. States and union territories were directed to lay down dietary scales for children, keeping in mind the calorific requirements of growing children in accordance with medical norms.
- Prisons have been directed to make arrangements to provide separate food, fulfilling the nutritional needs of children, separate utensils, clean drinking water and adequate and clean sleeping facilities.
- Regular medical examinations to monitor physical growth, timely vaccinations, and alternative arrangements for looking after a child should the mother fall ill form part of the guidelines laid down.
- Children of prisoners were also accorded visitation rights.
- Proper educational and recreational opportunities must be provided to children of female prisoners. It directs that a crèche and nursery be attached to prisons.
- Children below three years of age should be put into a crèche and from three to six years in a nursery.
- Crèches and nurseries should, preferably, be located outside the prison premises. These facilities must also be extended to children of warders and other female prison staff.

There are however, no clear guidelines for dealing with children of single parent, when such parent is in jail.

The court directed the amendment of jail manuals and rules within three months, to implement the guidelines. The present laws that govern the prison situation in the country are given in figure 5.2. An overall estimate of the changes that have been brought forth is not available. But certain states in an attempt to create model prison have now incorporated crèche facilities for the children of prisoners.264

| Fig. 5.2: Existing statutes which have a bearing on regulation and management of prisons in the country |
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Children Affected by Natural Disasters

In India, millions of children are affected every year by the impacts of natural disasters such as floods, earthquakes, cyclones and cloud bursts. Natural disasters leave children vulnerable to trafficking and many girls end up being “sold as brides.” Post-disaster, human trafficking has become common in the region (South Asia) as increasing manmade conflicts and natural disasters leave the already poor even more vulnerable.265

When a super cyclone ravaged Orissa in October 1999, women and children were perhaps among the worst sufferers. Not only did they have to suffer the trauma of being homeless, they also had to suddenly fend for themselves, essentially struggle desperately just to stay alive. Hundreds of orphans were found in roaming Orissa, confused, alone and traumatised.266

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**Caring for children after the Super Cyclone in Orissa**

Soon after the cyclone a number of orphanages came and started taking in children – some were orphans and the others were handed over by their guardians. It was around this time itself that the Government issued a notification in the newspapers asking certain listed orphanages to be accessed, in case there was a child who needed shelter.

There was a lot of protest from the other NGOs on this move by the Government. They insisted that the children must be kept within the community itself. They called for Community Based Rehabilitation. However, the greatest failing was that there was no system to monitor what was happening to the children – where they were going and who took them. As a result, there is no reliable information available on where the children are at the moment. At the same time, not having ever dealt with a tragedy of such proportions, the NGOs were unable to immediately respond to the situation with viable alternatives. They were still at the stage of discussing intervention possibilities among themselves, while the organisations running the orphanages were able to respond immediately.

The solution came from the communities themselves, who said that they wanted their children with them. The government took the initiative in finding a solution in terms of community-based rehabilitation, which led to the formulation of the *Sneha Abhiyaan*, conceived jointly with civil society organisations. It was decided that destitute women, children and old persons would be placed in temporary shelters referred to as *Mamta Gruhas*, and an effort was made to knit an artificial family, with one of the women acting as the ‘link mother’. Subsequently, Action Aid took over the management of these shelters and utilised food for work resources to construct durable mud and thatched shelters to enable them to survive and withstand the changes in weather.

Subsequently the *Mamta Gruhas* were dismantled and children placed back in the community with relatives and friends and also given a monthly sum of money for their upkeep. This way they remained in their own setting.

However, what was clear was that this whole arrangement needs close monitoring to see that the children are not being deceived and ill-treated by their friends and relatives and their money remains theirs.


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On 26 December 2004, the tsunami left 241 children orphaned and 1,513 children lost one of their parents. Education was hampered by the tsunami for an estimated 269,532 children. It also sharply exposed the orphaned and abandoned children and children whose parents and guardians themselves were in a vulnerable situation to the risks of child trafficking, child labor, child abuse, violence against children and child marriage. Children also stood the chance of losing legal rights over land, assets and property. Children orphaned and separated and those from damaged and destroyed houses and schools have very special needs in terms of psychological and emotional support, education, socioeconomic protection and protection from trafficking.

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and other risks. The special needs of children were identified and appropriate models for child support and protection were developed.267

A policy for adoption of children orphaned in the calamity must be evolved, with great care and concern and in consultation with the community. Experienced social workers and child care organisations of repute must be asked to study the specific context of each child and propose the suitable arrangement for each child. Decisions in matters of adoption should not be taken as per a blanket Government Order, however well intentioned it is.


In the wake of the 2004 tsunami, the issue of adoption had acquired another dimension with an outpouring of solidarity and generosity from India and abroad – the trafficking of children under the guise of adoption. As evidence poured in of child trafficking from all tsunami-affected countries, some 60 child rights organisations called for a year-long ban on the adoption of children affected by the tsunami, as Gujarat did after the Bhuj earthquake in 2001. Realising the problems, the Tamil Nadu government wisely decided not to entertain any request for adoption of tsunami-affected children.268

The 2008 floods in Bihar – the worst in recent years – resulted in a spurt in human trafficking from the region.269 Hundreds of children were trafficked and forced to work as bricklayers and domestic servants. Disasters lead to a breakdown of social institutions, making food and humanitarian supplies difficult. This leaves women and children vulnerable to kidnapping, sexual exploitation and trafficking.270 It is found that attention paid to infant food and infant clothing during relief operations is very inadequate.

“The flash floods in Leh and surrounding areas in early August 2010 caused immense damage to infrastructure. The destruction was concentrated in and around the two districts of Leh and Kargil. This included damage to roads (resulting in access and transportation issues), physical damage to schools, ICDS (Integrated Children Development Services) centres, and health facilities”.271

“The flash floods had affected school infrastructure; the children had no safe place either to play or learn. They were worried about the disruption to their schooling, which was a central part of their daily life. They had lost their school books, their schools were non-functional due to the damage caused by the floods and many of their families were forced to relocate, finding temporary refuge in either makeshift tents or in neighbouring villages. Safe drinking water was another major issue. This had an impact on children’s health, and cases of diarrhoea increased significantly”.272

The first time India started talking about safeguards for children in disaster situations, particularly in the context of sexual exploitation and trafficking, was after the Orissa Super Cyclone in 1999.273 At the time of the Gujarat earthquake, the civil society groups got into action to keep track of the number of women and children that went missing. However, these efforts were not systematic. Sure enough, the Gujarat Disaster Management Plan does not mention children at all. At the time of the tsunami, the situation was reported to be a little better.

268 Asha Krishnakumar, The Adoption Market, Frontline, vol 22, Issue 11, 21 May to 3 June, 2005
270 ibid.
272 ibid.
273 HAQ: Centre for Child Rights, Still out of Focus: Status of India’s Children 2008, New Delhi, p 221
State governments and many NGOs got together to maintain records of persons in the relief camps and keep a watch to prevent sale of women and children, including illegal adoptions. Now once again with floods in Bihar and Orissa taking their toll on women and children, state governments seem to have got into action to form watchdog bodies to rescue women and children from the clutches of the traffickers and arrest the traffickers.

Although the initial report recognises that disaster management should respond to the needs of destitute children in crises, there is no national disaster management and rehabilitation law that would require the state governments to maintain surveillance registers in such situations and check trafficking and other forms of exploitation suffered by women and children. Nothing significant has happened towards realising this. The National Disaster Management Bill that was introduced in 2005 never became a law. We now have the National Disaster Management Authority headed by the Prime Minister of India, the National Disaster Response Force, National Disaster Management Resource Centres and the like, but no law in place to address the needs of persons affected by disasters and assure their protection.

**Trafficked Children**

Indeed, there are many more categories of children deprived of a family environment, all of which is not possible to list in this chapter. For instance, trafficked children are not only children separated from their parents and deprived of family environment, but also children exploited every day. Even amongst the trafficked children, those trafficked for sexual purposes and adoption are the most vulnerable as their chances of family reunification are rare. The situation of tribal girls trafficked for domestic labour is also somewhat similar, especially because the placement agencies that find them work try their best to sever their connection with their family. These girls are exploited by the placement agencies and their employers too and are seldom in a position to go back home due to fear of repercussions or non-acceptance by their family and no control over their earnings. The gruesome stories below as reported in the media call for immediate state action.

“Smita, now 16, was one of four girls brought in June 2005 from their village in Jharkhand by an acquaintance of her father to a placement agency in Punjabi Bagh, New Delhi. There, while no employment came her way, she found the placement agent continually harassing her for massages. She refused. Three months later, the agent punished her with rape. ‘I ran away that very day, and stayed on the streets for the next two days. I had no money and I didn’t know any Hindi.’ An NGO, Domestic Workers’ Forum, Chetnalaya, finally came to her aid, but her parents refused to take her back because she had been raped, leaving her nowhere to turn but the rescue home where she still lives. A case was registered last year against the placement agent; he, however, is absconding.”

“Latika Das from Alipore Dwaar arrived in Delhi in January 2005. Illiterate, a complete stranger to city life and without a soul she knew, it was no surprise that the 14-year-old could not manage to open a bank account.

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274 ibid.
275 ibid.
277 ibid.
She turned to Praveen, her placement agency owner, who said she could deposit her money into his account. A year of hard labour in domestic service netted her Rs 12,000, collected in Praveen’s name. Says Latika, ‘When I asked him to give me my money and send me home, he refused. When I insisted, he raped me and told me that if I complained, he would get me arrested.’ Fearing the legal repercussions Praveen could cause her to incur, Latika agreed to work at two different places for the next two years, during which she had no contact with her parents. Befriended by NGO Prayaas, Latika registered a case this May against Praveen, who now owes her Rs 36,000. He, however, is absconding. Speaking from a rescue home, she tells us, ‘I can’t go back to my parents till I get my money. How will I tell them about what I went through here?’”279

“Being locked into a wet bathroom on winter nights was perhaps the mildest. Beatings with dumbbells and cricket bats were common; the children would be gagged so their screams would not be heard. ‘When we did not finish our work on time,’ says Parul, ‘Madam (Ritu Gupta) would throw our food into the commode from where we picked it up to eat.’ During the two years the children worked for the Guptas, they neither got any money nor were they allowed to visit their homes. Says Geeta, ‘I was desperate to call my parents, and I once became adamant about it. She (Ritu Gupta) snatched the paper on which I had the number, put chillies in my eyes and tied me naked to the kitchen door. She did not give me food for the next five or six days.’ Geeta says Manish Gupta attempted to rape her several times. He also shot Priyanka in the thigh with an air gun, apparently because he thought she ate too much. ‘They did not even call a doctor after that,’ Priyanka says. Manish Gupta is an architect; his wife is what is commonly referred to as an ‘educated’ woman”.280

There are no government programmes for trafficked children. The ones that exist are for women, which at best include girls. The situation of boys trafficked into labour situations is no different and requires equal attention.

While the juvenile justice law treats such girls and boys as children in need of care and protection, and provides for their restoration, what happens in practice is mere repatriation. The first answer to a situation of deprivation of family environment is indeed sending children back home. But failure to prepare the children and their families for this can lead to a worse situation. Children are packed off without any care plan and programme for them or assistance to their families for keeping their children protected and sending them to school. They are invariably trafficked again and again.

When parents themselves are responsible for trafficking, the situation gets trickier. The principle of best interest is seldom followed by the Child Welfare Committees and courts when such children are handed over to their claimants. There is no home inquiry conducted to ascertain the genuineness of the claimants and the family situation. On the other hand, the quality of institutional care is so poor that often enough children wish to go back home knowing that they can be sold off again. That seems to be a better option in the view of many others too.

Even in the case of child prostitution, most programmes for rehabilitation and restoration are run by NGOs. Prevention remains the weakest component of all programmes, whether run by the government or NGOs. Most funds for such initiatives support rehabilitation programmes as it is easier to report on the number of children rehabilitated, or rather repatriated.

Chapter 8 in Volume II of this report on ‘Special Protection Measures’ throws more light on the issue of child trafficking.

279 ibid.
280 ibid.
There are diverse situations where children are without parental care. These include situations when parents migrate in search of work, situation of street children, children of prisoners etc. It is important to acknowledge that in certain situations care may not be provided at all. Children may be living on the streets, often with other non-related children or in unsupported child-headed households. In other cases, children in need of care may not be reachable by either governments or other non-state actors.

Source: Saathi, Care for Children without Parental Care, 20 May 2006, pg. 7.
Available at www.saathi.org/ovc/care_and_support/care%20for%20children%20parental%20care.pdf

The previous sections highlighted the situation of children deprived of family environment and separated from their parents for various reasons. As these situations are diverse, there is a need for a range of responses to deal with children without parental care. Such responses are termed as “alternative care”.281

Currently, although sponsorship and foster care find mention in Section 42 of the JJ Act of 2000 (as amended in 2006), the only forms of alternative care that are being implemented are institutional care and adoption. There is no national foster care or sponsorship policy or programme, though rules for foster care are being prepared by the Central Adoption Resource Agency (CARA) on behalf of the Ministry of Women and Child Development. As regards sponsorship, the oft-repeated response of the government is that its various conditional cash transfer schemes for the girl child are sponsorship schemes. Some states like Karnataka, Maharashtra and Rajasthan are reported to have initiated foster care programmes.282 The third and fourth periodic report states: “Maharashtra has introduced Bal Sangopan Yojana, a foster-care scheme (tending to function as a sponsorship programme)”.283 Clearly, there is very little clarity on the distinction between foster care and sponsorship. On adoption itself, several models are available, which different organisations are following. Community-based rehabilitation is yet another neglected area, though it has tremendous possibilities of providing alternative care and protection to children within the same social and cultural milieu. Such alternative forms of care need be explored much more. A crèche service can be initiated in the community itself and will not only prove cost-effective but will also be a sustainable option in the long run. According to the third and fourth combined periodic report, “Balwadis and Phoolwadis are being run in Rajasthan and Chhattisgarh respectively, with the support of community women.”284 In Tamil Nadu, the Department of Social Defence of the state has set up “village level watchdog committees”. UNICEF has been providing technical assistance to strengthen these committees through training in the area of child protection and facilitating them to play their role effectively.285 Such initiatives need to be scaled up.

In the 1980s, WHO promoted a community-based rehabilitation strategy to provide primary care and rehabilitative assistance to persons with disabilities by using human and other resources already available in their communities.286 The community-based rehabilitation programme implemented in Patanga, one of the hardest hit villages in Gujarat by the 2001 earthquake, was built on the “philosophy that proper rehabilitation was not only about building earthquake-resistant houses, but also the restoration of livelihoods, and the restoration of normal life with sustainable economic activities”, including welfare, health care, medical service, educational

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283 Ibid.
facilities, labor condition, disaster prevention etc. Besides exploring community-based rehabilitation for emergency response, the HIV/AIDS scare too resulted in the government promoting initiation of community care and rehabilitation through NGOs. Such programmes require adequate investment by the central and state governments. While communities are happy to take care of their children, they do require certain basic support that would ensure, for instance, schooling and health care for children being looked after by them.

5B.3.1 Institutional Care

There are several problems affecting the institutional care and the adoption system in the country. Section 5B.4 of this chapter highlights some of these and the rest are mentioned in Chapters 4 and 8 of Volume II of this report. It is, however, necessary at this point to state that children languish in all kinds of institutions and the states or the Central government has no record of all such institutional care providers. Section 34 of the Juvenile Justice (Care and protection of Children) Act, 2000 (as amended in 2006) makes registration of institutions mandatory in order to ensure that minimum standards of care and protection are followed and the institutions are subjected to periodic monitoring. However, the provision is being flouted by many institutional care providers, particularly religious charities. Even the number of children housed by such religious charitable institutions is not known and therefore these are all “invisible children”, left to the mercy of charities. Instances of child abuse in such institutions, including child sexual abuse have been reported time and again. While institutional care provided by NGOs is far better than government-run homes for children, the government provides very little support to such institutions by way of grant-in-aid. There is increased abdication of state responsibility by passing on the provision of institutional care services to NGOs. This implies that the state washes its hands off investing in such services.

5B.3.2 Adoption (Article 21)

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<tr>
<td>States Parties 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:</td>
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<tr>
<td>(1) Ensure that the adoption of a 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;</td>
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<tr>
<td>(2) Recognise that inter-country adoption may be considered as an alternative 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;</td>
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<td>(3) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;</td>
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<td>(4) 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;</td>
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<td>(5) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.</td>
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Despite being seen as the most effective form of alternative care by the government, there is no uniform law on adoption. The Hindu Adoption and Maintenance Act of 1956 allows only Hindus, Sikhs, Jains, and Buddhists to adopt. The Law Commission in its 153rd report recommended that a uniform law be enacted to regulate adoptions, but nothing seems to have happened in this regard. Following the framework of the norms and principles laid down by the Hon’ble Supreme Court of India in the series of judgements delivered between 1984 and 1991 in *Lakshmi Kant Pandey v Union of India and Others*, WP No. 1171 of 1982 [(1984) 2 SCC 244; AIR 1984 SC 469] and various other court orders from time to time, CARA issued separate policy guidelines for inter-country and in-country adoptions. Finally, in June 2011, a comprehensive set of guidelines was notified.

Personal laws govern matters of maintenance, custody, adoption and other issues regarding the family environment. The government has been wary of amending personal laws lest some religious communities take offence, and many provisions remain that do not serve the best interests of the child.288 Adoption of children in India thus continues to be defined by different personal laws.

When the provision of adoption was included in the Juvenile Justice (Care and Protection of Children) Act, 2000, there was controversy regarding the rights conferred on the child given in adoption under this law. The courts were of the opinion that the juvenile justice legislation was for care and protection of orphaned, abandoned and surrendered children below the age of 18 years and hence the provision of adoption did not mean anything more than giving the guardianship of such a child to a fit person. Further, these children could be placed in adoption by the Juvenile Justice Boards instead of a regular district court or any other appropriate civil court.

As per India’s first periodic report to the CRC Committee, even though the 1984 Supreme Court judgement in the Lakshmi Kant Pandey case clearly spelt out that children given in adoption be treated as legitimate children with rights as those of a biological child289, the new juvenile justice law of 2000 failed to provide for the same while it allowed adoption as a form of alternative care. It was through the 2006 amendment to this juvenile justice law that the controversy was addressed. The amendment clearly defined adoption as “a process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship”. The Juvenile Justice (Care and Protection of Children) Rules, 2007 further specified the competent court for carrying out legal adoptions as a civil court that has jurisdiction in such matters and could include the court of a district judge, family courts and city civil courts. Unlike the personal laws on adoption, under the juvenile justice law as it stands today, adoption is allowed to single parents, parents who already have a child or children of the same sex and persons of all communities irrespective of their religious background. In a very progressive move, the Court of District Judge in Delhi has granted the adoption of a Muslim girl child to Muslim parents under Section 41 (6) of the Juvenile Justice (Care and Protection of Children) Amended Act, 2006 and Rule 33 (1) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.290 While there have been instances of Muslim children given in adoption to Muslim couples, the juvenile justice law does not clearly state that adoption under the Act is irrespective of the religion and customary practices of child or the adoptive parents and supercedes existing personal laws in this regard.

Besides the contradiction between personal laws and the juvenile justice law, there are other contradictions too that require attention. For example, as per the opinion of the Union Law Ministry (Department of Legal Affairs), “non-resident Hindus (NRIs/PIOs) are not eligible to adopt a child under HAMA, whereas adoption

290 In the Court of Sh. Satnam Singh: District judge, Delhi, Guardianship Petition No. 497 of 2007, *Church of North India v Mr. Syed Javaid Muftaba Gillani*. 

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orders are being issued in favour of NRIs and PIOs (habitual residents in other countries) by the Indian Courts. These adoptions are considered as final adoptions. There is a need to bring congruity between the opinion of the Law Ministry and Court practice.\textsuperscript{291}

Unless the contradictions are removed, children will remain vulnerable to abuse and exploitation under the garb of adoption.\textsuperscript{292}

In the report of the Working Group on Development of Children for the Eleventh Five Year Plan, the Ministry of Women and Child Development acknowledges: “In order to integrate provisions of the UNCRC and protect the fundamental right to equality of children as provided under Article 14 of the Constitution of India, there is a need to review the situation and promote adoption under the JJ Act 2000 (as amended in 2006), which has an enabling provision on adoption and clearly defines it to ensure adopted child the same status as that of a biological child”. Yet, no steps are being taken to put in place a uniform law on adoption.

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<thead>
<tr>
<th>Table 5.2: Adoption Agencies recognised by CARA and Number of Children placed in Adoption</th>
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<tr>
<td>Recognised Indian Placement Agencies for In-country and Inter-country adoption</td>
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<tr>
<td>Shishu Grehs for In-country adoption</td>
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<tr>
<td>Specialised Adoption Agencies (earlier known as LAPA – Licensed Adoption Agencies) for In-country adoption</td>
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</table>

| Number of Children placed in adoption |
|---|---|---|---|
| Year (Jan. to Dec.) | In-country | Inter-country | Total |
| 2001 | 2533 | 1298 | 3831 |
| 2002 | 2704 | 1066 | 3770 |
| 2003 | 2585 | 1024 | 3609 |
| 2004 | 2294 | 1021 | 3315 |
| 2005 | 2284 | 867 | 3151 |
| 2006 | 2409 | 852 | 3261 |
| 2007 | 2405 | 770 | 3264 |
| 2008 | 2169 | 821 | 2990 |
| 2009 | 1852 | 666 | 2518 |

*Note: This does not include in-country adoption figure of other licensed adoption agencies recognised by State Governments


\textsuperscript{292} HAQ: Centre for Child Rights, \textit{Still Out of Focus: Status of India’s Children 2008}, New Delhi, p 27
Until the recent CARA guidelines were notified in June 2011, RIPAs were required to place at least 50 percent of children in in-country adoption to qualify for inter-country placements. This requirement has been increased to 80 percent domestic adoptions, with the term “domestic” being interpreted to include NRIs, PIOs and OCIs, though the fee charged and contribution expected by the adoption agencies from such persons is the same as that charged to foreigners. In violation of the Hague Convention, the present CARA guidelines also allow inter-country adoptions in countries that are not a party to the Hague Convention. Indeed, court cases have put tremendous pressure on the Government to increase its monitoring of adoption agencies and they seem to be the only hope left for correcting such anomalies.

The immediate gaps that need to be addressed are as follows.

Poor database

CARA functions as an autonomous body under the Ministry of Women and Child Development. Unfortunately, until now CARA has failed to improve its database. On its website itself, one finds two sets of information regarding number of RIPAs, Shishu Grihas and other SAAs (Specialised Adoption Agencies) in existence. The section on associated agencies gives different figures as compared to the section on state portal. Besides, there is no information on numbers of children in waiting and numbers of parents in waiting. Repeated demands for state-wise data have been ignored, though officials from CARA continue to say that such information will soon be made available on their website.

The Ministry’s Sub-group report on Child Protection for the Eleventh Five Year Plan dated 2007 gives a very different picture on number of children placed in in-country adoptions as well as number of various adoption agencies. While number of adoption agencies can possibly vary as many licenses have been discontinued and new licenses issued, variance in the number of children placed in in-country adoption places a question on the efficacy of CARA and its data management as well as monitoring of adoption agencies that fall within its purview.

| Table 5.3: Number of Adoption Agencies and Number of Adoptions between 1999 and 2009 |
|---|---|
| **No. of Child Welfare Organisations recognised by CARA**<br>for Inter-country/In-country Adoption | 60 in 14 States |
| **No. of Child Welfare Organisations licensed by State Governments**<br>for only In-country Adoption | Data not available. |
| **No. of Shishu Grihas** | 33 in 12 States |

<table>
<thead>
<tr>
<th>Number of Children placed in Adoption</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-country Adoption</strong></td>
<td><strong>Inter-country Adoption</strong></td>
</tr>
<tr>
<td><strong>Agencies</strong></td>
<td><strong>Shishu Greh</strong></td>
</tr>
<tr>
<td>1999</td>
<td>1627</td>
</tr>
<tr>
<td>2000</td>
<td>1890</td>
</tr>
<tr>
<td>2001</td>
<td>1960</td>
</tr>
<tr>
<td>2002</td>
<td>2014</td>
</tr>
<tr>
<td>2003</td>
<td>1949</td>
</tr>
<tr>
<td>2004</td>
<td>1707</td>
</tr>
<tr>
<td>2005</td>
<td>1541</td>
</tr>
</tbody>
</table>

This data too does not include the figures of Indian adoptions done by Child Welfare Organisations recognised by State Governments to do only Indian adoptions.

Inadequate monitoring as many adoption agencies, hospitals and nursing homes remain out of the purview of CARA

Another lacuna in the database available from CARA from time to time for the number of children placed in in-country and inter-country adoption is that the data does not include in-country adoption figures from licensed adoption agencies recognised by state governments. Hospitals too are out of the purview of CARA, while there have been reports of babies going missing from hospitals or given away in adoption by hospitals.

Data from a study conducted by Association for Development, a Delhi based NGO through use of Right to Information is as follows:

**Missing babies from Delhi hospitals**

RTIs were filed in 16 hospitals run by the Govt. of Delhi, Govt. of India and the Municipal Corporation of Delhi apart from those filed with the Dept. of Women and Child Development, GNCTD. So far information on 152 babies has been received. Of these, close to 10 children could be traced successfully. Many of the hospitals are not maintaining proper records.

**On Adoptions**

In Delhi, for the period 2007-09 around 60 children were received by the adoption agencies through RELINQUISHMENT. Around 590 children were handed over to the adoption agencies by Police, or cradles or found abandoned. In all 1389 in-country adoptions have taken place in the period 2000-09 (till June) through 11 adoption agencies of Delhi, and 761 inter-country adoptions have taken place in the same period (For details see Annexure 5B).

**CARA’s response to an RTI dated 27 September 2010**

In response to an RTI application filed in 2010, seeking state-wise information on number of children placed in adoption, number of children and parents in waiting etc., CARA replied that they do not possess such information and that such data will have to be sought from the recognised adoption agencies.

**Poor monitoring and follow-up of both inter-country and domestic adoptions**

Unfortunately, inter-country adoptions are not finalised in India but in the country of origin of the adoptive parents. Children are placed in inter-country adoption using the Guardianship and Wards Act. The follow-up being poor, there have been instances of children given in inter-country adoption coming back because the adoption failed.
Follow-up on adoption both domestic and inter-country needs to be strengthened. Children whose adoption fails are not welcome back into the country unless of course the adoptive parents pay for their return. A few cases where children have been returned do point at some form of follow-up taking place by the central authorities in the receiving countries. However, when it comes to domestic adoption, there is no information on adoption failure. Recently, a 17-year-old adopted child in Delhi was accused of setting her adoptive mother on fire, leading to her death. The adoptive father had died a year and a half ago.293 Neighbours swarmed the newspaper office protesting against the way the story was reported. According to them, the mother was schizophrenic and they often had to take care of the girl due to her mother’s erratic and violent behaviour. Whatever may

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be the facts of the case, one fact that cannot be ignored is that the adoption had failed and there had been no follow-up.294 In the name of giving a child a permanent family, we could probably be doing more harm to some children if the follow-up remains poor.

There is no database available for public scrutiny on follow-up in adoption matters and the outcomes.

Inter-country adoption of disabled children

Despite India’s commitment to protect its disabled children, often children even with minor and correctable disabilities are placed in inter-country adoptions because Indian parents do not come forward to adopt them. There is nothing on record to suggest that attempts have been made to place disabled children in adoption within the country.295

There are children with disabilities who have been sent back to India because the adoptive parents could not cope with the child’s needs.

CARA guidelines dated 24 June 2011 allow the government to abdicate its responsibility of ensuring care and treatment for disabled children as the first priority is to place disabled children in adoption. As per these guidelines, RIPAs are supposed to place 80 percent of children in domestic adoptions and 20 percent in inter-country adoptions. The 80 percent includes children placed in adoption with NRIs. This quota is only for children without any form of disability and for children not covered under the category of ‘special needs’. This implies that in case of children with special needs, the rule of ensuring domestic adoption as the first option does not apply. The list of children with special needs, including disabled children, is vast. Relinquishment of many children who can otherwise be provided treatment and can continue to live with their biological family is thus promoted. The guidelines merely require a certificate to be obtained from the medical board constituted by the government specifying the nature and percentage of disability in cases where foreigners are adopting children with special needs.296

Parents who adopt disabled children receive many incentives and support. This is not a practice in India and as a result, very few Indian parents come forward to adopt children with disability.

India supports inter-country adoption as a form of alternative care but not root search

With poor record-keeping, it is often difficult for children who come back in search of their roots looking for their biological parents. While root search forms part of the new draft guidelines of CARA, doubts have been expressed about the implementation of such provisions. The act of balancing a child’s right to root search and

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294 The information is based on the follow-up by an NGO providing counselling to the child

...In an open letter addressed to the US President, which has been delivered to the office of the US consulate general at Lincoln House on November 2, this 28-year-old mother of two, sketches the shocking tale of an inter-country adoption gone wrong. Haynes was adopted by an American couple from a Mumbai orphanage in 1989. Unfortunately for the seven-year-old, her foster family didn’t want her two years on. The adoption agency gave Haynes away to another American couple in Michigan. If only that meant all would be well. Haynes claims that her new foster parents exploited her and she was forced to seek refuge in other foster homes, eventually ending up on America’s mean streets...

the parent(s)’s right to privacy and confidentiality is delicate and India needs to develop the necessary skills and insights to maintain this balance.

**Inefficiency of CARA as an institution**

The role of CARA and its philosophy and rationale for adoptions, its inter-country adoption bias, licensing policies and of late even functioning has been controversial all along.

**Supreme Court notice to Centre, CARA on plea to review adoption policy**

J. Venkatesan, The Hindu, Saturday, Apr 23, 2011

NEW DELHI: The Supreme Court has issued notice to the Central Adoption Resource Authority (CARA) and the Union government on a petition to review the adoption regime in the country, with a particular reference to the status and functioning of the CARA and procedural hindrances.

A Bench of Chief Justice S.H. Kapadia and Justices K.S. Radhakrishnan and Swatanter Kumar issued the notice on Thursday on a petition filed by the Bangalore-based Ashraya and five other adoption agencies.

The petitioners said that according to an article carried in April 2007 in The Times, London, “more than 11 million babies in India are abandoned, of which almost 90 per cent are girls. Most of these would become beggars, prostitutes or menial workers when they attain adulthood. Shockingly, as per official statistics from what is termed a ‘young nation,’ the number of these children that are adopted every year is abysmal — just over 3,500…”

The petitioners said The United Nations Children’s Fund (UNICEF) had also reported that an abnormally large number of Indian children were exploited and subjected to the worst forms of trafficking, all without the protection of a loving family. They said the CARA was mandated and funded by the government to monitor and regulate placement agencies, encourage timely adoption, avoid unseemly delays and duplication of processes, provide training and facilitate dissemination of research, but it had failed on every single count.

“Families seeking to adopt are left languishing as they wait for months to be given an adoptable child, and the reams of red-tape along with the lure of foreign money ensures that more children are sought to be given to foreign parents than Indian ones, which is contrary to the norm.”

They said the Union government had gravely failed to ensure that a record of the adoptable children was maintained and direct the State governments to register all child welfare institutions as per the provisions of the Juvenile Justice Act, 2000. They sought a direction to appoint an independent body of agency representatives, childcare experts, psychologists, physicians, lawyers, sociologists and planners to review the entire adoption regime, with a particular reference to the CARA’s status and functioning and the procedural hindrances to an expeditious adoption procedure.

Source: http://www.thehindu.com/health/policy-and-issues/article1118638.ece
Reportedly, the process and final appointment of a completely unfit chairperson, who subsequently was allegedly involved in renewing the license of an institution (Preet Mandir) that was being investigated for unethical practices and even trafficking for adoption, has put the role and functioning of CARA under a cloud. The chairperson of CARA was amongst the six persons against whom a chargesheet was filed by the Central Bureau of Investigation (CBI).  

**Trafficking and illegal adoptions remain unchecked**

The main issue with regard to adoption over the years is that it has come to be a profit-making enterprise for agencies rather than a matter of “best interest of the child”. As a result, babies have become a commodity, often being procured through illegal means, including kidnapping and stealing and fraudulently procuring babies from poor parents. In 2001, it was the Tender Love and Care Home and the Bethany Home in Andhra Pradesh that made news on adoption scandals. In 2005, it was the Malaysian Social Service Society in Tamil Nadu and then Preet Mandir in Maharashtra that made the headlines in leading press. The ongoing case of illegal adoptions in the Preet Mandir Case highlights all the elements of the racket that adoption has degenerated into over the years. This case has further accentuated the doubts regarding the adoption process in India. In fact, in the late 1980s, all through the 1990s as well as 2000 onwards, reports of illegal baby sale and commercialisation of inter-country adoptions has led to several debates pointing to the need for stricter regulations.

Trafficking of children for adoption using the gaps in the legal provisions and procedures or in evasion of the due process has been a cause of concern for several years. Even the CARA has admitted that there are reports of delays, excessive adoption charges and huge donations given to Indian agencies and of course illegal practices including buying and selling of infants for adoption.

One of the provisions of the Juvenile Justice Act of 2000 (as amended in 2006) that has drawn criticism from various quarters is the provision that allows a parent to surrender their child for adoption. The criticism has been largely because of illegal use of this provision by adoption agencies for procuring children. There have been several reports and cases in various High Courts pointing to the way adoption agencies misguided parents/guardians into signing the surrender deeds on the pretext of sending their child to a good school for education and good care. Most of these children were procured for inter-country adoption, even if less in number, is a lucrative trade. There are agencies that run a maternity ward alongside an adoption agency so that they can have unwed mothers deliver in their maternity ward and then get them to surrender their children. Adoption agencies take the plea that they need money to provide quality care to children in their institutions and hence the money they get by placing children in inter-country adoption goes into it.

Tedious adoption procedures also lead to illegal sourcing of children. With increased reporting of illegal surrenders or sourcing of children, changes were introduced in the 2007 Central Model Rules on Juvenile Justice to ensure that the surrender deeds are made in the presence of the Child Welfare Committees set up

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301 *Indian adoptions run into problems*. Available at: [http://www.familyhelper.net/newscy.html#india](http://www.familyhelper.net/newscy.html#india).
THE ADOPTION MARKET
ASHA KRISHNAKUMAR Frontline, Volume 22 - Issue 11, May 21 - Jun. 03, 2005
A Frontline investigation lays bare a multi-billion-dollar, countrywide racket in inter-country adoption of children, run by private adoption agencies that exploit the loopholes in the rules.

P. GOOUTHAM

A new-born female child, which was sold by her mother in Salem, in the arms of her sisters after she was restored to the family by the district administration in 2002

THE arrest in Chennai on May 3, 2005, of five kidnappers, who have sold over 350 children to an adoption agency in the city over many years; the inquiry ordered by the Delhi government into the process of inter-country adoptions in 10 agencies in the Capital; and the recent moves in Andhra Pradesh to book Shalini Misra, a former Director of the Women Development and Child Welfare Department, who had cracked the adoption racket in the State in 1999, under the SC/ST Atrocities Prevention Act, have blown the lid off a massive adoption racket in the country. Trade in inter-country adoptions, in particular, appears to be a “roaring business” for some unscrupulous agencies. In 1999, the country was shocked by the revelation of an inter-country adoption racket in Andhra Pradesh when S. Peter Subbiah of Good Samaritan Evangelical Social Welfare Association was found buying and selling babies. Around the same time, similar stories emerged from Tamil Nadu’s Salem district, from where the police arrested five persons on complaints of stealing four babies from the government hospital. The babies were found in an adoption agency in Chennai. The commodification of children should have ended with such revelations. But it has not.

Papers are forged and guidelines violated as babies are matched rapidly with foreign parents. Touts of private adoption agencies hunt for vulnerable families. Often, the mother has little negotiating power. For as little as Rs.150-500, a new-born is handed over to touts who are paid about Rs.6,000 a baby by the agencies. Mothers who go to reclaim their babies are turned away. Some agencies look the other way from the trafficking, stealing, and buying of babies.

Children are sold abroad by providing false information about them, falsifying documents, and making use of loopholes in the adoption guidelines prescribed by the Supreme Court. Some agencies also make bargain offers to adoptive parents for the wholesale purchase of babies; while some others seem to blackmail those who refuse to increase the purchase price of babies. Western placement agencies collect payment far in excess of the actual adoption costs, routing a portion of this to the Indian adoption agency.

While only an estimated 15-20 per cent of adoption agencies seem to indulge in the racket, the gravity of the situation must not be underestimated. There is an urgent need to restructure and reform the system of adoption in India.

Recognising that there is a danger of children being trafficked for adoption during and after an emergency or a natural calamity that leads to children becoming orphans, it is significant that the Tamil Nadu Government, after the Tsunami should have passed an order putting a moratorium on adoptions.

under the law. When the parents are living and identified, they have to sign a surrender deed. The children have to be then declared legally free by the Child Welfare Committees set up under the juvenile justice law before they can be put up for adoption. This move has been much to the dislike of adoption agencies who have been challenging the requirement of signing the surrender deed before the Child Welfare Committee because unwed mothers want the surrender to be a quiet affair and such a move would encourage them to abandon their babies instead of surrendering them in safe hands.

Interestingly, while on one hand several adoption scandals have been reported in the past from the states of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Delhi, the number of adoption agencies in these

states is significantly high. The overall adoptions on the other hand have reduced in the country (see Table 5.3 and Annexure 5C for details). The number of RIPAs (Recognised Adoption Agencies for In-country and Inter-country adoptions) in Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Delhi is 24, 6, 9, 1 and 8 respectively. Andhra Pradesh had put a moratorium on inter-country adoptions for some years and hence it has only one RIPA at present. In Karnataka and Tamil Nadu too, certain measures have been taken to monitor the agencies and de-recognise the erring ones. In Maharashtra however, RIPAs continue to thrive.

National statistics on kidnapping and abduction of children for the purpose of adoption are made available by the National Crime Records Bureau in its reports on crime in India. However, state and district-wise data is not available, neither is the data completely reliable, as it is based only on cases that are reported to the police stations and dependent on the understanding of the police personnel who register the cases. A case of kidnapping for adoption may be treated as a case of kidnapping for ransom or for sale. The available data in this regard is, however, as given below.

### Table 5.4: Kidnapping and abduction of Children for Adoption

<table>
<thead>
<tr>
<th>Year / Crime</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kidnapping and Abduction for Adoption</td>
<td>100</td>
<td>37</td>
<td>45</td>
<td>36</td>
<td>21</td>
<td>15</td>
<td>41</td>
<td>23</td>
<td>36</td>
<td>34</td>
<td>44</td>
</tr>
</tbody>
</table>

*Source: Crime in India, 1999-2009, National Crime Records Bureau*

The NCRB data clearly shows a decline in such cases since 1999, though there has been an increase between 2008 and 2009.

### Adoption only for the rich

A poor family in India cannot adopt even if it is capable of providing due care, love and protection that a child would require from a family. The reason indeed is the thinking that a child needs to be given a “better life”, that being restricted to materialistic gains. An investigative report in Frontline had brought this to light in 2005. The situation has not changed since. The report quotes: “According to the study ‘Adoption Agencies and Institutional Practices in Tamil Nadu: A Sociological Study’ by Sujata Mody of the Chennai-based Malarchi Women’s Resource Centre, one adoption agency head in Tamil Nadu said: ‘It is the privilege of the elite.’ Some agencies in Tamil Nadu admit that they need money to run the home, so they need to ‘charge suitably’. Even those agencies that charge only nominal legal, maintenance and registration fees do not consider skilled manual workers worthy ‘adopters’.”

The Guidelines clearly lay down the requirement for prospective adoptive parents to submit three years’ income certificate, if they are salaried, and income tax returns filed for the previous three years for those who are self-employed. The poor or people not in regular employment or those in the unorganised sector stand no chance and the only resort for them is illegalprocuration.

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### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

This issue has been highlighted in detail in chapter 8 of Volume II of this report on Special Protection Measures. It is being dealt with here only in the context of the care facilities that are available to children who are victims of abuse and maltreatment. Such children are either encouraged to be with their families or are produced before the Child Welfare Committees set up under the Juvenile Justice (Care and Protection of Children) Act 2000. Then they may be sent to a child care home that is declared a “fit institution” as per the Act or placed in the custody of a “fit person”.

The situation of these care institutions has always been a matter of concern and controversy as the standards of care and the facilities are almost always inadequate. Physical and mental abuse and torture are not unheard of. A qualitative study undertaken in an observation home in Delhi in September 2005 which housed boys aged between 7-18 years showed that a large number of drugs were used by adolescents. Another action research has shown that bullying and beating is a constant feature. Children had no one to talk to and the probation officers never called them to discuss their problems. Children had no opportunities for education and in many cases, those who were in school also found their education discontinued as there were no facilities for schooling in the Observation Homes or Special Homes.

Although familial homes are meant to be the safest havens for children, neglect, maltreatment, abuse and discrimination is not uncommon. As a precursor to the proposed Offences against Children bill, the Ministry of Women and Child Development, on suggestion from activists and experts undertook the Study on Child Abuse in 2007.

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In the preface to the report, the Joint Secretary to the department acknowledged that traditionally in India the responsibility of care and protection of children has been with families and communities. It further brought out the fact that on the one hand there were enormous numbers of children needing care and protection, while on the other hand there were not enough schemes or sufficient budgetary allocations to deal with them. It was also observed that to carry the issue of child protection forward there was a need to create an enabling environment through a legislation to address issues of child abuse, make a policy on child protection, formulate interventions and outreach services and create an information base on child protection.

**Conclusion**

Even after 20 years of ratification of the Convention on the Rights of the Child (CRC), service providers are of the view that the family is always the safest haven, though efforts at strengthening family care remain inadequate. In the name of permanency planning and non-institutional care, adoption is promoted as the best alternative, and foster care and sponsorship programmes are yet to take off. Ensuring the best interest of the child in settling issues of guardianship and custody too remain a challenge. Gender biases in family care persist, and provision of childcare services to assist working mothers, especially those in the unorganised sector, is inadequate.

Most responses in the government’s combined third and fourth periodic report suggest that the commitments to children are being met through NGOs. Indeed more and more NGOs are providing care and protection services as well as carrying out public awareness campaigns. The government has in many ways transferred the responsibility to the civil society. While it is important to enter into partnerships with civil society actors, in effect it has led to abdication of state’s responsibility. This has also been a way of cutting down on state expenditure for critical services as the budget for NGO run services is far lower than what the government would otherwise be expected to invest. Issues of accountability also come under a scanner with inadequate monitoring of private services. Need for a uniform law on adoption is a critical area of concern requiring immediate attention. CARA and its work needs to be reviewed to give effect to the efforts at regulating illegal adoptions. In fact, CARA guidelines are challengeable in court on grounds of violation of the principles of non-discrimination and best interests of the child as also in violation of the Hague Convention. Children of prisoners, children in conflict areas, street children, railway children and many more categories of children require urgent attention. Community rehabilitation, sponsorship and foster care programmes need a boost.
6. Basic Health and Welfare

Introduction

The provisions of health care in India have always been uneven and erratic and have received minimal attention from the government. Discrimination exists at many levels not only in terms of provisions and access to health care but also in terms of divides amongst class, caste, being with disability, gender, tribals and minorities. Children born to poor rural families, in particular girls, are likely to have the least access to affordable and good quality health care. The prevalence of an anti-female bias in Indian society and the systematic discrimination against girls is striking in terms of health. The National Family Health Survey-3 found that even in 2005-06, girls are less likely than boys to be immunised and families were found to seek treatment from a healthcare provider more often for boys than for girls.

About 75 percent of health infrastructure, medical human power and other health resources are concentrated in urban areas, where only 27 percent of the population live. The rural populations, who are the prime victims of the policies, work in the most hazardous environments and live in abysmal conditions. Unsafe and unhygienic birth practices, unclean water, poor nutrition, sub-human habitats and degraded and unsanitary environments are challenges to the public health system. The majority of rural population are small landholders, artisans and labourers, with limited resources that they spend chiefly on food and necessities such as clothing and shelter. They have no money to spend on health.

The chapter has been divided into two parts. The first part talks about developments made on national and international commitments. The second tries to analyse where the country stands on the status of children in terms of the CRC articles on health.

Part A

Progress on the Concluding Observations – A quick glance

The Initial Report began the chapter on Basic Health and Welfare by citing the provisions in the Constitution of India pertinent to the issue. It went on to state the goals that were laid down by the National Policy for Children and the National Plan of Action for Children wherein the priority has been given to maternal and child health. It also mentioned the National Health Policy, 1983, which has given the highest priority to launching special programmes for the improvement of maternal and child health. It further stated that India was committed to attain the goal of “Health for All” by the year 2000 through universal provision of comprehensive primary healthcare services. The First Periodic Report reiterated goals laid down by different policies and plans. It also highlighted the strategies in the Ninth Five Year Plan to improve the health status of children in the country. The

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307 HAQ: Centre for Child Rights, Still out of Focus: Status of India’s Children, New Delhi, 2008, p 87.
308 ibid.
311 ibid.
Third and Fourth Combined Periodic Report, which was submitted very recently, attempted to address a few concerns that were raised in the Concluding Observations by the committee. These have been analysed below.

Annexure 6A tries to look at the progress in complying with the Concluding Observations made following the Initial Report submitted in 1997 and the First Periodic Report submitted in 2004. It also consists of Concluding Observations of certain other committees such as the Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, the Human Rights Committee, etc.

6A.1 Progress on Concluding Observations made by the CRC Committee

Though there have been efforts through various programmes and schemes towards improving the status of health of children, there are still areas that need attention.

6A.1.1 Recommendations that have been complied with

- The Committee in its Concluding Observations on the 2001 country report made suggestions to increase efforts to prevent HIV/AIDS, strengthen measures to prevent mother-to-child transmission and create more awareness about HIV/AIDS among adolescents. The National AIDS Control Programme (NACP) Phase III began in 2007 and is to run until 2012. It is based upon the experiences and lessons drawn from NACP I and II. Also, the Prevention of Parent-to-Child Transmission Programme was initiated to prevent prenatal transmission of HIV. The National Paediatric HIV/AIDS initiative, also launched in December 2006, focuses on early diagnosis of children up to 18 months and life-long antiretroviral therapy (ART) in paediatric formulation. (CRC/C/15/Add.228, para.55).

- It also recommended taking effective measures to collect adequate and disaggregated statistical data on children with disabilities and use of such data in developing policies and programmes to prevent disabilities and train enumerators during data collection for the Census 2011 (CRC/C/15/Add.228, para.57 (b)).

- The Committee recommended that the government should take all necessary steps to implement the Child Marriage Restraint Act, 1929, following which the new Prohibition of Child Marriages Act, 2006 was enacted (CRC/C/15/Add.228, para.61 (a)).

- The Committee also recommended strengthening sexual and reproductive health education, mental health and adolescent-sensitive counselling services and to make them accessible to adolescents. The Reproductive and Child Health Programme was introduced which includes a component on Adolescent Reproductive and Sexual Health (ARSH), and is a core package of services consisting of preventive, promotive, curative and counselling services for adolescents. (CRC/C/15/Add.228, para.61 (c)).

6A.1.2 Measures under way

- Efforts have been made to amend the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and harmonise it with the UN Convention on Rights of Persons with Disabilities (UNCRPD) ratified by India in 2007. The amendment has not taken place yet. (CRC/C/15/Add.228, para.56).

- The data gathered on children with disability in the Census 2011 has not been published yet. The provisional data available now does not contain data on children with disability. (CRC/C/15/Add.228, para.57 (b)).

6A.1.3 What remains

- The Committee recommended developing effective policies and programmes to improve the health situation of children and also to ensure access for all children to primary, free and quality health services. In response to the Concluding Observation, the GoI states that the health infrastructure varies across states
and there are inadequacies in the rural health infrastructure in a large number of health facilities like the Sub-Health Centres, Primary Health Centres, etc. (CRC/C/15/Add.228, para.53).

The Committee recommended ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but the Convention has not been ratified yet (CRC/C/15/Add.228, para.43 (a)).

6A.2 Shifting goals reflect shifting priorities

A Health Policy was first formulated in 1983, and since then there have been marked changes in the determinants relating to the health sector. Yet, several outcomes and goals remain unmet. The second National Health Policy (NHP) was formulated in 2002. The National Plan of Action for Children, 1992 had laid down the goal to achieve 100 percent immunisation coverage and eradication of polio by 2000. This goal was shifted to 2005 by the National Health Policy of 2002. Also, while the 2002 Health Policy was based on the need for adequately investing in health infrastructure, it ignored the pressing need of primary healthcare services. The table below provides various commitments and goals that were set by different law and policy documents.

<table>
<thead>
<tr>
<th>Legal and Policy Commitments</th>
<th>Target/ Goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution of India, Art. 47</td>
<td>The State shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties.</td>
</tr>
<tr>
<td>National Health Policy, 1983</td>
<td>“India is committed to attaining the goal of ‘Health for All by the Year 2000 A.D.’ through the universal provision of comprehensive primary health care services”.</td>
</tr>
<tr>
<td>National Plan of Action for Children, 1992</td>
<td>Reduce the infant mortality rate to below 60 and the child mortality rate to below 10 per thousand. Maintenance of 100 percent immunisation coverage, eradication of polio by 2000 A.D. Elimination of neonatal tetanus by 1995, prevention of 95 percent of deaths from and 90 percent of cases of measles by 1995 Prevention of 70 percent of death from and 25 percent of cases of diarrhoea Prevention of 40 percent of deaths due to acute respiratory infections by 2000 A.D. Reduction of the maternal mortality rate (MMR) by half between 1990 and 2000</td>
</tr>
<tr>
<td>National Health Policy, 2002</td>
<td>Achieve an acceptable standard of good health among the population by increasing access to decentralised public health system and by establishing or upgrading the infrastructure in the existing institutions. Reduce IMR to 30/1000 and MMR to 100/lakh by 2010 Eradicating polio and yaws and eliminate leprosy by 2005 Improve nutrition and reduce proportion of LBW babies from 30% to 10% by 2010 Achieve zero level growth of HIV/AIDS by 2007</td>
</tr>
</tbody>
</table>
Ninth Five Year Plan, 1997-2002
- Reduce IMR to less than 60 by 2002
- Reduce CMR to below 10 by 2002
- 100 percent coverage of immunisation in respect of all vaccine preventable diseases
- Universalise Nutrition Supplementary Feeding programmes with special focus on girls child and adolescent girls
- Expand the scheme of adolescent girls in preparation for their productive and reproductive roles

Tenth Five Year Plan, 2002-07
- Reduction of decadal rate of population growth between 2001 and 2011 to 16.2 percent
- Reduction of Maternal Mortality Ratio (MMR) to 2 per 1000 live births by 2007 and 1 per 1000 live births by 2012
- Reduction of Infant Mortality Rates to 45 per 1000 live births by 2007 and to 28 by 2012

Eleventh Five Year Plan, 2007-12
- Reducing Maternal Mortality Ratio (MMR) to 1 per 1000 live births.
- Reducing Infant Mortality Rate (IMR) to 28 per 1000 live births
- Reducing Total Fertility Rate (TFR) to 2.1.
- Providing clean drinking water for all by 2009 and ensuring no slip-backs.
- Reducing malnutrition among children of age group 0–3 to half its present level.
- Reducing anaemia among women and girls by 50%
- Raising the sex ratio for age group 0–6 to 935 by 2011–12 and 950 by 2016–17.

National Rural Health Mission
- Improve the availability of and access to quality health care by people, especially for those residing in rural areas, the poor, women and children

International Conference on Population and Development (ICPD), Cairo 1994
- Efforts should be made by all the states to reduce the infant mortality rate by one-third by the year 2000

Millennium Development Goals (MDG)
- Reduce the under-five mortality rate by two-thirds between 1990 and 2015,
- Reduce the maternal mortality rate by three-quarters between 1990 and 2015
- Combat HIV/AIDS, malaria and other diseases

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**Part B**

**Status of health of children: Still far to go**

**6B.1 Survival and Development**

**Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

According to a World Health Organization survey, 16 percent of Indian families have been pushed below the poverty line by high health costs.\(^3\) These families have been made more prone to ill health by their inability to access or afford clean water, sanitation and nutritious food. Lacking any kind of health insurance, more than 40

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percent of low-income families in India had to borrow money from outside the family to meet their healthcare costs and 12 percent of families had to sell their assets to cover the medical expenses of family members.\footnote{ibid.}

### 6B.1.1 Mortality Rates

Infant mortality stagnated during 1981-97 and then declined. However, during 1999-2006, the reduction in infant and child mortality slowed down considerably.

Although not consistent with the findings of the NFHS survey, as per the analysis based on the Sample Registration System (SRS) data, while infant mortality shows stagnation, child mortality has increased in all major states such as Assam, Kerala, Madhya Pradesh, Maharashtra and West Bengal during 2002-2006.\footnote{Nandita Saikia, Abhishek and Faujdar Ram, Has Child Mortality in India Really Increased in the Last Two Decades? Economic and Political Weekly 18 December 2010, Vol. XIV No 51, pp 62-68.} And the recent news of the deaths of 100 children in just four months at the government district hospital in Satna, Madhya Pradesh supports this argument (see Annexure 6B for details of the health status of children).

India could not meet its target of the Tenth Five Year Plan (2002-2007) to reduce the \textit{infant mortality rate} to 45/1,000 and will have to struggle to meet its plans to reduce the rate to 28/1,000 by 2012.\footnote{ibid.}

Each year, 26 million children are born in India. They constitute 20 percent of the world’s infants. Of them, 1.2 million die within four weeks of birth.\footnote{Armida Fernandez, David Osrin, The city initiative for newborn health. Available at: http://www.snehamumbai.org/documents/PLOS_Med_CINH.pdf} This figure comprises a huge 30 percent of the 3.9 million \textit{global neonatal deaths}.\footnote{ibid.} According to the report \textit{State of India’s Newborns},\footnote{ibid.} India has the highest number of births as well as neonatal deaths in any country in the world.

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

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

However, India is a large country, and there are wide variations across the states on NMR, IMR, and U-5MR. On the one hand, there are states like Kerala and Tamil Nadu that have excellent indicators of child health,
comparable with those of many developed countries. On the other hand, there are states like Orissa, Madhya Pradesh, Uttar Pradesh, Rajasthan and Bihar that have very poor child health indicators. These five states put together account for almost 40 percent of India’s total population and 60 percent of child deaths.319

Table 6.2: Childhood Mortality Trend-NFHS 1, 2 and 3

<table>
<thead>
<tr>
<th>NFHS</th>
<th>Neonatal Mortality</th>
<th>Postnatal Mortality</th>
<th>Infant Mortality</th>
<th>Child Mortality</th>
<th>Under-5 Mortality</th>
</tr>
</thead>
<tbody>
<tr>
<td>NFHS 3 (2005-06)</td>
<td>28.5</td>
<td>13.0</td>
<td>41.5</td>
<td>10.6</td>
<td>51.7</td>
</tr>
<tr>
<td>NFHS 2 (1998-99)</td>
<td>31.7</td>
<td>15.4</td>
<td>47.0</td>
<td>16.9</td>
<td>63.1</td>
</tr>
<tr>
<td>NFHS 1 (1992-93)</td>
<td>34.1</td>
<td>22.0</td>
<td>56.1</td>
<td>19.6</td>
<td>74.6</td>
</tr>
</tbody>
</table>

Rural

| NFHS 3 (2005-06) | 42.5               | 19.7                | 62.2             | 21.0           | 82.0             |
| NFHS 2 (1998-99) | 46.7               | 26.6                | 73.3             | 31.8           | 103.7            |
| NFHS 1 (1992-93) | 52.9               | 32.2                | 85.0             | 37.5           | 119.4            |

Total

| NFHS 3 (2005-06) | 39.0               | 18.0                | 57.0             | 18.4           | 74.3             |
| NFHS 2 (1998-99) | 43.4               | 24.3                | 67.6             | 18.4           | 74.3             |
| NFHS 1 (1992-93) | 48.6               | 29.9                | 78.5             | 33.4           | 194.3            |

The rate of female child deaths in Rajasthan is a staggering 119 percent. In Madhya Pradesh, statistics reveal that mortality rates for girls are higher than those for boys except during early infancy when girls have a biological advantage. Kevin Watkins, who edited the United Nations Human Development Report, said that despite growing prosperity brought on by a sustained boom, child malnourishment in India is higher than in Ethiopia and well above the African average of 28 percent.320 Gender inequalities are also still rife in India, with boys getting access to food and medicine before girls. “Being born a girl carries high risks: it raises the chance of premature death

Fig. 6.2: Infant Mortality Rates across Indian States 1990-2006


320 Human development: Child mortality stays high despite India’s boom. Available at: http://www.guardian.co.uk/world/2008/jul/28/india.internationalaidanddevelopment
between the ages of one and four by about one-third”, he said. Figure 6.3 shows that there has been a decline over the last 20 years in the rate of female child mortality from 42.1 in 1993 to 12.4 in 2006.321

The National Family Health Survey-3 reveals how Scheduled Tribes and Scheduled Castes have higher-than-average infant and child mortality rates. The under-five mortality rate is 88.1 for SC children and 95.7 for ST children, as compared to 59.2 for other children. This reveals that caste and tribal-based discrimination continues to play a key role in terms of child survival.

![Fig. 6.3: India - Mortality Rate; Female Child (Per 1,000 Female Children Age One)](source)

A study by an NGO in Andhra Pradesh documents an IMR of 165 per 1000 for tribal communities in Andhra Pradesh compared to an average of 95 per 1000 at the State level.322 This is a phenomenal increase from the previous figure of 62 out of 1000 in 2002 for tribal people. The under-five mortality is also extremely high, at nearly 50 percent.323

### 6B.1.2 Early Marriage and Pregnancy

More than half the world’s women between 20 and 24 years of age who were married or in union by age 18 live in South Asia, and more than one in three women in the world who were married as children are from India.324

The 2001 Census reports that there are nearly 20 percent married girls under 15 (300,000) who have given birth to at least one child. Over 170,000 married girls under the age of 15 have borne two children, while 125,000 have had one child. There are nearly 43,151 urban mothers below the age of 15 with two children. “The average number of children born to girls below the age of 15 has increased dramatically from 0.02 in 1981 to 0.31 in 2001.”325

A close look at the figures shows that 177,000 girls in the 15-19 years age group are married with four

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321 Mortality rate; female child (per 1,000 female children age one) in India. Available at: http://www.tradingeconomics.com/india/mortality-rate-female-child-per-1-000-female-children-age-one-wb-data.html
323 ibid.
children. Over 600,000 have two children, and over 134,000 have three children.\textsuperscript{326}

The average age of marriage at the national level has already reached 19.5 years and therefore achieving the target of 20 years by 2010 seemed to be an easily achievable task, though not yet achieved.

Getting accurate data on the true extent of early marriages remains a challenge. Even with the data that is available, the average conceals significant regional differences. Most marriages are not officially registered, and many parents resort to falsifying girls’ ages. This becomes easier in rural areas where birth certificates are usually non-existent. There is also very little data on girls who get married below the age of 15 years.

Early child-bearing has long been seen as a risk to maternity and as contributing significantly to large families. Since girls who marry young have many childbearing years, they are more prone to miscarriage, unsafe abortions, infant death, malnutrition, cervical cancer, sterility and maternal death. Even when girls are closer to the age of 18 but not yet that age, the risk remains.\textsuperscript{327} Girls between the ages of 15 and 19 are twice as likely to die of pregnancy-related reasons as women between age 20 and 24.\textsuperscript{328} Further, studies suggest that unmarried young abortion-seekers are even more vulnerable because they are more likely to delay abortion-seeking, face discrimination and seek abortion from unqualified providers.\textsuperscript{329}

Child marriage is the leading cause of young women between the ages of 15 and 24 dying during pregnancy. Not only the mothers but offspring born too early in their mothers’ lives are at increased risk of illness and death. The babies of child brides are sicker and weaker and many do not survive childhood. Evidence shows that infant mortality among the children of very young mothers is almost two times higher than among those of older peers. The health problems linked to early marriage not only affect the pregnant mother but also continue after childbirth.\textsuperscript{330} Complications are more likely during pregnancy and birth purely because of the mother’s young age.

A large proportion of reproductive and sexual health concerns of adolescent girls and women start from early marriage and early pregnancy. In the context of reproductive health, girl spouses face well-acknowledged risks. These include the problem of giving birth when the pelvis and birth canal are still under-developed, which leads to an increased risk of complications during delivery including protracted labour.\textsuperscript{331} Mothers aged less than 15 are especially vulnerable to fistulae – relentless pressure from the baby’s skull can damage the birth canal causing breakages in the wall. A girl or a woman with this condition, which is irreversible without surgery, is not only in constant pain but will be socially ostracised and may well be divorced because of this.\textsuperscript{332}

\textsuperscript{326} ibid.
\textsuperscript{327} UNICEF, Early Marriages in South Asia, A Discussion Paper. Available at: www.unicef.org/rosa/earlymarriage(lastversion).doc
\textsuperscript{328} ibid.
\textsuperscript{329} Shireen J. Jejeebhoy, Shveta Kalyanwala, A.J. Francis Xavier, Rajesh Kumar, Pathways to induced abortion among unmarried young women: Are the unmarried more vulnerable than the married?, Population Council, India. Available at: http://iussp2009.princeton.edu/download.aspx?submissionId=92622
\textsuperscript{330} ibid.
\textsuperscript{331} ibid.
\textsuperscript{332} ibid.
Child marriage is still a practice in many states. About 20.3 percent of girls in rural areas are married before 18 years. In India, 8.3 percent of fertility is contributed by mothers younger than 19 and this is closely linked with pregnancy wastages ranging from premature death, stillbirth, neonatal deaths, low birth weight and maternal morbidity. Therefore, region-specific strategies and action plans need to be worked out to achieve this national goal.

Regional Variations

There are stark variations in marriage patterns across the country. Of women aged between 25 and 49 in Madhya Pradesh, over half (52.6 percent) were married before the age of 15. In Bihar, 51 percent of women were married before 15; in Uttar Pradesh 49.7 percent, in Andhra Pradesh 48.9 percent; and in Rajasthan 47.8 percent. A huge 80 percent of the women were married before the legal age of 18 in these states – Madhya Pradesh (78.5 percent), Bihar (83.9 percent), Uttar Pradesh (79.6 percent), Andhra Pradesh (79.8 percent) and Rajasthan (81.5 percent). However, by contrast, the median age of marriage in Goa, Mizoram and Manipur is 22-23 years and 20 years in Kerala, Nagaland, Punjab and Sikkim. Despite high female literacy in Kerala, close to one-tenth of women are married before the legal age of 18. According to UNICEF’s India Country Office, although Punjab is one of India’s wealthier states, the proportion of girls getting married before the legal age of 18 has dramatically increased over the past seven years, from 12 percent in 1998-1999 to 19 percent in 2005-2006. This could be one of the first signs of the fallout of Punjab’s rapidly declining child sex ratio.

6B.1.3 Morbidity

Poverty, hunger and continuous environmental degradation are making India’s children more and more vulnerable to diseases. Lack of access to health services and governmental apathy also contributes to their situation. According to a report by the Centre for Science and Environment (CSE), more than 60 percent of India’s population succumbs to diseases and ailments triggered by environmental causes every year. The report explains how diseases like malaria, diarrhoea and malnutrition have increased while modern diseases such as cancers, cardiovascular ailments and asthma have risen sharply.

Death of Children due to Encephalitis

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

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

The situation in Eastern UP is equally grave. On 13 October 2010, 3 persons died due to Japanese Encephalitis in Chargawan Block of Gorakhpur within 24 hours. But this did not move the authorities as the Gorakhpur District Commissioner announced that the vaccine could only be available after 28 November 2010. According to Poorvanchal Grameen Seva Samiti, ground water up to the level of 70 feet is polluted. However 90 percent of the people drink water drawn from a depth of only 30-40 feet making them vulnerable to infection. Only awareness by civil society has made people aware of the disease and its causes.

Source: Information provided by Poorvanchal Grameen Seva Samiti, Uttar Pradesh

333 HAQ: Centre for Child Rights, Still Out of Focus: Status of India’s Children, 2008, New Delhi, p 147.
337 Ibid.
### Table 6.3: Diseases that children suffer from: A Quick Glimpse

<table>
<thead>
<tr>
<th>Disease</th>
<th>Status of Children in India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Polio</td>
<td>India is one of only four countries across the world where polio is endemic. The government claims that as a result of all these there was a substantial reduction in polio cases till 2001. However, in 2002 there was a setback because of a sudden increase in cases by 7 times the previous year. The eradication goal was then postponed to 2005. The total number of cases in 2003 was 225 cases affecting 88 districts and in 2004 till 26 March there were already 7 cases detected. Although two years ago it looked like India was winning the war against polio and the disease might be wiped out by 2007, polio programmes are now in reverse in some parts of the country and the target date for the eradication of the disease has been pushed back as far as 2010. New outbreaks of polio cases are appearing despite three decades of national immunisation plans. In 2007, an estimated 500 children across India were diagnosed with paralytic polio and this number does not include those carrying the virus without getting paralysed. However, according to the government, only 169 cases had been reported up till 24 August 2007.</td>
</tr>
<tr>
<td>Tuberculosis</td>
<td>Six to eight percent of the total TB cases are amongst children aged 0-14 years and a nationwide survey, conducted by National Tuberculosis Institute, Bangalore and the Tuberculosis Research Centre, Chennai from 2000 to 2003 has found that 1-2 percent of children in the 1-9 age group are at risk of developing tuberculosis in the country annually. It has also found that children in the North zone are at a higher risk of contracting the disease. UP, Tamil Nadu, Maharashtra and Delhi are also becoming increasingly vulnerable to the disease. The impact of TB revealed that over 300,000 children are orphaned by the disease every year while over 100,000 women are rejected by their families, once they contract the disease. Thousands of children drop out of school on account of parental illness, while over 20 percent of them have to take up jobs to supplement income, especially if the father has TB.</td>
</tr>
<tr>
<td>Anaemia</td>
<td>As many as 79.1 percent of India’s children between the ages of three and six, and 56.2 percent of married women in the age-group 15-50 were found to be anaemic in 2006. The prevalence of severe anaemia is higher in adolescent girls. In March 2008, the government responded to concerns about the huge number of children in the six months to 59 months age group suffering from anaemia, by announcing that it would take several steps, including providing supplementary and fortifying food and vitamin supplements to tackle the illness.</td>
</tr>
<tr>
<td>HIV and AIDS</td>
<td>According to an annual sentinel survey in 2007, it was estimated that around 70,000 children below 15 years of age were HIV infected. Discrimination, exclusion and stigmatisation are faced by all persons living with HIV and AIDS.</td>
</tr>
<tr>
<td>Malaria</td>
<td>Malaria deaths were very high in the 1950s and 1960s but they were dramatically brought down and stayed so until the resurgence of the vector-borne communicable disease in the 1990s. There was an outbreak not just of malaria but also filariasis and Japanese B encephalitis. About 1.8 million people were affected by malaria in 2006 and on average 1,000 die from malaria each year. Children in the 1-5 age group are the most vulnerable. The NFHS-3 found of the respondents that only 8 percent of children with fever were given an anti-malarial drug and 13 percent were given antibiotics. Malaria impacts the marginalised tribal communities that have little access to medical facilities; 7.8 percent of the tribal population contributes to about 30 percent of malaria cases of which more than 60 percent are Plasmodium vivax cases — the most lethal type. This section of society also contributes to 75 percent of all malaria deaths.</td>
</tr>
<tr>
<td>Diarrhoea</td>
<td>One out of every five children who die of diarrhoea worldwide is Indian. Most deaths are caused by dehydration, which is easily preventable by taking oral rehydration salts. In response to this, the government launched the Oral Rehydration Therapy Programme in 1985-86 as one of its priority activities for child survival. One major goal of this programme is to increase awareness among mothers and communities about the causes and treatment of diarrhoea. Despite the Oral Rehydration Therapy Programme, the use of oral rehydration salts did not increase in urban or rural areas in the seven years between NFHS-2 and NFHS-3. Worryingly, more than half of children (57 percent) received neither oral rehydration salts nor increased fluids when sick with diarrhoea.</td>
</tr>
</tbody>
</table>

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| Acute respiratory Infection | Acute respiratory infection (ARI), including pneumonia, is one of the leading causes of child mortality throughout the world. UNICEF’s 2006 report on pneumonia documents how of the 133 million childhood pneumonia cases around the world, India accounted for 44 million. According to UNICEF’s ‘State of the World’s Children’ 2008 report, 19 percent of the total under-five mortality in India is due to pneumonia and the illness claims the lives of 399,000 children in India every year. Whilst the pneumonia vaccine is commonly used in some countries, circulation in India is less than 10 percent. |
| Fluorosis | Fluorosis is a condition caused by a high level of fluoride content in drinking water and food products. Once affected by fluorosis, the person's bones and teeth get damaged permanently. Fluorosis is a problem in 19 states - Andhra Pradesh, Gujarat, Rajasthan, Karnataka, Orissa, Punjab, Maharashtra, Madhya Pradesh, Haryana, Bihar, Tamil Nadu, Uttar Pradesh, West Bengal, Kerala, Assam, Delhi, Jammu and Kashmir, Jharkhand and Chattisgarh. According to one report, an estimated 62 million people in India are affected with dental, skeletal or non-skeletal fluorosis. Out of 29 countries known to have excess fluoride in drinking water, the number of people suffering from fluorosis in India is the highest in the world. Although it is difficult to obtain recent statistics for the number of children, there can be no doubt that they are affected. Further research is needed to assess the full extent and effects of this disease and to address the situation where high levels of fluoride are found in the water. |
| Silicosis | Silicosis, an occupational lung disease caused by the inhalation of silica dust, continues to be a major killer in certain areas of Delhi, Gujarat and other parts of the country, where workers of stone-crushing and quarrying units are exploited by their employers and neglected by governments. Under the surface of prosperity in the nation’s capital, lie buried stories of people who have built the city and are now condemned to a life of disease and death. In Lal Kuan, there are many stories of former mine and quarry workers who are unable to breathe and unable to work. A report by the Industrial Toxicology Research Centre on agate workers in Gujarat revealed that small children being taken to work by their mothers were inhaling the dust and experiencing breathing problems. |
| 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. 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 from silicosis, pneumoconiosis, backache, cervical spondylisis, and crush injuries and tuberculosis. Children as old as 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. They are overworked, underpaid, perpetuating intergenerational destructive cycle of repetitive impoverishment and ill-health. |
| Juvenile Diabetes | Diabetes, commonly known to attack people over the age of 25, is now being detected in very small children. According to hospital statistics estimated in 2002, Delhi alone accounts for about 4,000 to 5,000 diabetic children though it is estimated that there might be an equal number of such undiagnosed cases. India has the largest number of diabetics in the world— close to 40 million people. That number is expected to double in the next 25 years. The chances of a child getting juvenile diabetes is about six percent if the father was diabetic and two percent if his/her mother was one. Children as young as three years of age have been diagnosed to be suffering from juvenile diabetes, even when the parents are not suffering from the disease. |

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343 ibid.


6B.1.4 Malnutrition, Anaemia and Underweight Children in a Booming Economy

Child malnutrition continues to be a serious problem in India. Despite its booming economy, India is home to one in three malnourished children in the world; the number increased by an average of 8.5 percent over the last four years.

Cases have been reported from the Jhabua district of Madhya Pradesh where 43 children died because of malnutrition.\(^{348}\) The incidence of anaemia among children in the age group of 6-35 months in Tamil Nadu has gone up from 69 percent in 1998-99 to 72.7 percent in 2005-06 according to statistics from the National Family Health Survey-3 (NFHS-3). Malnutrition is not only confined to the remote rural areas of India. In July 2007, state health officials confirmed that malnutrition had killed a six-month old in Mumbai’s Aarey Milk Colony area. Maharashtra state health officials also confirmed two additional cases of malnutrition, terming the phenomenon “common” in the area’s tribal settlements. In a meeting held in August 2011 of the Maharashtra Women and Child Development Committee, the District Health Officer for Nashik reportedly revealed that over 450 children had died due to malnutrition and close to one lakh were found malnourished.\(^{349}\)

The ICDS is reaching only 12.5 percent of children in the age group of six months to six years despite a three-fold increase in its budget in the last five years and the Ministry of Women and Child Development’s contention that there are 1.5 early child care centres (ICDS centres) per village.\(^{350}\) The programme targets children mostly after the age of three, when malnutrition has already set in. It does not focus on the critical age group of children under three years, the age window during which health and nutrition interventions can have the most effect.\(^{351}\)

Indian women’s inadequate nutrition and feeding and caring practices for young children are among the main reasons for higher child malnutrition rates in the country. This is attributed to their status in society, early marriage, and low weight at pregnancy and also to their lower level of education.\(^{352}\) The percentage of infants with low birth weight (LBW) in 2006 was as high as 30.\(^{353}\) Underweight women give birth to LBW babies, who become further vulnerable to malnutrition because of low dietary intake, lack of appropriate care, poor hygiene, poor access to medical facilities, and inequitable distribution of food within the household. The NFHS-3 reveals how the incidence of underweight children has declined only 1 percentage point, to 46 percent, in seven years. Figure 6.5 captures the trends in nutritional status as available in the three NFHS surveys.


\(^{349}\) NDTV, 450 kids starve to death in 4 months. Available at: http://www.ndtv.com/article/cities/450-kids-starve-to-death-in-4-months-130564

\(^{350}\) NC Saxena, Hunger, under-nutrition and food security in India, Chronic Poverty Research Centre, Indian Institute of Public Administration. Available at: http://www.dfid.gov.uk/r4d/PDF/Outputs/ChronicPoverty_RC/CPRC-IIPA44.pdf

\(^{351}\) ibid.


Even worse is the situation regarding the number of anaemic children, whose percentage increased during 1998-2006 from 74 percent to 79 percent. The NFHS-3 shows that only 23 percent of children under three years were breastfed within one hour of birth and less than half the babies (46 percent) aged 0-5 months were exclusively breastfed. Also affecting the health and nutritional well-being of children is the status of women’s health and their access to maternal care services. Clearly, the government’s efforts to change age old practices are not working well, and critical public health messages are simply not reaching families with children.

**Right to food and Integrated Child Development Scheme**

In 2001, the People’s Union for Civil Liberties filed a Public Interest Litigation on the general need to uphold the Right to Food, which follows from the Fundamental Right to Life enshrined in Article 21 of the Indian Constitution. Although the judgment is still awaited, significant “interim orders” have been passed from time to time. Two main orders that were passed in this case have led to the introduction of cooked mid-day meals in all primary schools and universalising of the Integrated Child Development Scheme. The interim orders passed by the Supreme Court have now made these benefits into legal entitlements.

The Supreme Court on 28 November 2001 directed the government to “universalise” the Integrated Child Development Scheme. This order, however, received very little attention for several years and nothing was done to implement it. In April 2004, several marathon hearings on ICDS were held in the Supreme Court and detailed orders were issued, followed by further orders on 7 October 2004.

The Supreme Court orders of April and October 2004 gave a useful wake-up call to the government as far as the universalisation of ICDS is concerned. The universalisation of ICDS was included in the National Common Minimum Programme of the UPA government in May 2004. The National Advisory Council submitted detailed recommendations for achieving ‘universalisation with quality’ in October 2004, and some ‘follow-up recommendations’ in February 2005 (see www.nac.nic.in). However, there has been little progress in terms of the situation on the ground. The expansion of ICDS is excruciatingly slow, and there is no evidence of any substantial quality improvement. The Central Government is yet to submit an affidavit to the Supreme Court stating the time-frame for universalisation of ICDS.

*Source: Right to Food Campaign, ICDS: Key Directions in the Supreme Court Orders http://www.righttofoodindia.org/icds/icds_index.html*

Based on his mission to India (August 20 to September 2, 2005), Special Rapporteur on Right to Food Jean Ziegler has written in his report that most victims of starvation are women and children of the Scheduled Castes and Scheduled Tribes and that deaths are due mainly to discrimination in food-based schemes. Table 6.4 depicts the malnutrition statistics by castes/tribes in India as recorded in the NFHS-3 (2005-06). According to his report, this was because of discrimination in access to food, productive resources, eviction from lands and lack of implementation of food-based schemes despite persistence of laws prohibiting discrimination and untouchability.

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355 ibid.
UNICEF has warned that the current global food crisis, with escalating food inflation, has placed more than 150 million children in India at risk of malnourishment. The price of rice doubled between early 2007 and early 2008 and the price of wheat has increased over 130 percent under the worldwide pinch. For every percentage point that the price of staple foods increases, the number of people who become “food-insecure” increases by 16 million. More expensive food is having a severe impact on poorer families, who have to cut back on the number of meals that they eat a day. This has a dramatic impact on child nutrition because children need to be fed frequently.

6B.1.5 Adolescent Health

According to the State of the World’s Children report, India has the largest national population of adolescents (243 million), and they account for 20 percent of the country’s population. India also has the highest percentage of underweight adolescent girls among the countries with available data (47 percent). The report further suggests that the implications for adolescent girls in India are particularly serious given that in the period 2000-2009, around 47 percent of Indian women aged 20-24 were married by the age of 18. Adolescent pregnancy is a regular consequence of child marriage, and underweight mothers have a higher risk of maternal death or morbidity.

As can be seen, the age group of adolescence, especially adolescent girls, has suddenly gained the attention of policy makers, not because it has been a neglected group in patriarchal families, but because it is identified as a target group that can be used to achieve the goals of child development and those of population control. The international and the government approaches mainly look at the needs for life skills of adolescent girls from the point of view of their role as future mothers.

The adoption of the Programme of Action (POA) of the International Conference on Population Development (ICPD) in 1994 further strengthened adolescent centred interventions, especially for girls. India wholeheartedly endorsed the Programme of Action for Population and Development at the 1994 Cairo Conference. It was

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362 ibid.


364 ibid.

considered that Population Education and Family Life Education of adolescents assumed special importance
in the Indian context. Attempts are being made for developing a Curriculum Framework for schools on sex
education, developing material for identified target groups, advocating for creating an enabling environment
and involving community, panchayat members and NGOs; introduction of innovative co-curricular activities in
schools and colleges, telephone and peer counselling and conducting research on the needs and behaviour
of adolescents. But, unfortunately, there has been resistance towards introducing sex education in several
states like Maharashtra, Karnataka, Madhya Pradesh, etc. Further, teachers are not equipped to take the
course even in states where the curriculum has been introduced as they are not trained on the issue either.
They often give the chapters for home reading and try to avoid taking classes.

The Beijing Conference stipulated that “reproductive rights” for women means their having the right to refuse
unwanted sex and to protection from abuse such as rape, beatings and genital mutilation. With these changes
in perspective, there has been a shift in family planning programmes to aim towards health objectives rather
than just demographic needs. This shift geared governmental and voluntary organisations to implement
“programmes that focussed on protection of young people’s sexual and reproductive health and ability to
exercise their rights”. As a result, most programmes related to adolescent development in the country
focus mainly on the reproductive and sexual health and rights of adolescents. Scant attention is given to
other needs of adolescents, though there has been a shift very recently. The National Youth Policy, 2003
brought forth by the Ministry of Youth Affairs and Sports made an attempt to address other needs, especially
the mental health needs of the youth. The Department of Secondary and Higher Education of Ministry of
Human Resources Development carries out schemes like Vocationalisation of Secondary Education, National
Population/Adolescence Education Project, etc.

The government has also launched a programme called the Adolescent Reproductive and Sexual Health
Programme under the National Rural Health Mission as a part of reproductive and child health (RCH). Ensuring
the nutritional, health and educational needs of its adolescent population, particularly girls, still remains a key
challenge for the country. Widening disparities, gender discrimination and the social divide among castes
and tribes are also among the barriers to advancing the development and protection rights of young people.
A very low adolescent sex-ratio—882 for those aged 10-19 years and 858 for the 15-19 year age group as per the 2001 Census—has received no attention.

6B.1.6 HIV/AIDS

The Government of India’s Initial Report to the Committee on the Convention on the Rights of the Child falls
short on reporting anything related to HIV/AIDS. The First Periodic Report noted the formation of the National
AIDS Control Organisation (NACO). On the perusal of the First Periodic Report, the Committee welcomed
the adoption of the National AIDS Prevention and Control Policy, 2001, which aimed at achieving no new
infections by 2007.

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367 Ibid.
368 Sumiya Yasmeen, I'll advised resistance to sex education. Available at: http://educationworldonline.net/index.php/page-article-choice-more-id-883
369 Ibid.
370 Ibid.
372 Ibid.
376 Ibid.
The biggest challenge to addressing this issue is the complete lack of proper statistics. The estimates of population with HIV/AIDS seem very low as compared with the numbers/rates referred to by a number of international organisations. According to UNAIDS, there were 120,000 Indian children living with the virus in 2004. NACO estimated that there were around 60,000 new infections in 2005 alone and estimated that up to 250,000 children in India are HIV-positive. However, according to UNICEF, India has an estimated 220,000 children infected by HIV/AIDS.

It is estimated that 55,000 to 60,000 children are born every year to mothers who are HIV-positive. Without treatment, these newborns stand an estimated 30 percent chance of becoming infected during the mother’s pregnancy, labour or through breastfeeding after six months. The country has an increasing population of children living with HIV and those who have lost either one or both parents to an AIDS-related illness. However, there are no official estimates available on children affected and orphaned by HIV and AIDS in India. Significantly, the 2007 UNAIDS epidemic update for Asia makes no mention of children.

The National AIDS Control Programme (NACP) was launched in 1992 by the Ministry of Health and Family Welfare (MHWFW) with major support from the World Bank. It is being implemented as a comprehensive programme for prevention and control of HIV/AIDS in India. Over time the external support has been shrinking and the focus has shifted from raising awareness to behavioural change, from a national response to a more decentralised response and to increasing involvement of NGOs and networks of people living with HIV/AIDS (PLHA). NACP’s Phase-III has the overall goal of halting and reversing the epidemic in India over the five-year period (2007-2012). NACP-III has placed the highest priority on preventive efforts. One such effort is the Blood Safety Programme, which aims to ensure provision of safe and quality blood even to far-flung remote areas of the country in the shortest possible time, through a well-coordinated National Blood Transfusion Service. But, unfortunately, there have been reports of HIV transmissions through blood transfer over the past two years. The most recent story from Junagadh, Gujarat reports that more than 20 thalassaemic children from Junagadh have tested HIV-positive due to transfusion of infected blood. They are among 100 thalassaemic children from Junagadh district who have been coming to the civil hospital for blood transfusion regularly. Last year, there were similar stories from Jaipur.
The Millennium Development Goal target to stabilise and reverse the rate of HIV infection remains a challenge in India. There have been some efforts made by the government, like converging the NACP with the National Rural Health Mission (NRHM); it emphasises optimal utilisation of existing NRHM resources for strengthening NACP services and vice versa.387

An Indian delegation was present at the United Nations General Assembly Special Session (UNGASS) to review the 2001 Declaration on HIV and AIDS.388 The Declaration included commitments to prepare by 2003 and implement by 2005 strategies for special assistance for children orphaned by and vulnerable to HIV and AIDS and to roll out treatment and care. The number of children according to NACO who have received Anti-Retroviral Therapy as of June 2011 is 25,071.389 This number is categorised under paediatric HIV/AIDS, which means children from the age 0-15 years are covered. There is no record available for children in the 15-18 age group. Also, there has been no report on what provisions have been made for the care and support services for children in difficult circumstances.390

The Policy Framework for Children and AIDS seeks to broaden the focus to address the needs of overwhelming majority of children affected by HIV and AIDS in recognition of the fact that the virus is seen to have a profound and permanent effect on their lives.391 However, while the policy is for children up to the age of 18 years, the available age group data is only divided between 15 years of age, 15-49 and above 50 years.392

6B.1.7 Drug and Substance Abuse

The Government of India acknowledges that over the years drug addiction has become an area of concern as traditional moorings, effective social taboos, emphasis on self-restraint and pervasive control and discipline of the joint family and community are eroding. The processes of industrialisation, urbanisation, migration, unsupervised television and media viewing, and the fast-changing social milieu have led to the loosening of the traditional methods of social control, rendering an individual vulnerable to the stresses and strains of modern life and contributing to the proliferation of drug abuse, both of traditional and of new psychoactive substances. The introduction of synthetic drugs and intravenous drug use leading to HIV/AIDS has added a new dimension to the problem, especially in the Northeast states of the country.

There is very little systematic data available on drug and substance abuse. What has to be relied on are rapid assessment surveys that have been conducted at different times, such as the one initiated by the United Nations Office on Drug and Crime (UNODC), which found that of the children who came for treatment to various NGOs, 63.6 percent were introduced to drugs before they turned 15. Overall, 0.4 percent and 4.6 percent of total treatment seekers in various states were children.393

Besides drugs and other toxic substances, the consumption of tobacco by children too is a cause for concern. India accounts for one-sixth of tobacco illnesses worldwide.394 In India, 20 million children are getting addicted to smoking every year, and nearly 55,000 children are becoming smokers every day in comparison to 3,000

390 ibid.
391 ibid.
392 ibid.
394 India may ban smoking scenes in films and television, 1 June 2005. Available at: www.antara.co.id
in the US. According to a WHO report “Tobacco and the Rights of the Child”, most people start using tobacco during adolescence and, sustained by an addiction to nicotine, continue into adulthood. Tobacco use among young people continues to rise as the tobacco industry aggressively promotes its products to a new generation of potential smokers. The GoI banned smoking in public places in May 2004 as well as tobacco advertising and sponsorship of sporting events by tobacco firms.

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**Delhi kids on a dangerous high**

If you think sniffing white eraser fluid to get high is something only street kids do, think again.

On Tuesday, Hindustan Times reported how students of a top school in Greater Noida were caught on CCTV cameras sniffing eraser fluid in class. The situation is as bad – or worse – in Delhi. Schoolchildren as young as 10 are getting addicted to sniffing eraser fluid, glue, pain relieving balms, paint thinner, nail polish remover – available in any neighbourhood stationery or provision shop. Costing just Rs 15 to Rs 30, most children can buy it from their lunch money. Some make do with inhaling petrol from their parents’ cars and from parked bikes. Doctors say prolonged abuse can damage brain cells and cause cancer.

“I know of at least seven students in my class who have started sniffing; everyone knows about it,” said a Class 8 student of a central Delhi school whose class has about 50 students. Some do it on their way to school, some in bathrooms, empty play areas, even classroom backbenches, HT learnt. It’s difficult for parents to find out, since most of the substances being abused are commonly found in homes. Even at school, it’s easy to get away. “Pourer eraser fluid on your sleeve and sniff it, no one notices. It’s not like drinking or smoking a joint,” south Delhi school students say. This also means most cases go unreported and untreated. “Just about one percent of all the cases that we get are of inhalant abuse. Children as young as 13 start this and graduate to harder drugs,” said Anil Bhandoola of Astha Kripa rehabilitation centre.

Source: http://www.hindustantimes.com/StoryPage/Print/673909.aspx

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The Ministry of Social Justice and Empowerment (MSJE) is the focal point for drug demand reduction programmes in the country and has been implementing the Scheme for Prohibition and Drug Abuse Prevention since 1985-86. Similar programmes are also run by the Ministry of Health and Family Welfare under the National AIDS Control Policy. Unfortunately, there has been no convergence between the programmes run by the two ministries, which causes problems. As the implementation of programmes for de-addiction and rehabilitation of drug addicts requires sustained and committed/involved effort with a great degree of flexibility and innovation, a state-community (voluntary) partnership appears to be a particularly strong mechanism for service delivery. Accordingly, under the scheme run by the MSJE, while a major portion of the cost of services is borne by the Government, the voluntary organisations provide actual services through the counselling and awareness centres, de-addiction cum rehabilitation centres, de-addiction camps and awareness programmes.

Under this scheme, the MSJE is assisting 361 voluntary organisations for maintaining 376 de-addiction-cum-rehabilitation centres and 68 counselling and awareness centres all over the country. The average annual allocation for this programme has been around US$5 million.

To facilitate the medical treatment of hard-core addicts who require intensive long-term medical attention, 100 de-addiction centres are being run in government hospitals/Primary Health Centres, etc.

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397 The ban is being implemented as part of the Cigarettes and other Tobacco Products (Prohibition of Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 which was passed by Parliament in April 2003 and notified in May that year.
Available government infrastructure and services have been integrated with the services offered by the NGO sector for dealing with associated health problems such as TB, HIV/AIDS and hepatitis. Efforts are also being made to provide medical professionals in the health sector with knowledge on rehabilitation and after-care of alcohol and drug dependents. Simultaneously, steps have been initiated for providing training to NGO professionals on various medical inputs for providing effective service to the clients. One of the successful initiatives towards inter-sectoral collaboration has been the integration of the HIV/AIDS prevention programme into the substance abuse programme of 100 NGO-run de-addiction centres supported by the MSJE.

Some volatile substances, present in many easily available products like cough syrups, pain relief ointments, glue, paint, gasoline and cleaning fluids, are directly toxic and are often abused by children. Many chemist shops that sell drugs without prescription also contribute to the growing instances of drug and substance abuse. Besides being a crime, the issue has serious health dimensions that call for timely mental health inputs.

What is important to note is that drug and substance abuse is no longer, as it has often been believed, done only by poor and street children. Increasingly, it is middle class, schoolgoing children who are taking to substance abuse.

In June 2010, the GoI announced that it was thinking of a new Drug Abuse Policy.399

6B.1.8 Children now used as guinea pigs for multinational drug companies

It is the poor and the marginalised on whom drugs and vaccines are tested. This is not new. Indeed, they are tested with medicines and vaccines that they may not ever be able to afford. Here is yet another such instance:

Ethical Violations of HPV Vaccination Trials in India

14,000 girls between the age group of 10-12 were identified for drug trials against the Human Papillomavirus (HPV) in three mandals of Khammam district in Andhra Pradesh in July 2009. In August 2009 the blocks of Vadodara District in Gujarat were also roped in to conduct the ‘Demonstration project for cancer of the cervix vaccine’ and the sample size constituted of 16,000 girls in the same age group as mentioned above. The studies, independently initiated by international non-governmental-organisation PATH and Indian Council of Medical Research (ICMR) for GSK and Merck vaccines respectively, were called off after six deaths were reported among the girls who were administered these vaccines in Gujarat and Andhra Pradesh, and after protests by activists,400 and a fact finding report based on a visit to Andhra Pradesh.401 The girls were mostly tribal living in Ashram Paathshalas (residential schools).

The fact finding team found that most of the girls in the two Ashram Paathshalas and ST Balika Hostel reported that they were told that the vaccine would prevent garbasanchi (uterine) cancer from which many women die. The girls did not know what ‘uterus’ or ‘cervix’ meant and where they were located in the body. After the first dose, the girls were told that it was compulsory for them to take the following two doses. Wherever information was provided to the girls and their parents/wardens, they were told that the vaccine would provide life-long protection, has no side-effects and will not affect future fertility of the young girls. The fact finding team found that the entire process of consent was unclear. But what was clear, was that wherever the parents did give

400 Saheli Finds Enquiry of PATH Project on HPV vaccines still shielding the guilty, February 13th, 2011. Available at: http://www.haqcrc.org/blogs/saheli-finds-enquiry-path-project-hpv-vaccines-still-shielding-guilty
consent, they did not have complete information that this was a trial. They believed that this was some kind of lifelong protection for their girls that the ‘government’ was providing.\(^{402}\)

A committee was formed after the government suspended the vaccine trials which were mandated to find if the trials had indeed caused the deaths and whether it was necessary to allow further trials.

Despite all protests and evidence from the activists, the three-member expert committee of the health ministry may give a clean chit to the agencies that conducted observational clinical trials on the safety and efficacy of cervical cancer vaccines marketed by global drug majors GlaxoSmithKline (GSK) and Merck in the country. Official sources said the committee had not been able to see any linkage between the administration of vaccines and the deaths.\(^{403}\)

What is more, cervical cancer vaccine continues to be advertised as well as administered to young girls across the country. Each dose of the three course vaccine costs Rs 3,000 (Rs 9,000 in all) which in effect puts it out of the reach of the poor. So tribal girls pay with their health, and may be even their lives for a vaccine they will never be able to afford.

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**PREVENTION OR TRAUMA?**

**HPV vaccine controversy**
Tested and marketed to millions of girls and young women

**HPV vaccine’s side-effects**
Epileptic fits, blood disorders, arthritis, neurological problems and seizures

**Key global players**
Seattle-based Merck, Sharp and Dohme produce Gardasil, while GlaxoSmithKline makes Cervarix

**The Indian vaccine market**
Estimated at nearly $2.5 billion, the Indian cervical cancer market accounts for a quarter of global sales; 78,000 Indian women die of cervical cancer each year.


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**6B.2 Children with Disabilities**

**Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

\(^{402}\) ibid.

6B.2.1 Physical Disability

The Initial Report summed up the situation of disabled children in one and a half pages and blamed poverty and its correlates as the reason for disability amongst children. It also provided statistics but did not mention if any steps were being taken towards providing various services for these children.

The First Periodic Report acknowledged that there was no systematic, scientific and precise information available on the prevalence, degree and kind of disability in general and children in particular. The legislation pertaining to people with disabilities – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – does not clearly define inclusion and access. The 2001 Indian Census reported that there are 21.9 million people in India who are disabled, and that there are seven million in the 0-19 age group who are living with a disability. This data includes people living with visual, hearing, speech, physical and mental impairments.

As with all other social sector issues, in case of disability too, lack of data regarding different types of disabilities and number of people living with such disabilities has been an obstacle in planning and making adequate interventions. Moreover, data on children with disabilities has been the most difficult to find.

In 2004, the CAG report noted, “The Ministry did not possess any reliable data on the numbers and categories of disabled in the country, which was essential to estimate the resource requirements and facilitate the preparation of a well-considered action plan.” It also said that adequate measures had not been taken for prevention of disabilities through early detection, awareness campaigns and training of staff of Primary Health Centres.

The Registrar General and Census Commissioner of India made available the long awaited detailed figures on disability based on the 2001 Census Report, which shows 21.9 million (2.13 percent) of the total population are persons with disability and 1.67 percent of the total population in the 0-19 age group (463,826,702) are disabled. The National Sample Survey Organisation had also conducted a survey on disability in its 58th round (January-December 2002) but it reports a much lower number of people with disabilities (18.5 million). The World Bank notes that “the real prevalence of disability in India could easily be around 40 million people, and perhaps as high as 80-90 million if more inclusive definitions of both mental illness and mental retardation in particular were used”.

Even though current disability figures are not the most reliable, it is noteworthy that national prevalence rates suggest that about 35 percent of people with disabilities are in the 10-29 age group. In comparison to 1991, incidence rates amongst the 0-9 age group have shown a decline, but there has been an increase in the incidence rates among the 10-29 age group. The decreasing trends could be attributed to immunisation coverage of polio eradication, especially since the figures for movement disabilities among the 0-4 age group in 2001 are well below those for the 5-9 and 10-19 age groups. The increasing rates among young adults could be due to factors such as accidents, on the road and/or at work. This raises important issues of access to education, protection and a need for focusing or transitions (education, socio-emotional, physical etc.) for young people with disabilities in later years. These children not only face discrimination but are also exploited. There have been instances where girls with intellectual disabilities were made subject to forced hysterectomy.

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405 Ibid.


409 Ibid.


411 Ibid.
Dyslexia, a learning disorder found among children, is not widely understood and accepted as a problem, which obstructs the learning abilities of a child. A study conducted by the paediatric and psychiatry departments of the All India Institute of Medical Sciences (AIIMS), concludes that “anything between 3-7 percent school children in Delhi could be suffering from dyslexia”.\textsuperscript{412} Mental health disorders account for nearly a sixth of all health-related disorders.\textsuperscript{413}

Despite this, most countries devote 1 percent or less of their health budgets to mental health services. India spends just 0.83 percent of its total health budget on mental health.\textsuperscript{414} The 2004 CAG report clearly pointed out that the government has failed to ensure three percent reservation of people living with disability (PWD) in poverty alleviation schemes, thus depriving them of the opportunity of economic rehabilitation.\textsuperscript{415}

\textbf{Disabled children face discrimination at many levels in India including healthcare facilities.} Those suffering from mental health disorder face the worst stigma and social exclusion. It accounts for nearly one sixth of all health-related disorders but India spends less than one percent of its total health budget on mental health.\textsuperscript{416}

The ICDS is expected to train \textit{Anganwadi} workers about disability and the \textit{Anganwadi} centres are supposed to provide referral services where necessary.\textsuperscript{417} However, a recent audit carried out in Uttar Pradesh revealed that only 25 percent of \textit{Anganwadi} workers had received training about disability and majority of the children enrolled at the centres with special needs had not received any medical care.\textsuperscript{418} Hence, it becomes not just a health issue but a social protection issue as well.

Even amongst disabled children, there are some more vulnerable than others on account of their circumstances and living conditions. For instance, for the working child population, occupational hazards pose a serious threat. Sometimes, environmental factors too render children vulnerable to diseases that result in long-term disability.\textsuperscript{419}

The situation of those suffering from mental disorders is even worse as there is still very little recognition of the problem. Also, gender-discriminatory feeding and healthcare practices within the home render the girl child more vulnerable to ill health and acquired disabilities compared to her male counterparts.\textsuperscript{420} Along with the physical and communication-related limitations that their disability places on their daily activities, they constantly face

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\begin{tabular}{|c|c|}
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\textbf{Forced sterilisations} & \\
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In Dr Anant Phadke and others v State of Maharashtra (W.P. No. 1527 of 1994) the petitioners urged the Bombay High Court to restrain the state from taking the decision to perform forced hysterectomy. The state cited reasons of inability to maintain personal hygiene and danger of pregnancies arising from sexual assault to support the decision to sterilise. The mass hysterectomies were put on hold owing to demonstrations by women activists; however, hysterectomies had already been performed on 11 girls in the age-group of 13-35. (16) The petition detailed the pathetic living conditions and shortage of staff at the Shirur Home, Pune, Maharashtra, where the girls lived. The hysterectomies were performed for convenience and were not medically necessitated. & \\
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\end{tabular}
\caption{Forced sterilisations}
\end{table}

\begin{itemize}
\item \textsuperscript{412} Sutirtho Patranobis, ‘Around 7 percent school kids are dyslexic, says study’, 1 March 2004, Hindustan Times
\item \textsuperscript{413} Soumitra Patthare, \textit{Less than 1 percent of our health budget is spent on mental health}, June 2005. Available at: http://infochangeindia.org/agenda/access-denied/less-than-1-of-our-health-budget-is-spent-on-mental-health.html
\item \textsuperscript{414} ibid.
\item \textsuperscript{415} HAQ: Centre for Child Rights, \textit{Status of Children in India Inc. 2005}, p 71.
\item \textsuperscript{416} Ministerial Round Tables 2001, 54th World Health Assembly, Geneva. Available at: http://www.who.int/mental_health/media/en/249.pdf
\item \textsuperscript{417} ibid.
\item \textsuperscript{418} Funds crunch cripples ICDS, Hindustan Times, Lucknow edition, 12 February 2007.
\item \textsuperscript{419} Dr Gro Harlem Brundtland, Director-General of the World Health Organization, \textit{World Health Day Theme: 2003, Shape the future of Life: Healthy Environments for Children}, Nursing Journal of India, April 2003. Available at: http://hindarticles.com/p/articles/mi_qa4036/is_200304ai_n8_226858/
\end{itemize}
discrimination – economic, educational, architectural, legal, health.\textsuperscript{421} There is an over-representation of disabled boys in education, both in special and mainstream schools. Due to differential gender-based role expectations, education is not considered a priority for disabled girls.\textsuperscript{422} Dropout rates for disabled girls are higher than for disabled boys. Parents become more protective and restrictive, especially after a disabled girl reaches puberty. Travelling to school is a huge problem since, besides transport difficulties, the danger of sexual abuse and violation looms large. There is also the reasoning that there is little point investing in a disabled girl’s education as she will anyhow never be able to earn.\textsuperscript{423} She will be a lifelong burden on the natal family because marriage is not a realistic option and so, it is economically unsound to invest in her education or vocational training.

Children with disabilities are less likely to be in school, disabled adults are more likely to be unemployed and families with a disabled member are often worse off than average.\textsuperscript{424} One reason why the implementation of laws is poor is because education of children with disabilities is still considered an act of charity.\textsuperscript{425} While education comes under the Ministry of Human Resource Development, education for those with disabilities comes under the Ministry of Social Justice and Empowerment. In addition, children with disabilities may also be at greater risk of malnutrition if there is relative neglect of their feeding, and/or their disability contributes to problems with feeding.\textsuperscript{426} Children from poor households are at greater risk of malnutrition-induced disabilities.

\subsection{6B.2.2 Mental Health}

According to the Eleventh Five Year Plan, at any given time, 7 to 15 percent or 65 million Indian children suffer from a significant mental disorder.\textsuperscript{427} This is in addition to the stress-related suicides and deaths that are a leading cause of mortality among young adults. Civil society has been advocating for child mental health to be seen before and beyond physical health.\textsuperscript{428} Child mental health has to be recognised an essential child right. Unfortunately, the primary and prevailing understanding of health in our society is illness and treatment or management (based on pharmacology), which is most often individual and disease-focussed. Mental health is not just a sub-part of physical health; it is the key to all – social and physical health and a milestone for reproductive health.\textsuperscript{429} Prevention or promotion has to be based on care, acceptance, understanding and fulfilment of basic human rights. Psychosocial support in the community is the key to positive change, productivity and overall development of children and adolescents.

Experience has shown that the efficacy of early preventive strategies and intervention are likely to diminish the burden on the health sector, mental health sector, juvenile and criminal justice system, family and social welfare system, and institutions dealing with a wide range of disabilities.\textsuperscript{430} Maximum prevention is possible in community based psychosocial support. Even though the Eleventh Five Year plan had a section on child mental health, no programmatic interventions were made based on the same; neither has a policy been formed. There is currently no budgetary allocation for child and adolescent mental health either.

The inadequacy of mental health services and mental health professionals across the country makes the problem even more complex. The number of specialised inpatient and outpatient facilities for children are very few and are mostly attached to the psychiatric and paediatric departments of various medical colleges and

\begin{itemize}
  \item \textsuperscript{421} Ibid.
  \item \textsuperscript{422} Ibid.
  \item \textsuperscript{423} Ibid.
  \item \textsuperscript{424} World Bank, Human Development Unit, South Asia Region, People with disabilities in India From Commitments to Outcomes, May 2007. Available at: http://siteresources.worldbank.org/INDIAEXTN/Resources/295583-1171456325808/Chapter03.pdf
  \item \textsuperscript{425} A Deepa, Included in law but little else, India Together, January 2006. Available at: http://www.indiatogether.org/2006/jan/edu-speced.htm
  \item \textsuperscript{426} World Bank, Human Development Unit, South Asia Region, People with disabilities in India From Commitments to Outcomes, Health and People with Disabilities (Chapter 3). Available at: http://siteresources.worldbank.org/INDIAEXTN/Resources/295583-1171456325808/Chapter03.pdf
  \item \textsuperscript{427} ML Kataria, ‘War against disability-fighting for the right of the child’, May 29, 2002. Available at: www.tribuneindia.com
  \item \textsuperscript{428} Abdul Mabood, Director, Sneh: An Organization for Psychosocial Support and Mental Health Care, New Delhi, at the National Consultation on Twenty Years of CRC-A Balance Sheet held from 20 to 22 October, 2011.
  \item \textsuperscript{429} Ibid.
  \item \textsuperscript{430} Ibid.
\end{itemize}
other special institutions (see section on mental health). These also differ in their structure, functioning and in the available therapeutic facilities and are situated mainly in urban areas. There are practically no facilities available in the rural areas.431 According to a World Health Organization (WHO) report, however, the District Mental Health Programme being operated in 22 districts in the country attempts to take mental healthcare to the rural and underprivileged sections of the society.432

6B.3 Health Services and Standard of Living

<table>
<thead>
<tr>
<th>Article 18</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.</td>
</tr>
<tr>
<td>3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 24</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. States Parties recognize 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 such health care services.</td>
</tr>
<tr>
<td>2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:</td>
</tr>
<tr>
<td>(a) To diminish infant and child mortality;</td>
</tr>
<tr>
<td>(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;</td>
</tr>
<tr>
<td>(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;</td>
</tr>
<tr>
<td>(d) To ensure appropriate pre-natal and post-natal health care for mothers;</td>
</tr>
<tr>
<td>(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;</td>
</tr>
<tr>
<td>(f) To develop preventive health care, guidance for parents and family planning education and services.</td>
</tr>
<tr>
<td>3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.</td>
</tr>
<tr>
<td>4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 26</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 27</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.</td>
</tr>
<tr>
<td>2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.</td>
</tr>
<tr>
<td>3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.</td>
</tr>
</tbody>
</table>


6B.3.1 Programmatic Efforts to Address Children’s Health Issues

Children’s health has never really found a space in the government’s efforts at improving healthcare in India. Usually subsumed in the government’s population control and family planning efforts, child health continues to be an extension of reproductive healthcare programmes.

This has been the case since the 1960s, when the Family Planning Programme was at its peak and child health primarily implied immunisation, and this continued until the mid-1970s. In 1979, when the Family Planning Programme was renamed the “Family Welfare Programme”, a number of initiatives were taken to improve the health and nutritional status of women and children such as Vitamin A programme to combat nutritional blindness, programmes to reduce anaemia deficiency and related health problems, food supplementation for pregnant and lactating women and children below 5 years through the ICDS. However, the child continued to be part of efforts directed towards ensuring safe birth and population control.

The International Conference on Population and Development (ICPD) in 1994 led to the ongoing Reproductive and Child Health Programme, focussing on several child health aspects such as immunisation, essential care for the newborn, Vitamin A deficiency and prevention of nutritional blindness, prophylactic schemes against nutritional anaemia, diarrhoea control, ARI prevention and management, prevention of diseases such as malaria and tuberculosis among children, safe delivery, promotion of exclusive breastfeeding, spacing between children, etc.

However, improvement in the health status of children and women has not been as expected and activists continue to blame the population control and family planning approach for it. India’s children continue to die of easily preventable and easily treated illnesses. The various programmes implemented in the country are discussed below.

**National Rural Health Mission**

Launched by the Prime Minister on 12 April 2005, the National Rural Health Mission (NRHM) aims at undertaking architectural correction of the health system to enable it to effectively handle the increase in health spending from 0.9 percent of GDP to the 2 percent of GDP promised under the National Common Minimum

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### Rural Health Mission or Population Control Mission?

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

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

*Source: Rajya Sabha Unstarred Question No. 1673, 17 December 2004*
It proposes to restructure the delivery mechanism for health towards providing universal access to equitable, quality and affordable healthcare that is accountable and responsive to people’s needs. This programme promised a major upgrading of health centres and introduced a new line of health workers known as Accredited Social Health Activists (ASHA).

The NRHM has been criticised for being just a label for selected activities from existing programmes, with the only real “new” component being the ASHA scheme. There is also the significant issue of weak uptake of NRHM funds by the states. The government has failed to allocate enough resources to the NRHM. If the resources provided for health were to be distributed on a per capita basis equitably, then rural healthcare should get around Rs 175 billion per annum as opposed to the Rs 100 billion it currently receives. This does not happen because the more expensive hospital services and the elaborate health bureaucracy continue to be located in the urban areas, showing a continued urban bias. The overall NRHM strategy needs to be reoriented into a universal access framework for which financial resources need to be determined on the basis of the needs and demands of people.

Reproductive and Child Health Programme

The majority of child health services continue to be covered under the Reproductive and Child Health (RCH) Programme launched in 1997 by the Ministry of Health and Family Welfare. The RCH programme incorporates the components covered under the Child Survival and Safe Motherhood Programme and includes an additional component relating to reproductive tract infections and sexually transmitted diseases. The programme aims to comprehensively integrate interventions to improve child health and was initiated originally to address each of the major factors contributing to high infant mortality rate and under-five mortality.

Evaluations have indicated an improvement as far as infrastructure and access to healthcare is concerned since the launch of the NRHM. Reports from several states show an increase in the number of patients visiting Primary Health Centres and Community Health Centres (CHC). However, other reports have suggested that there is still a serious need to improve the rural health infrastructure, with only 63 percent of the CHCs having adequate infrastructure and just 14 percent having adequate staff. The fact that RCH is primarily an externally aided programme has also attracted criticism.

Integrated Child Development Services

The Integrated Child Development Services (ICDS) programme was launched by the government in 1975 with the aim of improving the health and well-being of new mothers and children under six by providing health and nutrition education, health services, supplementary food and pre-school education.

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434 S K Satpathy and S Venkatesh, Human Resources for Health in India’s National rural Health Mission; Dimension and Challenges. Regional Health Forum, Vol 10 No. 1, 2006 Available at: http://www.searo.who.int/LinkFiles/Regional_Health_Forum_Volume_10_No_1_03-Human_Resources_for_Health_in_Indias_National.pdf
435 ibid.
437 ibid.
438 ibid.
440 Ministry of Health and Family Welfare, *Child Health Programme in India*, Available at: http://mohfw.nic.in/WriteReadData/892s/Chapter04final-85836829.pdf
442 ibid.
443 Integrated Child Development Scheme. Available at: http://wcd.nic.in/icds.htm
Studies have found that, despite some unevenness in the quality of services, the ICDS programme has had a positive impact on the survival, growth and development of young children. However, its reach has been called into question on numerous occasions. The NFHS-3 indicates that only 28 percent of children received any services from an Anganwadi centre (the network of centres through which the scheme is implemented).

As a wake-up call, the Supreme Court passed a couple of orders as part of the Right to Food case in April and October 2004. These orders were specifically directed to the government as far as the universalisation of ICDS was concerned. The universalisation of ICDS was included in the NCMP in May 2004. The NAC submitted detailed recommendations for achieving "universalisation with quality" in October 2004, and some “follow-up recommendations” in February 2005. However, there has been little progress in terms of the situation on the ground. The expansion of ICDS is excruciatingly slow, and there is no evidence of any substantial quality improvement.

**Immunisation**

Children in India continue to lose their life to vaccine-preventable diseases such as measles, which remains the biggest killer. The universal immunisation of children against six vaccine-preventable diseases (TB, diphtheria, whooping cough, tetanus, polio and measles) is crucial to reducing infant and child mortality.

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>BCG</td>
<td>62.2</td>
<td>71.6</td>
<td>78.1</td>
</tr>
<tr>
<td>DPT-1</td>
<td>66.4</td>
<td>71.4</td>
<td>76</td>
</tr>
<tr>
<td>DPT-2</td>
<td>59.2</td>
<td>65</td>
<td>66.7</td>
</tr>
<tr>
<td>DPT-3</td>
<td>51.7</td>
<td>55.1</td>
<td>55.3</td>
</tr>
<tr>
<td>OPV-0</td>
<td>4.6</td>
<td>13.1</td>
<td>48.4</td>
</tr>
<tr>
<td>OPV-1</td>
<td>67</td>
<td>83.6</td>
<td>93.1</td>
</tr>
<tr>
<td>OPV-2</td>
<td>61.2</td>
<td>78.2</td>
<td>88.8</td>
</tr>
<tr>
<td>OPV-3</td>
<td>53.6</td>
<td>62.8</td>
<td>78.2</td>
</tr>
<tr>
<td>Measles</td>
<td>42.2</td>
<td>50.7</td>
<td>58.8</td>
</tr>
<tr>
<td>All Basic Vaccines</td>
<td>35.5</td>
<td>42</td>
<td>43.5</td>
</tr>
<tr>
<td>No Vaccination</td>
<td>30</td>
<td>14.4</td>
<td>5.1</td>
</tr>
</tbody>
</table>

Source: IIPS: NFHS-1 (p 252 ), NFHS-2 (p 209) & NFHS-3 (p 231)

NFHS-3 revealed that only 44 percent of children aged 12-23 months are fully vaccinated in India – 58 percent in urban areas and 39 percent in rural areas. This is only a 2 percentage-point increase from the 42 percent of

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445 PUCL v. Union of India and others (Writ Petition [Civil] No. 196 of 2001)
446 Extracts of the Supreme Court Judgement on ICDS (13 December, 2006). Available at: www.righttofoodindia.org/orders/2006dec13scorderabridged.doc
447 UNICEF India Website, Health Overview. Available at: http://www.unicef.org/india/children_2355.htm
448 ibid.
children that had been fully immunised during data collection for the National Family Health Survey-2 in 1998-99 suggesting that urgent efforts must be made to address this issue and promote universal immunisation.\textsuperscript{449} The NFHS-3 also revealed a continued gender bias in terms of immunisation, with mothers surveyed showing vaccination cards for 39 percent of boys as against 36 percent of girls.\textsuperscript{450} Not surprisingly, household wealth affects immunisation strongly. Only 24 percent of children from households in the lowest wealth quintile are fully vaccinated compared to 71 percent of children from households in the highest wealth quintile.\textsuperscript{451}

Figure 6.6 presents the percentage of children who received complete vaccination in the major states of India. The percentage of children who are fully vaccinated ranges from 13 percent in Nagaland to 91 percent in Tamil Nadu.

In addition to these poor statistics on the level of immunisation in India, there have also been recent cases of children dying due to unsafe vaccines. In 2006, there were reports from Gorakhpur, Uttar Pradesh of 10 children who died after receiving a Chinese vaccine for Japanese encephalitis.\textsuperscript{452} No tests had been carried out by the government to establish how safe the vaccine was. In April 2008, four million doses of a measles vaccine were recalled by the Government after four children died in Tamil Nadu following their inoculation.\textsuperscript{453} These cases seriously call into question the safety of vaccinations being administered to children in India.

\begin{itemize}
\item \textsuperscript{450} ibid.
\item \textsuperscript{451} ibid.
\item \textsuperscript{453} India recalls measles vaccine after child deaths, 25 April 2008. Available at: http://www.igovernment.in/site/child-death-forces-india-to-recall-measles-vaccine/
\end{itemize}
The Pulse Polio Initiative (PPI) has responded by pressurising parents into complying with the administration of multiple doses of polio vaccine to their children.\textsuperscript{454} But almost all new cases occur among children who have been vaccinated many times.\textsuperscript{455} The initiative has been lopsided as other immunisation programmes were not given much importance and were not followed up. The problem here is the weaknesses of government health services and in the PPI’s inadequacies and errors: a focussed top-down programme using the wrong vaccine and with dubious targets. It has lost its way and requires a radical shake-up.

The Government of India announced the Universal Immunisation Programme (UIP) in 1985, yet the coverage of children under vaccination for each of the vaccine preventable diseases continues to be very poor. Immunisation against vaccine preventable diseases remains a concern in managing childhood illnesses.

\textbf{6B.3.2 Privatisation of healthcare}

There is an increasing move towards the privatisation of healthcare; this is affecting the poor’s access to healthcare. This began with the National Health Policy, 2002, which proposed privatisation of secondary and tertiary level care, ignoring the fact that 45 percent of the poorest of the country continue to depend on the

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure6.7.png}
\caption{Trends in immunisations completed by 12 months of age in India (NFHS-1 to NFHS-3) (in percent)}
\end{figure}

\begin{itemize}
\item \textbf{West Bengal records first polio case of 2011}
\end{itemize}

Kounteya Sinha, TNN Feb 12, 2011

NEW DELHI: India has recorded its first case of polio infection this year.

The victim of the crippling disease is an 18-month-old girl from West Bengal’s Howrah district. She tested for polio after the onset of paralysis on June 13.

The girl has been infected with the dangerous type-1 virus. The P1 strain of polio causes large outbreaks and paralyses one out of every 200 children infected.

\begin{itemize}
\item \textbf{Source: http://articles.timesofindia.indiatimes.com/2011-02-12/india/28546000_1_polio-virus-opv-first-case}
\end{itemize}

\textsuperscript{454} Patricia and Roger Jeffery, \textit{Polio in North India: What Next?}. Available at: http://www.indiaenvironmentportal.org.in/files/Polio percent20in percent20North percent20India.pdf

\textsuperscript{455} ibid.
public sector hospitals for critical indoor care.\textsuperscript{456} It also proposed strengthening the provision of user fees in public hospitals with the qualification that it will target only those who can pay. Once the system is based on the premise that healthcare provided by the government is to be paid for by the user, the apprehension is that the inability to pay may exclude a large part of the vulnerable sections from the healthcare system.

So, today, India’s healthcare system is predominantly catered to by the private sector and only to a small extent by the public sector, while a minuscule portion comes from external aid. Expenditure in the private sector contributes 78.05 percent of the total health expenditure, while the public sector accounts for 19.67 percent and external flows, 2.28 percent. Health expenditure including public and private formed 4.25 percent of the gross domestic product (GDP).\textsuperscript{457} The state, which is primarily responsible for and duty-bound to deliver a public health service, is completely abdicating its responsibility and leaving it to the private sector.

This means that there is also an increase in out-of-pocket costs for all those who find themselves unable to access government healthcare. A World Bank study in 2001 on India found that out-of-pocket medical costs – estimated to be more than 80 percent of the total medical expenditure – alone may push 2.2 percent of the population below the poverty line each year.\textsuperscript{458}

It constituted more than two-thirds of the total health expenditure in India during 2004-05. Component-wise, about 66.10 percent was spent on outpatient care, followed by 23.48 percent on inpatient care, 3.43 percent on delivery and 2.83 percent on family planning services. In per capita terms, Rs 564 was spent on outpatient care – the highest among all the services.\textsuperscript{459}

<table>
<thead>
<tr>
<th>Expenditure on Health Care</th>
<th>Rural (Rs. Thousands)</th>
<th>Urban (Rs. Thousands)</th>
<th>Total (Rs. Thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Out-Patient Care</td>
<td>396,715,569</td>
<td>218,058,969</td>
<td>614,774,538</td>
</tr>
<tr>
<td>In-Patient Care</td>
<td>123,057,693</td>
<td>95,275,339</td>
<td>218,333,032</td>
</tr>
<tr>
<td>Delivery Care</td>
<td>18,020,851</td>
<td>13,904,678</td>
<td>31,925,528</td>
</tr>
<tr>
<td>Post-natal Services</td>
<td>3,735,449</td>
<td>2,073,266</td>
<td>5,808,715</td>
</tr>
<tr>
<td>Anti-natal Care Services</td>
<td>7,249,680</td>
<td>5,293,854</td>
<td>12,543,534</td>
</tr>
<tr>
<td>Abortion and Still births(1)</td>
<td>11,965</td>
<td>28,255</td>
<td>40,220</td>
</tr>
<tr>
<td>Immunisation</td>
<td>1,746,360</td>
<td>3,104,958</td>
<td>4,851,318</td>
</tr>
<tr>
<td>Family Planning Services(2)</td>
<td>18,239,724</td>
<td>8,039,650</td>
<td>26,279,373</td>
</tr>
<tr>
<td>Medical Attention at Death(3)</td>
<td>10,211,560</td>
<td>5,235,358</td>
<td>15,446,918</td>
</tr>
<tr>
<td><strong>Total Expenditure on Health</strong></td>
<td><strong>578,988,851</strong></td>
<td><strong>351,014,325</strong></td>
<td><strong>930,003,177</strong></td>
</tr>
</tbody>
</table>

Notes: Detail on Methodology in chapter II
1. Estimates based on the total number of pregnant women and number of deliveries
2. Data available from NFHS-3 on family planning and their average expenditure
3. Health expenditure incurred by households on the members who died during the previous year

Source: Health Care and the Condition of the Aged, NSSO 60th Round, (2006), Ministry of Statistic and Programme Implementation, Government of India

When costs are so high and availability is scarce, discriminatory practices set in. The already marginalised find themselves pushed back even further. The problems of gender disparity manifest in various forms – declining female-to-male population ratio, social stereotyping, violence at the domestic and social levels and continuing open discrimination against the girl child, adolescent girls and women in access to healthcare and nutrition.

\textsuperscript{459} ibid.
The National Health Surveys provide clear evidence of the declining use of public health services from 60 percent for hospitalisations in 1986-87 to 45 percent in 1995-96 and for outpatient care from 26 percent to 19 percent during the same period.460

6B.3.3 Inadequate investment

The status of the health of children reveals the ocean-wide gap between the needs on the ground and the average allocation every year. Although it is very difficult to disaggregate the allocations – since a large part of the needs are met by the universal government health facilities – a detailed analysis shows that children received an average of only 0.76 percent of the total Union Budget and 17.14 percent within Budget for Children (BfC) during the period 2004-05 to 2008-09.

Table 6.7: Allocation for Child Health as Percentage of BfC and the Union Budget

<table>
<thead>
<tr>
<th>Year</th>
<th>Allocation for Health (BE) (in Rs. in crore)</th>
<th>Allocation for Health as percentage of BfC</th>
<th>Allocation for Health as percentage of Total Union Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004-05</td>
<td>3139.12</td>
<td>23.83</td>
<td>0.66</td>
</tr>
<tr>
<td>2005-06</td>
<td>3930.88</td>
<td>18.69</td>
<td>0.76</td>
</tr>
<tr>
<td>2006-07</td>
<td>4734.13</td>
<td>16.04</td>
<td>0.84</td>
</tr>
<tr>
<td>2007-08</td>
<td>4851.41</td>
<td>14.03</td>
<td>0.71</td>
</tr>
<tr>
<td>2008-09</td>
<td>6150.55</td>
<td>18.60</td>
<td>0.82</td>
</tr>
<tr>
<td>Average percentage allocation from 2004-05 to 2008-09</td>
<td>17.14</td>
<td></td>
<td>0.76</td>
</tr>
</tbody>
</table>

Source: HAQ: Centre for Child Rights, Budget for Children Analysis, 2004-2009

What is more worrying is that what is allocated is not spent. An analysis of the Union Budget shows an average under-spending of up to 10.59 percent during the period of 2004-05 to 2008-09, the second-highest under-spending within the Budget for Children.461

The maximum under spending of 25.03 percent in child health was seen in the year 2006-07, which was a result of 34.64 percent under-spending in the RCH programme.462 Further scrutiny of the programme reveals that not a single paisa was spent out of the massive allocation of Rs 500 crore for supply and purchase of materials. According to the 2006-07 Appropriation Accounts, of the Department of Health and Family Welfare, this is because the agreement with the World Bank for the RCH-II project was not finalised and materials and medicines were not purchased. There was under-spending of 75.03 percent even in the RCH training programme and of 65.41 percent in the Strengthening of Immunisation and Polio Eradication Programme. In a situation where we need more investment in universal immunisation and in training health workers/ANMs/ASHAs, such massive under-spending of the budget is seriously alarming.

The National Maternity Benefit Scheme (NMBS) was launched in 2001 to provide nutrition support to pregnant women who are below the poverty line. However, women were given a one-time payment of Rs 500, eight to twelve

461 HAQ: Centre for Child Rights, Budget for Children 2000 to 2008 in various reports. Available at: http://www.haqcrc.org/research-publications
462 ibid.
weeks prior to delivery. The scheme saw no allocation from 2005-06 onwards. With the launch of the NRHM in 2005, this scheme was terminated in 2004-05 and merged with the Janani Suraksha Yojana (JSY). But even in its last year of existence, the scheme, which received an allocation of Rs 101 crore (1.01 billion), saw an under-spending of Rs 44.79 crore (447.9 million). One CAG mentioned that Rs 42.74 crore (427.4 million) of the NMBS was lying unspent with 31 states/union territories other than Sikkim, Dadra and Nagar Haveli, Chandigarh and Puducherry.

### 6B.3.4 Impact of Urbanisation, Industrialisation and Environmental Degradation on Children

In the light of increasing displacement of communities across the country in the name of development and progress leading to their own marginalisation, it is important to examine their health status separately as has been attempted in detail in chapter 9 of volume II of this report on Ecological Rights of Children. Experiences of dislocation, urban and rural, have shown that little effort is made to ensure that the rights of the displaced are protected. Impact of displacement on education, health and nutrition and an increase in violence and alcoholism are typically some of the fallouts that have been documented. The financial crisis caused by relocation, further aggravated by the overall increase in the cost of commodities, forces many women to seek employment or work as wage earners. Thus, both adult males in most households and adult women in several households are unable to tend to the needs of their children. The added implication of this is that in the absence of alternative child care facilities, older siblings, especially girls, are likely to have to take on domestic responsibilities as well as look after the younger ones. It has been found that children are more vulnerable to acute illness, malnutrition, stunting and wasting because they lack the endurance of adults and also because the negative impact of illness is more pronounced among children. Recognising the impacts of forced evictions, the Committee on Economic, Social and Cultural Rights had adopted General Comment number 14; this needs to be complied with.

In October 2003, the Goa Bench of the High Court in the case of Savera v State gave its final judgement in the matter of Baina red light district, Vasco, Goa. The state government demolished half the area on the

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463 ibid.
465 ibid.
468 ibid.
469 ibid.
470 ibid.
pretext of implementing the court order, which was to rehabilitate the victims of trafficking. An analysis of the health and sanitation situation showed that people were deprived of their most basic amenities, including electricity and water supply, in the whole area. The public toilets were also locked by the state authorities. In the entire process, the children suffered the most. Due to the state government action of demolition and lack of services before and after the demolition, children were left to suffer from health problems – both physical (including frequent bouts of high fever; water-borne diseases and vitamin deficiencies) and mental (such as shock, anxiety, depression, insomnia etc.). The report states that there are possibilities that these experiences could have a long-term impact on the educational and intellectual development of children.

**Conclusion**

Children’s health statistics, despite some improvements, remain shocking in a country that claims to have the tenth highest GDP in the world and yet is home to the highest number of hungry and malnourished children. This is because free and compulsory healthcare is yet to be recognised as a Fundamental Right. Not surprisingly, healthcare is becoming increasingly unaffordable and inaccessible to the common citizen with more and more moves towards privatisation.

The Right to Health is also about equal access to healthcare services. There is an uneven distribution of the disease burden as well as access to health services across regions as well as socio-economic and religious categories. An examination of the disease burden clearly shows that some groups are more vulnerable than others. Clearly, discrimination and exclusion continue to affect children’s health status. A strong political will and greater financing is needed to ensure that child health becomes a priority in India. Quality health services need to be made available to all children in the country, irrespective of class, caste, gender and location. Widespread discrimination means that certain groups of children are still the most vulnerable to illness and disease – and still have the least access to reliable health services.

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473 ibid.
474 ibid.
475 ibid.
476 ibid.
7. Education, Leisure and Cultural Activities

Introduction

India had made a commitment to ensuring the Right to Education when it adopted its Constitution, but had to wait 55 years for it to become a Fundamental Right.

Despite progress, 7.1 million children remain out of school and over 50 percent drop out before they complete Class 8. And these are matters of serious concern. Children drop out of school or find themselves squeezed out of the education system because of the situation of the schools as well as because of their own socio-economic status. Analysis of the available data clearly indicates that a few groups of children find themselves excluded or pushed out more than others. Many others are unable to make inroads into schools because they are either poor, dalits, adivasis, disabled or girls.

Leisure and cultural activities are also recognised by educationists as an integral part of education, it benefits the child’s mental, physical, emotional and social development. Though efforts are taken at school level, the importance of leisure is not very well understood. India is known for its diverse culture and the array of cultural activities one could think of is endless. Promotion of cultural activities has mostly been in the form of youth festivals and competitions for children.

The chapter is divided into two parts; the first part attempts to trace the progress made on national and international commitments and the second part throws light on the status of children vis-à-vis the articles of the CRC relating to education.

478 Butterflies, Conditions, Attitudes and Resources-Right to Play-New Delhi, A Study collating information pertaining to state of 'play' in the city of Delhi, New Delhi, 2010, p 4.
Part A

Progress on the Concluding Observations – A quick glance

At the time of the submission of India’s Initial Report, the Right to Education was not a Fundamental Right. However, Article 45 of the Directive Principles of State Policy in the Constitution called upon the State to provide free and compulsory education within a period of 10 years from the commencement of the Constitution.

It also mentions the National Policy of Education, 1986 and Programme of Action, 1992, which coincided with the year of India’s ratification of the CRC. The 1992 Programme of Action laid emphasis on the universalisation of enrolment of children in schools. The Initial Report also mentions the initiative of the Department of Women and Child Development on Early Childhood Education, which has been in place since 1987-88.

Importantly, the Initial Report recognised and acknowledged the fact that the dropout rates were significant, retention of children in schools was low and that wastage was considerable. Citing the Annual Report of the Department of Education for 1993-94, it reiterated the Government’s concern regarding the striking disparities between regions, rural and urban areas, boys and girls, dalits, adivasis and the minorities and the others etc. in access to elementary education.

What was most significant was the reporting of the Government’s effort towards the drafting of the Amendment Bill to the Constitution making elementary education a fundamental right.

By the time India presented its First Periodic Report, the government had passed the 86th Amendment Bill to the Constitution making Right to Education a Fundamental Right. This was reported to the UN Committee.

However, unlike the Initial Report, when it came to reporting on the situation of education, the First Periodic Report, although much more verbose and filled with a lot of data and statistics, was not as open about stating the problems as they existed. The report lacked prioritising of issues. Although problems related to disparity of access to education remained and indeed continues to date, a glaring omission in the report was the lack of urban/rural data. A breakdown of figures pertaining to the education of SC/STs was not provided either. It also did not mention how the amendment to the Constitution did not safeguard or uphold the right to education for all children up to the age of 14 but limited it to the 6-14 age group. Children below six are left without the Fundamental Right to free, quality pre-school and early learning opportunity, to be served to the extent the State decides under the Directive Principles of the Constitution.479

Although the report is on children, the Government chose to club information from the primary level to university and included even computer education to present a better picture. It made no attempt to assess the impact of the programme and schemes, the most important of which is the Sarva Shiksha Abhiyan (SSA), the flagship project of the Central Government.

Not much importance has been given to the section on leisure and cultural activities in any of the reports. The Initial Report spoke about the leisure in the context of urban and rural settings and highlighted efforts taken by the then Department of Youth and Sports under the Ministry of Human Resources Development (MHRD). The first periodic report also noted various activities conducted by the Sports Authority of India, Nehru Yuva Kendra Sangathan, etc. The third and the fourth combined periodic report points out the formation of a separate Ministry of Youth Affairs and Sports (MoYAS) and the draft National Sports Policy, 2008, which aimed at

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479 India Alliance for Child Rights, Citizens Alternate Review and Report on India’s Progress Towards CRC Realisation, New Delhi, 2003, p 73.
integrating sports development and youth development. Similarly, the reports note efforts taken by the earlier department and now Ministry of Culture (MoC) regarding cultural activities for children through Bal Bhavans, youth clubs etc.

The recently submitted third and fourth combined report gives us an understanding of the progress that has been made so far in terms of complying with the Concluding Observations made by the committee following the submission of the initial report and the first periodic report.

Annexure 7A looks at both the Concluding Observations of both the initial report (submitted in 1997) and first periodic report (2004). It also includes concluding observations made by other committees such as the Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, the Human Rights Committee, etc.

### 7A.1 Progress on Concluding Observations made by the CRC Committee

There have been significant attempts made to improve the situation of education in the country. If one looks at the Concluding Observations and recommendations made by the committee, it can be seen that efforts have been made by the government to incorporate the recommendations but the implementation and impact of these policy measures are yet to be assessed.

#### 7A.1.1 Recommendations that have been complied with

- The recommendation to improve quality of education was covered by the introduction of the Right of Children for Free and Compulsory Education Act, 2009 (CRC/C/15/Add.115, para. 58 and CRC/C/15/Add.228, para. 65 (e)).

- The committee also recommended strengthening efforts to progressively ensure that all children in urban, rural and least developed areas, children belonging to Scheduled Castes and Tribes have equal access to educational opportunities. It also recommended that the SSA attempts to strengthen the system by means of targeted provisioning in districts with a concentration of SCs, STs and minority population. Also, the Right of Children to Free and Compulsory Education Act, 2009 also provides for 25 percent reservation for economically disadvantaged communities in admission to class one in private schools. (CRC/C/15/Add.115, para. 58 and CRC/C/15/Add.228, para. 65 (b)).

- Recommendation to ban corporal punishment in schools was covered under the Right of Children to Free and Compulsory Education Act, 2009 (CRC/C/15/Add.115, para. 58 and CRC/C/15/Add.228, para. 44).

#### 7A.1.2 Measures under way

- The committee had recommended the hiring of more qualified teachers and providing them with more opportunities for training. Though efforts are under way to improve the quality of teacher under the RTE Act, para teachers and shiksha mitras who are not well qualified continue under the SSA. The provision of Special Training Programme is not being adequately implemented as per the RTE, 2009. (CRC/C/15/Add.115, para. 58 and CRC/C/15/Add.228, para. 65 (f))

- The committee had also recommended building better infrastructure for schools. This has been noted by the RTE Act, but it states that the school infrastructure is to be improved in three years. Therefore, one will have to wait and see to what extent the government was able to keep its promise. (CRC/C/15/Add.115, para. 58 and CRC/C/15/Add.228, para. 65 (h))
7A.1.3 What remains

- The Committee had suggested raising awareness of early childhood education and introducing it into the general framework of education. Early childhood education for the age group of 3-6 does not find place in the RTE; also, age-appropriate learning is one of most neglected component of the Integrated Child Development Scheme. (CRC/C/15/Add.115, para. 58 and CRC/C/15/Add.228, para. 64, 65(c)).

- State Commissions for Protection of Child Rights (SCPCR) who are to be the monitoring authority for the RTE, 2009 have not been set up in all states. So far, only 12 SCPCRs are in place. In the states where SCPCRs are not formed, the Department of Education can form the Right to Education Protection Authority. But these are not formed either (REPA). (CRC/C/15/Add.115, para. 58 and CRC/C/15/Add.228, para. 64,65).

7A.2 The Shifting goals of universalising education

When India became free, it was hoped that universalising free and compulsory education would be achieved for all children up to 14 years by 1960. This still remains a distant dream.

Art. 45. Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

As per the National Policy for Education 1986 (modified in 1992) and the Programme of Action 1992, India was to achieve Universal Primary Education by 1995, which was subsequently shifted to 2000.

The National Plan of Action, 1992 had hoped to achieve universalisation by the end of the century, when the new National Plan, 2005 was adopted was aimed at “all children in school by 2005 and universal retention by 2010”. It also aims at “bridging gender and social gaps in primary education by 2007 and elementary education by 2010”. There has been a shift in goals visible in the Five Year Plans as well.

Table 7.1 below highlights some of the major international and national goals regarding education in India.

<table>
<thead>
<tr>
<th>Legal and Policy Commitments</th>
<th>Target / Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution of India, Art 45</td>
<td>Free compulsory education for all children upto 14 years by 1960.</td>
</tr>
<tr>
<td>National Policy for Education (NPE), 1986</td>
<td>All children having attained 11 years age by 1990 will complete 5 years of schooling. By 1995 all children upto 14 years will be provided free and compulsory education.</td>
</tr>
<tr>
<td>National Policy for Education (modified in 1992) and the Programme of Action, 1986</td>
<td>Universal Primary Education by 1995, which was subsequently shifted 2000.</td>
</tr>
</tbody>
</table>

The SSA programme aimed to achieve universal primary education (five years of schooling) by 2007 and universal elementary education (UEE – eight years of schooling) by 2010. But now it needs to be extended by another five years, to the end of the Eleventh Five Year Plan (2011 - 2012).
National Plan of Action, 1992

- Universal enrolment, retention, minimum level of learning, reduction of disparities and universalisation of effective access of schooling by the end of the current century

National Plan of Action, 2005

- To achieve universal elementary education through school system for all children, through provision of free and compulsory services.
- Progressively provide compulsory secondary education to all children.
- All children to be in school by 2005.
- Universal retention by 2010.
- Bridging gender and social gaps in primary education by 2007 and elementary education by 2010.

Sarva Shiksha Abhiyan, 2001-02

- All children in school, Education Guarantee Centre, Alternate School, Back to School Camp by 2003.
- 5 years of primary schooling for all children by 2007.
- 8 years of Schooling and Universal Retention by 2010.

Ninth Five Year Plan, 1997-2002

- The basic agenda for the Ninth Plan is to fulfil the objectives of Article 45 of the Constitution by charting out a clear course of action to make primary education free and compulsory up to Vth standard, though the ultimate object is to universalise up to VIIIth Standard. This phasing is necessary because of the resource constraint on the one side and enormous complexity of the problem on the other.
- Since the task of Universalisation of Elementary Education will remain unfulfilled in States like Andhra Pradesh, Assam, Bihar, J&K, Madhya Pradesh, Orissa, Rajasthan, Uttar Pradesh and West Bengal, particularly at upper primary stage, it is obvious that there is need for a longer time horizon. The Xth Plan will continue to lay emphasis on a higher allocation for primary education so as to complete

Tenth Five Year Plan, 2002-2007

- All children in school by 2003
- All children to complete 5 years of schooling by 2007

Eleventh Five Year Plan, 2007-2012

- Drop out at primary level to be eliminated and the drop out rate at the elementary level to be reduced from over 50 per cent to 20 per cent by 2011-2012
- Universalised MDMS at elementary level by 2008–09.
- Universal coverage of ICT at UPS by 2011–12.
- All gender, social, and regional gaps in enrolments to be eliminated by 2011–12.
- All EGS centres to be converted into regular primary schools.

Right to Free and Compulsory Education Act, 2009

- The Right to Education Act, which was enforced from April 1, 2010 began to be implemented from the academic session beginning March 2011.
- The Act makes it the responsibility of the state’s to ensure that every child in the 6 to 14 years age bracket is provided free and compulsory education.

7A.2.1 Shifting goalposts leading to children still being denied education

India, Nigeria and Pakistan account for 27 percent of the world’s out-of-school children. The UNESCO “Education for All” Global Monitoring Report 2008 once again ranked India in the lowest category, at 105 out of a total of 129 countries on its EFA Development Index.480

This is actually a drop of five points since 2007 UNESCO rankings. The index is based on factors such as the net primary enrolment rate and survival rate to grade five.

Table 7.2: Failed Promises

<table>
<thead>
<tr>
<th>International Goals</th>
<th>National Goals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Millennium Development Goals, 2000</strong></td>
<td><strong>Education for All, Dakar, 1990</strong></td>
</tr>
<tr>
<td>Achieve universal primary education: Ensure that by 2015, children everywhere, boys and girls alike will be able to complete a full course of primary schooling (goal 2)</td>
<td>Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children</td>
</tr>
</tbody>
</table>
| Ensuring that by 2015 all children, particularly girls, children, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality | All children in school by 2003  
All children to complete 5 years of schooling by 2007.  
Universal enrolment of 6-14 age group children including the hard to reach segment  
One Year Pre-School education for children entering primary school  
Universalise Mid Day Meal Scheme at elementary level 2008-09  
All Education Guarantee Scheme to be converted into regular primary schools |
| **Tenth Five Year Plan, 2000-2007**                      | **Eleventh Five Year Plan, 2007-2012**                                       |
| Promote gender equality and empower women: eliminate gender disparity in primary and secondary education, preferably by 2005, and to all levels of education no later than 2015 (goal 3) | Eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015  
Reduction of gender gaps in literacy by at least 50 percent by 2007  
All Gender, Social and Regional gaps in enrolments to be eliminated by 2011-2012  
Substantial improvement in quality and standards with the ultimate objective of achieving the standard of Kendrya Vidyalayas Under the CBSE pattern |
| **Eleventh Five Year Plan, 2007-2012**                  |                                                                               |
| Increase in literacy rate to 75 percent within the Plan period.  
Drop out at primary level to be eliminated and the drop out rate at the elementary level to be reduced from over 50 per cent to 20 per cent by 2011-2012 |


According to the UNESCO report, there are three main challenges for India if it is to achieve the goal of universal primary education by the 2015 UN Millennium Development Goal target:

1. providing primary education to socially marginalised minority groups,
2. reducing the dropout rate in primary education and
3. improving the quality of learning.\(^{481}\)

The UN Millennium Development Goals (MDG) requires governments to ensure that all boys and girls complete a full course of primary schooling by 2015. Despite scepticism surrounding the MDG,\(^{482}\) they seem to have been accepted as targets by many countries of the world, including ours. In India, this means that all children


\(^{482}\) See for Ashwani Saith example *From Universal Values to Millennium Development Goals: Lost in Translation*. Available at: [http://www.impactalliance.org/file_download.php](http://www.impactalliance.org/file_download.php)
must be enrolled in school by 2010 to meet this target. It is unlikely that India will be able achieve universal primary education by the 2015 target given its current out-of-school numbers.

The success of any education system depends on both enrolment and retention. Unfortunately, the government only provides a Gross Enrolment Ratio. This does not reflect the retention of children in schools, which would then mean Net Enrolment Ratios. Also the birth registration data is inadequate which makes it difficult to compare and analyse the enrolment rates.

Needless to say, this is not done inadvertently, because field-level experiences and a comparison between the gross enrolment ratios and the dropout ratios reveal that not all children who enrol complete five years of primary school. Similarly, all those who finish primary school do not finish elementary school or the secondary level.

**Part B**

**7B.1 Right and Aims of Education (Articles 28 & 29)**

**Article 28**

1. States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

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

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29**

1. States Parties agree that the education of the child shall be directed to:

   (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.
7B.1.1 Pre-primary education

The Constitution of India under Article 45 includes early childhood education as one of the Directive Principles. Even after growing consensus among educationists that age-appropriate learning for the 0-6 age group is crucial for future levels of learning, there has been nothing but neglect in the ICDS centres. The ICDS is run by the Ministry for Women and Child Development (MWCD) while education is handled by the MHRD, which is now the nodal ministry to implement the Right to Free and Compulsory Education Act. The policies remain fragmented among different ministries. There have been no improvements in the schemes and there are no provisions to address the issues of children with special needs. There is no system for early detection of disabilities or for early intervention. Few children with disabilities are present in the Anganwadi Centres, and training on identification and inclusion does not as yet form part of Anganwadi Workers’ training.

The Right to Free and Compulsory Education Act (RTE), 2009 confines the right to education to the age group of 6 to 14 years; pre-school education is outside its ambit. The Act does not consider pre-school education a necessary building block to a child’s transition to primary school. The high rates of dropout witnessed in the first two years are cited as evidence of this lack of “school readiness” among children. In other words, if children have to be enabled to attend and successfully complete the entire cycle of elementary education, as promised by the Act, they must be able to access a pre-school education programme of equitable quality.

Section 11 of the RTE Act makes a provision for being engaged with pre-school education. It states: “With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.” Though this allows for the necessary space within the ambit of the RTE Act to enable a greater degree of involvement in the pre-school segment of education, there has been no substantial effort on the part of the states to put this provision into effect. Unlike in elementary education, only a few state governments have pre-schools. The gross enrolment ratio for pre-school is 38.8 percent according to the administrative data provided by UNESCO.

Fig. 7.1: India: Pre-primary enrollment

UIS GER 2005: male 38.0, female 30.7, GPI 1.04. EFA GER 1997: male 17.3, female 18.4, GPI 0.95.
The MHRD has stated that it would have to study various implications before considering pre-school education under the ambit of the RTE. The National Advisory Council has also asked the ministry to examine bringing pre-school education within the gamut of the RTE as presently there is no regulatory mechanism and the children enrolled in pre-school remain neglected. A Planning Commission Working Group on Elementary Education for the Twelfth Five Year Plan is also exploring the possibilities for the same and has been looking into the financial implications.

7B.1.2 Change in the Status of Elementary Education in India

Between 1950-51 and 2008-09, the number of primary/junior basic schools in India increased nearly four-fold, from about 210,000 to 809,108. The number of middle/upper primary schools increased 35 times from 13,600 to 476,468 schools (MHRD, Annual Report 2008-09 and DISE Report 2009-2010). Significantly, after the Dakar Framework of Actions and MDG commitments made by India, 126,336 primary schools and 48,994 upper primary schools were constructed in the country between 2002-2003 and 2008-2009.

Table 7.3: Changes in the Status of Elementary Education in India

<table>
<thead>
<tr>
<th>Sixth Education Survey, 1993</th>
<th>Seventh Education Survey, 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>49.79 percent habitation have primary school facility</td>
<td>53 percent habitations have primary school facility</td>
</tr>
<tr>
<td>83.36 percent habitations have primary schooling facility within or at a walking distance of one km</td>
<td>88 percent habitations have primary schooling facility within or at a walking distance of one km</td>
</tr>
<tr>
<td>13.87 percent habitations have Upper primary schools/sections</td>
<td>19.1 percent habitations have Upper primary schools/sections</td>
</tr>
<tr>
<td>76.15 percent habitations have upper primary schooling facility within or at a distance of 3 km.</td>
<td>78.12 percent habitations have upper primary schooling facility within or at a distance of 3 km.</td>
</tr>
<tr>
<td>94.08 percent of rural population is served within 1.0 km by primary stage.</td>
<td>98.5 percent of the rural population was served by primary schools (Grades I-V) and had access to primary schools / sections within one kilometer from their habitations</td>
</tr>
<tr>
<td>85 percent of rural population is served within 3.0 km by upper primary stage</td>
<td>86 percent population served within 3.0 Kms by upper primary stage</td>
</tr>
</tbody>
</table>

Source: Sixth (1998) and Seventh (2007) All India Educational Survey. NCERT. New Delhi

However, certain inadequacies remain.

- Several mountainous regions and tribal areas lack access to primary schools even within the distance of 2 to 3 kilometres.

- More than 50 percent of the population from backward caste groups is not served within the habitation in states such as Madhya Pradesh and Uttar Pradesh.

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483 Chetan Chauhan, HRD Ministry not averse to include pre-school education under RTE, Hindustan Times, 29 July 2011. Available at: http://www.hindustantimes.com/StoryPage/Print/727106.aspx
484 National Coalition for Education, Status of Elementary Education in India. Available at: http://xa.yimg.com/kq/groups/8951350/1112235766/name/Status-of+elementary+education+in+India.docx
486 ibid.
One-fourth to one-half of ST habitations lack upper primary schools.\footnote{R Govinda, Elementary Education in India Promise, Performance and Critical Issues, Securing Rights, Citizen’s Report on MDG, Wada Na Todo Abhiyan, 2005.}

There is overcrowding in existing schools.

Nationwide, just 68 percent of Muslim girls go to school compared to 72 percent\textit{ dalit} girls and 80 percent of the girls from other communities.\footnote{UNICEF, Muslim girls strive for education. Available at http://www.unicef.org/india/education_2891.htm}

\begin{quote}
The elementary education system in India is the second largest in the world with 1,285,576 government recognised elementary level schools located in 633 districts, enrolling 187,727,513 children during 2008-09. But in spite of the large network of educational institutions, India has already missed the gender parity target and target of covering all children aged 6-14 years in schools by 2010. The NSSO 64th Round (2007-08) indicates literacy rate of 62.3 percent for females and 80.5 percent for males for population aged 7 and above years, which indicates significant gender gap in the literacy rate. Access, reach and gender parity deficit in schooling is observed, in the most populated states of Bihar, Uttar Pradesh, Andhra Pradesh, Orissa, West Bengal and Rajasthan.…..

....There has been significant decline in the out-of-school children aged (6-14 year) from Sixty-five million children (according to the Census- 2001) to about 21 million in 2007-08 (NSSO, 64th Round) which is still higher than the estimated government figures of 7.59 million children.”

\textit{Status of Elementary Education in India (Draft), EDWATCH Survey 2010, National Coalition for Education}
\end{quote}

### 7B.1.3 Enrolment

As the table below shows, there has been an increase in the number of children who have been enrolled in schools at different stages. However, what is also important to note is that the trend of children dropping out from one stage of school has continued. Moreover, there are indications that even the trend of increasing enrollment may have seen some reversals.

\begin{quote}
\textbf{India: Enrolment in schools drops by 2.6 million}

Despite the Indian government’s effort to increase the number of children attending school, the country has actually witnessed a dip in enrolment in primary classes since 2007. According to data released by the Ministry of Human Resource Development, the decline in national figures has been the steepest in the last two years, with the state of Uttar Pradesh being the worst performer.

It is a lesson in misplaced enthusiasm. While the Centre has been busy tom-tomming its efforts to send more children to school, enrolment in primary classes across the country has, in actuality, dropped since 2007. Between 2008-09 and 2009-10, enrolment in classes I to IV in Indian schools dropped by over 2.6 million.

The biggest setback was witnessed in Uttar Pradesh, where admissions plummeted by over a million in the last two years, according to the latest data released by the Ministry of Human Resource Development.

The slide in national figures began between 2007-08 and 2008-09 and became, ironically, steeper between 2008-09 and 2009-10, when the Centre cleared the Right to Education Act making education a fundamental right.

\textit{Source: Hemali Chhapia, Enrolment in primary schools plunges 2.6 million in 2 years, The Times of India, 21 March 2011}
\textit{Available at: http://articles.timesofindia.indiatimes.com/2011-03-21/india/29171057_1_enrolment-indian-schools-education-act}
\end{quote}
The data on enrolment of children in schools has always been a matter of great controversy. There are several estimates available at any given time. The data most readily available is the Gross Enrolment Ratio (GER). This does not reflect the retention of children in schools. In effect, what is needed is a Net Enrolment Ratio.

### Table 7.4: Enrolment By Stages of School Education All Categories of Students

<table>
<thead>
<tr>
<th>Year</th>
<th>Primary (I-V)</th>
<th>Middle Upper (VI-VIII)</th>
<th>Sec./Sr. Sec./Inter/Pre-Degree (IX-XII)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
<td>Total</td>
</tr>
<tr>
<td>1990-91</td>
<td>57.0</td>
<td>40.4</td>
<td>97.4</td>
</tr>
<tr>
<td>1991-92</td>
<td>58.6</td>
<td>42.3</td>
<td>100.9</td>
</tr>
<tr>
<td>1992-93</td>
<td>57.9</td>
<td>41.7</td>
<td>99.6</td>
</tr>
<tr>
<td>1993-94</td>
<td>55.1</td>
<td>41.9</td>
<td>97.0</td>
</tr>
<tr>
<td>1994-95</td>
<td>60.0</td>
<td>45.1</td>
<td>105.1</td>
</tr>
<tr>
<td>1995-96</td>
<td>60.9</td>
<td>46.2</td>
<td>108.2</td>
</tr>
<tr>
<td>+1996-97</td>
<td>61.4</td>
<td>48.0</td>
<td>110.3</td>
</tr>
<tr>
<td>1997-98</td>
<td>62.3</td>
<td>49.0</td>
<td>111.7</td>
</tr>
<tr>
<td>1999-2000</td>
<td>62.7</td>
<td>50.0</td>
<td>113.6</td>
</tr>
<tr>
<td>2000-01</td>
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<tr>
<td>2005-06</td>
<td>70.5</td>
<td>61.6</td>
<td>132.1</td>
</tr>
</tbody>
</table>

Source: Education Statistics available at [http://www.education.nic.in/stats/Timeseries0506.pdf](http://www.education.nic.in/stats/Timeseries0506.pdf)

A government survey that covered 28 States and seven Union Territories found that 2.92 percent of the schools had zero enrolment. These institutions are mostly located in rural areas and are in the public sector. The main reason for zero enrolment is that these schools do not have teachers – 23,000 schools were yet to be provided with a teacher – while 130,000 schools had only one teacher. The lack of teachers is a problem faced by many government schools across the country, even in the capital. A visit by the Convener of the Right to Education Taskforce (RETF) to a government middle school in Delhi discovered that the school had 450 students but only one teacher.

---


491 ibid.

### Table 7.5: State Wise Teacher-Pupil Ratio

<table>
<thead>
<tr>
<th>State/UTs</th>
<th>Pupil –Teacher Ratio</th>
<th>State/UTs</th>
<th>Pupil –Teacher Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>A &amp; N Islands</td>
<td>15</td>
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<td>D &amp; N Havelli</td>
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<td>Daman &amp; Diu</td>
<td>30</td>
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<td>Jammu &amp; Kashmir</td>
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<tr>
<td>Kerala</td>
<td>22</td>
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<td></td>
</tr>
</tbody>
</table>


What is more, it is extremely difficult to get reliable data. Even the government itself recognises this. The inconsistency in enrolment data forced the Comptroller and Auditor General to make the following comment:

> The Ministry, however, did not establish a system of reliable and consistent data capture from the states. Neither was there any system of cross verification of the correctness of enrolment figures reported by the state governments. The data of enrolment collected from the states were inconsistent with the data maintained by the Ministry, which indicates unreliable data capture.⁴⁹³

---

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of state</th>
<th>Years</th>
<th>Enrolment Provided by Ministry</th>
<th>Figures collected in states</th>
<th>Difference (+) (-)</th>
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Source: Performance Audit of National Programme for Nutritional Support to Primary Education (Midday Meal Scheme, Annexure 5 of the Report No. PA13 of 2008.)
Table 7.7: Children out of School

<table>
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<tr>
<th>Sl. No.</th>
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<th>Out of school children as on March 2007</th>
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<td>Chhattisgarh</td>
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<td>6</td>
<td>Goa</td>
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<td>15</td>
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<td>Mizoram</td>
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<tr>
<td>19</td>
<td>Nagaland</td>
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</tr>
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<td>Orissa</td>
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</tr>
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<td>21</td>
<td>Punjab</td>
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<td>22</td>
<td>Rajasthan</td>
<td>163894</td>
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<tr>
<td>23</td>
<td>Sikkim</td>
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<tr>
<td>24</td>
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<td>Tripura</td>
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<td>West Bengal</td>
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<tr>
<td>29</td>
<td>A &amp; N Island</td>
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<td>Chandigarh</td>
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<td>31</td>
<td>D &amp; N Haveli</td>
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<td>Daman &amp; Diu</td>
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<td>Lakshadweep</td>
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<td>35</td>
<td>Puducherry</td>
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<tr>
<td><strong>INDIA</strong></td>
<td></td>
<td><strong>7597214</strong></td>
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</table>

What is therefore more indicative of the situation is to examine how many children are out of school. Despite its goal of ensuring every child in school by 2007, 7.6 million children continue to be out of school according to the MHRD.494

According to some other estimates, almost 21 million children, that is, close to 17 percent of all children of primary school age (6-10 years) continue to be out of school. About one quarter of all children of primary school age live in urban areas and the remaining three quarters in rural areas.495

7B.1.4 Dropouts

Of every 100 children who enroll in school, 70 percent drop out before they reach secondary school; of every 100 children who drop out of school, 66 are girls. Only 66 percent of children enrolled in Class 1 survive to reach Class 5 in India, i.e., as many as 34 percent of children enrolled in Class 1 drop out before reaching Class 5, in all probability without acquiring any level of the basic 3 Rs, contributing to the number of out-of-school children, to child labour and also perhaps to the mass of our illiterate population.496

"It is, thus, crucial to concentrate in India on the problem of low survival rate in primary education. After all, a 90-95 percent net enrolment ratio will have no meaning, if it is contrasted with 34 percent dropout rate. Rapid progress in net enrolment ratio is possible, but a more important challenge is to ensure that the children enrolled in schools progress through the system to complete the given cycle of schooling and even beyond”,” says Tilak.497 He attributes three reasons for these high drop-out rates:

(a) schools are not attractive;
(b) economic constraints (poverty, direct costs of schooling and child labour) do not allow continuation in schools; and
(c) other reasons including lack of tradition in going to or continuing in schools.498

Further, both physical access and social access remains a challenge. This inequality is to be seen based on geographical location, gender, disability, socioeconomic reasons, etc.

For example, children of manual scavengers are expected to clean toilets and sweep and swab the school premises, dalit children are made to sit separately, drink water from separate containers and eat separately.

It is difficult to assess the retention of those children who belong to migrant labourer families, and children who migrate alone without families The migrant way of life is constantly eroding both the physical status and those features which provided the parent group with psychological and emotional stability, this eventually affects the education of the child.499 Most often the children drop out of schools when the families move. Also, when they move to a new location, getting admission in a new school is difficult for these children.

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494 This information was given by the Minister of State for Human Resource Development, Shri MAA Fatmi in reply to a question in Lok Sabha, Tuesday, April 29 2008 cited in HAQ: Centre for Child Rights, Still Out of Focus: Status of India’s Children, 2008, p 96.
496 Jandhyala B G Tilak, India ranked at 105 in the Education for All Development Index, National University of Educational Planning and Administration. Available at: http://www.norrag.org/Issues/article/1302/en/india-ranked-at-105-in-the-education-for-all-development-index.html?PHPSESSID=a02be85225d91552f39b23b1370009ee
497 ibid.
498 ibid.
Religion and caste remain a determining factor for enrolment as well as retention in school. The Planning Commission notes that the social composition of out-of-school children indicates that 9.97 percent of Muslim children, 9.54 percent of Scheduled Tribes (STs), 8.17 percent of Scheduled Castes (SCs), and 6.97 percent of Other Backward Classes (OBC) children were out of school and an overwhelming majority (68.7 percent) was concentrated in five states, viz., Bihar (23.6 percent), Uttar Pradesh (22.2 percent), West Bengal (9 percent), Madhya Pradesh (8 percent) and Rajasthan (5.9 percent).  

### Table 7.8: Children of primary school age out of school (million), India 2000 and 2006

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<th>2006</th>
<th>Change 2000 to 2006</th>
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</thead>
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<tr>
<td>Female</td>
<td>16.4</td>
<td>11.2</td>
<td>-5.2</td>
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<tr>
<td>Urban</td>
<td>5.0</td>
<td>3.7</td>
<td>-1.3</td>
</tr>
<tr>
<td>Rural</td>
<td>24.5</td>
<td>17.0</td>
<td>-7.5</td>
</tr>
<tr>
<td>Poorest 20 percent</td>
<td>9.4</td>
<td>9.8</td>
<td>0.5</td>
</tr>
<tr>
<td>Second 20 percent</td>
<td>8.5</td>
<td>5.3</td>
<td>-3.2</td>
</tr>
<tr>
<td>Middle 20 percent</td>
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<td>Fourth 20 percent</td>
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<td>Richest 20 percent</td>
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<tr>
<td>Total</td>
<td>29.5</td>
<td>20.7</td>
<td>-8.7</td>
</tr>
</tbody>
</table>

Data sources: India MICS 2000, India DHS 2005-06. in International Education Statistics, Analysis by Friedrich Huebler

Girl children cannot attend school because schools have no toilets, and because parents do not encourage them to go to school with male teachers (the presence of female teachers has a remarkable impact on increasing girls’ enrolment and learning outcomes, yet only 35 percent teachers are female). Besides, in the absence of guaranteed day care for the younger siblings or early childhood care and education, who will look after the younger siblings when the parents go to work? So they stay away from school and stay at home. Disabled children too continue to face discrimination. Lack of facilities denies access, while attitudes towards disabilities impact their lives when in school.

However, as the Eleventh Five Year Plan acknowledges, “social and gender disparity, existing at both primary and upper primary education levels, continues to be an issue to be tackled with more concerted and sustained efforts, especially in Bihar, Rajasthan, Jharkhand, Madhya Pradesh (MP), Gujarat, and Uttar Pradesh (UP)”.

So while in theory “all children are welcome”, in practice it is impossible for them to continue. Is it then still “dropout”? Professor Anil Sadgopal often argues (for example as he did in a television interview on 22 May 2005 on Doordarshan News Channel) that children walk out of the education system because they find it inappropriate and meaningless. We would like to argue that the education system is designed to push out children.

501 Arun C Mehta, Education for All in India with focus on Elementary Education: Current Status, Recent Initiatives And Future Prospects. Available at: http://www.educationforallinindia.com/page101.
7.1 million children being out of school and over 50 percent dropping out at elementary level are matters of serious concern. SSA would, therefore, be reoriented to meet the challenges of equity, retention, and high-quality education. This would require a strong rights orientation within the programme.

Planning Commission, Eleventh Five Year Plan

7B.1.5 Inadequate Infrastructure

From the very beginning, one of the challenges to providing elementary education in India has been the lack of adequate infrastructure and teachers. Single-room and single-teacher schools have been relied upon to ensure enrolment, education and retention. Schools under trees still remain a reality. Apart from a lack of teachers, other serious problems remain on the supply side of education in India. Even minimal infrastructure such as proper classrooms, desks, toilets and drinking water is missing in a large number of schools. Because some schools have no toilets at all, and others have toilets that are so unpleasant, children either prefer to go outside rather than use them or not come to school at all. As stated earlier, this indeed remains a reason for preventing girls from attending school. Safety in schools is also a serious issue across the country, with reports of many children struggling to learn in crowded, unsafe classrooms.503

Table 7.9: Cost Implication for Shortfall in RTE

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<th>Facility</th>
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<th>Schools</th>
<th>Total</th>
<th>Shortfall</th>
<th>Per Unit* (in Rs)</th>
<th>Total (in Rs lakhs)</th>
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<td>50051</td>
</tr>
<tr>
<td>HM Office/Store Room</td>
<td>26</td>
<td>817841</td>
<td>208958</td>
<td>NA</td>
<td></td>
<td>519288</td>
</tr>
<tr>
<td>Kitchen Shed</td>
<td>19</td>
<td>817841</td>
<td>152854</td>
<td>NA</td>
<td></td>
<td>87621</td>
</tr>
<tr>
<td>Library in Primary School</td>
<td>4</td>
<td>659051</td>
<td>289851</td>
<td>NA</td>
<td></td>
<td>7058</td>
</tr>
<tr>
<td>Library in UPS</td>
<td>27</td>
<td>158790</td>
<td>42286</td>
<td>NA</td>
<td></td>
<td>4637</td>
</tr>
<tr>
<td>Separate Boys’/Common Toilet</td>
<td>9</td>
<td>817841</td>
<td>74832</td>
<td>NA</td>
<td></td>
<td>32515</td>
</tr>
<tr>
<td>Separate Girls’ Toilet</td>
<td>29</td>
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<td>240002</td>
<td>NA</td>
<td></td>
<td>104262</td>
</tr>
<tr>
<td>Teachers for Classes 1-5</td>
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<td></td>
<td>257694</td>
<td>NA</td>
<td></td>
<td>298486</td>
</tr>
<tr>
<td>Teachers for Classes 6-8</td>
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<td></td>
<td>22824</td>
<td>NA</td>
<td></td>
<td>70813</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>1515833</strong></td>
</tr>
</tbody>
</table>

*Per Unit Costs vary by state. Total shortfall for each item is aggregated from state level estimates.


503 Mentioned in the case Social Jurist, A civil rights groups v. Union of India, WP (C) No. 3507 of 2000, September 2006. Available at: http://karmayog.org/socialjurist/social-jurist_2947.html#rVu04v51OC8
The core RTE facility requirements are boundary wall/fencing, drinking water, head master's office/store room, kitchen shed, library in primary school, library in upper primary school, playground and a separate toilet facility. Accountability Initiative’s PAISA survey 2010 has found that only 11 percent of schools in India has all the core RTE facility requirements, 22 percent has six of the seven requirements, 3 percent only has one of the infrastructure facilities and 1 percent has none of the facilities required.504

7B.1.6 Quality of Education

Children go to school for learning. However, the results of the Annual Survey of Educational Report (Rural) 2010, which has been tracking learning achievements, leave cause for concern. In 2004, a nationwide survey conducted in June and August 2004 by Pratham found that in rural areas eighteen percent of girls in India drop out of school by the age of 14, and an average of 25 percent of all schoolchildren cannot write a dictated sentence by that age. The 2010 ASER report finds that in rural areas learning levels continue to remain stagnant, with nearly half the children in Class 5 unable to read a simple text; even worse, this figure seems to have declined between 2007 (58 percent) and 2010505 (53 percent).

While in government schools the percentage of children in Class 5 who could read a Class 2 text fell from 57 percent in 2007 to 50 percent in 2010, the corresponding percentage in private schools fell from 69 percent in 2007 to 64 percent in 2010.506

The ASER report suggests that while some of these variations can no doubt be explained away by external factors, sampling error, differences in the timeline, etc., the fact that learning levels do not seem to be improving significantly should be a cause for concern. It states that this drop in learning levels is not confined to government schools and may be observed equally across government and private schools. Further, the lack of universal pre-schooling (Early Childhood Care and Education, ECCE) and the consequent poor vocabulary and poor conceptual development of mind makes even enrolled children less participative in the class even for learning by rote.507

The acknowledgement that the quality of learning is poor and must be improved has slowly gathered momentum over the past five years.508 However, an assessment of programmes introduced to improve the situation has not been done yet. One of the most talked about model in this approach is the Activity Based Learning Programme of Tamil Nadu, which has been scaled up across the state for the past three academic years.509 It is said that the classroom has been transformed as a result of the intervention and there is no reason to broadly doubt this claim. This in itself is a huge achievement for the state. But one of the problems with our state-run programmes is that they are not evaluated sufficiently for learning from it to take place. There is no constant third-party observation or research linked to programme design and objectives.510 In an important experiment in Tamil Nadu, one would have expected considerable research to be available. Several other states have initiated programmes to improve learning. Barring Himachal Pradesh, Kerala and Maharashtra, no other state has yet reached high learning levels that are almost constant. Several states are making fresh attempts but these have not yet shown significant improvement. Some states seem to be losing their advantage and yet others just have not got their act together as years go by.

506 ibid.
509 ibid.
510 ibid.
The Planning Commission notes that teacher attendance, ability and motivation appear to be the weakest links of elementary education programmes.\textsuperscript{511} School teachers are often involved in carrying out other non-teaching functions such as the decennial Census, which is at the cost of their teaching time. On the other hand where instructions are laid out to carry out such surveys over weekends or other non-working days, it is not appreciated by the teachers at all, affecting the quality of data collected. In several states, the teachers have to serve two shifts in a day; these extended working hours are another factor for demotivation. Interestingly, the Right of Children to Free and Compulsory Education Act, 2009 states: “No teacher shall be deployed for any non-educational purposes other than the decennial census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.”\textsuperscript{512}

A World Bank survey in 2006 found that 25 percent of government primary school teachers in India are \textit{absent from work}. Only 50 percent of teachers are actually engaged in the act of \textit{teaching while at work}, according to researchers. These statistics represent average numbers taken across many states. The numbers are not so harsh across all of India and several Indian states fare much better.\textsuperscript{513} It is often argued that teachers are

![Fig. 7.1: India: Pre-primary enrollment](http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/0,,contentMDK:20848416~pagePK:146736~piPK:146830~theSitePK:223547,00.html)

\textsuperscript{511} ibid.

\textsuperscript{512} Section 27, Right of Children to Free and Compulsory Education Act, 2009, Ministry of Law and Justice (Legislative Department), Gazette of India Notification dated 27 August, 2009.

badly paid and hence unwilling to work. The research found that better the pay more the teacher absenteeism. Older teachers, more educated teachers and head teachers have better salaries but were also absent more frequently, according to a related research paper on absenteeism among Indian teachers.\textsuperscript{514} Also, contract teachers are paid much less than regular teachers but have similar absenteeism rates.\textsuperscript{515}

\textbf{7B.1.7 Corporal Punishment}

The Committee on the Rights of the Child defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices).

Seven year old Rani is a student of class 3 in Kendriya Vidyalaya School in Chennai. She was carried away from her class by a man and sexually abused in the school laboratory in the presence of a woman teacher. When she cried, a cloth was stuffed into her mouth and she was told that she would be killed if she told any one. The National Commission for Protection of Child Rights which heard Rani’s story at a Public Hearing organised in Chennai in January 2008 reports that 91 children had committed suicide due to mental, physical and sexual abuse during the last five years in Tamil Nadu alone. In Delhi, a child collapsed and died after having run many rounds of the school field as punishment; in Rajasthan, a student died after he was beaten by a teacher, and in Andhra Pradesh there was a report of child dying after being subjected to electric shock by the teacher with the support of the school headmaster. These are only a few examples.

\textit{Source: National Commission for Protection of Child Rights, Corporal Punishment and Child Suicide, Infocus, Volume 1, No. 3}

Till 2009, only a few states/union territories in India had banned corporal punishment in schools. These included Tamil Nadu, Goa, West Bengal, Andhra Pradesh, Delhi, Chandigarh and Himachal Pradesh. In April 2006, officials in Bihar were considering prohibiting corporal punishment in schools, and in June 2006 it was announced that the Punjab government had decided to repeal Article 191 of the Punjab Education Code, which permitted principals and headmasters to cane senior male students for misconduct.\textsuperscript{516}

But these bans had no impact. Every day, the national newspapers carry news reports of children being beaten or abused in schools. Some even die.

A 1996 study supported by UNICEF found that 66 percent of children in the state of Maharashtra reported being regularly punished by their teachers in class. In Tamil Nadu state, the corresponding figure was 87 percent, with similar prevalence figures in urban and rural schools.\textsuperscript{517}

In February 2008, the National Commission for Protection of Child Rights (NCPCR) published a report on the state of penal institutions for children in conflict with the law, based on a detailed study of juvenile care centres (“juvenile homes”) across the country. Physical punishment was found to be a dominant disciplinary method

\textsuperscript{515} ibid.
\textsuperscript{516} \textit{End All Corporal Punishment of Children, India Country Report}, Summary of necessary legal reform to achieve full prohibition. Available at: http://www.endcorporalpunishment.org/pages/progress/reports/india.html#Prevalence
in 70 percent of the centres. The study looked at the incidence and the extent of corporal punishment on school children and the impact it inflicts on them. It was carried out in four states of India: Uttar Pradesh, Bihar, Rajasthan and Andhra Pradesh.

_Corporal punishment has finally received universal attention through the enactment of the Right to Free and Compulsory Education Act, 2009._ Corporal punishment is prohibited in schools in the Article 17 states: “(1) No child shall be subjected to physical punishment or mental harassment. (2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.” Interestingly, neither the Act nor the Model Rules uses the term “corporal punishment”.

The Right of Children to Free and Compulsory Education Rules, 2010 provides for implementation of the Act, including awareness raising about the rights in the Act, procedures for monitoring implementation, and complaint mechanisms when the rights are violated. However, the Act and Rules do not apply in Jammu and Kashmir.

_There seems to be a caveat to justice, because the law only holds the perpetrator to disciplinary action and not criminal action. Since the rules are being framed by the states, how many will go beyond this is yet to be seen._

### 7B.1.8 Discrimination in Schools Persists

Despite some efforts made to reduce discrimination by introducing pre-Matric and post-Matric scholarships for children from SCs, STs, minorities and girl children, disparities in enrolment and retention remain. Children languishing in juvenile facilities continue to be deprived of educational opportunities. Exclusion is faced on the basis of gender, caste and ethnicity as well as religion. Even more important is the fact that the design of the SSA is itself flawed and designed to exclude children from “equal opportunity to quality education”.

<table>
<thead>
<tr>
<th>Highlights</th>
</tr>
</thead>
<tbody>
<tr>
<td>In rural areas 7.80 percent of children are out of school against 4.34 percent in urban areas.</td>
</tr>
<tr>
<td>The proportion of children out of school is relatively higher among those in the age category 11-13 years (8.56 percent) compared to those in the 6-10 years age category (6.1 percent).</td>
</tr>
<tr>
<td>Percentages of out of school boys and girls in the age group 6-10 years are 5.51 percent and 6.87 percent respectively. For the age group 11-13 years, the percentage of out-of-school children is relatively higher among girls (10.03 percent) than boys (6.46 percent).</td>
</tr>
<tr>
<td>Amongst social groups, 9.97 percent of Muslim, 9.54 percent of ST, 8.17 percent of SC and 6.9 percent of OBC children are out of school.</td>
</tr>
<tr>
<td>69 percent of the children are out of school: Bihar (23.6 percent), U.P. (22.2 percent), West Bengal (9 percent), Madhya Pradesh (8 percent) and Rajasthan (5.9 percent);</td>
</tr>
<tr>
<td>Bihar (3.18 million), Uttar Pradesh (almost 3 million), West Bengal (1.2 million), Madhya Pradesh (1.08 million) and Rajasthan (795,000) have the highest number of out-of-school children.</td>
</tr>
</tbody>
</table>


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During 2008-2009, the Haryana State government launched an innovative monthly stipend scheme for children of SCs, OBCs and below poverty line (BPL) families. Under the scheme, boy and girl students of Classes 1 to 5 get an incentive of Rs 100 and Rs 150 respectively, and the amount increases as the children move to higher classes. Following the launch of the scheme, there has been an increase in the enrolment of poor children.

However, the scheme is not without problems. Some government schools pointed out that they were facing problems in opening bank accounts because of the banks’ stringent rules of requiring two identity proofs for opening an account. The banks were returning the forms of students due to lack of the mandatory two identity proofs. As a result, some schools were facing problems in disbursing stipends, especially to children of migrant families.

Despite a recent increase in the number of girls attending school, gender discrimination is still evident in education in India. The traditional place of the woman is in the home, and so many parents and children consider education for girls to be a waste of time especially when the child can instead be working or performing domestic chores.

The Eleventh Plan Working Group Report called for urgent action to be taken to develop multiple strategies to enable girls to go beyond the primary stage. The report recommended that a school sanitation programme in both rural and urban areas should be considered, as well as a general focus on creating a girl-friendly classroom and environment. It recommended that both the special schemes to promote girls’ education – National Programme for Education of Girls at Elementary Level (NPEGEL) and the Kasturba Gandhi Balika Vidyalaya Scheme (KGBVS) to provide educational facilities for girls belonging to SCs, STs, OBCs, minority communities and BPL families in Educationally Backward Blocks – be continued in the Eleventh Five Year Plan. It stated that the success be measured on the quality of education provided to girls, for example through achievement rates in examinations and transition to the next level, as opposed to simply on enrolment rates.

520 ibid.
522 i-india, Gender discrimination. Available at: http://www.i-indiaonline.com/sc_crisis_theproblem.htm#gender.
Even though both schemes aim at addressing educational needs of girls, inadequate resources in the schemes to cover the girls who have dropped out of schools leaves out a major number of beneficiaries who should ideally be covered under these. Also while special intervention programmes such as NPEGEL, KGBVS are important for girl’s education, cannot only be dealt with through schemes and must be addressed systematically.\(^{525}\)

There has been constant demand for reviewing and accelerating the physical progress of the schemes.\(^{526}\)

There are 1,652 mother tongues spoken in India.\(^{527}\) Children from linguistic minorities also face difficulty and discrimination as they are often unable to access education in their mother tongue. This is a particularly important issue in most of the inter-state border areas and places with a concentration of migrants with a different language background.\(^{528}\) The Indian Constitution allows linguistic minority groups to receive education in their mother tongue (Article 350). However, the large majority of children in India today begin school confronted by a language that is not their mother tongue and that they do not understand, making learning extremely difficult and impacting negatively on their overall learning. Under the SSA, only a few states such as Andhra Pradesh and Orissa have initiated bilingual or multilingual education strategies.\(^{529}\) In Chhattisgarh, some text books are available in Gondi, Sadri, Abujmari, etc. There have been some efforts made by the civil society to introduce text books in other local dialects such as Baiga, Hindi and Chhattisgarhi.

Although policy talks of integration of disabled children, practice does not provide either the physical infrastructure required or the special education skills that teachers may need. The Elementary Education in India, Analytical Report, 2008-09 states that ramps in school has increased from 17.14 percent in 2005-06 to 40.39 percent in 2008-09.\(^{530}\) Two main policies introduced for improving the educational status of disabled are the National Action Plan for Inclusion in Education of the Children and Persons with Disabilities (MHRD 2005) and the National Policy for Persons with Disabilities in 2006 (MSJE). While the policies have been recognised as most progressive disability policy frameworks amongst developing economies, it needs to be noted that there remains a huge challenge in operationalising the vision entailed in these documents.\(^{531}\)

Children with HIV/AIDS are thrown out, as are others with communicable diseases such as leprosy. The government has devolved responsibilities for education across different ministries and departments raising issues of lack of coordination, inability to develop a coherent strategy and duplication of efforts. For example, the education of children with disabilities attending special schools is the responsibility of the MSJE, whereas children with disabilities in mainstream settings fall under the purview of MHRD. While the former is financing special schools, the latter is trying to evolve an inclusive approach. This fragmented approach historically adopted by the government in response to the perceived unique needs of certain group of children raises an important dilemma.

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\(^{526}\) ibid.


\(^{528}\) ibid.


\(^{530}\) Arun C Mehta. Elementary Education in India. Analytical Tables 2008-09. National Institute of Educational Planning and Administration, New Delhi.

Children with Disability continue to be denied their right to education
Disabled child alleges discrimination in HC

New Delhi A disabled child, who was allegedly denied admission in the nursery section of Sardar Patel Vidyalaya, has approached the High Court. The child’s father submitted that his son has 75 percent disability but the school considered his application in the general category. The government was directed to conduct an inquiry. Notices were issued to the DoE and the school.

Express News Service Fri, 8 Apr 2011

Dear Friends,

There are a number of schools who refuse admission to disabled students. But I was really shocked to learn that a boy was denied admission to some of Mumbai schools simply because his mother is blind. The reasons given is “how will the parent manage the child’s homework”. I think this is ridiculous. The school must be stripped of their license. This is case of a centre of learning behaving operating in the dark ages. Whether there should be homework at all is of course another matter of debate. I understand that there are schools in Delhi too who have turned children of blind parents away for the same reason.

George Abraham
CEO
Score Foundation
17/107, LGF
Vikram Vihar, Lajpatnagar 4
New Delhi 110024

Received by Email On Sat, Mar 19, 2011 at 1:07 PM, George Abraham <george@eyeway.org>

City schools not open to autistic kids

Joyeeta Ghosh, Hindustan Times, New Delhi, April 07, 2011

First Published: 23:03 IST(7/4/2011)
Last Updated: 23:05 IST(7/4/2011)

Maheesh Karthik, 10, is a bundle of energy and fun. He is so active that sometimes his friends fail to keep up with him. “If he keeps jumping, it’s very difficult to control him,” said Sharda Kesan, his mother. It is this hyperactive behaviour of Karthik that made him ‘unfit’ for a regular school. “It was at the age of four that his teachers and classmates found it difficult to deal with him,” added Kesan. Karthik was subsequently moved to a special school that deals with children with autism.

As the world gets ready to observe Autism Day on Friday, parents of children with autism in India said they find it difficult to send their wards to school. In Delhi, one finds only a handful of schools that have an inclusive set up.

“The latest figures suggest that every 1 out of 150 children are detected with autism worldwide. But where are the schools for children like these? Most schools neither have any awareness nor the infrastructure to deal with autistic children,” said Dr Shelja Sen, child and adolescent psychologist and family therapist.

7B.1.9 Parallel Systems of Education

Non-formal education (NFE) centres are mainly meant for children who have been forced out of the mainstream school system, mostly because of their socio-economic circumstances. The Central Government is involved in providing two types of NFE centres: one run under the SSA (for those who do not have physical access to a school) and the other run under the National Child Labour Project (NLLP). Within the government system there are parallel systems such as District Primary Education Programme (DPEP), Lok Jumbish, Kendra Vidyalaya, Sarvodaya Vidyalaya, Navodaya Vidyalaya, Municipal Schools, Tribal Residential Schools, etc.

The experience of programmes like Lok Jumbish and DPEP, where flexible strategies of alternative schooling were implemented, led to the introduction of the Education Guarantee Scheme (EGS) and Alternate Innovative
Education (AIE). The EGS and AIE were introduced based on the assumption that the planning for universalisation of elementary education (UEE) for all children in the 6-14 years age group should be done in a holistic manner. In most states, the planning for NFE for “out-of-school” children has followed a “parallel track” approach to the formal system, the underlying assumption being that the only option for “out-of-school” children is part-time, non-formal education. The EGS component, viz. the setting up of alternative school in small, unserved habitations, would cover the entire country according to the actual requirement. But the centres tend to have very high dropout rates, due to teachers who lack training, lack of facilities and funds and inadequate community involvement. They do not follow the curriculum used in the government school system and instead tend to use books that are easily available in the market. Therefore, children’s competency levels are seldom in the same range as that of their counterparts in regular schools and a non-level playing field is created for children. The Convenor of the Right to Education Taskforce, Ashok Aggarwal, has argued that children should be in regular schools, not “transformatory” schools, and that the NFE centres benefit NGOs more than the children themselves as they guarantee the NGOs income.

Recognising that the challenge for the SSA is to be able to address the needs for access and quality education for each and every child, the MHRD’s report for the Eleventh Plan Working Group highlights two main areas of focus for the Eleventh Plan period: 1) improvement of the quality of education, and 2) focus on disadvantaged and educationally backward areas and social groups that are lagging behind.

7B.1.10 Problem lies in conceptualisation of interventions

7B.1.10.1 Growing dependence on private sector

With the poor standard of many government schools, there is an increasing dependence on market forces to fill the educational deficit. This is leading to a situation, described by P Sainath, the acclaimed journalist, as one where “your educational attainment has very little to do with your quality as a student and everything to do with your ability to pay.”

The National University of Educational Planning and Administration (NEUPA) undertakes an educational survey as part of their District Information System for Education (DISE).

As per the data collected by DISE, three out of every four students in elementary education are from government schools and 84.85 percent of the schools imparting elementary education were government managed, which included those run by the Department of Education, Local Bodies and Tribal/Social Welfare Department. Further, irrespective of types of school, the percentage share of government schools has been lower than their share in the number of schools considered. About 79 percent of the total independent Upper Primary schools are under government management, with 66.95 percent of total enrolment.
However, its Analytical Report 2005-2006\textsuperscript{543} is based on data collected from recognised schools only (there may be other children in unrecognised, EGS and alternative learning schools). This is important because in a recent study of enrolment of children in Punjab,\textsuperscript{544} figures on enrolment of children in unrecognised schools show that the numbers are very large.

Overall, the ASER 2010 Report shows that private school enrolment for rural children in the age group 6 to 14 has increased from 21.8 percent in 2009 to 24.3 percent in 2010.\textsuperscript{545} This number has risen steadily since 2005 when it was 16.3 percent nationally.\textsuperscript{546}

According to the CABE Committee, almost 25 percent of secondary schools in India are now private, unaided schools, with students coming only from the privileged sections of society.\textsuperscript{547} A huge 46 percent of all secondary school students are attending private schools.\textsuperscript{548}

\subsection{7B.1.10.2 Sarva Shiksha Abhiyaan}

India has from time to time introduced various educational reforms. We have had Operation Blackboard, District Primary Education Programme (DPEP), several state based programmes such as Bihar Education Project, Lok Jumbish of Rajasthan etc. However, a vast majority of children is still out of school. The Sarva Shiksha Abhiyaan (SSA) was launched by the Government of India to achieve Universalisation of Elementary Education (UEE) in a time bound manner, as mandated by the 86th amendment to the Constitution of India making free and compulsory education of 6 to 14 year old children a Fundamental Right.\textsuperscript{549} The programme sought to open new schools in those habitations that do not have schooling facilities and strengthen existing school infrastructure through provision of additional class rooms, toilets, drinking water, maintenance grant and school improvement grants.\textsuperscript{550} Existing schools with inadequate teacher strength were to be provided with additional teachers and provide capacity building to existing teachers. The SSA aims at providing quality elementary education including life skills, is focussed on girls’ education and children with special needs and also seeks to provide computer education to bridge the digital divide.\textsuperscript{551} The SSA has been designed as the government’s flagship programme to achieve UEE.

But what does one do when the flagship itself is flawed? Although promoting education for all, the programme is not designed to provide equal education for all. Much-advertised programmes under the SSA, such as the Education Guarantee Scheme, promote parallel systems of education in which less qualified, under-paid, local para teachers are replacing trained professional teachers. Also, the concept of multi-grade teaching, in which one teacher is responsible for teaching many classes, each of them overcrowded, continues. Clearly, these programmes are aimed at providing literacy skills to children who are school dropouts and unable to access schools.

The Abhiyaan launched in 2001 is a joint effort on the part of Central and state governments. The SSA is a national programme largely resourced through national resources and supplemented by external funding from the World Bank’s International Development Association (IDA), the UK’s International Department for

\begin{itemize}
\item 543 ibid.
\item 544 ibid.
\item 546 ibid.
\item 548 ibid.
\item 549 Sarva Shiksha Abhiyaan, a programme for the universalization of elementary education. Available at: http://ssa.nic.in/
\item 550 ibid.
\item 551 ibid.
\end{itemize}
International Development (DFID) and the European Commission (EC). While the Central government’s contribution is 75 percent, it is subject to the condition that 25 percent contribution comes from the states, failing which the Central Government does not put in its share. Given their precarious financial condition, many state exchequers are unable to put in their share. There is also often the issue of poor implementation of the programmes in the states.

The first Joint Review Mission was conducted in 2005 to review the progress in the implementation of the programme with respect to development objectives, namely, access and enrolment, bridging gender and social gaps and retaining all children in elementary education till completion and quality of education. The review concluded by recommending improvement in data collection of out-of-school children for better planning and policy interventions. It highlighted the necessity of effective strategies for translating high enrolment to high attendance throughout the school year. The review also suggested that urgent attention had to be paid to the issues of access to schools in urban areas. The latest Joint Review Mission was conducted in January 2011. It suggested trial even though access and enrolment levels have increased over the years, the issues with retention, quality of education, gender and social gaps persist.

<table>
<thead>
<tr>
<th>Table 7.10: Access and Enrolment</th>
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<tbody>
<tr>
<td><strong>Primary Enrolment</strong></td>
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<tr>
<td>--------------------------</td>
</tr>
<tr>
<td>Primary Enrolment</td>
</tr>
<tr>
<td>Upper Primary Enrolment</td>
</tr>
<tr>
<td>Elementary Enrolment</td>
</tr>
<tr>
<td>GER Primary</td>
</tr>
<tr>
<td>NER Primary</td>
</tr>
<tr>
<td>GER Upper Primary</td>
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<tr>
<td>NER Upper Primary</td>
</tr>
<tr>
<td>Elementary Enrolment in government schools + aided schools</td>
</tr>
<tr>
<td>Out of School Children +</td>
</tr>
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</table>


The Evaluation Report on SSA conducted for the Planning Commission by the Programme Evaluation Organisation of 2010 suggests that universal access has not been achieved due to formations of new habitations over time, non-availability of land, delays in construction, procedural delays and lack of community involvement. It further states that universal enrolment has been a challenge due to seasonal migration, illiteracy, economic backwardness, lack of awareness, etc. This clearly shows that though some improvement has been made overall, the goals laid down by the Sarva Shiksha Abhiyaan have not yet been fully achieved. Now, with an entire new law on education, one has to closely analyse the implications it will have on schemes such as the SSA.

**SSA vis-à-vis the RTE Act**

Many believe that the RTE would help realise the SSA goals because while the SSA had no legal backing to achieve its goals, the RTE makes it legally binding for local and state governments. To assess the implications

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553 The Joint Review Mission was conducted by the Department of School Education and Literacy under the Ministry of Human Resources Development and other Development Partners including World Bank, United Kingdom’s International Department for International Development and European Commission.
of the RTE on the SSA, a committee was set up by the Department of School Education and Literacy under the chairpersonship of former GoI Education Secretary Anil Bordia to suggest follow-up action on the SSA vis-à-vis the RTE Act. The report highlighted that all EGS centres currently running under SSA, numbering about 26,000 in 2009-10, will need to be upgraded to regular primary schools within three years or closed down. It also suggests how to operationalise several provisions under the RTE such as teacher education capacity, mechanism for admission of 25 percent children from disadvantaged groups, etc. Further, all states will now be required to have an explicit policy for opening of schools. It also highlighted the financial implications of implementing the SSA vis-à-vis the RTE.

The SSA has done some groundwork for implementing large-scale educational programmes. It is expected to be the main vehicle for RTE implementation. From its language, the RTE does have certain advantages over the SSA; for example, it prescribes certain standards for schools to follow while in the SSA the quality of education has suffered due to sub-standard educational institutions. The RTE will also have to work towards retention, assessing of learning outcomes, funding and active community participation, which the SSA could not achieve.

7B.1.10.3  Loopholes in the Right to Free and Compulsory Education Act, 2009

The Right to Education Act came into force on 1 April 2010, covering the entire country except Jammu and Kashmir, as per the Central Gazette Notification dated 19 February 2010. Theoretically, this meant that all provisions under the Act, including norms and standards for schools, should have been in place across the country on the day of its commencement. The notification of Central Rules was made on 8 April 2010 as required under Section 38 of the Act. But it was not until the draft Model Rules for the states was circulated in February 2010 by the Centre along with a favourable hint at fund-sharing between the Centre and the states that some states began to mull implementation of the Act, albeit with a lot of hesitation and doubt that persist to this day.

The fact that neither the 86th Amendment nor the RTE addresses children in the 0 to 6 or 15 to 18 age group has been an issue that educationists and activists have been critical about. Another cause for scepticism has been the fact that the bill when passed was not accompanied by a Financial Memorandum.

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556 Chitta Behera, A dismal report card. Available at: http://infochangeindia.org/education/analysis/a-dismal-report-card.html

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234
It has been criticised for being a law that empowers the government (a) to abdicate its Constitutional obligation to provide mass education of equitable quality; (b) to demolish the vast government school system except the elite schools like Kendriya or Navodaya Vidyalayas, the proposed 6,000 model schools or similar categories in the states; and (c) to expedite the pace of privatisation and commercialisation through public-private partnership. It is felt that it “can neither equip a child with the necessary knowledge and skills to face the world of work nor does it empower the child to deal with the challenges of a globalising economy. What career avenues – professional or otherwise – are open to a child with merely eight years of elementary education?”

Tackling child labour is closely related with progress on basic education. There are many children who are not in school and many who are enrolled but do not attend on a regular basis. There has to be a strengthened global, national and local level commitment to ensuring education for all children at least up to the age of 18.

The RTE Act and the Rules now require all private schools (whether aided or not) to reserve at least 25 percent of their seats for economically weaker and socially disadvantaged sections in the entry level class. These students need not pay tuition fees. Private schools will receive reimbursements from the government calculated on the basis of per child expenditure in government schools. It also prohibits physical punishment, emotional harassment, expulsion or detention of a child and deployment of teachers for non-educational purposes other than census or election duty and disaster relief. Running a school without recognition will attract penal action.

Further, the RTE is virtually silent on children with disability. It does not explicitly cover children with disabilities in Section 2(d) of the RTE Act, which otherwise lists children belonging to disadvantaged groups. It only allows the appropriate government to specify, by notification, any other group of children who are disadvantaged as a result of any other factor. Thus, appropriate governments can issue a notification in Section 2(d) of the RTE Act to include children with disabilities, within the category of “children belonging to disadvantaged groups.”

Section 3(2) of the Act qualifies that only a child suffering from disability as defined under Clause (i) of Section (2) of the PWD Act, 1996 shall have the right to pursue free and compulsory elementary education in accordance with provisions of Chapter 5 of the said Act. This would end up creating more confusion as the RTE Act provides for free and compulsory education to ‘children’ between the ages six and 14 years, but under the Persons with Disability Act, a child refers to a person up to the age of 18 years. Also, the PWD Act, 1996 excludes children suffering from certain disabilities, such as cerebral palsy, autism and learning disabilities like dyslexia, dyspraxia, etc. Further, Chapter 5 of the PWD Act, 1996 permits a multi-option model for education of children with special needs (CWSN.), which includes “special schools”, etc.

Moreover, the Act or the Draft Rules do not mention a “resource support” teacher who is trained to handle all kinds of visual, hearing, intellectual, learning and physical disability and who helps a disabled child inside the classroom when he/she attends mainstream education. The ambiguity surrounding the role of the School Management Committee in the RTE is another issue. It is not clear whether and how the SMC’s should evaluate students’ learning outcomes and teacher competencies.

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559 India Gateway, *India Clears the Education Bill*. Available at: http://www.indg.in/primary-education/policiesandschemes/right-to-education-bill

560 ibid.


562 ibid.

7B.1.10.4 Is the Right of Children to Free and Compulsory Education (RTE) Act truly justiciable?

It may not be possible for any person to approach the courts directly under the Act as it requires persons to approach the local authority and at best the State Commissions for Protection of Child Rights. The Act almost prohibits all legal proceedings against anyone in this case under Section 37: “No suit or other legal proceedings shall lie against the central government, the state government, the National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights, the local authority or the school management committee, or any person, in respect of anything which is in good faith done or intended to be done, in pursuance of this Act, or any rules or order made there under.”

The release says another mandatory provision – the State Commission for Protection of Child Rights (SCPCR) that is supposed to be the monitoring authority and highest appellate body for grievance redressal according to Sections 31 and 32 of the Act – has been complied with by only one-third of the states, namely Assam, Bihar, Chhattisgarh, Delhi, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Mizoram, Punjab, Orissa, Rajasthan and Sikkim. Broadly speaking, therefore, two-thirds of India still remains outside the ambit of the RTE Act 2009 – a fact that only makes this particular law weak.564

As mentioned above, even in the case of corporal punishment, the Act specifies only disciplinary action under the service rules and not criminal action against the perpetrator. There is also no penal provision for flouting or non-compliance of the Act.

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7B.1.10.5 Financing and Implementation of Education

The RTE Act is considered a building block to ensure that every child has his or her right (as an entitlement) to get a quality elementary education and that the State, with the help of families and communities, fulfils this obligation.565 Central and state governments shall share financial responsibility for the RTE.

As of now, the Central government has to prepare the estimates of expenditures and state governments will be provided a percentage of these costs.566 The state government will be responsible for providing the remaining funds needed to implement.567

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564 Chitta Behera, A dismal report card. Available at: http://infochangeindia.org/education/analysis/a-dismal-report-card.html
567 ibid.
From the above Table 7.11, it can be seen that the share of education has risen slightly in the past two years of the previous 10 year-period. The difference between allocation and expenditure has fluctuated during 2000 and 2007. In the 2011-2012 Union Budget, the allocation for education (elementary and secondary) has seen an almost 30 percent increase.568 Two new scholarship schemes at the pre-Matric level for SC and ST students and an increase in scholarship for minority children is indeed welcome. But the over 34 percent decrease in the National Means cum Merit Scholarship Scheme at the secondary stage is bound to impact the access of poor children who do not fall into these categories.569 There has been a 40 percent hike in the allocation for SSA, which constitutes 65.32 percent of the total allocation made for elementary education; of this, 57.1 percent comes from Parambhik Shiksha Kosh (PSK), which is collected from the 2 percent cess that every citizen contributes.570 It is ironical that a large number of children still remains out of school despite citizens’ contribution to creating resources for education.571 Besides, what does it say about the government’s own commitment towards investment in education?572

### Table 7.11: Difference between Allocation and Expenditure

<table>
<thead>
<tr>
<th>Year</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-01</td>
<td>-11.99</td>
</tr>
<tr>
<td>2001-02</td>
<td>-5.37</td>
</tr>
<tr>
<td>2002-03</td>
<td>-3.25</td>
</tr>
<tr>
<td>2003-04</td>
<td>10.43</td>
</tr>
<tr>
<td>2004-05</td>
<td>24.22</td>
</tr>
<tr>
<td>2005-06</td>
<td>6.99</td>
</tr>
<tr>
<td>2006-07</td>
<td>-1.69</td>
</tr>
</tbody>
</table>

Source: HAQ: Centre for Child Rights, Budget for Children Analysis
The PAISA report has calculated the cost implication of implementing RTE Act (see Table 7.12.)

### Table 7.12: RTE Cost Calculations

<table>
<thead>
<tr>
<th>STATES</th>
<th>Number of Out of School Children</th>
<th>Number of Teachers</th>
<th>Number of Schools</th>
<th>Teacher Cost (Rs. Crore)</th>
<th>Classroom Cost (Rs. Crore)</th>
<th>Other Infrastructure Cost (Rs. Crore)</th>
<th>Total Cost (Rs. Crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bihar</td>
<td>4,422,846</td>
<td>139,144</td>
<td>21,777</td>
<td>1,754.5</td>
<td>4,290.9</td>
<td>1,196.6</td>
<td>7,242.9</td>
</tr>
<tr>
<td>UP</td>
<td>5,485,061</td>
<td>167,241</td>
<td>50,004</td>
<td>654.1</td>
<td>2,930.8</td>
<td>2,479.2</td>
<td>6,064.0</td>
</tr>
<tr>
<td>Andhra</td>
<td>1,117,126</td>
<td>32,615</td>
<td>26,430</td>
<td>75.5</td>
<td>1,210.9</td>
<td>1,440.7</td>
<td>2,727.0</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>1,713,849</td>
<td>51,894</td>
<td>26,535</td>
<td>335.5</td>
<td>786.3</td>
<td>1,566.0</td>
<td>2,687.7</td>
</tr>
<tr>
<td>WB</td>
<td>1,732,930</td>
<td>51,069</td>
<td>13,219</td>
<td>361.9</td>
<td>1,221.7</td>
<td>658.4</td>
<td>2,241.9</td>
</tr>
<tr>
<td>Gujarat</td>
<td>1,000,726</td>
<td>29,205</td>
<td>10,569</td>
<td>146.7</td>
<td>1,241.2</td>
<td>617.7</td>
<td>2,005.5</td>
</tr>
<tr>
<td>Orissa</td>
<td>951,038</td>
<td>28,204</td>
<td>14,543</td>
<td>120.4</td>
<td>929.9</td>
<td>863.0</td>
<td>1,913.3</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>886,362</td>
<td>26,264</td>
<td>8,855</td>
<td>135.6</td>
<td>744.4</td>
<td>667.0</td>
<td>1,547.0</td>
</tr>
<tr>
<td>Karnataka</td>
<td>610,969</td>
<td>18,019</td>
<td>9,285</td>
<td>297.2</td>
<td>615.0</td>
<td>549.4</td>
<td>1,461.6</td>
</tr>
<tr>
<td>MP</td>
<td>1,190,250</td>
<td>35,871</td>
<td>10,521</td>
<td>267.0</td>
<td>777.9</td>
<td>NA</td>
<td>1,044.9</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>759,452</td>
<td>23,596</td>
<td>6,419</td>
<td>54.0</td>
<td>559.8</td>
<td>336.5</td>
<td>950.3</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>434,780</td>
<td>12,924</td>
<td>4,574</td>
<td>117.1</td>
<td>362.5</td>
<td>269.0</td>
<td>748.6</td>
</tr>
<tr>
<td>Assam</td>
<td>400,978</td>
<td>11,983</td>
<td>6,131</td>
<td>162.8</td>
<td>249.6</td>
<td>294.4</td>
<td>706.8</td>
</tr>
<tr>
<td>Punjab</td>
<td>335,495</td>
<td>9,890</td>
<td>4,386</td>
<td>176.6</td>
<td>255.6</td>
<td>234.5</td>
<td>667.6</td>
</tr>
<tr>
<td>Haryana</td>
<td>303,588</td>
<td>9,227</td>
<td>2,576</td>
<td>217.0</td>
<td>239.1</td>
<td>111.3</td>
<td>567.4</td>
</tr>
<tr>
<td>TN</td>
<td>150,655</td>
<td>4,358</td>
<td>1,729</td>
<td>81.6</td>
<td>121.4</td>
<td>114.9</td>
<td>317.9</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>118,361</td>
<td>3,590</td>
<td>1,828</td>
<td>70.3</td>
<td>35.1</td>
<td>81.9</td>
<td>187.2</td>
</tr>
<tr>
<td>Tripura</td>
<td>62,447</td>
<td>1,874</td>
<td>786</td>
<td>14.5</td>
<td>35.9</td>
<td>99.8</td>
<td>150.2</td>
</tr>
<tr>
<td>Arunachal</td>
<td>28,834</td>
<td>915</td>
<td>464</td>
<td>10.1</td>
<td>18.8</td>
<td>42.3</td>
<td>71.3</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>28,775</td>
<td>862</td>
<td>658</td>
<td>5.6</td>
<td>15.9</td>
<td>28.7</td>
<td>50.2</td>
</tr>
<tr>
<td>HP</td>
<td>20,197</td>
<td>580</td>
<td>309</td>
<td>7.0</td>
<td>14.5</td>
<td>17.4</td>
<td>38.8</td>
</tr>
<tr>
<td>Kerala</td>
<td>24,121</td>
<td>778</td>
<td>93</td>
<td>13.1</td>
<td>19.3</td>
<td>4.8</td>
<td>37.2</td>
</tr>
<tr>
<td>Manipur</td>
<td>19,404</td>
<td>579</td>
<td>311</td>
<td>8.2</td>
<td>NA</td>
<td>12.9</td>
<td>21.1</td>
</tr>
<tr>
<td>Nagaland</td>
<td>4,850</td>
<td>142</td>
<td>77</td>
<td>2.3</td>
<td>5.2</td>
<td>3.0</td>
<td>10.5</td>
</tr>
<tr>
<td>Sikkim</td>
<td>2,272</td>
<td>96</td>
<td>51</td>
<td>2.7</td>
<td>1.7</td>
<td>1.7</td>
<td>6.1</td>
</tr>
<tr>
<td>Jammu</td>
<td>82,143</td>
<td>2,527</td>
<td>566</td>
<td>5.3</td>
<td>NA</td>
<td>-</td>
<td>5.3</td>
</tr>
<tr>
<td>Mizoram</td>
<td>2,629</td>
<td>78</td>
<td>35</td>
<td>0.9</td>
<td>2.2</td>
<td>1.8</td>
<td>4.8</td>
</tr>
<tr>
<td>UNI TERRITORY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dadra</td>
<td>4,558</td>
<td>139</td>
<td>22</td>
<td>NA</td>
<td>NA</td>
<td>1.3</td>
<td>1.3</td>
</tr>
<tr>
<td>Daman</td>
<td>632</td>
<td>19</td>
<td>15</td>
<td>NA</td>
<td>NA</td>
<td>0.9</td>
<td>0.9</td>
</tr>
<tr>
<td>Pooncherry</td>
<td>2,395</td>
<td>71</td>
<td>3</td>
<td>NA</td>
<td>NA</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>2,307</td>
<td>65</td>
<td>37</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>-</td>
</tr>
<tr>
<td>Delhi</td>
<td>8,054</td>
<td>243</td>
<td>122</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>-</td>
</tr>
<tr>
<td>Andaman</td>
<td>1,398</td>
<td>41</td>
<td>22</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>21,916,059</td>
<td>664,288</td>
<td>211,776</td>
<td>5,099</td>
<td>16,685</td>
<td>11,700</td>
<td>33,484</td>
</tr>
</tbody>
</table>

Number of teachers calculated using PTR 30 for standard I-V
Sample was not available for shaded cells, Enrolment of 30 for Primary and 40 for Upper primary has been applied to calculate number of schools.

The EDWATCH report concludes: “Although there has been a substantial increase in the allocation of budget for education by the Union Government but the overall expenditures in terms of GDP, [the] proportion of budget to total budget as well as proportion of education budget to total social sector budget shows declining trends during 2000-2010.”

Indeed, since the last two subsequent annual Union Budgets (2009-10 and 2010-11) have failed to live up to the expectations raised by the Eleventh Five Year Plan allocations, questions arise regarding the government’s seriousness to implement the Right to Elementary Education.573

7B.1.10.6 Monitoring RTE: Role of NCPCR and the State Commissions

The National Commission for Protection of Child Rights (NCPCR) has been designated as the agency to monitor provisions of the Right to Free and Compulsory Education (RTE) Act. The NCPCR has taken the initiative to build a consensus among institutions, government departments, civil society and other stakeholders.574 It has instituted an expert committee comprising officials from various government departments, persons of eminence and experience in the field of education, to focus on the roadmap for proper implementation of the RTE.575 It has also designated State representative in 15 states who would monitor and report on the implementation of the RTE in the state.576

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573 National Coalition for Education, Status of Elementary Education in India (Draft), EDWATCH Survey 2010. Available at: http://xa.yimg.com/kq/groups/8951350/1112235766/name/Status+of+elementary+education+in+India.docx


575 India Gateway, Selected RTE State Representatives for 15 States. Available at : http://www.indg.in/primary-education/policiesandschemes/final_list_of_selected_state_representatives_15_states.pdf

576 ibid.
### Table 7.13: Initiatives taken by States

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Item</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Notification of State RTE Rules</td>
<td>Arunachal Pradesh, Manipur, Orissa, Sikkim have notified their State RTE Rules; A&amp;N Islands, Chandigarh have adopted Central RTE Rules. Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Gujarat, Himachal Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Nagaland, Puducherry, Punjab, Rajasthan, Tamil Nadu, Tripur, Uttar Pradesh, Uttaranchal, West Bengal have prepared the draft State RTE Rules.</td>
</tr>
<tr>
<td>2.</td>
<td>Constitution of SCPCR/REPA (11 States)</td>
<td>Assam, Bihar, Chhattisgarh, Delhi, Haryana, J&amp;K, Madhya Pradesh, Maharashtra, Mizoram, Rajasthan, Sikkim notified.</td>
</tr>
</tbody>
</table>

7B.1.10.7 Mid-Day Meal Scheme (MDMS)

The Mid Day Meal Scheme, or National Programme of Nutritional Support to Primary Education, was launched by the Central Government in 1995 and involves the provision of a free cooked meal to all children in Classes 1-5 of government and government-aided schools. As well as tackling the serious issue of malnutrition in children, this also serves as an incentive to attract and retain students from the poorest families. In June 2006, the scheme was revised to provide 450 calories from a meal from 300.577

In October 2007, the scheme was further revised to cover children in upper primary school (Classes 6 to 8) initially in 3479 Educationally Backward Blocks (EBBs). Around 17 million upper primary children are expected to be included by this expansion of the scheme. It is proposed that the programme be extended to all areas

across the country from 2008-09. The calorific value of a mid-day meal at upper primary stage has been fixed at a minimum of 700 calories and 20 grammes of protein by providing 150 grammes of food grains (rice/wheat) per child/school day.

The MDM Scheme was launched in 1995 to enhance enrolment, retention and participation of children in primary schools, simultaneously improving their nutritional status. A review of MDM Scheme indicates absence of proper management structure in many states. Even the reported average number of school days on which meals are provided varied widely – the NUEPA reports 209 days per annum while the MHRD reports 230 days at the national level. Steering Committees at state/district levels for effective monitoring are yet to be set up in some states.578

Reports of “caste bias” in the implementation of the MDM scheme continue to be a matter for serious concern. The Department for Human Resource Development found that caste discrimination in serving food exists in several states such as Haryana and Karnataka.579 Another survey of the practice of untouchability in 565 villages in 11 states reveals that in as many as 38 percent of government schools, dalit children are made to sit separately whilst eating.580 The Seventh Report of the Commissioners of the Supreme Court also expressed concern about continued reports of caste discrimination during the serving of the meals, when children are made to sit separately or served smaller meals or given different plates.581 Discrimination is also seen in the appointing of cooks. In spite of an order from the Supreme Court that preference should be given to SC/ST cooks, it is seen that the majority of schools still do not do so.582

There are still serious concerns in many places regarding the quality of food served to the children under this scheme. Lack of a varied menu and failure to provide a sufficient amount of vegetables and fruit and concerns about hygiene and numerous reported and unreported cases of children falling sick after their meal all undermine the purpose of the scheme and continue to pose major concerns.584 One parent, on seeing that the quality of the rice being distributed was of the kind he used to feed his chickens, instructed his child not to eat the food. He said: “Even though I am a poor man, I don’t allow my children to consume such low quality food.”585

A key issue is that the MDM is only served to children who are currently in school, whereas the most vulnerable children remain out of school working as child labourers or living on the street.586 The Seventh Report of the Commissioners of the Supreme Court recommends that the scheme be expanded to cover all children of school-going age, irrespective of whether they are going to school, to ensure that all children benefit from this vitally important nutrition programme.587

582 Ibid.
583 Ibid.
584 Ibid.
585 Thingbaijam Dhamen, SSA and mid-day meal scheme not meeting standards, Kangla Online, 22 December 2006.
587 Ibid.
Leisure and Cultural Activities (Article 31)

The importance of leisure time for children has to be realised as it bears a direct connection to their personal and intellectual development. It is also important to note that policy makers, programme planners and even the child’s own families have few doubts about reducing this time. When examination grades fall or family incomes dip, children are not allowed to play and opportunities to participate in extracurricular activities are often restricted as hours required for work or study are increased.  


The National Policy for Children, 1974, MWCD, GoI stated that physical education, games, sports and all type of recreational as well as cultural and scientific activity have to be promoted in school, community centres and such other institutions. Section 5.6 of the National Policy on Education, 1986 (as modified in 1992) says a warm welcoming approach, in which all concerned share solicitude for the welfare of the child, is the best motivation for the child to learn. The national policy also lists numerous attainments in physical and mental health, which can and will be promoted in the schools.

The National Charter for Children, 2003 also endorses the Right to Play and states that the state and community shall recognise that children require adequate play and leisure for their healthy development. It also states that the State and community must ensure that children of all ages and social groups are provided recreation facilities and services. Another provision which highlights the importance of play and leisure in the child’s life is in the JJ Act which lays down minimum standards of care to be provided for child in an institution, which includes guided recreation to be made available to all children and juveniles and indoor and outdoor games, outings, television, music, picnics and cultural programmes. Section 29 of the RTE talks about the all-round development of children wherein physical and mental abilities of children are to be developed, but it is limited to providing facilities to school and does not refer to play or games. However, a study conducted by the NCERT and UNICEF states that as many as 400 schools in Delhi do not have play grounds in a usable state and that the playgrounds that exist are not disabled-friendly.

There are hours in the day when children are not formally required to be in school or engaged in household. These hours, activities and often even programmes are considered discretionary – optional but not necessary or even particularly important – and the absence or disappearance of which would not be noticed by policy makers. Public recognition of the right to play of a child is low, a fact reflected in the scarcity of relevant data.


589 Butterflies, Conditions, Attitudes and Resources-Right to Play-New Delhi, A Study collating information pertaining to state of ‘play’ in the city of Delhi, New Delhi, 2010, p 7.
Further, a major deterrence to children’s right to play has been the mad race to score marks, vast syllabi and over-ambitious parents and schools.590

During a children’s consultation on the right to play, children expressed their desire to play, defined play, identified games and resources needed to play and spoke of ways in which the government and adults could be made responsible for play.591 Following the consultation with children, a roundtable consultation of eminent educationists and child rights specialists identified amongst other issues592

- the need to define “play”;
- the need to broaden the scope of the right to “play”;
- the need to focus on all children with special emphasis on the underprivileged children and girls;
- integration of play into school curriculum;
- infrastructural facilities for play;
- traditional toys and games;
- an assessment of “play”;
- play for out-of-school children;
- public spaces for play;
- improving parental interest in play;
- widespread awareness of government schemes and projects promoting play;
- integration of “play” into Right to Education Act; and
- the need to make parks equally accessible for children with disability.

The Supreme Court also underlined the importance of open spaces and playgrounds in Bangalore Medical Trust v BS Muddappa593 stating inter alia that they are required to protect the residents of the locality from the ill-effects of urbanisation and to ensure a place where children can run about and the aged and infirm can rest and as a place reserved for recreation.

There are not enough opportunities or space for children to play. This makes them passive. The present generation has taken to the internet; this leads to the early onset of lifestyle diseases like obesity and leaves them vulnerable to sexual predators online. In addition to communicating and being entertained for 53 hours a week, children and youth are also consuming powerful messages, stories, and images that will shape their understanding of who they are, what they should have to fit in, and how they should think and act.594 A change in mindset towards play as opposed to involvement in passive play through internet and video games is also responsible for children not being able to play. Regulation of public parks by bodies like Residents Welfare Associations (RWAs) leading to limiting access to play areas is also a serious concern. RWAs are creating and encouraging an element of class by allowing only certain groups of children to access parks/open spaces for play. Play/sports indeed enable children to break down barriers and it is important for RWAs to value this feeling and not create divisions in society.

590 Venita Kaul, India: Give children their Right to Play. 03 October, 2011. Available at: http://southasia.oneworld.net/todaysheadlines/india-give-children-their-right-to-play
591 Butterflies, Conditions, Attitudes and Resources-Right to Play-New Delhi, A Study collating information pertaining to state of ‘play’ in the city of Delhi, New Delhi, 2010, p 4.
592 Ibid.
593 (1991) 4 SCC 54
594 Gentile, Douglas; Walsh, David, A normative study of family media habits (Minneapolis: National Institute on Media and the Family, 2002). Available at: http://www.parentfurther.com/media
The concept of colony parks – which ideally should be used by all age groups for recreational activities – is fast changing. In April 2011, the Delhi High Court took a stand in a matter that came before regarding a park that was being used by children to play. The Rajinder Nagar Welfare Association argued that it was an ornamental park and therefore sports activity was not allowed. Their contention was against the Municipal Corporation of Delhi, which had installed iron mesh in one section of the park, segregating it from the walkways in the park. The court took the stand that if children are not permitted to play in the parks either, they will be left with no other place except the busy streets to play in, which will severely affect their behaviour pattern, growth and health.

This is not an isolated case. Children are discouraged from playing in most colony parks. In an April 2010 consultation on children’s right to play, the Chairperson of the Delhi Commission for Protection of Child Rights stated that there were five similar cases pending with the commission.

The planners and policy makers have to consider children as important stakeholders in development plans. The needs of children with disability should be looked into and they should have equal access with other children to play. Providing and promoting playgrounds and open spaces where children can play safely should be one of the key non-negotiable guiding principles of planning.

**Conclusion**

It is true that India has travelled some distance in moving towards the goal of education for all. We have come far but not only has the progress been slow – there have been some regressions. There has to be more focus on recreation and promotion of cultural activities amongst children.

This is because of the flaws in the very envisioning of how the government wants to reach its goals. The Right to Education cannot be ensured to all children in an equitable manner through laws and programmes that are differential in its very structure. How can education for all be achieved as a right if the law allowing children work in non-hazardous occupations continues?

As the Planning Commission has insightfully noted, “There has to be reorientation to meet the challenges of equity, retention, and high-quality education. This would require a strong rights orientation within the programme. It is necessary to consider passing appropriate legislation for this purpose. It would address access, quality, and equity holistically though a systems approach. Unless there is a strong effort to address the systemic issues of regular functioning of schools, teacher attendance and competence, accountability of educational administrators, pragmatic teacher transfer and promotion policies, effective decentralisation of school management, and transfer of powers to Panchayati Raj Institutions (PRIs), it would be difficult to build upon the gains of SSA. It is important to focus on good quality education of common standards, pedagogy, and syllabi to ensure minimum learning levels.”

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596 Rajinder Nagar Welfare Association & Another v. MCD and Others, on 26 April, 2011, WP (C) No. 13516/2009.

8. Special Protection Measures

Introduction

Whether it is through our Constitutional commitments or through the ratification of international conventions, India is committed to protecting its children from abuse, neglect and exploitation. Yet, India has the world’s largest number of sexually abused children. It has also the largest number of working children. Child abuse and violence against children have emerged as one of the most crucial and alarming problems in this country. Factors such as growing industrialisation, liberalisation, urban bias, inter-state and rural-urban migration, economic poverty, breakdown of family and community values and support systems etc., have resulted in children being the most marginalised and vulnerable victims.\(^{598}\)

This chapter is divided into two parts. The first part is a look at the different national and international commitments and where we stand on them, and the second part looks at the present situation of children in the country in terms of protection as it should be according to the Articles of the Convention on the Rights of the Child (CRC).

PART A

Progress on the Concluding Observations – A Quick Glance

At the time of the Initial Report, India was dealing with refugees from Sri Lanka, Tibet, Bangladesh and Myanmar; therefore, the chapter begins with an explanation on children as political refugees in the country. It goes on to explain the situation of children facing environmental emergencies, armed conflicts, children in conflict with law, child labour etc. It lays down different policies and programmes in place and different Supreme Court orders and directions on various issues related to child protection. The section on special protection measures for children in the First Periodic Report indicates that India has not moved on the recommendations made by the committee after the Initial Report. The Third and Fourth Combined Periodic Report submitted recently has responded to a few of the concerns raised by the Committee on the Rights of the Child.


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8A.1 Progress on Concluding Observations made by the CRC Committee

The policies and schemes introduced over the past few years indicate a change in the approach to child protection. But poor implementation and lack of resources and support have left room for improvement.

8A.1.1 Recommendations that have been complied with

- The Committee had recommended that India ratify the UN Convention against Transnational Organised Crime (CRC/C/15/ADD.228, para. 75(h)). India ratified the Convention in May 2011.

- The Integrated Child Protection Scheme (ICPS) was introduced in the Eleventh Five Year Plan (2007-2012) which is aimed at creating protective environment for children and help in speedy implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its Amendment Act 2006 (CRC/C/15/ADD.228, para. 80(d)).

8A.1.2 Measures underway

- The Committee recommended in its Concluding Observations the provision of necessary human and financial support for the establishment and reinforcement of toll-free ‘Childlines’ in all districts of the State party. The Childline was recognised as a component of the ICPS in the Eleventh Five Year Plan with a budget allocated for opening of new Childlines across the country, so far, 181 cities have Childline all districts are to be equipped with a Childline by 2017 (CRC/C/15/ADD.228, para. 66).

- The Juvenile Justice Act of 1986 was repealed in 2000 and radical changes were incorporated in the law. But the law is still not fully in compliance with the CRC (CRC/C/15/ADD.228, para. 80(a)).

8A.1.3 What Remains

- The Committee recommended that India should consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Government of India has not acceded to this Convention yet (CRC/C/15/ADD.228, para. 71).

- The Committee was deeply concerned that the Prevention of Terrorism Act, 2002 (POTA) allowed for the prosecution of children by special courts. As of now, POTA has been repealed but it is replaced by a new law under which children may be arrested – Unlawful Activities (Prevention) Amendment Act 2008 (CRC/C/15/ADD.228, para. 80(c)).

- India has not ratified ILO Convention No. 138 concerning the minimum age for admission to employment, and No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour (CRC/C/15/ADD.115, para. 71 & CRC/C/15/ADD.228, para. 73(d)).

- The Committee had recommended that a master plan be developed for drug control with the help of the UN Drug Control Programme (UNDCP). There is no master plan developed on drug control (CRC/C/15/ADD.115, para. 73).

- India has not yet withdrawn its Declaration on Article 32 of the CRC (CRC/C/15/ADD.115, para. 66 & CRC/C/15/ADD.228, para. 8).
8A.2 Shifting Goals on Child Protection

The changing concept of child protection is reflected in different policy and plan documents. The focus is now more on the preventive aspect and the approach is right-based. This is clear from the analysis of the goals in the Eleventh Five Year Plan (2007-2012), which focus on creating a protective environment so that children do not fall through the security net than the goals in the Ninth Five Year Plan (1997-2002), which talk more about the effective implementation of laws and widened rehabilitative measures. There have been changes made to laws that focus on child protection, such as the Juvenile Justice (Care and Protection of Children) Act, 2000; the Child Labour (Prohibition and Regulation) Act, 1986; Prohibition of Child Marriage Act, 2006 etc. Unfortunately, poor law enforcement remains a concern. The fact that many cases fail to result in a conviction – and that high numbers of cases are reported as “pending” – continues to act as a deterrent for children and their families to report cases of crimes and undermines their faith in the justice system. Some of the goals laid down were met while some remain unachieved. Some goals and commitments that were made in different policy and plan documents can be seen in the table below.

<table>
<thead>
<tr>
<th>Legal and Policy Commitments</th>
<th>Targets/Goals</th>
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| Constitution of India       | Article 15: …Not discriminate against any citizen…(3) Nothing in this Article shall prevent the state from making any special provision for women and children  
Article 23: Traffic in human beings and beggar 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 factory or mine or engaged in any other hazardous employment  
Article 39: …that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment |
| Ministry of Labour Citizen’s Charter | Commitment to the concerns of children and elimination of child labour from hazardous sectors  
All-out efforts for mainstreaming children from National Child Labour Project (NCLP) schools to the formal schools  
Children in the age group 5-8 years to be directly linked to the formal education and vocational training for children in the age group of 9-14 years |
| Ministry of Women and Child Development, Five Year Strategic Plan, 2011-16 | Create a solid foundation for a protective environment for children by addressing the gaps identified.  
Strengthen prevention of the child rights violation  
Create a knowledge base of vulnerable children and services available for them  
Enhance infrastructure for protection services  
Increase access to wider range and better quality of services  
Increase investment in child protection and raise awareness of child rights and their violation. |
| National Plan of Action for Children, 1992 | Improve protection of children in especially difficult circumstances  
To assist children affected by one or more disabilities, having no access to proper rehabilitative services…to lift up the status of those more marginalized |
| National Plan of Action for the SAARC decade of the Girl Child, 1991-2000 | To extend special protection for girls in difficult situations/circumstances arising out of natural calamities and manmade disasters and to those economically and socially deprived like SC/ST and physically and mentally disabled |
| National Plan of Action for Children, 2005 | Has a whole chapter dedicated to child protection: Children in difficult circumstances with the goals to  
• Ensure that best interest of the child is upheld in all policies, plans, programmes, interventions and in strategies for children in difficult circumstances  
• To create and uphold a safe, supportive and protective environment for all children within and outside the home.  
‘Children in difficult circumstances’: such as, orphans, street children, beggar children, migrant children, children affected by manmade and natural disasters, drug addicts, children of nomads, refugee children, slum and migrant children, children of commercial sex workers, children of prisoners, children affected by/in armed conflict, displaced children, evicted children, young children in charge of siblings, children born as eunuchs² or brought up by eunuchs and all other children in need of care and protection.  
A wide range of objectives to explicitly deal with all areas of child protection  
• To eliminate child labour from hazardous occupations by 2007, and progressively move towards complete eradication of all forms of child labour.  
• Link the child labour elimination efforts with education measures with an attempt to ensure that all children in the age group of 5-8 years get directly linked to school and the older children are mainstreamed to the formal education system through the rehabilitation centers by 2012  
• Adolescents’ Goals: ‘to eliminate child marriage by 2010’  
• To eliminate all forms of discrimination against the girl child which results in harmful and unethical practices like pre-natal sex selection, female foeticide and infanticide  
• To prevent children from getting into conflict with law.  
• To recognize, promote and protect the rights of children in conflict with law through preventive, protective, reformative and rehabilitative policies, laws, plans, strategies, programmes and interventions  
• To protect all children, both girls and boys, from all forms of sexual abuse and exploitation.  
• To prevent use of children for all forms of sexual exploitation, including child pornography.  
• To develop new and strengthen existing legal instruments to prevent sexual abuse and exploitation of children.  
• To stop sale of children and all forms of child trafficking, including for sexual purposes, marriage, labour, adoption, sports and entertainment and illegal activities, like organ trade, begging and drug peddling. |
| Ninth Five Year Plan, 1997-2002 | Describes children in ‘difficult circumstances’ as working children, child sex workers street children; Special efforts will be made to ensure that no street/destitute/orphaned child or any other child in difficult situations will be left uncovered for  
Action will be initiated to make the Immoral Traffic (Prevention) Act, 1956 (as amended in 1986) more specific, through amendments, to the problem of child prostitution and also make the punishment more stringent.  
Commits to enforce the on-going legal as well remedial/ rehabilitative measures to eliminate child labour not only by strengthening various instruments that prevent/combat the problem of child labour but also by ensuring their effective implementation  
Keeping in view the increasing problems of social mal- adjustment viz. juvenile delinquency/vagrancy, abuse, crime, and exploitation, the scope of the Juvenile Justice Act (JJ Act), 1986 will be widened with requisite infrastructural support of various statutory institutions in rehabilitating children, who come in conflict with law |
Every effort will be made to protect children from all forms of exploitation through strict enforcement of the existing legislations

**Tenth Five Year Plan, 2002-07**
- To ensure ‘protection’ for all children and in particular those with special needs and problems and those in difficult circumstances through effective implementation of the existing child-related legislations
- Describes ‘Children in Difficult Circumstances’ as street children, working children, child sex workers, child drug-addicts; children in conflict with law; children with disabilities; children with HIV/AIDS; children whose parents are in custody and suffering from HIV/AIDS, Tuberculosis, Leprosy; children affected by various disasters (natural and man-made); children affected by national and international conflicts, viz. political refugees, war victims, internally displaced and children whose families are in crisis, including those belonging to broken families
- A National Policy and Charter for Children as well as a National Commission for Children will be set up to protect and safeguard the rights of children

**Eleventh Five Year Plan, 2007-12**
- This Plan was a huge step forward in the realm of child protection and saw a paradigm shift in the approach to child protection, moving toward creation of a protective environment for children so that children do not fall through the security net in the first place
- Ensuring survival of the girl child and her right to be born
- The Eleventh Plan to ensure that Commissions for protection of child rights are constituted in all States and UTs at the earliest.
- Ministry of WCD will launch an Integrated Child Protection Scheme (ICPS)
- Ensuring a balanced sex ratio…review of the PC & PNDT Act with law enforcement authorities to ensure its implementation.
- Creating child-friendly protective services.
- Childline-1098, will be extended to rural areas and to all districts of the country
- Focus on Prevention of Girl Child Abuse, Exploitation and Violence, Prohibition of Child Marriage, reaching out to the marginalized and most vulnerable (Child workers, Eliminating Child Trafficking, Commercial Sexual Exploitation of Children, Child Pornography, Child Sex Tourism, HIV/AIDS-Infected/Affected Children, social integration of Children in Conflict with Law, Special provisions for children in distress/difficult circumstances (including children of prisoners), the need to see disability as a child protection issue, and simplifying adoption issues and preventing unscrupulous practices

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**PART B**

**Present Status on Child Protection**

As can be seen from the above, the approach to addressing child protection issues since the very beginning has been through interventions designed to address children who had already fallen through the security net, such as children in hazardous labour, street children, children with in need of care and protection, child in conflict with law etc. Due to close interaction between civil society, the Ministry of Women and Child Development (MWCD) and the Planning Commission, a paradigm shift took place and the thrust is now on the creation of a protective environment for children. This was done by introducing the ICPS. The scheme is in the early stages of implementation.

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India does not have the exact number of children who need special protection. The available data is limited to crimes that get reported to the police. Many crimes against children go unreported/under reported like child marriage, sexual abuse etc. Every year, a huge number of children go missing. Even in this day and age, children have to deal with increasing child sacrifice, infanticide, early marriage etc. There has been an increase in crimes against children such as murder, foeticide, selling of girls for prostitution, kidnapping and abduction, etc.

The National Study on Child Abuse, 2007 declared a lack of understanding of the extent, magnitude and trends of the child abuse problem in India. Although not completely reliable because of the criticism it has received on methodology and process of data collection, the picture of child abuse presented in this study is quite telling.

Some of the main recommendations of the study were to revise the National Policy on Children, 1974, introduce a separate national child protection policy and a child protection scheme, set up a data management system for child protection and improve outreach and support services, capacity building, advocacy, etc.

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**Major Findings from the Study on Child Abuse: India 2007**

**Physical Abuse**
- Two out of three children were physically abused.
- Over 50 percent of children in all 13 sample states were being subjected to one or the other form of physical abuse.
- Out of the children physically abused in family situations, 88.6 percent were physically abused by parents.
- 65 percent of schoolgoing children reported facing corporal punishment.
- 62 percent of the corporal punishment was in government and municipal schools.
- Andhra Pradesh, Assam, Bihar and Delhi consistently reported higher rates of abuse in all forms as compared to other states.
- Most children did not report the abuse to anyone.

**Sexual Abuse**
- 53.22 percent children reported having faced one or more forms of sexual abuse.
- Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls.
- 21.90 percent of child respondents reported facing severe forms of sexual abuse and 50.76 percent other forms of sexual abuse.
- Out of the child respondents, 5.69 percent reported being sexually assaulted.
- Children on the street, children at work and children in institutional care reported the highest incidence of sexual assault.
- 50 percent abuses are by persons known to the child or in a position of trust and responsibility.
- Most children did not report the matter to anyone.

**Emotional abuse and girl child neglect**
- Every second child reported facing emotional abuse.
- Equal percentage of both boys and girls reported facing emotional abuse.
- In 83 percent of cases parents were the abusers.
- 48.4 percent of girls wished they were boys.

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602 Refer to Section 8B.4.5.1 and Section 8B.3.2 for details
603 Refer to Section 8B.3.2 for details.
It also made specific recommendations towards the abuse of children in schools, at work, in institutions, etc. No impact assessment study was undertaken that could provide information on the measures taken to comply with the recommendations.

8B.1 Children in Situations of Emergency (Articles 22, 38 and 39)

While in its Concluding Observations based on the Initial Report the Committee has noted that natural disasters make children more vulnerable, it has made no specific recommendation on this issue. Natural disasters of emergency do not find a mention in the Concluding Observations based on the First Periodic Report of 2004.

In both Concluding Observations, the Committee had made recommendations on children impacted by emergency resulting out of armed conflicts.

8B.1.1 Children and Armed Conflict (Articles 38 and 39)

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<tr>
<th>Article 38</th>
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<tr>
<td>1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.</td>
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<tr>
<td>2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.</td>
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<tr>
<td>3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.</td>
</tr>
<tr>
<td>4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.</td>
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<th>Article 39</th>
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<tr>
<td>States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</td>
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In the Initial Report, India stated that children are not inducted into the armed forces and hence do not take a direct part in hostilities. However, *children are often innocent victims of armed violence*.

The Initial Report has very clearly desisted from using the term “armed conflict”. It also noted that terrorism has an adverse effect on education – leading to increase in dropout rates – and that children, especially teenagers, are often instigated into active involvement in armed conflicts, in violation of Article 38.

However, the First Periodic Report categorically states: “While India is not in a situation of armed conflict, there are major instances of terrorism, both cross-border and internal, and children are the unwitting victims of such strife”.

In its Action Taken Report, the Government of India states: “One of the key priorities in this area is to ensure a special focus on children in the National Disaster Relief Plan and contingency plans to meet emergency situations including situations of conflict”.


In India, 21 states face internal armed conflicts characterised by gross violations of international human rights and humanitarian laws both by the security forces and the armed opposition groups. Assam, Arunachal Pradesh, Mizoram, Nagaland, Meghalaya and Tripura in North East India and Jammu and Kashmir have faced internal armed conflicts for a number of years now. In the last couple of years, some insurgent movements have spread to 11 states including Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh and West Bengal.

According to the South Asia Terrorism Portal, nearly 20,000 civilians have been killed in internal conflicts between 1995 and 2005 in India. A number of these casualties can be assumed to be children. For instance, in Kashmir, children have died in grenade attacks in crowded places, during election meetings and in cross-fire. Three boys were killed in July 2005 when an army platoon mistook them for militants and opened fire.

It is reported that the some insurgent groups even have a separate division of child recruits named Bal Mandal (“Children’s Division”) to carry out its activities. All former insurgents that were interviewed during a study in 2008 stated that they joined these groups when they were children. The groups repeatedly pressurise parents into sending their children to join them.

The TIMES OF INDIA

Naxal problem not an armed conflict, India tells UN

PTI, Jun 18, 2010, 03.54pm IST

UNITED NATIONS: India has strongly protested the inclusion of Naxal issue under the realm of an “armed conflict” in a UN report, saying the violence being perpetrated by these groups does not make it a zone of armed conflict as defined by international law. Referring to the recent UN report that deals with “Children and armed conflicts”, India’s envoy to UN Hardeep Singh Puri told Security Council that operations of the Maoist groups did not fall into the realm of an “armed conflict”.

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607 South Asia Terrorism Portal, Institute for Conflict Management, India Fatalities, Available at: http://www.satp.org/satporgtp/countries/india/database/fatalities.htm


In July 2008, at least 30 children were believed to be missing from different parts of the Imphal valley, although many cases were not been reported to the police. The police were certain that various outlawed militant groups had lured or kidnapped these children.610

Over the years, the impact on children growing up in conflict areas has been significant. These children absorb the material and economic fallout of violence.611 Because schools are occupied by security forces or used as refugee camps, children’s education is affected. For those children living in camps the situation is grim; they live in constant hunger and with little or no security. Children in the 0-6 age group have no access to anganwadis or Integrated Child Development Services (ICDS) services. They are too scared to leave the camp compound. Even if they can leave, they may not have access to basic services in the area.612 The loss, grief and fear a child experiences in such situations should also be taken into account.613 Psychosocial concerns are intrinsic to child development – seeing their parents or other important adults as vulnerable in their lives severely undermines children’s confidence and adds to their sense of fear.614 They are also at risk of being separated from their families. As bad as these experiences are, many children have to witness their parents’ torture, murder or rape, and have been threatened with death themselves.615 There are also instances where children are left behind because the camps are not considered safe.616 Parents leave their children behind when they believe that giving children into the care of someone else or even leaving children on their own will offer them a better chance of survival or access to services.617

It has been found that children from the North Eastern states were being sent to schools in the southern States and that in many cases they lived miserable lives and had to be rescued. Such exploitation was rampant in orphanages in Tamil Nadu and Karnataka where children were brought from the states of Manipur and Assam. Following large-scale transportation of children from one state to another, on 1 September 2010 the Supreme Court in an extraordinary order in the matter of Exploitation of Children in Orphanages in the State of Tamil Nadu [WP (Crl.) No.102/2007 and Cr.M.P. No.4359/2010] directed the North Eastern states and relevant Central Ministries to vacate the school premises currently under the occupation of the security forces and also directed that the states of Manipur and Assam to ensure that no child below the age of 12 years or those at primary school level are sent outside for pursuing education to other states until further orders. The Ministry of Human Resource Development of the GoI was directed to submit a district-wise list of schools and hostels and to indicate the date from which or duration for which security forces have occupied such schools and hostels. The state governments were also directed to mention the source and destination states for

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612 ibid.
614 ibid.
615 ibid.
616 ibid.
617 ibid.
addressing protection issues concerning children taken from one state to another. Children in such situations face additional trauma as they do not understand the language and are not used to the food, surrounding environment and climatic conditions.

**8B.1.2 Child Soldiers**

The GoI acknowledges issues of internal security and threat from various rebel groups but has never acknowledged existence of armed conflict; rather, it has addressed the issue as “internal civil strife” on many occasions. In its first report on the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, the GoI states that India does not face either an international or non-international armed conflict situation.\(^618\)

There is an ongoing struggle by people trying to establish their right to autonomy in most of the seven North Eastern states, continuing struggles in Jammu and Kashmir and recent outbreaks in Andhra Pradesh and in some parts of Rajasthan, Chhattisgarh, Jharkhand, etc. This has led to political instability, strife and outright violence in the region.\(^619\)

Children are not just getting caught in the crossfire but are also being targeted in many cases and are bearing the brunt of violence.\(^620\) On 9 February 2004, the Government adopted a National Charter for Children. It states: “The State shall in partnership with the community take up steps to draw up plans for the identification, care, protection, counselling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically, and re-integrate into society”.\(^621\)

In the absence of a complete package on disarmament, demobilisation and rehabilitation, children continue to suffer. Though the National Charter for Children prescribes for plans to be drawn up for rehabilitation of

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**12-Year-Old Boy Arrested Under Pota**

NEW DELHI: India may not be breaking many world records these days but here’s something for the Guinness book: the world’s youngest “terrorist”, and the oldest. Among the nearly 200 people arrested in Jharkhand under the draconian Prevention of Terrorism Act (POTA) are Gaya Singh, 12, and Rajnath Mahto, 81.

According to a confidential police file, a copy of which is with The Times of India, the total number of children arrested as terrorists under POTA is 10. And two of these “terrorists” are over 60.

Declining to provide the exact number of Pota arrests, state home secretary J B Dubit says the number of detainees is “increasing every day” and “difficult to keep track of”. In fact, he justifies the arrests of students and farmers. Dubit asks, “Pota does not specify that students providing information to Naxalite groups would be exempt from arrest. If a student is providing information to Naxalite groups or a 12-year-old is carrying a rifle, he has to be arrested under Pota.”

However, a fact-finding team from the All-India Peoples Resistance Forum found that Pota is being used against ordinary citizens and Naxalite sympathizers in Jharkhand.

*Source: Akshaya Mukul, Times of India, 20 February, 2003, Available at: http://articles.timesofindia.indiatimes.com/2003-02-20/patna/27284753_1_pota-naxalite-groups-terrorism-act*

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children, there are no official government programmes to assist the reintegration of former child soldiers or war-affected children. Little was available for child victims of the Jammu and Kashmir conflict, although the army provided some financial assistance and launched an education programme in 2003.\footnote{Y Rana, Army sponsors J&K children’s education, Times News Network, 17 September 2003, Available at: http://timesofindia.indiatimes.com/articleshow/186478.cms as in Child Soldiers Global Report 2004}

Children are used in situations of insurgency, rioting and terrorist activities in India and often land up being caught by the government law enforcement agencies. The indiscriminate use of special and local laws and legislation like the (now-repealed) Prevention of Terrorism Act, 2002 (POTA) in situations of armed conflict saw children doubly victimised – first by insurgent groups and then by law enforcement agencies. In a welcome initiative, the Public Safety Act of 1978 (PSA) of Jammu and Kashmir was amended in October 2011. The PSA was infamous as many children were apprehended on mere suspicion and their cases were not heard.\footnote{Coalition to Stop the Use of Child Soldiers, Child Soldiers, Global Report 2008, London, pp 170-171, Available at: http://www.childsoldiersglobalreport.org/content/india} The amendment now prevents children younger than 18 being charged under the PSA.\footnote{The Hindu, J&K approves amendments to Public Safety Act, 1978, 20 October, 2011, Available at: http://www.thehindu.com/todays-paper/tp-national/article2553716.ece}

There is evidence that children accused of being members of armed groups in areas of armed conflict were detained often in violation of national legislation designed to protect children in conflict with law. Reportedly, security forces (including the police) claimed that the children they had detained in anti-insurgency operations were over 18 when registering cases against them and sending them to adult detention centres. Human rights organisations attempting to address individual cases of detained children on behalf of parents were hampered by the absence of birth certificates to prove their age.\footnote{ibid.}

Children in Jammu and Kashmir were reportedly indoctrinated and recruited from schools and mosques. Lack of education and employment opportunities for young people were said to be major factors in the recruitment of children by armed groups.\footnote{Human Rights Watch, Everyone lives in fear: Patterns of impunity in Jammu and Kashmir, September 2006, Available at: http://www.hrw.org/en/reports/2006/09/11/everyone-lives-fear}

Armed groups have been reported to use children as young as 10 as messengers and couriers and train them in the basic use of weapons.\footnote{ibid.} Some children were reported to have been used by armed groups to throw grenades and plant improvised explosive devices.\footnote{ibid.} This put children at increased risk from security forces, which opened fire on them in two major incidents during 2005 and 2006.\footnote{In Bangergund in Kupwara district, soldiers of the Rashtriya Rifles waiting to ambush militants claimed to have mistakenly shot dead three boys and critically injured a fourth on the night of 23 July 2055. The army said that the boys had acted suspiciously by failing to stop when challenged. In Doodipara, Handwara, on 22 February 2006 soldiers shot at a group of children playing cricket, killing four boys including an eight-year-old. The soldiers claimed there were militants among the children.}

The Child Soldiers Global Report, 2008 states that scores of armed groups were operating in the North Eastern Region alone and over a hundred armed groups were reportedly active. Admitting that it was very difficult to access exact data, the Report added that children as young as 14 and 15 had reportedly joined a variety of armed groups in the North Eastern states primarily to escape poverty and provide for their families.\footnote{Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report, 2008. Available at: http://www.childsoldiersglobalreport.org/content/india}
Militant groups in Manipur are forcibly recruiting children to fill their ranks, reports TERESA REHMAN

Abduction or recruitment? Over 20 children have gone missing in the past few months and many more cases may be unreported

Photo: Sukham Nanda

SUBADANI, 40, a distraught mother lies in her bed, insensate. At times she whispers plaintively 'I want my son back'. While conducting a frenetic search for her youngest son, AK Ajay, missing since July 6, she fainted and had to be hospitalised. Later, the militant group, People’s Revolutionary Party of Kangleipak (General Secretary) (PREPAK (GS)) delivered a shocker. Ajay, the 13-year-old student in Class 8, was one of many ‘recruits who had joined out of their own volition’, they claimed.

AK Milan, Ajay’s older brother, an undergraduate, takes over from where the mother cannot. ‘Our house is near National Highway 39, also known as the Indo-Myanmar Road. My brother was fishing at a pond outside. He was called by two other young men who had come riding a bicycle. He spoke to them for a bit and went with them. He never came back.’ Boys in the locality said they had never seen those men before. Later, they found out that another 13-year-old boy, AK Bipanchandra, from the adjoining village of Thoubal Kiyam Siphi Amurijam, had also gone missing under mysterious circumstances.

On July 9, 2008, PREPAK called Bipanchandra’s father and told him that the two boys were with them. Bipanchandra’s father, a constable in the Manipur police asked PREPAK to release the children. He was warned not to mobilise people and told that the boys would be freed. Later, the police too stated that the boys were in the militant group’s custody. ……

Meanwhile, there are parents across Manipur who remain traumatised. N. Mohila, a vegetable vendor and mother of 14-year-old Ningombam Sharda, lies in shock at RIMS hospital in Imphal. Sharda and her classmate Longjam Jenevi, who had vanished mysteriously, recently appeared on a local cable television channel claiming that they were safe in PREPAK’s hideout. Jenevi’s mother Bidyapati Leima claims that her minor daughter was lured by the militant group and wants her back. What will be the fate of the child soldiers of Manipur?

India’s November 2005 declaration on ratifying the Optional Protocol reflected that the minimum age of recruitment to the armed forces was 16. The first report by India on the status of implementation of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict stated that the minimum age of recruitment of prospective officers into the armed forces is 16 years and 6 months. However, the report reiterated the government’s position that after enrolment and the requisite training period, personnel were sent to operational areas only after reaching the age of 18.

The lack of systematic birth registration, particularly in rural areas of conflict-hit regions, has made it difficult to verify ages and also made it impossible to rule out the possibility that children under 18 might participate actively in hostilities. There were active recruitment drives targeting “youths”, particularly in the Kashmir Valley. The Chhattisgarh police say that the minimum age for Special Police Officers (SPO) is 18, but do not deny that younger children were recruited initially. The police explained that many recruits from rural areas did not have birth certificates or school certificates (many have not attended schools) and, therefore, they were forced to rely on the oral confirmation of age given by the headmen of the applicant’s villages. The national law does not contain any age-related criteria for recruitment of civilians as special police officers (SPOs). The Dantewada police superintendent stated that Chhattisgarh police followed three appointment criteria: “Applicants should be above age 18, should volunteer to be an SPO and should be a victim of Naxal violence.” However, it is obvious that no special care was taken to ensure that all applicants were indeed at least 18 years old. SPOs explained that the application procedure is simple and does not involve a stringent verification of age.

The following statement of the Permanent Representative to the UN General Assembly is a reflection of India’s position on this issue.

How useful is it to have ‘thematic debates’ in the Security Council on subjects such as the present one? It is true that a large number of children are victims of armed conflicts. But it is equally true that malaria and AIDS kills more children than conflicts do, but we do not deal separately in the Council with children and malaria or children and AIDS or request reports from the Secretary-general on them. A sense of balance and perspective should be retained in order to make sure that too narrow a focus does not blot out the larger picture of what has sometimes been called the ‘soft’ challenges to international peace and security.

……. It cannot be denied that in many conflict situations, the most vulnerable members of the population, particularly women and children, are targeted with impunity. While no leniency should be shown to crimes perpetrated on innocent children, we need to see in perspective the fact that many children responsible for reprehensible crimes have often been manipulated by unscrupulous adults to take part in armed conflicts.


There is no truth and reconciliation commission in India to listen to both parties involved in armed conflicts. The National Commission for the Protection of Child Rights (NCPCR) monitors the violation of child rights. The NCPCR visited Khammam district, Andhra Pradesh and Dantewada, Chhattisgarh in December, 2007 and

633 Human Rights Watch interviews with Rahul Sharma, first and second interview, 10 December, 2007 and February 1, 2008 respectively; Vishwa Ranjan, 17 December, 2007. SP Sharma said that Chhattisgarh police had accidently recruited children as SPOs
635 ibid.
three North Eastern states in 2008 to study the effect of the hostilities/civil unrest situation on children and recommended appropriate measures to the state governments, which have responded.

Certain schemes such as the ICPS, launched by the MWCD in 2009, also include within its ambit children affected by or involved in armed conflict. The Bal Bandhu Scheme for Protection of Child Rights was launched by the NCPCR in October 2010, supported by the Prime Minister’s National Relief Fund, to bring stability in the lives of children in areas of “civil unrest” by ensuring their entitlements to protection, health, nutrition, sanitation, education safety, etc. According to the scheme implementation report, about 166 “Bal Bandhus” were identified and engaged under the scheme in five states.

8B.1.3 Unaccompanied, Asylum Seeking and Refugee Children (Article 22)

The First Periodic Report states that the situation of refugees in India generally depends upon the extent of protection they receive from either the GoI or the United Nations High Commission for Refugees (UNHCR). The GoI recognises certain categories of refugees and provides them rehabilitative measures. The UNHCR in Delhi takes care of the categories of refugees that the GoI does not recognise. As mentioned earlier, India has not yet ratified the 1951 UN Convention on the Status of Refugees and its 1967 protocol. The Committee on the Rights of the Child highlighted this fact and reiterated the legal obligation of state parties for all unaccompanied or separated children in their territory. It also stated in particular that it prohibits any discrimination if a child is unaccompanied or separated or is a refugee, asylum seeker or migrant.

Many refugees have been charged under Section 14 of the Foreigners Act, 1946 for illegal entry into India. In cases where a whole family including children are charged under this section, children are counted under the category of children in conflict with the law and are sent to observation homes until their parents/kin are released from prison, which in most cases extends from two to three years. There have been instances where unaccompanied children are rescued and brought before a Child Welfare Committee (CWC), but language and communication challenges make repatriation difficult. In a case before the Bangalore CWC, a rescued Bangladeshi child could not speak any of the local languages. The organisation that rescued the child had to first arrange for a translator, identify an organisation in Bangladesh which would help the child once back and then find someone to contact the Bangladesh Consulate in Delhi. The CWC had no financial support or other resources to send the child to Bangladesh, and the organisation which rescued the child managed to arrange for funds for the child to be repatriated. There many other children who are still lost in the crowd in various

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636 Term as used by the NCPCR
637 General Comment No. 6 (2005), CRC/GC/2005/6, Committee on the Rights of the Child, Thirty-ninth Session, 17 May to 3 June 2005, pp 12-17
parts of the country and have not been rescued yet. The trauma that such children face due to separation from family and friends, alienation from culture, the incapacity to communicate etc. cannot be overlooked.

Also, for no fault of theirs and because they merely accompany their parents or relatives for better living conditions, these children have to spend their time in already overcrowded observation homes. Further, as the Foreigners Act, 1946 contains no special category of protection for the “refugees” regarding their well-founded fear of persecution the refugees can be refouled even if they face torture and death in their countries of origin.638

The lack of specific refugee legislation in India has led the government to adopt an ad hoc approach to different refugee influxes: some groups are granted the full range of benefits including legal residence and the right to be legally employed639 while others are criminalised and denied access to even basic social resources. Even those children who are born in India to refugee parents are not granted citizenship; hence, they become stateless. Not all who enter India (mainly from Nepal and Bangladesh) are actually political refugees – many are trying to escape poverty. Those in search of better livelihood and income seek a foothold in the unorganised sector. In some areas, the authorities have made efforts to detect them, and some reports suggest that Muslims amongst them may be more likely to be targeted for deportation.

**8B.1.4 Children Affected by Natural Disasters**

In the last twenty years, India has encountered a number of emergency situations – natural calamities such as earthquakes, floods and of course the tsunami. Indeed, there are children living in some emergency somewhere in the country at any time. However, it was not until 2005 that the National Disaster Management Act was passed and the National Disaster Management Authority created. What is more, there is no mention of children or children with special needs in the Act. *The National Plan of Action for Children, 2005* includes children affected by man-made and natural disasters affected by/in armed conflict (11.2.2). It calls for responding to children in emergency situations by expanding child help lines and providing necessary support service infrastructure for referral (11.3.6), and ensuring that children affected by disasters (natural or man-made) receive timely and effective humanitarian assistance through a commitment to improve contingency planning and emergency preparedness and that they are given all possible assistance and protection to resume a normal life as soon as possible (11.3.13).

Children become most vulnerable to deprivations of different kinds during natural calamities. They lose their homes, families, friends and even schools. Though children who are victims of natural calamities are included in the definition of the children in need of care and protection under Section 2(d)(ix) of the Juvenile Justice (Care and Protection of Children) Act, 2000 there are no provisions describing their special needs in the Act. The Juvenile Justice (Care and Protection of Children) Rules of 2007 are also silent on the issue. A commendable approach has been taken in Karnataka Juvenile Justice Rules, 2010,640 in which Rule 40 talks about immediate and appropriate measures to be taken for the rescue and safety of children affected by natural calamities and for their long-term rehabilitation. It states that Child Welfare Committee will hold sittings at relief centres or temporary shelters. It says that in case of death of the child’s parents in a calamity, the state will ensure that the child’s property rights and right to compensation are secured and such assets protected till the child attains majority. It goes on to say that special efforts will be made for tracing a child’s family/extended family and foster care and adoption will

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639 Issues relating to citizenship are discussed in Chapter 4 on Civil Rights and Freedoms in Section 4B.1
be identified within the child’s community. The Karnataka Juvenile Justice Rules laid the basis for including children affected by natural calamity in the Gujarat Juvenile Justice Rules which were notified in early 2011.641

- According to an estimate made by aid officials, one in every three who died during the tsunami was a child. Thousands of children lost their lives in the disaster. In the Karaikal region of Pondicherry, 251 out of 490 total casualties were children, of which 148 were girls. In Tamil Nadu, children account for 40 percent of the casualties.
- According to a UNICEF official, ‘an estimated 2.5 million children have lost their two safe havens – their homes and schools in the 2001 Gujarat earthquake’. The Gujarat earthquake in 2001 destroyed three hospitals, 21 Primary Health Centres and four community health centres.
- 500,000 children were rendered homeless in the devastating floods in 2004 in Assam. “The biggest problem that we are beginning to face is the shortage of baby food, nutritious food and medicine for this huge population of children, a large chunk of whom are infants”, said Assam Health Minister Bhumidhar Barman.
- An estimated 3.3 million children have been affected by the super cyclone that hit the coastal districts of Orissa on 29 October 1999. It is estimated that 1,500 children were orphaned, with an undetermined number of children losing one parent or becoming especially vulnerable due to the situation of their families. Many schools that withstood the cyclone were turned into temporary shelters for the homeless. All school equipment and teaching materials were destroyed.

Children are likely to be separated from their parents and families in the turmoil of natural calamities. These children are amongst the most vulnerable, as they have lost family protection when they need it most. They face abuse and exploitation and even their survival may be threatened. These children may be forced to assume adult responsibilities such as looking after younger siblings and earning a living.

The breakdown of social institutions in devastated areas creates difficulties in securing food and humanitarian supplies, leaving children vulnerable to kidnapping, sexual exploitation and trafficking. Natural disaster situations have become a major source for child trafficking. Concerns about exploitation are the last thing on relief worker’s minds and natural disasters leave the already poor even more vulnerable.642 The floods in the north-eastern parts of Bihar in 2008 reportedly displaced three million people; many went missing. Reports suggested that children were being bought and sold for Rs 500 to 1,000.643 The situation was reportedly a little better during the tsunami. After the tsunami, there was a moratorium on adoptions as there were many people who wanted to adopt orphaned children – this should be compulsory after every major disaster.644 Special emergency mechanisms have to be introduced to prevent trafficking in disaster areas and anti-human trafficking measures should become part of post-disaster reconstruction.

8B.2 The Administration of Juvenile Justice

A juvenile justice system has existed long in the country and has also undergone legislative changes.

The Initial Report refers to the Juvenile Justice Act, 1986. Also, for some reason, in the section on the definition of “child”, the Initial Report quotes the 1960 law and not the 1986 law. The age of children under the JJ Act was not in consonance with the Convention; the age was 16 years for boys and 18 years for girls.

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642 HAQ; Centre for Child Rights, Still Out of Focus, Status of Children in India, New Delhi, 2008, p 220
644 Deepika Naruka, Research Analyst for UNODC in South Asia to Nita Bhalla in, Traffickers prey on disaster hit areas in India-agencies, March 2009 Available at: http://poundp- plegacy.org/node/29647
In the First Periodic Report, the government reported: “In a landmark step, the GoI has repealed the Juvenile Justice Act, 1986, and introduced the Juvenile Justice (Care and Protection of Children) Act, 2000 that has come into force from 1 April 2001.”

In its General Comment No. 10 (2007), the Committee directed the state parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the CRC.\[645\] The Committee referred to the relevant parts of Article 40 of CRC and emphasised diversion (i.e., measures for dealing with children alleged as, accused of or recognised as having infringed the penal law without resorting to judicial proceedings) and other principles.\[646\] Unfortunately, there is no policy on juvenile justice yet; changes that have been made so far amend existing laws. Even the National Child Policy of 1974 is outdated and not in line with the CRC. A strong foundation is required for any law; therefore, an immediate review and introduction of a new National Child Policy is imperative to improve the status of children in the country.

8B.2.1 **Evolution and the Present Status of Juvenile Justice Law in India**

The Children’s Act, 1960 was replaced by the Juvenile Justice Act, 1986 to make the juvenile justice system operate in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). This was the law in force when the CRC was ratified.

The 1986 law covered both “delinquent juveniles” and “neglected juveniles”. It defined “juvenile” as a boy who has not attained the age of 16 years or a girl who has not attained the age of 18. This law provoked much concern in human rights circles. It was seen to be custodial in nature, mainly because both children in need of care as well as those who had committed an offence were initially, after apprehension or being picked up by the police, kept in the same premises unless orders were passed to move them to other homes.

The combination of a growing focus on the juvenile justice issue and the pressure on the GoI to submit a Country Report to the Committee on the Rights of the Child made the Ministry for Social Justice and Empowerment draft a new law – the Juvenile Justice Act, 2000.\[647\] Introduced by the then Minister of State for Social Justice and Empowerment, the draft law was discussed for only a few hours in Parliament and not referred to a Select Committee.

The present juvenile justice system in India is designed to address two categories of children unlike as in most countries: (a) those in conflict with the law and (b) those in need of care and protection. However, as stated previously, there is no comprehensive policy on juvenile justice in India; therefore, the JJ Act, 2000 lacked a foundation. Although the Act created two separate systems for the children in conflict with law and children in need of care and protection, it remained deeply custodial in nature. The framework of the law remains within

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646 Ibid.

the criminal justice system, as even the children in need of care and protection are also to be produced by the police in front of the CWC. While the 2000 law aimed at minimising the stay of the child in the observation home and special home there were serious concerns as to whether restoration can be the only solution.\textsuperscript{649} Especially in the case of sexual abuse, the solution can be ill-conceived. Further, in the case of children in difficult circumstances, such as children on the streets, restoration of working children might not be an immediate solution.\textsuperscript{649} Although the JJ Act, 2000 makes provision for adoption and foster care, it does not provide any safeguards for regulating the procedure and leaves it entirely to the discretion of the states, which have the power to make rules under the Act.

Considering the above and other discrepancies that existed, the JJ Act 2000 was amended in 2006. It broadened the scope of rehabilitation through both institutional and non-institutional approaches. The 2006 Amendment also clarified that the JJ Act shall apply to all cases of detention or criminal prosecution of a child under any other law. It further removed doubts regarding the relevant date in determining the juvenility of a person and the applicability of the Act.

### Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 – Highlights

- Perpetrated the exclusion of the local authority from the provisions authorising them to discharge or transfer a child from any institution.
- Laid down the procedure whereby a claim of juvenility can be raised before any court.
- Prescribed that the juvenile must be produced before the Board within a period of 24 hours, excluding the time needed for the journey from the place where the juvenile in conflict with the law was apprehended; prescribed a similar provision about producing a child before the CWC.
- Provided alternatives to detention in the observation home to achieve the objectives of the JJ Act.
- Did away with the involvement of any police officer in the inquiry process of the child in need of care and protection, as this work is assigned to the CWC, and to cover other cases where the child can remain in a children's/shelter home after completion of enquiry.
- Provided for a flexible period of leave that may be given to a child on special occasions like examination, marriages and deaths of relatives, accident or serious illness of parent or any similar emergency.

Under this law, CWCs are meant to be set up in every district or for a group of districts to receive children in need of care and protection and to make appropriate orders for their rehabilitation, restoration and reintegration using their powers as a bench of magistrates. As regards children in conflict with law, the law provides for the establishment of Juvenile Justice Boards (JJB) to deal with all crimes allegedly committed by children, their right to bail and speedy inquiry and their rehabilitation in every district or group of districts. The Supreme Court ordered on 22 January 2010 that CWCs and JJBs be set up in every district (\textit{Bachpan Bachao Andolan v Union of India}) [WP (Civil) No. 51 of 2006]. However, a reply filed by different states in \textit{Sampurna Behura v Union of India} and others\textsuperscript{650} on the implementation of the JJ Act says that only 14 states and four union territories have set up JJBs and CWCs in all districts.\textsuperscript{651}

Over the years, there have been discrepancies noted in the appointment of JJB and CWC members and in the extension of their terms. In an RTI enquiry into a CWC tenure extension where its members’ attendance during the previous term was not assessed, the Department replied that it found their attendance ‘more or

\textsuperscript{648} ibid.
\textsuperscript{649} ibid.
\textsuperscript{650} W.P.(O) No.473/2005
\textsuperscript{651} Annexure 8B
less adequate’ on a review of the records and therefore the extension was valid. Questions have been raised on the qualification of the members, selection procedures of the members, etc. The role of the social worker in JJBs is unclear; also, the magistrates, social workers and police are not well trained to deal with cases involving children. This results in the ineffective functioning of the juvenile justice system.

Although the JJ Act provides for the establishment of Special Juvenile Police Units (SJPUs) in every district of each state, many states have not established SJPUs yet. Even where they have been established, the police lack awareness about their role and functioning. The department actually finds it difficult to designate a police officer Child Welfare Officer (CWO) or Juvenile Welfare Officer (JWO) as they need the entire force for all kinds of duties imposed on them, varying from VIP movement to general law and order. Wherever they are, CWOs/JWOs also handle other cases in addition to those registered under the JJ Act. Therefore, they find it difficult to run from one court to another and also be present in the JJB/CWC with the concerned child. It would be unreasonable to expect them not to be in uniform when they bring a child in conflict with law to the JJB/CWC, which is a requirement under the JJ Act. Besides, CWO/JWOs and SJPUs need appropriate training and sensitisation to do justice to their role and to the children. Although the law also provides for two social workers in the SJPUs, they are yet to be appointed in many places. The JJ Rules, 2007 lay down the roles and responsibility of the social workers, but there continues to be ambiguity on how these two social workers are to be appointed, who shall appoint them, who they will report to and what their role will be.

Besides institutional care, the 2006 amendment also sought to provide for non-institutional alternative forms of care for children, such as adoption, foster care, sponsorship and after care (for those between 18 and 21), but these are yet to gain popularity within the government; therefore, little effort is made to place children in such alternative forms of care. Of late, however, adoption has come to be a sought-after viable option, at least in cities like Mumbai, Hyderabad, Delhi, Chennai, Kolkata, Bangalore etc.

With increasing numbers of children going missing every year, it becomes imperative to ensure that all institutions providing shelter to children are registered under the juvenile justice law which, unfortunately, does not provide for action to be taken against institutions that do not register themselves although it makes their registration compulsory. The Orphanages and Charitable Homes Act, 1960 is used to license institutions in a few states, such as Kerala and Tamil Nadu. In Maharashtra, institutions continue to be licensed under the Women and Children Licensing Act. These legislations are now superseded by the Juvenile Justice (Care and Protection of Children) Act 2000 and the JJ Amendment Act 2006, which clearly mandates under Section 34 that all child care institutions should be licensed within six months of the passing of the Act, which implies that this should have happened by February 2007. Regrettably, no state/union territory has given any serious thought to this exercise, thus allowing institutions to continue to hold children in care and set their own standards with little or no accountability.

Under the Act, the states must also set up shelter homes/children’s homes for children in need of care and protection, and observation homes and special homes for children in conflict with law. In 2007, the Central Government had come out with Model Rules on Juvenile Justice. The state governments were supposed to have set up their own rules based on the model rules. Annexure 8B shows the present status of the structures put in place in different states for the implementation of the Juvenile Justice Act 2000.

Most custodial institutions (children’s homes and observation homes) are overcrowded and house violence and child abuse. A qualitative study undertaken in September 2005 of an observation home in Delhi that
housed boys aged 7-18 years showed that a large number of drugs were used by adolescents. To understand the actual implementation and policy outcomes of the JJ legislation, the NCPCR undertook a review in 2008 of the failures and gaps in the JJ system affecting children and their rights and noted a breach in children's rights in the procedural processes for adjudication, disposition and placement of children as well as within existing institutional care, rehabilitation and detention facilities.

A study conducted in nine states reported incidences of overcrowding in almost all states. In 12 of the 144 homes surveyed, there were more children housed in the buildings than the sanctioned capacity. In some instances, the overcrowding was three times more than sanctioned capacity. However, the situation has improved in the past three years and the incidence of overcrowding has reduced significantly. Other issues identified during the study include children being ignorant of their entitlements, poor physical infrastructure and poorer infrastructure of homes in rented premises.

Setting up of homes and institutions is usually covered under state-sponsored schemes. Certain Central schemes also have provisions for setting up of some institutions for children, such as the Scheme for Prevention and Control of Juvenile Social Maladjustment, Shishu Griha Schemes, Scheme for Welfare of Working Children and Children in Need of Care and Protection, Integrated Scheme for Street Children, etc. These fall under the budget provided for protection, which has consistently been receiving the lowest share of the children’s budget. A few components are to be merged with the ICPS, the allocation for which has fallen over the years. In 2011, there were no allocations for the Scheme for Prevention and Control of Juvenile Social Maladjustment, Integrated Scheme for Street Children or Shishu Griha Schemes.

In several states, NGOs run homes under the JJ system recognised by state governments as per provisions of the JJ Act. These homes are known as fit institutions, shelter homes, places of safety, etc. These institutions have been self-initiated to serve particular categories of children such as street and working children, abandoned, orphaned or surrendered children, children with special needs, etc. While a few of them receive funds under the state governments’ grant-in-aid schemes, most of them raise their own funds.

The Sub Committee Report on Review of Operations of Observation and Children’s Homes stated that in some states, homes house both children in conflict with law (CICL) and children in need of care and protection (CNCP) either in the same building or in the same campus. It cited examples from Karnataka where there are very few girls in the CICL category and therefore the state does not maintain an observation home for girls. Instead, the few girls are housed in the reception centre at Bangalore. Further, it said that age-wise segregation is done in few homes in Maharashtra. The monitoring tool used by Aangan Foundation in the

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657 Ruzbeh Bahrucha, Changing Spaces: Action Research by Aangan quoted in My God is a Juvenile Delinquent, Sainathan Publications, 2008
662 ibid.
664 ibid.
665 ibid.
666 ibid.
institutions in Maharashtra highlighted low staff-child interaction as a key area of concern. In Assam, it was observed that the staff was not well-versed in dealing with CICL and that corporal punishment, detention in isolated room, denial of food, isolation etc. were often pursued as measures for disciplining the child. In some states, like Uttar Pradesh, the situation was different – there was segregation between CICL and CNCP and age-wise segregation was partially achieved. The Sub Committee noted that the children in government-run homes in Tamil Nadu seemed fairly well-nourished and sociable.

The Sub Committee noted that child participation was least explored in the homes. It suggested that listening to children, building their leadership skills and making child participation an approach and not a programme could lead to the active involvement of children in the operation of the homes. It also suggested that most homes were understaffed and that the staff was untrained and the matter therefore needed urgent attention, especially since many institutions are overcrowded and all functionaries including doctors and teachers come in limited contact with the children.

The JJ Act 2000 needs to be strengthened further to address the above issues. Also, with the Right of Children to Free and Compulsory Education Act 2009 (RTE), now children in the 6-14 age group are to receive free and compulsory education. This will include children within the JJ system as well. All CICL and CNCP assessed as having the potential to benefit from attending neighbourhood schools as specified under the RTE Act will fall into the category of disadvantaged children under the RTE and will, accordingly, be entitled to admission. An amendment to the JJ Act is necessary to bring it in consonance with the RTE. The Ministry of Women and Child Development has recognised this requirement and notified amendments to the JJ Act in September 2011. Also, the amendment to the law needs to consider the following issues and concerns.

- Abuse and trafficking of children in homes not registered under the JJ Act
- Gross negligence and lack of facilities in homes leading to children running away from homes and even death
- Violence and abuse by children in observation and special homes
- Repeated offences by CICL due to inadequate rehabilitation measures
- Delays in decisions by CWCs and JJBs
- Trafficking in guise of adoption
- Delays in courts for adoption orders
- Disruptions in adoptions due to incomplete procedures and illegal adoptions
- Lack of laws related specifically to offences against children
- Need for building good jurisprudence for children who are victims of a crime
- Include child mothers (especially those who are mentally challenged), child witnesses, etc. in the definition of CNCP

The above list is only indicative and not comprehensive; there are several other issues that need to be addressed. The discussions on the Amendment to the JJ Act, 2000 will begin in November 2011; it is hoped there will be enough opportunity this time for discussions and debates to bring in the changes necessary in the JJ system.

667 ibid.
668 ibid.
669 ibid.
670 ibid.
671 ibid.
672 ibid.
673 Recommendation for Amendment of JJ Act in the light of RTE, Centre for Child and Law, National Law School of India University, Bangalore.
8B.2.2 Latest Amendment to the JJ Act

The Hon’ble High Court of Delhi vide an interim order on 4 February 2009 held urgent, immediate need for steps to remove/amend discriminatory legislation and to ensure that patients/ persons suffering from leprosy enjoy a status equal to other citizens.674 The Rajya Sabha Committee on Petitions for Integration and Empowerment of Leprosy Affected Persons also recommended in its 131st Report presented on 24 October 2008 amendment of the relevant provision of the Act so that the juvenile or child is not subjected to segregation or discrimination.

Table 8.2: Incidence and Rate of Juvenile Delinquency under IPC in India

<table>
<thead>
<tr>
<th>Year</th>
<th>Incidence of Juvenile Crimes</th>
<th>Total Cognizable Crimes</th>
<th>Percentage of Juvenile Crimes To Total Crimes</th>
<th>Estimated Mid Year Population (In Lakh)</th>
<th>Rate (Incidence of Crime Per Lakh of Population)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>24827</td>
<td>1440356</td>
<td>1.7</td>
<td>7966</td>
<td>3.1</td>
</tr>
<tr>
<td>1989</td>
<td>18457</td>
<td>1529844</td>
<td>1.2</td>
<td>8118</td>
<td>2.3</td>
</tr>
<tr>
<td>1990</td>
<td>15230</td>
<td>1604449</td>
<td>0.9</td>
<td>8270</td>
<td>1.8</td>
</tr>
<tr>
<td>1991</td>
<td>12588</td>
<td>1678375</td>
<td>0.8</td>
<td>8463**</td>
<td>1.5</td>
</tr>
<tr>
<td>1992</td>
<td>11100</td>
<td>1693341</td>
<td>0.7</td>
<td>8677</td>
<td>1.3</td>
</tr>
<tr>
<td>1993</td>
<td>9465</td>
<td>1629936</td>
<td>0.6</td>
<td>8838</td>
<td>1.1</td>
</tr>
<tr>
<td>1994</td>
<td>8561</td>
<td>1635251</td>
<td>0.5</td>
<td>9000</td>
<td>1.0</td>
</tr>
<tr>
<td>1995</td>
<td>9766</td>
<td>1695696</td>
<td>0.6</td>
<td>9160</td>
<td>1.1</td>
</tr>
<tr>
<td>1996</td>
<td>10024</td>
<td>1709576</td>
<td>0.6</td>
<td>9319</td>
<td>1.1</td>
</tr>
<tr>
<td>1997</td>
<td>7909</td>
<td>1719820</td>
<td>0.5</td>
<td>9552</td>
<td>0.8</td>
</tr>
<tr>
<td>1998</td>
<td>9352</td>
<td>1778815</td>
<td>0.5</td>
<td>9709</td>
<td>1.0</td>
</tr>
<tr>
<td>1999</td>
<td>8888</td>
<td>1764629</td>
<td>0.5</td>
<td>9866</td>
<td>0.9</td>
</tr>
<tr>
<td>2000</td>
<td>9267</td>
<td>1771084</td>
<td>0.5</td>
<td>10021</td>
<td>0.9</td>
</tr>
<tr>
<td>2001@</td>
<td>16509</td>
<td>1764308</td>
<td>0.9</td>
<td>10270</td>
<td>1.6</td>
</tr>
<tr>
<td>2002</td>
<td>18560</td>
<td>1780330</td>
<td>1.0</td>
<td>10506</td>
<td>1.8</td>
</tr>
<tr>
<td>2003</td>
<td>17819</td>
<td>1716120</td>
<td>1.0</td>
<td>10682</td>
<td>1.7</td>
</tr>
<tr>
<td>2004</td>
<td>19229</td>
<td>1832015</td>
<td>1.0</td>
<td>10856</td>
<td>1.8</td>
</tr>
<tr>
<td>2005</td>
<td>18939</td>
<td>1822602</td>
<td>1.0</td>
<td>11028</td>
<td>1.7</td>
</tr>
<tr>
<td>2006</td>
<td>21088</td>
<td>1878293</td>
<td>1.1</td>
<td>11198</td>
<td>1.9</td>
</tr>
<tr>
<td>2007</td>
<td>22865</td>
<td>1989673</td>
<td>1.1</td>
<td>11366</td>
<td>2.0</td>
</tr>
<tr>
<td>2008</td>
<td>24535</td>
<td>2093379</td>
<td>1.2</td>
<td>11531</td>
<td>2.1</td>
</tr>
<tr>
<td>2009</td>
<td>23926</td>
<td>2121345</td>
<td>1.1</td>
<td>11694</td>
<td>2.0</td>
</tr>
</tbody>
</table>

Abbr. IPC-Indian Penal Code
@As Per Revised Definition of Juvenile Justice Act, The Boys Age Group of 16-18 years has also considered as Juveniles since 2001 onwards

Source: Ministry of Home Affairs, Government of India

In light of the above, the Juvenile Justice (Care and Protection) Amendment Bill, 2010 was introduced in the Rajya Sabha on 16 November 2010 and referred to a Standing Committee for examination in December 2010. The Bill was passed on 19 August 2011. The Amendment deleted Section 48 (2) that segregated

674 Kusth Asha Deep Foundation v Union of India and Others, Writ Petition (Civil) No. 8112/2007
children suffering from certain diseases from others in a home. It also replaced the provision under Section 58 of the Act of 2000 that gave authorities in special homes or children’s homes the power to move children with leprosy, tuberculosis, unsound mind and hepatitis B to treatment centres because it is now known that it is unnecessary to segregate people being treated for these conditions. The difficulty faced by the homes must be considered from the civil society perspective as well as this would increase the number of children in homes because children will be moved to special hospital care only for in-patient care. Therefore, the sudden requirement of upgrading the homes for children in country will be a huge task. Though these amendments are welcome, as discussed earlier there still are several other issues in the JJ Act that need amendment.

8B.2.3 Incidence of Crimes by Children

The main source of information for details on children who are in conflict with law is the ‘Crime in India’ statistics brought out by the National Crime Records Bureau (NCRB) based on records collected from police stations across the country. Despite changes in the law to avoid stigmatisation of children, the NCRB continues to use the term ‘arrested’ for children in conflict with law. However, unlike in earlier years, it does also use the term apprehended in some places.

The main source of information on CICL is the “Crime in India” statistics brought out by the National Crime Records Bureau (NCRB) based on records collected from police stations across the country. Despite changes in the law to avoid stigmatisation of children, the NCRB continues to use the term “arrested” for CICL. However, unlike in earlier years, it does also use the term “apprehended” in some places.

Table 8.2 shows that the share of crimes committed by juveniles to total IPC crimes reported in the country during 1999 was the same as in 2000, at 0.5 percent. It states that this share has increased to 0.9 percent in 2001 and further marginally increased to 1 percent in 2002 but remained static in 2003, 2004 and 2005. The share marginally increased to 1.1 percent in 2006 and remained static in 2007, and increased marginally to 1.2 percent in 2008 and decreased to 1.1 percent in 2009. The NCRB attributes this increase partly to the new definition of “juvenile”, which includes boys between the ages of 16 and 18. Similar pattern was observed in juvenile crime rate also. The juvenile crime rate was 0.9 during 1999 and 2000, but showed a mixed trend during 2000-2009. The details can be seen in Figure 8.1

![Fig. 8.1: Juvenile IPC Crime Incidence](image-url)

Significant increase in 2001 mainly due to increase in the upper age of Male Juvenile from 16 years to 18 years as per JJAct
Table 8.3 breaks down the crime incidence by gender.

<table>
<thead>
<tr>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>13,852</td>
<td>3,351</td>
<td>17,203</td>
</tr>
<tr>
<td>1995</td>
<td>14,542</td>
<td>4,251</td>
<td>18,793</td>
</tr>
<tr>
<td>1996</td>
<td>14,068</td>
<td>5,030</td>
<td>19,098</td>
</tr>
<tr>
<td>1997</td>
<td>14,282</td>
<td>3,514</td>
<td>17,796</td>
</tr>
<tr>
<td>1998</td>
<td>13,974</td>
<td>4,969</td>
<td>18,923</td>
</tr>
<tr>
<td>1999</td>
<td>13,088</td>
<td>5,372</td>
<td>18,460</td>
</tr>
<tr>
<td>2000</td>
<td>13,854</td>
<td>4,128</td>
<td>17,982</td>
</tr>
<tr>
<td>2001</td>
<td>31,295</td>
<td>2,333</td>
<td>33,628</td>
</tr>
<tr>
<td>2002</td>
<td>33,551</td>
<td>2,228</td>
<td>35,779</td>
</tr>
<tr>
<td>2003</td>
<td>30,985</td>
<td>2,335</td>
<td>33,320</td>
</tr>
<tr>
<td>2004</td>
<td>28,878</td>
<td>2,065</td>
<td>30,943</td>
</tr>
<tr>
<td>2005</td>
<td>30,606</td>
<td>2,075</td>
<td>32,681</td>
</tr>
<tr>
<td>2006</td>
<td>30,375</td>
<td>1,770</td>
<td>32,145</td>
</tr>
<tr>
<td>2007</td>
<td>32,671</td>
<td>1,856</td>
<td>34,527</td>
</tr>
<tr>
<td>2008</td>
<td>32,795</td>
<td>1,712</td>
<td>34,507</td>
</tr>
<tr>
<td>2009</td>
<td>31,550</td>
<td>2,092</td>
<td>33,642</td>
</tr>
</tbody>
</table>

Source: Crime in India 2009, NCRB

Table 8.3 makes clear that the number of boys apprehended under IPC and SLL crimes has increased while the number of girls fell below 2000 in the years 2006 to 2008 but increased to 2092 in 2009.

8B.2.4. Monitoring Progress

Disposal of cases remains a huge challenge leading to pendency, leading to delayed justice. Table 8.4 gives us the disposal and pendency details.

The Hon’ble Supreme Court of India has issued notices to all High Courts asking them to appoint a judge to monitor juvenile justice issues in the state. In some states, High Court judges are responsible for monitoring the implementation of the JJ System, while in some states High Court Committees are formed, like in Maharashtra, Delhi etc. Further, the National Legal Services Authority (NALSA) has declared 2011 the Year of Protection of Child Rights to help reduce pendency and provide free legal aid to children. It has issued directions to State Legal Services Authorities to put in place Legal Aid Centres attached to the JJBs in the States where there is high pendency.

---


Table 8.4: Status of Disposal of Cases of Children in Conflict With Law (1998-2009)

<table>
<thead>
<tr>
<th>Year</th>
<th>Arrested and sent to Courts</th>
<th>Sent to home after advice or admonition</th>
<th>Released on probation &amp; placed under care of Parents/Guardian</th>
<th>Sent to Special Homes</th>
<th>Dealt with Fine</th>
<th>Acquitted or disposed of otherwise</th>
<th>Pending disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>18,964</td>
<td>2,620</td>
<td>3,889</td>
<td>829</td>
<td>1,751</td>
<td>908</td>
<td>2,107</td>
</tr>
<tr>
<td>1999</td>
<td>18,460</td>
<td>1,656</td>
<td>5,298</td>
<td>768</td>
<td>1,281</td>
<td>832</td>
<td>3,358</td>
</tr>
<tr>
<td>2000</td>
<td>17,982</td>
<td>2,619</td>
<td>3,091</td>
<td>2,012</td>
<td>1,864</td>
<td>609</td>
<td>1,132</td>
</tr>
<tr>
<td>2001</td>
<td>33,628</td>
<td>4,127</td>
<td>4,833</td>
<td>1,003</td>
<td>4,037</td>
<td>897</td>
<td>4,436</td>
</tr>
<tr>
<td>2002</td>
<td>35,779</td>
<td>3,236</td>
<td>11,338</td>
<td>1,240</td>
<td>3,381</td>
<td>908</td>
<td>1,693</td>
</tr>
<tr>
<td>2003</td>
<td>33,320</td>
<td>3,413</td>
<td>9,074</td>
<td>1,526</td>
<td>3,936</td>
<td>1,592</td>
<td>1,730</td>
</tr>
<tr>
<td>2004</td>
<td>30,943</td>
<td>3,848</td>
<td>5,662</td>
<td>1,138</td>
<td>4,942</td>
<td>1,256</td>
<td>1,957</td>
</tr>
<tr>
<td>2005</td>
<td>32,681</td>
<td>3,807</td>
<td>5,578</td>
<td>1,933</td>
<td>4,423</td>
<td>1,361</td>
<td>1,801</td>
</tr>
<tr>
<td>2006</td>
<td>32,145</td>
<td>4,036</td>
<td>5,723</td>
<td>1,482</td>
<td>4,510</td>
<td>1,023</td>
<td>1,579</td>
</tr>
<tr>
<td>2007</td>
<td>34,527</td>
<td>4,476</td>
<td>6,324</td>
<td>1,336</td>
<td>5,077</td>
<td>1,543</td>
<td>1,474</td>
</tr>
<tr>
<td>2008</td>
<td>34,507</td>
<td>3,964</td>
<td>6,022</td>
<td>1,143</td>
<td>5,764</td>
<td>1,362</td>
<td>1,755</td>
</tr>
<tr>
<td>2009</td>
<td>33,642</td>
<td>4,986</td>
<td>4,822</td>
<td>1,241</td>
<td>5,420</td>
<td>1,113</td>
<td>1,507</td>
</tr>
</tbody>
</table>


8B.3 Children in Situations of Exploitation, including Physical and Psychological Recovery and Social Integration (Articles 32, 33, 34, 35, 36 and 39)

The increase in crimes against children has been 119.6 percent in the past decade and 60.5 percent in the past five years (Figure 8.2).

Although this huge increase in crimes against children is alarming, it must be remembered that this is not the whole picture – this is based only on reported data and does not include the employment of children for labour, which too is exploitation and indeed ought to be declared a crime. Besides, reporting of crimes is very low and
many crimes go unreported. India has the dubious distinction of having the highest number of child labourers as well as the highest number of sexually abused children.\textsuperscript{677}

Child marriage, trafficking and other forms of crime continue to exist and have increased. Table 8.5 breaks down the incidence of crimes as recorded by the police.

<table>
<thead>
<tr>
<th>Crime Head (\downarrow/) Year (\rightarrow)</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kidnapping &amp; Abduction</td>
<td>6882</td>
<td>6562</td>
<td>2845</td>
<td>2322</td>
<td>2571</td>
<td>3196</td>
<td>3518</td>
<td>5102</td>
<td>6377</td>
<td>7650</td>
<td>8945</td>
</tr>
<tr>
<td>Exposure &amp; Abandonment</td>
<td>593</td>
<td>660</td>
<td>678</td>
<td>644</td>
<td>722</td>
<td>715</td>
<td>933</td>
<td>909</td>
<td>923</td>
<td>864</td>
<td>857</td>
</tr>
<tr>
<td>Abetment of Suicide</td>
<td>NA</td>
<td>18</td>
<td>26</td>
<td>24</td>
<td>25</td>
<td>33</td>
<td>43</td>
<td>45</td>
<td>26</td>
<td>29</td>
<td>46</td>
</tr>
<tr>
<td>Procuration of minor girls</td>
<td>172</td>
<td>147</td>
<td>138</td>
<td>124</td>
<td>171</td>
<td>205</td>
<td>145</td>
<td>231</td>
<td>253</td>
<td>224</td>
<td>237</td>
</tr>
<tr>
<td>Buying of girls for prostitution</td>
<td>5</td>
<td>53</td>
<td>6</td>
<td>9</td>
<td>24</td>
<td>21</td>
<td>28</td>
<td>35</td>
<td>40</td>
<td>30</td>
<td>32</td>
</tr>
<tr>
<td>Selling of girls for prostitution</td>
<td>13</td>
<td>15</td>
<td>8</td>
<td>5</td>
<td>36</td>
<td>19</td>
<td>50</td>
<td>123</td>
<td>69</td>
<td>49</td>
<td>57</td>
</tr>
<tr>
<td>Child Marriage Restraint Act</td>
<td>58</td>
<td>92</td>
<td>85</td>
<td>113</td>
<td>63</td>
<td>93</td>
<td>122</td>
<td>99</td>
<td>96</td>
<td>104</td>
<td>3</td>
</tr>
<tr>
<td>Child Rape</td>
<td>3153</td>
<td>3132</td>
<td>2113</td>
<td>2532</td>
<td>2949</td>
<td>3542</td>
<td>4026</td>
<td>4721</td>
<td>5045</td>
<td>5446</td>
<td>5368</td>
</tr>
<tr>
<td>Infanticide</td>
<td>87</td>
<td>104</td>
<td>133</td>
<td>115</td>
<td>103</td>
<td>102</td>
<td>108</td>
<td>126</td>
<td>134</td>
<td>140</td>
<td>63</td>
</tr>
<tr>
<td>Foeticide</td>
<td>61</td>
<td>91</td>
<td>55</td>
<td>84</td>
<td>57</td>
<td>86</td>
<td>86</td>
<td>125</td>
<td>96</td>
<td>73</td>
<td>123</td>
</tr>
<tr>
<td>Murder</td>
<td>NA</td>
<td>NA</td>
<td>1042</td>
<td>1073</td>
<td>1212</td>
<td>1304</td>
<td>1327</td>
<td>1450</td>
<td>1377</td>
<td>1296</td>
<td>1488</td>
</tr>
<tr>
<td>Other Crimes</td>
<td>NA</td>
<td>NA</td>
<td>3685</td>
<td>3424</td>
<td>3700</td>
<td>5107</td>
<td>4697</td>
<td>6127</td>
<td>6070</td>
<td>6699</td>
<td>6985</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>11024</strong></td>
<td><strong>10874</strong></td>
<td><strong>13558</strong></td>
<td><strong>10469</strong></td>
<td><strong>11633</strong></td>
<td><strong>14423</strong></td>
<td><strong>15083</strong></td>
<td><strong>19093</strong></td>
<td><strong>20506</strong></td>
<td><strong>22604</strong></td>
<td><strong>24204</strong></td>
</tr>
</tbody>
</table>

MWCD conducted a study in 13 states on the extent of child abuse in India in 2007. The study revealed that 69 percent of children were physically abused in one or more situations;\textsuperscript{678} 54.68 percent of these children were boys and 48.29 percent were young children. In the 5-12 age group, nearly 3 of 4 children reported physical abuse in one or more situations and 53.22 percent of children reported having faced one or more forms of sexual abuse.\textsuperscript{679}

An analysis of the calls received by Childline India in 2009 shows that 5.05 percent was about abuse. Of the calls that reported abuse, 35.9 percent was about physical abuse, 4.74 percent was about sexual abuse and 5.12 percent was about financial abuse.\textsuperscript{680}

\textsuperscript{677} HAQ: Centre for Child Rights, \textit{Status of Children in India Inc.}, New Delhi, 2005, p 169.

\textsuperscript{678} Ministry of Women and Child Development, Government of India, \textit{Study on Child Abuse}, 2007

\textsuperscript{679} ibid.

\textsuperscript{680} Childline India Foundation, \textit{Childline Calling...Is India Listening}, 1098, Childline in India, \textit{An analysis of calls to 1098}, 2009, Volume V, Mumbai, Available at: http://www.childlineindia.org.in/1098/ChildNET.htm
8B.3.1 Economic Exploitation of Children (Article 32)

The Child Labour (Prohibition and Regulation) Act 1986 (CLPRA) is the main law that deals with child labour. It does not ban or prohibit child labour in all its forms; instead, it makes a distinction between hazardous and non-hazardous forms of labour. Although new additions have been made to the list of hazardous occupations to include domestic work, dhabas, restaurants, hotels, motels, tea shops etc., there does not seem to be much difference in the situation of the children working in these places.

The other laws that directly or indirectly deal with child labour are listed below.

- 1933 Children (Pledging of Labour) Act
- 1951 Plantation Labour Act
- 1952 Mines Act
- 1970 Contract Labour Act
- 1976 Bonded Labour System (Abolition) Act
- 1961 Apprentices Act
- 1961 Motor Transport Workers Act
- 1966 Beedi and Cigar Workers (Conditions of Employment) Act
- 1958 Merchant Shipping Act
- 2000 Juvenile Justice (Care and Protection of Children) Act

Justifying the continuation of India’s declaration that has been made on Article 32, the Initial Report opened by stating the reality – undesirable child labour still persists in the country due to socio-economic compulsions – and cited various policies and programmes. It quoted its efforts to implement the judgment in MC Mehta v State of Tamil Nadu that were initiated by the government for the protection of children from work. However, the government admitted that “the number of working children covered by the special school is minuscule compared to the total number of children waiting to be released and rehabilitated”.

In its First Periodic Report, the Government of India stated that the non-availability of accurate, authentic and up-to-date data on child labour has been a major handicap in “planned intervention for eradication of this social evil”. It stated that it does not minimise the urgency and importance of drawing up concrete programmes for identification, release and rehabilitation of working children.

Interestingly, while the Report identifies poverty as a major factor compelling parents to send their children to work, it also states that the correlation between child labour and regional poverty in India does not necessarily
indicate a causal relationship. It further says that ineffective enforcement of child labour-related laws and the lack of awareness and educational opportunity contribute to the existence and acceptance of this social evil. Some of the poorer states, for different reasons, have a lower child labour count and some of the richer states have a higher count.

*By implication, the Union Government should have in 20 years withdrawn the Declaration on Article 32, reviewed the CLPRA and enacted a new law Prohibiting Child Labour in all sectors up to 18 years long ago. It is high time for India to remove its declaration on this Article and take responsibility to abolish child labour.*

While activists have been advocating for the removal of the declaration on Article 32, many of them do not agree with the Committee’s insistence on the ratification of the ILO Convention 182 on the Worst Forms of Labour.

They argue that India now needs to move towards higher standards of elimination of all forms of labour and amend the existing CLPRA rather than making distinctions between worst and other forms of labour as in the ILO Convention 182. The Juvenile Justice (Care and Protection) of Children Act 2000 lists children in labour as children in need of care and protection and also makes exploitation of children a cognisable offence which the CLPRA does not.

Along with the Right to Free and Compulsory Education Act, 2009, this must be used to coerce the GoI to move towards elimination of all forms child labour rather than making distinctions between hazardous (worst) and non-hazardous forms of labour. This has to be based on the premise that all children must be in school in compliance with the RTE and any labour that denies children this right is a violation. Further, the 1986 CLPRA itself was not fully implemented. The Department of Labour with its limited mandate does not have the capacity to implement it effectively. Also, given that the goal is not just to rescue children from situations of labour but to ensure their rehabilitation, this issue needs to be taken away from the Department of Labour and put it as a responsibility of the MWCD, so that the protective and rehabilitative services of the JJ Act are automatically made available to rescued children who need it.

With the notification of some industries as hazardous for children, work in hazardous industries has shifted from visible workplaces to less visible home settings. The related shift of child employment in these places – from boys to girls – only adds credence to the above argument.

Importantly, the NCPCR reiterates this view:

*From a rights based perspective, the NCPCR considers that there can be no excuse for existence of child labour and violation of children’s rights. There can be no distinction between child labour and child work, or hazardous labour and non-hazardous labour. The definition of ‘child labour’ must encompass children working for the families in their own homes, children in agriculture work, work rendered by girl children and all other forms of work that deprives them of their right to education in a full time formal school. It recommended that the definition of ‘child labour’ be inclusive and recognise all forms of child labour as prohibitive and to include children up to 18 years of age. The NCPCR calls for a consonance of the between child labour law with the Act on ‘Right of Children for Free and Compulsory Education-2009’ that guarantees education as a fundamental right to all children in the 6-14 years age group. The NCPCR has reflected its stand in a policy document and as well suggested reform in this area.*

The reality is that no political will has been shown in the past 25 years since the CLPRA was passed to eliminate child labour despite proclamations of how bad it is. Although estimates differ on the number of child workers in India, they agree it has the largest number in the world.

<table>
<thead>
<tr>
<th>Source</th>
<th>Number of Working Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 National Census</td>
<td>12.6 million (5.2 percent)</td>
</tr>
<tr>
<td>Ministry of Labour and Employment</td>
<td>2 million in hazardous industries *</td>
</tr>
<tr>
<td>National Sample Survey</td>
<td>2000 16.4 million (6.5 percent)</td>
</tr>
<tr>
<td>2006 UNICEF report**</td>
<td>35 million (14 percent)</td>
</tr>
<tr>
<td>Various NGOs***</td>
<td>60-115 million</td>
</tr>
</tbody>
</table>

* Figure provided by the Ministry of Labour and Employment, Government of India.

The National Commission for Enterprises in the Unorganised Sector (NCEUS) in its Report on the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector has expanded the definition when examining the issue of child labour: “The Commission does not consider it appropriate to view child labour purely from a definitional point of view of who is a worker and who is not. This is because there is a significant proportion of children who are out of school and are not reported as child labour…” (p 101). The report recognises that even if they are not reported as workers, chances are that they are engaged in some activity by way of helping their parents or in activities that are not perceived as income-earning by the reporting parents.

Despite existing education and rehabilitation interventions, the number of working children has increased from 11.3 million in 1991 to 12.6 million to 2001 (by 11.5 percent). During this period, the number of all children in the 5-14 age group rose by 15.5 percent. Some states, including Andhra Pradesh and Maharashtra, reported reductions in child labour, whereas in other states, including Rajasthan, Uttar Pradesh, and Bihar, child labour increased between 29 and 39 percent, outstripping the total population increase. The highest percentage rise was in Himachal Pradesh, at 91 percent, with the number of working children increasing from 56,000 in 1991 to 108,000 in 2001.682

The Ministry of Labour reports that

between the years 1996 and 2006 there have been nearly 286,000 bonded labourers across various states.\footnote{National Commission for Enterprises in the Unorganised Sector, Report on the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, August 2007, p 105} Table 8.8 shows the number of working children in different states over the years. Clearly, there has been no radical change in the number of working children in more than 30 years.

Table 8.7: Incidence of Child Labour and Out-of School Children (Labour Pool) (5-14 years) across the States (in percent) 2004-05

<table>
<thead>
<tr>
<th>State</th>
<th>Out of school children</th>
<th>Child labour</th>
<th>Out of school children</th>
<th>Child labour</th>
<th>Out of school children</th>
<th>Child labour</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Males</td>
<td>Females</td>
<td>Total</td>
<td>Males</td>
<td>Females</td>
<td>Total</td>
</tr>
<tr>
<td>Bihar</td>
<td>29.9</td>
<td>2.2</td>
<td>40.1</td>
<td>0.6</td>
<td>34.4</td>
<td>1.5</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>20.0</td>
<td>2.4</td>
<td>27.4</td>
<td>2.7</td>
<td>23.4</td>
<td>2.5</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>20.3</td>
<td>4.7</td>
<td>25.7</td>
<td>3.4</td>
<td>22.8</td>
<td>4.1</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>15.6</td>
<td>3.8</td>
<td>29.2</td>
<td>5.9</td>
<td>22.2</td>
<td>4.8</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>17.3</td>
<td>2.4</td>
<td>26.4</td>
<td>3.3</td>
<td>21.5</td>
<td>2.8</td>
</tr>
<tr>
<td>Orissa</td>
<td>17.3</td>
<td>5.3</td>
<td>23.7</td>
<td>4.6</td>
<td>20.4</td>
<td>5.0</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>14.0</td>
<td>3.6</td>
<td>23.0</td>
<td>5.5</td>
<td>18.6</td>
<td>4.5</td>
</tr>
<tr>
<td>West Bengal</td>
<td>16.7</td>
<td>4.3</td>
<td>18.1</td>
<td>3.2</td>
<td>17.4</td>
<td>3.7</td>
</tr>
<tr>
<td>Gujarat</td>
<td>12.0</td>
<td>2.7</td>
<td>18.1</td>
<td>2.3</td>
<td>14.8</td>
<td>2.5</td>
</tr>
<tr>
<td>Haryana</td>
<td>9.7</td>
<td>1.4</td>
<td>17.7</td>
<td>2.1</td>
<td>13.3</td>
<td>1.7</td>
</tr>
<tr>
<td>Assam</td>
<td>11.9</td>
<td>2.6</td>
<td>13.5</td>
<td>1.1</td>
<td>12.6</td>
<td>1.9</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>9.6</td>
<td>6.1</td>
<td>15.1</td>
<td>7.1</td>
<td>12.2</td>
<td>6.6</td>
</tr>
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<td>Uttarakhand</td>
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<td>14.0</td>
<td>1.8</td>
<td>12.1</td>
<td>2.6</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>7.6</td>
<td>1.6</td>
<td>16.8</td>
<td>4.1</td>
<td>12.1</td>
<td>2.8</td>
</tr>
<tr>
<td>Karnataka</td>
<td>10.4</td>
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<td>13.7</td>
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<td>12.0</td>
<td>4.6</td>
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<tr>
<td>Maharashtra</td>
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<td>3.7</td>
<td>11.5</td>
<td>3.7</td>
<td>11.1</td>
<td>3.5</td>
</tr>
<tr>
<td>Punjab</td>
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<td>2.8</td>
<td>11.3</td>
<td>1.3</td>
<td>10.2</td>
<td>2.1</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>5.2</td>
<td>2.0</td>
<td>8.2</td>
<td>3.5</td>
<td>6.6</td>
<td>2.7</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>2.3</td>
<td>1.3</td>
<td>5.3</td>
<td>1.9</td>
<td>3.7</td>
<td>1.6</td>
</tr>
<tr>
<td>Kerala</td>
<td>2.9</td>
<td>0.4</td>
<td>2.0</td>
<td>0.1</td>
<td>2.5</td>
<td>0.3</td>
</tr>
<tr>
<td><strong>All India</strong></td>
<td><strong>15.4</strong></td>
<td><strong>3.5</strong></td>
<td><strong>20.8</strong></td>
<td><strong>3.3</strong></td>
<td><strong>17.9</strong></td>
<td><strong>3.4</strong></td>
</tr>
</tbody>
</table>

Note: State arranged in descending order of total ‘out of school’ children.
This table is based on NSS 61st rounds 2004-2005, Employment- Underemployment Survey. Computed.

Source: National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, August 2007 Appendix table A6-1 pp 269
Table 8.8: State-wise Distribution of Working Children according to 1971, 1981, 1991 and 2001 Census in the age group 5-14 years

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
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<td>1661940</td>
<td>1363339</td>
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<td>**</td>
<td>327598</td>
<td>351416</td>
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<td>1101764</td>
<td>942245</td>
<td>1117500</td>
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<td>523585</td>
<td>485530</td>
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<td>5</td>
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<td>194189</td>
<td>109691</td>
<td>253491</td>
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<td>99624</td>
<td>56438</td>
<td>107774</td>
</tr>
<tr>
<td>7</td>
<td>Jammu &amp; Kashmir</td>
<td>70489</td>
<td>258437</td>
<td>**</td>
<td>175630</td>
</tr>
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<td>1131530</td>
<td>976247</td>
<td>822615</td>
</tr>
<tr>
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<td>34800</td>
<td>26156</td>
</tr>
<tr>
<td>10</td>
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<td>1698597</td>
<td>1352563</td>
<td>1065259</td>
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<td>16467</td>
<td>45874</td>
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<td>20217</td>
<td>16493</td>
<td>28836</td>
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<tr>
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<td>44916</td>
<td>34633</td>
<td>53940</td>
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<tr>
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<td>Jharkhand</td>
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<td>1986</td>
<td>1870</td>
<td>3779</td>
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<tr>
<td>16</td>
<td>Uttaranchal</td>
<td>1086</td>
<td>1986</td>
<td>1870</td>
<td>3779</td>
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<tr>
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<td>Nagaland</td>
<td>13726</td>
<td>16235</td>
<td>16467</td>
<td>45874</td>
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<tr>
<td>18</td>
<td>Orissa</td>
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<td>702293</td>
<td>452394</td>
<td>377594</td>
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<tr>
<td>19</td>
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<td>232774</td>
<td>216939</td>
<td>142868</td>
<td>177268</td>
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<tr>
<td>20</td>
<td>Rajasthan</td>
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<td>819605</td>
<td>774199</td>
<td>1262570</td>
</tr>
<tr>
<td>21</td>
<td>Sikkim</td>
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<td>8561</td>
<td>5598</td>
<td>16457</td>
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<td>22</td>
<td>Tamil Nadu</td>
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<td>975055</td>
<td>578889</td>
<td>418801</td>
</tr>
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<td>23</td>
<td>Tripura</td>
<td>17490</td>
<td>24204</td>
<td>16478</td>
<td>21756</td>
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<td>24</td>
<td>Uttar Pradesh</td>
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<td>1434675</td>
<td>1410086</td>
<td>1927997</td>
</tr>
<tr>
<td>25</td>
<td>West Bengal</td>
<td>511443</td>
<td>605263</td>
<td>711691</td>
<td>857087</td>
</tr>
<tr>
<td>26</td>
<td>Andaman &amp; Nicobar Island</td>
<td>572</td>
<td>1309</td>
<td>1265</td>
<td>1960</td>
</tr>
<tr>
<td>27</td>
<td>Arunanchal Pradesh</td>
<td>17925</td>
<td>17950</td>
<td>12395</td>
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<td>28</td>
<td>Chandigarh</td>
<td>1086</td>
<td>1986</td>
<td>1870</td>
<td>3779</td>
</tr>
<tr>
<td>29</td>
<td>Dadra &amp; Nagar Haveli</td>
<td>3102</td>
<td>3615</td>
<td>4416</td>
<td>4274</td>
</tr>
<tr>
<td>30</td>
<td>Delhi</td>
<td>17120</td>
<td>25717</td>
<td>27351</td>
<td>41899</td>
</tr>
<tr>
<td>31</td>
<td>Daman and Diu</td>
<td>7391</td>
<td>9378</td>
<td>941</td>
<td>729</td>
</tr>
<tr>
<td>32</td>
<td>Goa</td>
<td></td>
<td></td>
<td></td>
<td>4656</td>
</tr>
<tr>
<td>33</td>
<td>Lakshadweep</td>
<td>97</td>
<td>56</td>
<td>34</td>
<td>27</td>
</tr>
<tr>
<td>34</td>
<td>Mizoram</td>
<td></td>
<td>6314</td>
<td>16411</td>
<td>26265</td>
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<tr>
<td>35</td>
<td>Pondicherry</td>
<td>3725</td>
<td>3606</td>
<td>2680</td>
<td>1904</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10753985</strong></td>
<td><strong>13640870</strong></td>
<td><strong>11285349</strong></td>
<td><strong>12666377</strong></td>
<td></td>
</tr>
</tbody>
</table>

Note: * 1971 Census figures of Assam includes figures of Mizoram.
    ** Census could not be conducted.
    *** Census figures 1971 in respect of Mizoram included under Assam.
    **** includes marginal workers also.

Source: Information Available at: http://labour.nic.in/cwl/ChildLabour.htm
Though the classification of occupations in the Census data is not exactly matching with the occupations listed as hazardous under the CLPRA, a tentative segregation of data into hazardous and non-hazardous occupations was done by the Working Group on Child Labour for the Eleventh Five Year Plan to enable them to have a broad estimation of children working in different occupations.684 The Eleventh Five Year Plan acknowledged that there is ample evidence to suggest that more and more children are entering the labour force and are being exploited by their employers. It stated that adequate measures for the protection, rehabilitation and education of these children will be taken during the plan period.685

Since the Census in 2001, the number of listed hazardous processes in the schedule to the child labour law has gone up from 18 to 65 and the number of occupations has gone up from 7 to 18, but the figures fail to take into account all these changes. A large number of child workers therefore remain unaccounted for.

Table 8.9: Number of Child Workers (5-14 years) Engaged in Hazardous Occupations as per 2001 Census

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pan, Bidi &amp; Cigarettes</td>
<td>252574</td>
</tr>
<tr>
<td>2</td>
<td>Construction</td>
<td>208833</td>
</tr>
<tr>
<td>3</td>
<td>Domestic workers*</td>
<td>185505</td>
</tr>
<tr>
<td>4</td>
<td>Spinning weaving</td>
<td>128984</td>
</tr>
<tr>
<td>5</td>
<td>Brick-kilns, tiles</td>
<td>84972</td>
</tr>
<tr>
<td>6</td>
<td>Dhabasj Restaurants/ Hotels/ Motels*</td>
<td>70934</td>
</tr>
<tr>
<td>7</td>
<td>Auto-workshop, vehicle repairs</td>
<td>49893</td>
</tr>
<tr>
<td>8</td>
<td>Gem-cutting, Jewellery</td>
<td>37489</td>
</tr>
<tr>
<td>9</td>
<td>Carpet-making</td>
<td>32647</td>
</tr>
<tr>
<td>10</td>
<td>Ceramic</td>
<td>18894</td>
</tr>
<tr>
<td>11</td>
<td>Agarbati, Dhoop &amp; Detergent making</td>
<td>13583</td>
</tr>
<tr>
<td>12</td>
<td>Others</td>
<td>135162</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>1219470</strong></td>
</tr>
</tbody>
</table>

*Inclusion following the Government’s notification to include children working as domestic workers and in dhabas/restaurants, hotels, etc. in the list of hazardous occupations w.e.f. 10th October 2006.

Source: Planning Commission, GoI, Working Group on Child Labour for the Xth Five Year Plan Strategy Formulations, pp 5. Undated

A large proportion of children are engaged in the manufacturing sector (17.2 percent of which 14.4 are boys and 20.5 percent are girls as per the NSS, 61st rounds 2004-05), and they are likely to be exposed to the risk of being in such hazardous occupations as wage labourers.686

In the wake of globalisation and growing consumerism, children find their way into newer and newer occupations every day.687 So many new home-based occupations are emerging that it is often difficult to keep track.

Rescue operations carried out in Delhi and Mumbai in 2007-08 have exposed the employment of children in the textile and garments industry, including their employment by sub-contractors and suppliers who work for

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684 Planning Commission, GoI, Working Group on Child Labour for the Eleventh Five Year Plan Strategy Formulations, p 5
685 ibid.
687 HAQ: Centre for Child Rights, Still out of Focus, Status of India’s Children, New Delhi, 2008 p 195
large export houses and companies such as the US clothing giant GAP. Children are engaged in making footballs, cricket equipment, basketballs, badminton racquets and shuttle cocks and sports equipment for indoor and outdoor games, etc. in Jalandhar and Batala in Punjab and Meerut in Uttar Pradesh.

Reports of child labour still continue to come in from all over the country. In a complaint to the National Human Rights Commission, Campaign Against Child Labour - Karnataka reported that the girl child labour situation in the state was very serious. They highlighted five cases where working children had died under suspicious circumstances. There are also reports on children working under schemes run by the government for unemployed adults. Children go to work in the BT cotton farms in Sherpur, Laloda, Ganesh Pura and Hassanpura in Gujarat from June to September and return home afterwards. According to the sources, the children have disclosed how working under National Rural Employment Guarantee Act (NREGA) is much better than going to Gujarat, where the pay is less and they have to work long hours. The district officials admitted the trend of children working in the NREGA but said they have started taking action.

Policy makers and adults at large have never considered child labour in agriculture hazardous. The exploitation of children in cottonseed farms is one of the best examples of how child labour is linked to larger market forces. Several large national and multinational seed companies that produce and market seeds perpetuate the child labour problem. India is the first country in the world to introduce hybrid varieties in cotton crop for commercial cultivation. Over 150,000 children are engaged in the production of hybrid cottonseed, one of the fastest growing industries in India. Though hybrid seeds are used in most states in India, hybrid cottonseed production is concentrated in five states – Andhra Pradesh, Gujarat, Karnataka, Maharashtra and Tamil Nadu. These five states account for more than 95 percent of the area under cottonseed production in the country. Andhra Pradesh alone accounts for 65 percent of cottonseed production the country. A detailed study shows that children, particularly girl children, are engaged in most hybrid cottonseed production operations. They comprise 90 percent of the labour force. Very often, schoolgoing children are recruited; 90 percent of the labour force comprises bonded labour, of which migrant children constitute 30 per cent. Migrant children put in 11-13 hours of work a day while local children work for 9-10 hours. Girl children work in cross-pollination exclusively even in areas where adults are available for work. Children were employed on long-term contracts based on advances and loans to their parents by local seed producers, who have agreements with large national and multinational seed companies. They are exposed to the poisonous pesticides used in high quantities in cottonseed cultivation and are prone to inhalation of pesticide such as endosulfan, methomyl, cypermethrin, monocrotophos, nucracon and metasystox. Health problems such as headaches, weakness, vomiting and depression are widely reported. Health hazards and even deaths often go unnoticed. Children are forced to work even when they are sick and have little access to medical aid.

Urbanisation has led to sporadic migration; it has decidedly given rise to child labour in cities. A viable occupation for migrants is rag picking and working in the recycling industry as there is no monitoring. Studies

688 ibid.
691 ibid.
692 ibid.
694 HAQ: Centre for Child Rights, Status of Children in India Inc., New Delhi 2005, p 169
695 Davuluri Venkateswarlu, Child Labour in Hybrid Cottonseed Production in Gujarat and Karnataka, Study commissioned by India Committee of the Netherlands, cited in Status of Children in India Inc., HAQ: Centre for Child Rights, New Delhi 2005, p 169
696 ibid.
697 ibid.
698 ibid.
699 HAQ: Centre for Child Rights New Delhi, Still out of Focus, Status of India’s Children, 2008, p 191
show that most often, rag pickers are migrants who have fled home because of hard living conditions. The vast majority of rag pickers belong to marginalised communities, including dalits and minorities (Muslims in Kolkata, who are mostly Bangladeshi immigrants). In UP, Biharis and Assamese have by and large dominated the profession in the past two decades. Estimates are that in Delhi at least 30 percent of rag pickers are children. Given the hazardous nature of work, this occupation alone comprises a significant challenge for children working in hazardous conditions. Many children begin working as rag pickers at the young age of five or six years. Most of them never attend schools. There are two categories of child rag pickers – the street pickers, who collect garbage in street bins or residential areas, and dump pickers who work in dumping grounds. Children in both categories face life-threatening situations every day. They incur health issues arising due to long hours of work as they do rounds of collections during the day and at nights they go around picking empty bottles. The working conditions are hazardous, as they work in filth comprising of human/animal waste, broken glass, chemicals etc. Getting admission into schools is really difficult for such children as they do not possess the documents required by the school. Since most of them are migrants and do not understand the local language, they fall prey to the hands of local vendors, police and other authorities. In 2001, waste picking was included among the hazardous occupations banned under the CLPRA. But apart from this very brief mention, rag picking is ignored in legislation regarding child labour. Contrary to most child labourers, rag pickers are self-employed or working with their parents and therefore not answerable to any employer. This makes holding anyone accountable difficult.

Concluding Observations of the Human Rights Committee

34. The Committee expresses concern that, despite actions taken by the State party, there has been little progress in implementing the Child Labour (Prohibition and Regulation) Act of 1986. In this respect: the Committee recommends that urgent steps be taken to remove all children from hazardous occupations, that immediate steps be taken to implement the recommendation of the National Human Rights Commission that the constitutional requirement that it should be a fundamental right for all children under 14 to have free and compulsory education be respected, and that efforts be strengthened to eliminate child labour in both the industrial and rural sectors. The Committee also recommends that consideration be given to establishing an independent mechanism with effective national powers to monitor and enforce the implementation of laws for the eradication of child labour and bonded labour.

CCPR/C/79/Add.81
4 August 1997

In 2010, the Campaigns against Child Trafficking (CACT) and Child Labour (CACL) decided to undertake a social audit on the amendment to the CLPRA that added employment of children in hotel and domestic sectors in the list of hazardous employment.

The findings of the social audit show that despite the prohibition on employment, thousands of children continue to eke out an existence and also support their families through their toil in households and hotels, dhabas and eateries. Figure 8.3 highlights the findings of the national audit.

700 Pratham, Child Rag Pickers. Available at: pratham.org/images/Paper_on_ragpickers.pdf
701 ibid.
703 Pratham, Child rag pickers, Available at: pratham.org/images/Paper_on_ragpickers.pdf
704 Input from Mr. Prakash Kumar, President, Kachra Kamgar Union at the Focused Group Discussion for CRC 20 Year BS, held on 28th of September, 2011 at Indian Social Institute, New Delhi.
705 National Social Audit, Ban on Employment of children in Domestic Sector, Dhabas and Eateries, October 2009 to March 2010, CACL, CACT
706 ibid.
The National Child Labour Project (NCLP) Scheme is the oldest initiative of the government. It started in 1988 and has targeted children in the hazardous occupations only and child labour-endemic districts. So far, it has covered 400,200 children. About 308,000 children have been mainstreamed into the formal education system so far. The Scheme is running in 250 districts in 14 states. Even after discounting the inherent problems in the NCLP Scheme, the coverage is very low compared to the magnitude of the problem. The Scheme continues to exclude children who are working with the family or are in a family based set-up on the erroneous assumption that they are protected from hazards. Pointing out the sharp increase in child labour between 1991 and 2000, the Report of the Working Group on Child Labour for the Eleventh Five Year Plan notes that the efforts made in UP were not commensurate to the extent of the problem, as was the case with Rajasthan and West Bengal. It has pointed out that the pre-vocational training imparted in NCLP schools at present is not based on market

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707 Information Available at: http://labour.nic.in/cwl/childlabour.htm
709 ibid.
demand. It further stated that the vocational instructors are not well trained in newer and innovative vocations, which could be an enabling factor in the retention of these children in the special schools.710

The pre-vocational training imparted in the NCLP schools at present is not based on the market demand and the vocational instructors are also not well trained in newer and innovative vocations which could be very important enabling factor in retention of these children in the special schools.

Working Group on Child Labour for the 11th Five Year Plan

A joint India-US project, known as the INDUS Child Labour Project, had begun in 2004 and completed in 2007.711 This was implemented in 21 districts of five states – Tamil Nadu, Uttar Pradesh, Madhya Pradesh, Maharashtra and Delhi.712 The 2001 Census showed an increase in child labour in Uttar Pradesh, where the project was implemented. The Project continued as a part of the NCLP after 2007.713 Experience of the INDUS project has shown that this scheme too needs to provide employable vocational training as well as encourage child labour families to withdraw children from work and admit them into schools.714

8B.3.2 Sexual Exploitation and Sexual Abuse (Article 34)

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

The Initial Report defined sexual abuse as any sexual relation between an adult and a child and added that its legal definition includes child molestation, incest and rape. It is the least reported form of child abuse despite its high incidence in all economic and ethnic groups.

The First Periodic Report also defined child sexual abuse and then explained its various forms. Also it noted that India was in the process of ratifying the International Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. The protocol was ratified in May 2011.

Various studies in India have indicated high prevalence of child sexual abuse. Sexual abuse is reported under rape and incest in the NCRB Report but only in the context of girls. The NCRB, unfortunately, does not maintain data on sexual abuse of boys as it is not covered under the Indian Penal Code, 1860 (IPC). This creates a huge gap in data. Sexual abuse of boys is registered under Section 377 of the IPC, which is regarding unnatural sexual offences.

A study conducted in 2006715 showed that almost 48 percent of boys and 39 percent of girls among the respondents – drawn from school-going children in Chennai – had reported sexual abuse, breaking the myth

711 ibid.
712 ibid.
713 ibid.
714 HAQ: Centre for Child Rights, New Delhi, Still out of Focus, Status of India’s Children, 2008, p 194
that only girls are sexually abused. The study also showed that there did not seem to be any dramatic difference between the economic strata.

It is not just street boys who are victims of sexual abuse. Even those under state care are not safe. In the past couple of years there have been several newspaper reports of incidences of boys being abused in children’s homes. In May 2007, five boys – all younger than 10 – were allegedly sodomised in a children’s home in Delhi.716

“There is no reason why sexual assault on a male child should be treated differently from a similar act committed on a female child.”717 However, until the issue of sexual abuse against boys becomes less of a taboo in Indian society, incidents will continue to occur behind closed doors and remain unreported – with children continuing to remain vulnerable to abuse and perpetrators remaining free to re-offend.

Unfortunately, different courts deal with cases of sexual abuse of boys differently, pointing to the need for widespread sensitisation of the judiciary in such matters. In a 2008 case of paedophilia involving two British nationals, the High Court of Maharashtra acquitted the accused despite ample evidence and testimonies of the victims who lived in a shelter home for street children run by the two men.718 It was only after much effort and pressure put from child rights groups that the Supreme Court overturned their acquittal in March 2011.719

Sexual abuse of boys in coastal areas and tourist destinations is indeed a serious issue as no government – Centre or state – is likely to address the menace seriously, as it is linked to the lucrative tourism industry.720 The challenge is equally great in other cases of child sexual abuse as the law is weak, enforcement is poor and mindsets are orthodox and closed to reality.

Sexual exploitation in the name of religion is also rampant in parts of the country. The Devadasi system remains common in the poorest towns and villages of provinces of the states like Karnataka and Andhra Pradesh.721 The Karnataka Devadasis (Prohibition of Dedication) Act, 1982 and Rules, 1982 were meant to abolish the system but neither the victims nor the enforcement authorities are aware of such laws. Also, rehabilitation programmes are ad hoc and inadequate – they do not provide adequate means of livelihood and skill development for victims.722 In 2006, the NALSA launched an awareness programme for policemen and judges in Bangalore. Quoting the National Commission for Women, NALSA said 250,000 girls had been dedicated as devadasis to the Yellamma and Khandoba temples on the Maharashtra-Karnataka border,723 including 16,624 girls from Andhra Pradesh, 22,941 from Karnataka and 2,479 from Maharashtra. The Devadasi system is prevalent in 10 districts of northern Karnataka and 14 districts in Andhra Pradesh. But the remoteness of many of the villages, and the continuing rise in demand from organised traffickers who pay well for young girls, is thwarting efforts to combat the system.724 Former devadasis who braved stigma and social pressure to leave that way of life have formed self-help groups and are fighting to stop other children being dedicated to what is no longer

720 Nishta Desai, See the Evil: A study on tourism related paedophilia, VAK, Goa 2001, 2004
722 ibid.
723 ibid.
724 Why India’s ‘devadasi’ girls face a wretched life in the name of religion, 22 January, 2011, Available at: http://www.guardian.co.uk/world/2011/jan/22/india-sex-exploitation-girls-devadasi
a holy calling to the temples but a direct path to sexual exploitation.\textsuperscript{725} Though there has been a decline, the exploitation continues.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
Concluding Observations of the Committee on Economic, Social and Cultural Rights & \\
\hline
27. The Committee notes with concern that trafficking in persons remains a serious problem faced by the State party. The Committee is particularly concerned that women and children belonging to scheduled castes and scheduled tribes make up a large proportion of victims of trafficking and sexual exploitation. The Committee is also concerned that victims of trafficking and sexual exploitation, rather than being afforded protection and rehabilitation, are prosecuted under the Immoral Trafficking Prevention Act (ITPA), and that there is no legislation that specifically criminalizes trafficking in persons. & \\
\hline
\end{tabular}
\end{table}

It has been noted that 53.22 percent of children have reported some form of sexual abuse, amongst which 52.94 percent were boys and 47.06 percent were girls. Abuse started at the age of 5 years, with the incidence increasing with age, peaking at 12 to 15 years and then starting to decline.\textsuperscript{726}

\textbf{India is presently in the process of adopting a Protection of Children from Sexual Offences Bill.} The Bill was passed by the Cabinet and introduced in the Rajya Sabha on 23 March 2011. It aims to prevent and protect children from sexual assault, sexual harassment and pornography. In its present form, the Bill has many positives – the first is that it is gender-neutral. Secondly, it treats sexual offences committed by persons in authority or positions of trust as aggravated sexual offences. It also considers the physical/mental disability and the long-term after-effects of the injury inflicted. Special provisions are made for preventing pornographic abuse or even possession of such material. It also places the media, studio and photographic facilities under obligation to report such matters.

The Bill has been referred to a Parliamentary Standing Committee, which started hearing depositions from various civil society groups and organisations working on child protection in September 2011. It has also sought further clarifications and comments on the Bill. While there is general appreciation for the new Bill, there is also an equal apprehension among members of society about its enforceability. The Bill’s lacunae have been listed below.

- It does not contain certain important directions and guidelines already laid down by the Supreme Court as well as various High Courts regarding medical examination of the victims, role of police, procedures to be followed by judicial officers, victim protection and witness assistance.
- It fails to provide for recovery, rehabilitation and social integration of the victims.
- It also does not keep in mind the amendments that are already made in the Code of Criminal Procedure, 1973; the Juvenile Justice (Care and Protection of Children) Act, 2000; Indian Evidence Act, 1972; the Indian Penal Code, 1860 etc.
- It does not lay down the procedures for appeal, review and revision.
- Last, but not the least, the bill is not backed up with a Financial Memorandum that could ensure adequate investment in the implementation of the law.

\textsuperscript{725} ibid.
\textsuperscript{726} Ministry of Women and Child Development, Government of India, \textit{Study on child abuse: India,2007}
Table 8.10: Percentage of Boys and Girls Facing One or More Severe Forms of Sexual Abuse

<table>
<thead>
<tr>
<th>STATES</th>
<th>One form of Abuse</th>
<th>Two forms of Abuse</th>
<th>Three forms of Abuse</th>
<th>Four forms of Abuse</th>
<th>One form of Abuse</th>
<th>Two forms of Abuse</th>
<th>Three forms of Abuse</th>
<th>Four forms of Abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>14.00</td>
<td>10.00</td>
<td>5.2</td>
<td>-</td>
<td>17.96</td>
<td>10.78</td>
<td>7.98</td>
<td>1.80</td>
</tr>
<tr>
<td>Assam</td>
<td>21.35</td>
<td>27.53</td>
<td>12.73</td>
<td>0.94</td>
<td>18.79</td>
<td>21.38</td>
<td>9.29</td>
<td>1.73</td>
</tr>
<tr>
<td>Bihar</td>
<td>16.51</td>
<td>9.98</td>
<td>8.64</td>
<td>0.77</td>
<td>13.63</td>
<td>7.13</td>
<td>9.43</td>
<td>0.21</td>
</tr>
<tr>
<td>Delhi</td>
<td>23.55</td>
<td>16.34</td>
<td>13.53</td>
<td>1.23</td>
<td>10.80</td>
<td>7.04</td>
<td>3.99</td>
<td>0.70</td>
</tr>
<tr>
<td>Goa</td>
<td>1.82</td>
<td>0.36</td>
<td>0.36</td>
<td>1.74</td>
<td>0.43</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Gujarat</td>
<td>2.67</td>
<td>1.44</td>
<td>0.41</td>
<td>-</td>
<td>6.69</td>
<td>2.56</td>
<td>0.39</td>
<td>0.39</td>
</tr>
<tr>
<td>Kerala</td>
<td>11.85</td>
<td>3.82</td>
<td>4.02</td>
<td>1.53</td>
<td>6.29</td>
<td>2.94</td>
<td>4.19</td>
<td>0.42</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>4.56</td>
<td>2.09</td>
<td>0.57</td>
<td>0.19</td>
<td>6.71</td>
<td>4.19</td>
<td>1.68</td>
<td>-</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>6.55</td>
<td>0.99</td>
<td>0.79</td>
<td>-</td>
<td>8.25</td>
<td>2.21</td>
<td>0.80</td>
<td>-</td>
</tr>
<tr>
<td>Mizoram</td>
<td>17.47</td>
<td>2.21</td>
<td>0.60</td>
<td>-</td>
<td>8.28</td>
<td>2.40</td>
<td>1.09</td>
<td>-</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>6.04</td>
<td>2.34</td>
<td>1.36</td>
<td>1.36</td>
<td>6.39</td>
<td>2.47</td>
<td>1.03</td>
<td>0.62</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>3.40</td>
<td>1.20</td>
<td>2.40</td>
<td>1.40</td>
<td>1.98</td>
<td>0.99</td>
<td>0.60</td>
<td>-</td>
</tr>
<tr>
<td>West Bengal</td>
<td>8.32</td>
<td>6.00</td>
<td>2.32</td>
<td>1.16</td>
<td>8.81</td>
<td>4.61</td>
<td>3.14</td>
<td>-</td>
</tr>
<tr>
<td>Overall</td>
<td>11.12</td>
<td>6.90</td>
<td>4.33</td>
<td>0.71</td>
<td>9.20</td>
<td>5.45</td>
<td>3.46</td>
<td>0.47</td>
</tr>
</tbody>
</table>


Sexual exploitation such as forced prostitution, socially and religiously sanctified forms of prostitution and pornography are prohibited under various laws. The IPC has several provisions related to obscenity (Sections 292, 293 and 294), which could be used to prosecute cases of child pornography. Further, the Young Persons (Harmful Publications) Act, 1956, lays down provisions to prevent dissemination of certain publications (with or without the aid of pictures) harmful to young persons (under the age of 20 years). The Information Technology (Amendment) Act, 2008, which came into force from February 2009, prohibits publishing or transmitting of material depicting children in sexually explicit acts, in electronic form. This provision covers inducing or enticing children to online relationships for sexually explicit acts. The Indecent Representation of Women (Prohibition) Act, 1986 prohibits indecent representation of women (including girls) through advertisements, books, pamphlets, etc. or references which have the effect of denigrating women and are derogatory to them.727

8B.3.3 Sale, Trafficking and Abduction (Article 35)

<table>
<thead>
<tr>
<th>Article 35</th>
</tr>
</thead>
<tbody>
<tr>
<td>States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.</td>
</tr>
</tbody>
</table>

Trafficking has been described by many as modern-day slavery, as the ways in which people are now trafficked are virtually identical to how slaves used to be bought and sold.728 Child trafficking continues to be a problem and is on the rise, despite recognition from the government and NGOs as an issue that needs immediate attention.

728 HAQ: Centre for Child Rights, Still out of Focus, Status of India’s Children 2008, New Delhi, p 215
Table 8.11: Trafficking of Children in India

<table>
<thead>
<tr>
<th>Crime Head ↓ / Year →</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kidnapping &amp; Abduction (includes all forms that amount to trafficking for marriage, illicit intercourse, adoption, begging, camel jockeying, sale of body parts, prostitution slavery and other unlawful activities)</td>
<td>6882</td>
<td>6562</td>
<td>5589</td>
<td>2322</td>
<td>1965</td>
<td>2265</td>
<td>2445</td>
<td>3549</td>
<td>4183</td>
<td>5193</td>
<td>5488</td>
</tr>
<tr>
<td>Procuration of minor girls</td>
<td>172</td>
<td>147</td>
<td>138</td>
<td>124</td>
<td>171</td>
<td>205</td>
<td>145</td>
<td>231</td>
<td>253</td>
<td>224</td>
<td>237</td>
</tr>
<tr>
<td>Buying of girls for prostitution</td>
<td>5</td>
<td>53</td>
<td>6</td>
<td>9</td>
<td>24</td>
<td>21</td>
<td>28</td>
<td>35</td>
<td>40</td>
<td>30</td>
<td>32</td>
</tr>
<tr>
<td>Selling of girls for prostitution</td>
<td>13</td>
<td>15</td>
<td>8</td>
<td>5</td>
<td>36</td>
<td>19</td>
<td>50</td>
<td>123</td>
<td>69</td>
<td>49</td>
<td>57</td>
</tr>
<tr>
<td>Importation of girls (Up to 21 years of age)</td>
<td>1</td>
<td>64</td>
<td>114</td>
<td>76</td>
<td>46</td>
<td>89</td>
<td>149</td>
<td>67</td>
<td>61</td>
<td>67</td>
<td>48</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>7073</strong></td>
<td><strong>6841</strong></td>
<td><strong>5855</strong></td>
<td><strong>2536</strong></td>
<td><strong>2242</strong></td>
<td><strong>2599</strong></td>
<td><strong>2817</strong></td>
<td><strong>4005</strong></td>
<td><strong>4606</strong></td>
<td><strong>5563</strong></td>
<td><strong>5862</strong></td>
</tr>
</tbody>
</table>

Source: Crime in India NCRB 2009

Boys and girls continue to be bought and sold for a number of reasons, such as labour, begging, sexual exploitation, pornography, marriage, adoption, organ trade, etc. However, discussions on trafficking often still continue to be confined to the problem of prostitution or commercial sexual exploitation.

**Husband-wife arrested for providing minor domestic helps**

Indrani Basu, TNN, Mar 28, 2011, 08.29am IST

NEW DELHI: A husband and wife duo, both college graduates, have been arrested following their alleged involvement in running a placement agency for providing minor domestic helps in Saket in south Delhi. The arrested have been identified as Lalita and Manoj Singh, hailing from Jharkhand, said police.

“We found an 11-year-old girl crying on a street, alone. On enquiry, she told us that she is a native of Gumla in Jharkhand and had been brought to the city by the accused persons and made to work in a house in Saket. However, after three days she was sent to a different house to work. She ran away from that house as she was unhappy there. At her instance, we lodged a case against the accused who we nabbed after a raid. They were running a placement agency by the name ‘Citizen Service Centre’ in Lado Sarai for the past six months,” explained a senior police officer.


With the increase of paedophilia as part of sex tourism, the demand for boys is rising as is the trafficking of boys for sexual purposes. As the demand for children increases, growing consumerism, poverty, conflict and violence are contributing to making children more and more vulnerable.

There are no exact figures for the number of children trafficked each year in India. The number of trafficked persons is difficult to determine as bribery and corruption surrounding the practice render an estimate of its magnitude virtually impossible.

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729 HAQ: Centre for Child Rights Still out of focus, Status of India’s Children, New Delhi, 2008, p 217.
730 SANLAAAP, Concept note prepared for South Asia Consultation on care and protection of survivors of commercial sexual exploitation and trafficking, Kolkata, May 2008.
With the US State Department now recognising this, the Trafficking In Persons (TIP) Reports have started providing some information on trafficking in women and children for commercial sexual exploitation. The 2010 TIP Report on India states that 90 percent of trafficking in India is internal and mostly affects the disadvantaged social economic strata who are particularly vulnerable to forced or bonded labour and sex trafficking. It also states that children are also subjected to forced labour as factory workers, domestic servants, beggars and agricultural workers. Forced domestic work is a problem in Jharkhand, Madhya Pradesh, Chhattisgarh, and Orissa.731 Bachpan Bachao Andolan reports 100 thousand child labourers in embroidery and zari sweatshops in Delhi and nearly the same numbers in Mumbai and elsewhere, mostly trafficked from Bihar, Jharkhand and West Bengal.732 Moreover, there are also some new dimensions of trafficking that have emerged in the recent past and need to be accounted for, such as trafficking in the form of renting a womb for surrogacy.

In its Initial Report for the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, the GoI listed various schemes such as Ujjawala, Short Stay Homes, Swadhar Shelter homes etc. to rehabilitate trafficked women and children.733 It goes on to acknowledge the unavailability of data on missing children and states about various initiatives that being put in place to keep track of missing persons.734

Trafficking has not historically been regarded as an organised crime in India, therefore comprehensive laws relating to organised crimes are not used in enforcement.735 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted by the UN at Palermo, Italy in 2000 and supplemented the UN Convention against Transnational Organized Crime. This was signed by India in December 2002 but not ratified until 13 May 2011. Many campaigners are concerned that India still lacks a clear and full definition of human trafficking. The present law on trafficking remains inadequate, confining itself only to trafficking for prostitution. This is reflected in the recording of the problem. For example, the Chapter on Human Trafficking in the NCRB’s Crime in India Report also fails to take into account offences under certain provisions in the IPC such as kidnapping, unlawful compulsory labour and habitual dealing in slaves, which if enumerated by age and gender would add to the overall human trafficking figures.

The NCRB does not collect information on missing persons as ‘missing persons is not a cognisable crime’. No comprehensive tracking system has been established in the country, although there have been some efforts made to create an online system. The Don Bosco National Forum for Youth at Risk launched a website in association with UNICEF: www.missingchildsearch.net. Don Bosco National Forum for Youth at Risk also showcased its Homelink software-cum-web portal at the National Workshop on Child Tracking System held in October 2010.736 The workshop was organised by MWCD at the National Institute of Public Cooperation and

736 Information provided by Fr. Joe Prabhu, National Director, YaF Forum India, Home Link / Missing Children Search Network, at the National Consultation on Twenty Years of CRC-A Balance Sheet, 20-22 October, 2011
Child Development (NIPCCD), New Delhi. It was suggested that the Ministry of Women and Child Development could consider reviewing the effectiveness of this system for the implementation of Child tracking system instead of creating a new one.737

The traditional belief that poverty is the only cause of trafficking is now being challenged by other factors, such as displacement, conflict and gender discrimination which, coupled with economic insecurity, allow the trade to continue. Many girls from Nepal and Bangladesh are trafficked into India for purposes of sexual exploitation.738 Children from Nepal are also trafficked to work in embroidery factories, carpet factories, brick kilns and in quarries.739 As the government has failed to secure their livelihood, desperation sometimes forces the poorest communities to sell their children in order to survive. Social exclusion based on gender can be seen as a major contributing factor to the risks of being trafficked.740 Within India, girls are trafficked from remote and rural areas to big cities and towns to be sold to brothels for prostitution, while boys are trafficked for labour.

The Immoral Traffic (Prevention) Act, 1956 covers sexual exploitation of both girls and boys for commercial purposes and provides enhanced penalties for offences involving children and minors. It prescribes stringent punishment against perpetrators inducing children (below 16 years) and minors (16 to 18 years) in the offences of procuring, inducing or taking such a person for the sake of prostitution. Certain amendments have been proposed to this Act, including raising the age of a child to 18 years, defining ‘trafficking’, deletion of provisions which criminalise and re-victimise the victims, enhanced punishment for traffickers, pimps, etc., punishment for persons who visit brothels for commercial sexual exploitation, provision for ‘in camera’ trial to safeguard privacy of victims, and setting up of nodal authorities at the Centre and States.741 All forms of slavery, including child slavery, are prohibited under the Indian Penal Code and any person indulging in such acts is liable for punishment. The Bonded Labour System (Abolition) Act, 1976, prohibits forcing a person into bonded labour for debt repayment. This includes punishment for parents who pledge their child or other family member to work as bonded labour. These amendments are yet to be passed by the Parliament. The Juvenile Justice (Care and Protection of Children) Act, 2000, has defined a trafficked child as a child in need of care and protection and provides for their basic needs and protection of their human rights.

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737 ibid.
739 ibid.
740 SANLAAP, Concept not prepared for South Asia Consultation on care and protection of survivors of commercial sexual exploitation and trafficking, Kolkata, May, 2008
Some of the initiatives that have been taken at the central as well as the state levels to address trafficking are:

- The Protocol for Pre-Rescue, Rescue and Post Rescue Operations of Child Victims of Trafficking for Commercial Sexual Exploitation, 2005 of the Ministry of Women and Child Development

- The Protocol on Prevention Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour, 2008 of the Ministry Labour and Employment

- Ujjawala, A scheme launched in December 2007 aiming at prevention of trafficking and rescue and rehabilitation, re-integration and repatriation of victims.

- Government of Tamil Nadu, through a series of Government orders set up various committees and Boards at state, district and village level for Combating of Trafficking and Combating Sexual Exploitation of Women and Children GO no. 73 Dated 9th May 2003, GO no.26, Dated 16 February 2004)

### 8B.3.4 Children and Substance Abuse (Article 33)

#### Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

The Initial Report stated that drug abuse and drug trafficking has become a global phenomenon. It stated that the Narcotics Control Bureau is considering a proposal to amend the Narcotics Drugs and Psychotropic Substances Act, 1985 to protect the children from illicit use of drugs and to award the highest level of punishment. The First Periodic Report said that the estimated or projected number of drug abusers in India is 3 million and that of drug dependants is 0.5-0.6 million. The report also quoted the national survey that the Ministry of Social Justice and Empowerment undertook to assess the extent, trend and pattern of alcohol and drug abuse in the country. GoI has made it mandatory for all sellers of Tobacco to put up a notice saying that they cannot, as per the law, sell tobacco to children below 18 years. This law is of course often flouted right under the notice itself. Not only do children buy, they are also seen manning tobacco shops on roadsides.

Substance abuse creates a huge hindrance for survival, protection, growth and development of healthy children. Understanding the issue of substance abuse holistically and planning appropriate actions to intervene as early as possible is very crucial to create a ‘fit world’ for children and to restore their rights for protection from substance abuse.

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742 UNDCP Regional Office for South Asia, South Asia Drugs Demand Reduction Report, New Delhi, India, p 260

8B.3.5 Other forms of Exploitation (Article 36)

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare

Children are exploited in many ways in the country. Child marriage continues to be a menace, children living on the street are vulnerable to all forms of abuse and also children belonging to minorities or indigenous groups, children with disability etc. face discrimination and exploitation.

8B.3.5.1 Child Marriage

The Initial Report stated that the social and cultural milieu of India has long favored early marriage for girls. Despite the increase in the mean age at marriage of girls during the decade from 15.5 in 1981 to 19.5 in 1991, child marriage has remained a serious problem. The Child Marriage Restraint Act of 1929 (CMRA) was amended in 1978 to raise the minimum marriage age of girls to 18 years and for boys to 21 years. However the Act did not invalidate child marriages as it could adversely affect the status of girls.

The sum essence of the First Periodic Report is not very much different from that in the Initial Report. It only adds that perturbed over the reports in the media regarding child marriages, the National Commission for Women (NCW) with the National Human Rights Commission (NHRC) had made certain recommendations to the Government to amend the law and also undertake measures to prevent child marriages.

Child marriage is one of the biggest concerns of violation of child rights in the country even today. It was back in 1929 when India got its first law against child marriage as a result of the social reform movement. But the practice continues unabated! Child brides are much more likely to experience domestic violence and less likely to take action against this abuse.744

Young girls continue to have less reproductive control, and suffer higher rates of maternal mortality as their bodies are too immature to give birth. They are also highly susceptible to sexual abuse, including non-consensual sex with their husbands.745 This can make them vulnerable to sexually transmitted infections.746

The 205th Law Commission Report cites significant statistics on the scale of child marriages in India.747 According to the report, in a study carried out in 1998 to 1999 on women aged 15-19 years, it was found that 33.8 percent were currently married or in a union. In 2000 the UN Population Division recorded that 9.5 percent of boys and 35.7 percent of girls aged between 15-19 were married. The National Family Health Survey of 2005-2006 (NFHS-3)748 carried out in twenty-nine states confirmed that 45 percent of women currently aged 20-24 years were married before the age of eighteen years, with 58.5 percent in rural areas and 27.9 percent in urban areas (27.9 percent) and exceeded 50 percent in eight states. Only five states of Himachal Pradesh, Manipur, Kerala, Goa and Jammu and Kashmir report less than 20 percent of women married before 18.749

746 Ibid.
749 Ibid.
There are stark variations in marriage patterns across the country. The adjoining Figure 8.4 shows the percentage of child marriage by virtue of their economic status. It was seen that girls from poorer households are more likely to get married as children than girls from the richer households. More interesting are the data that comes from different states. Despite high female literacy in Kerala, close to one-tenth of women are married before attaining the legal age of 18.\textsuperscript{750} Since 2001, Gujarat has recorded 164 cases of child marriages with the state recording the highest of 38 in the year 2002. It had reported 11 cases the previous year. In 2003, Gujarat has 11 cases while it had 30 cases in 2004, 25 in 2005 and 12 cases in 2006.

Concluding Observations of the Human Rights Committee

16. While acknowledging measures taken to outlaw child marriages (Child Marriages Restraint Act), the practice of dowry and dowry related violence (Dowry Prohibition Act and the Penal Code) and sati self immolation of widows (Commission of Sati (Prevention) Act), the Committee remains gravely concerned that legislative measures are not sufficient and that measures designed to change the attitudes which allow such practices should be taken.

\textit{CCPR/C/79/Add.81} \\
4 August 1997

According to UNICEF India Country Office, although Punjab is one of India’s wealthier states, the proportion of girls getting married before the legal age of 18 has dramatically increased over the past 7 years, from 12 percent in 1998–99 to 19 percent in 2005–06. This could be one of the first signs of the fallout of Punjab’s rapidly declining girl to boy child sex ratio.\textsuperscript{751}

Experience of work on trafficking shows, Bengal, which is a supply state for ‘brides’ to states like Punjab, has also seen an increase in child marriage.

\textsuperscript{750} Aparna Bhat, Aatreyee Sen, Uma Pradhan (Ed.), \textit{Child Marriages and the Law in India}, Human Rights Law Network, New Delhi 2005

\textsuperscript{751} Vidya Kulkarni, UNICEF 15 April 2006 Available at: http://www.unicef.org/india/Media_AGE_AT_MARRIAGE_in.pdf
### Table 8.12: Age at Marriage

<table>
<thead>
<tr>
<th>State/Union Territory</th>
<th>Female</th>
<th>Male</th>
<th>Gap in age at marriage</th>
<th>Years above/below legal age</th>
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<td>4.2</td>
<td>1.6</td>
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<tr>
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<td>25.7</td>
<td>6.0</td>
<td>1.7</td>
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<tr>
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<td>3.4</td>
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<td>22.9</td>
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<td>1.4</td>
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<td>4.7</td>
<td>1.1</td>
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<td>5.0</td>
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<td>2.5</td>
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</table>

Source: Census of India 2001

In 2007 the Government of India passed The Prohibition of Child Marriage Act 2006 (PCMA). While a new law on child marriage, especially one that promises to prohibit it is welcome, the law was a big disappointment to
all those wanting to stop this violation of child rights. An analysis of the Act reveals that the PCMA does not actually prohibit child marriage or declare it illegal, rather it only creates a distinction between void and voidable marriages. According to the PCMA once a marriage has taken place, it is not void until such time the parties involved reach the age of adulthood (18 for girls and 21 for boys as per the Act) and seek to declare it to be so. There seems to be an underlying assumption in the Act that girls on attaining majority will have the agency and adequate support from their families to approach the courts for nullity of marriage through their guardians.

Child marriages, trafficking on the rise in West Bengal

Antara Das

A rising awareness against dowry is fuelling the incidence

KOLKATA: A survey conducted across several districts in West Bengal has indicated that a rising awareness against dowry is fuelling the incidence of child marriage and trafficking.

The survey was conducted by Women’s Studies Research Centre (WSRC); the Department of Sociology, Burdwan University; and Centre for Women’s Studies, University of North Bengal, supported by the West Bengal Government’s Department of Women and Child Development and Social Welfare and United Nations Children’s Fund (UNICEF).

“We found that the traffickers approach the villagers in the guise of grooms without any dowry demand and lure them into marrying off even minor girls,” said Ishita Mukhopadhyay, Director, WSRC, University of Calcutta. “The girls are then sold and sent to other places like Mumbai, Dubai or Kashmir,” she added.

“The problem is compounded by the fact that West Bengal lies on the vulnerable international trafficking route, a fact acknowledged by the United Nations, with Kolkata itself becoming a significant source and destination for traffickers”, Dr. Mukhopadyay said.

“The elderly women in the villages acknowledge that child marriages were not so prevalent earlier.” She said that once married, even minor girls were treated as women and they did not enjoy child rights any more. The data quoted in the report (sourced from the 2001 Census and the National Family Health Survey) shows a high incidence of child marriage in the State — 39.16 percent compared to the national average of 32.10 percent. “Though the Social Welfare Department has been organizing awareness campaigns at the block and anganwadi levels, it is hard to eradicate the problem,” the department’s Principal Secretary S.N. Haque said.

While the Government’s focus is on economic empowerment of women through vocational training, and providing financial incentives to prevent girls from dropping out of high school, Dr. Mukhopadhyay felt that police action was needed to reign in traffickers. “There are, after all, hardly any trafficking cases that are registered with the police,” she said.


Often courts have given decisions that child marriages, once solemnised and consummated makes it very difficult, if not impossible for girls to deny and step out of those marriages.\textsuperscript{752} If such judgments and the previous CMRA are criticised for its inability to control child marriages, the new Act equally fails to achieve its objectives where it retains the distinction between void and voidable marriages with simply leaving the choice to the woman.\textsuperscript{753} If the social reality largely remains the same, the likelihood that young girls will now choose to nullify their marriages, which would probably be consummated by the time she attains maturity and decides to approach the courts, seems far-fetched.\textsuperscript{754} The applicability of PCMA on various marriages of different communities and religion is also unclear. Social customs and personal laws of different religious groups in India allows marriage of minor girls and the PCMA does not mention whether it prohibits all under age marriages that are sanctioned by religious laws.\textsuperscript{755}

\textsuperscript{752} Ruchira Goswami, Child Marriage in India: Mapping the Trajectory of Legal Reforms, Available at: http://sanhati.com/excerpted/2207/
\textsuperscript{753} ibid
\textsuperscript{754} ibid
\textsuperscript{755} ibid
8B.3.5.2 Street Children

Although the Convention does not have a specific article on street children, both the Initial report as well as the First Periodic Report have devoted sections to it explaining why there is an increase in the number of children living on the streets, and that it is a matter of great concern for the government.

**Majority of street children face sex abuse in India: Study**

In damning statistics, a government study has found that a vast majority of street children face sexual abuse in India, which is home to the world’s largest number of destitute children.

According to a study conducted by the ministry of women and child development, the overall incidence of physical abuse among street children was 66.8 percent. The majority of the street children facing physical abuse are in the age group of 5-12 years. Around 55 percent of the street children reported having undergone sexual abuse, it said.

The study covered 13 states -- Andhra Pradesh, Assam, Bihar, Delhi, Goa, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Rajasthan, Uttar Pradesh and West Bengal with a sample size of 12,447 children.

These included children in family environment, those attending schools, those in institutional care and street children. Out of these, 2,317 children (18.6 percent) were street children.

**Estimates by international agencies put the number of street children in India at 18 million, which is the largest in the world.** The women and child development ministry has recently introduced a centrally-sponsored scheme, namely integrated Child Protection Scheme, for such children.

It is also implementing another scheme called ‘An Integrated Programme for Street Children’ for the welfare and rehabilitation of street children.

*Source: Times of India, 14 January, 2010

While the Initial report says that an estimated 500,000 children live on the streets in seven cities: Bangalore, Bombay, Calcutta, Delhi, Hyderabad, Kanpur and Chennai, and that majority of these children are over eight years of age, have never attended school, the First Periodic Report merely states India, with a population of more than 1 billion in 2000, has the largest population of street children in the world. The truth remains that there is no reliable data maintained on children living on the streets. There is however enough information available from organisations that work with street children to enable us to understand their situation.

For example, the data collected by the Forum for Child Rights, allows us to trace a demographic profile of Vijayawada’s (Andhra Pradesh) street children. The typical street kid is a boy between 11 and 13 years of age; a large majority are Hindu and belong to castes that the government designated as ‘backward’. Street children are driven out of their homes by poverty and violence. More than 75 percent, in fact, mention the breakdown of their families and the repeated abuse as the precipitating causes. Such abuses generally begin or intensify when one of the parents remarries and the child ends up being considered inferior to the step-parent’s sons and daughters. In other cases, street life is not a choice — albeit one compelled by unbearable circumstances — but the consequence of abandonment or the loss of both parents.756 Butterflies, an organisation in Delhi estimate that there are 400,000 street children in Delhi. The capital’s streets and roads are their workplace. For 100,000 of these children, the streets double as home. They have nowhere else to go. Street children work as rag pickers, in tea-stalls and dhabas (roadside eateries), as shoeshine boys or

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vendors. But street life is unpleasant and risky. They face physical abuse, the callousness of policemen, are vulnerable to drugs and to health insecurities.757

The reports of the GoI to the Committee on Child Rights acknowledges that most of the families of street children are migrants. It states “with very poor socio-economic conditions and the large-scale presence of street children is a disease that is widespread due to an exploitative social structure, lopsided development and iniquitous resource ownership”. Other parameters contributing to its presence in India are large-scale unemployment, rapid urbanisation, fast population growth, extreme poverty, increasing disparities in wealth, high levels of child abuse by parents/society and a breakdown of traditional family and community structure.

8B.3.5.3 Children Belonging to a Minority or an Indigenous Group

Children belonging to a minority or an indigenous group find no mention in the Initial Report of the country. But the First Periodic Report boldly declares ‘protection of minorities is the hallmark of any civilised nation’. It then lists various international and national covenants, statutes, laws, protective provisions and their overall applicability. It does not report that in the period under review the actual and perceived security of status of both ethnic and social minorities has become a controversial issue. It ambiguously states that measures have been taken for the health and education of children of minorities but also that ‘in most other aspects the status of children of minorities may be determined by the status of the community that they belong to’. It also records the setting up of the National Commission on Scheduled Castes and Scheduled Tribes in 1993 and the creation of the central Ministry of Tribal Affairs in 1999. Also, it highlights enhanced provisions in the Ninth Five Year Plan to ‘empower’ Scheduled Castes (SC), Scheduled Tribes (ST) and Backward Caste communities but there is no update on how these measures targeted, reached, or benefited children of these groups. The text reporting on education again gives numbers instead of assessing change of drift.

The Committee in General Comment No.11 (2009) noted that specific references to indigenous children in the Convention were indicative of the recognition that they require special measures in order to fully enjoy their rights.758 The Committee observed that indigenous children face significant challenges in exercising their rights. It noted that Indigenous children continue to experience serious discrimination contrary to Article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this General Comment.759 It suggested that among the positive measures required to be undertaken by States parties is disaggregated data collection and the development of indicators for the purposes of identifying existing and potential areas of discrimination of indigenous children.760

The situation of children belonging to minorities and indigenous communities has not improved substantially since the last country report. The present five year plan i.e. the Eleventh Five Year Plan recognises the prevalence of exclusions based on social groups and emphasises the need for inclusive growth. But the gap between the promise and reality persists.761 A High Level Committee under the Chairmanship of Dr. Gopal

758 General Comment No. 11 (2009), Committee on the Rights of the Child, Fiftieth Session, 12-30th January, 2009, CRC/C/GC/11
759 ibid
760 ibid
761 Centre for Budget and Governance Accountability, National Social Watch Coalition, Wada Na Todo Abhiyan, How Inclusive is the Eleventh Five Year Plan? People’s Mid Term Appraisal, A Review of Selected Sectors, New Delhi, March 2010, pp 124-126
Singh was set up in 1980 to study the conditions of minorities. The Committee in its report concluded that the poor among the Muslims could not avail the opportunities in education, employment and economic activities because of isolation and various historical factors. This led to the announcement of the Prime Minister’s 15 Point Programme in 1983 to provide a sense of security to minority communities and ensure their rapid socio-economic development. It is ironical that yet another committee appointed by the Prime Minister after 26 years, the Sachar Committee too talks about how the Muslims live in poverty, illiteracy and backwardness. It is a question of State accountability to its citizens on which there can be no middle way other than genuine participation by all. The steps announced under the PM’s new 15 point program lacks financial resources and publicity.

Although sexual abuse spans caste and class, reports continue of girls from scheduled castes being raped by upper caste youths across the country. In Piparia, Madhya Pradesh, a 16 year old Dalit girl was burnt to death in 2006 after she refused to withdraw the case against an upper caste youth who had allegedly raped her four years ago.\(^\text{762}\) This followed reports of an increase in violence against Dalits in the area.\(^\text{763}\) In May 2008, in the Bhamnagar area of Uttar Pradesh, a 13 year old Dalit girl was allegedly raped by an upper caste youth at gun point.\(^\text{764}\) Although her father lodged a complaint with the local police, the accused was not caught.\(^\text{765}\)

In March 2008, a 17 year old Dalit girl was burnt to death in Madhya Pradesh for resisting a molestation attempt by four youths.\(^\text{766}\) This was the second case in the space of a week of a Dalit girl being burnt alive for opposing an attempt to molest her.\(^\text{767}\) There have also been reports from Rajasthan of rape of Dalit girls. In October 2006, a Dalit girl was allegedly gang-rape by three men in the presence of her brother whilst they were waiting at a bus stand in Sikar district.\(^\text{768}\) And in November 2006, a Dalit girl from Class 9 was allegedly gang raped by two youths in Ajmer.\(^\text{769}\)

These incidents – examples of many similar stories from across the country – illustrate the vulnerability the girls and women from SCs and STs, who still continue to face sexual violence in India on grounds of their social status. India some very strict laws to deal with offences against persons belonging to the SCs and the STs by persons other than those belonging to such castes/tribes. Forced evictions and displacement from land that members belonging to SC/STs have been cultivating for generations, without any compensation or any alternate housing is not rare.\(^\text{770}\) Evictions by big corporate houses and even the government on the name of economic development have become common in the past 20 years.\(^\text{771}\) These are considered crimes under The Scheduled Castes and The Schedules Tribes (Prevention of Atrocities) Act, 1989 and there are also special courts to deal with such offences. Yet the crime continues unabated and there are many victims who are not even aware of the law. Even in cases where NGOs have attempted to bring it to the notice of the police, there have been instances where cognizance was not under the SC/ST (Prevention of Atrocities) Act 1989. There were two cases of rape of minors belonging to SC, where neither the police nor the court felt the need to file charges against the accused under The SC/ST (Prevention of Atrocities) Act 1989.\(^\text{772}\) Subsequently, petitions were sent to the National Commission for the Scheduled Castes and Scheduled Tribes also, which did not


\(^{763}\) ibid.

\(^{764}\) The Hindu, Dalit girl raped, 3 May 2008, Available at: http://www.hindu.com/2008/05/03/stories/2008050356470300.htm

\(^{765}\) ibid.


\(^{767}\) ibid.


\(^{769}\) ibid.

\(^{770}\) Update: Alternate Report on Housing and Land Rights in India, Available at: http://www.mmpindia.org/update_CESCR_nov05.PDF

\(^{771}\) ibid.

\(^{772}\) Cases details with HAQ: Centre for Child Rights, New Delhi.
take the matter seriously and was of the view that the accused, committed the offence without any motive to
demean a particular caste or for want of establishing their social status.

Over the years, the Supreme Court of India too has time and again raised admonished atrocities against the
weaker sections of society by the upper castes and the powerful. However, social biases and patriarchy along
with no fear of law, rule the life of the most marginalised and vulnerable.

8B.4 Government’s Initiatives on Child Protection

In a paradigm shift in its thinking on Protection the MWCD through the Eleventh Five Year Plan had designed a
‘broad and comprehensive framework of child protection and set the foundation for creating and strengthening
robust protective environment for children’.\(^{773}\) In the light of this expanded mandate it formulated a new
centrally sponsored scheme for implementation in this plan period, to address the issue of child protection
and build a protective environment for children through Government-Civil Society Partnership.\(^{774}\) This is called
the \textit{Integrated Child Protection Scheme (ICPS)}.

The ICPS brings together multiple vertical schemes under one comprehensive child protection scheme,
combining existing child protection schemes of the Ministry and integrating interventions for protecting children
and preventing harm.\(^{775}\) In People’s Mid Term Appraisal of the Eleventh Five Year Plan of selected sectors it
was stated that launching of the ICPS was seen as an important initiative in the Eleventh Five Year Plan.\(^{776}\) It
was noted that the Integrated Child Protection Scheme will be an umbrella scheme that will merge existing
schemes for protection of children which will include

i) An Integrated Scheme for Street Children
ii) A programme for Juvenile Justice
iii) Scheme for Assistance for Homes
iv) Central Adoption Resource Agency (CARA).\(^{777}\)

However, even after four years since it was announced, the scheme is yet to be implemented, so far, 33 Memorandum of
Understanding with states have been signed.

There are problems with the planning of the scheme as well. The fact that the same official is being given the responsibility of being the
nodal officer for the ICPS scheme, the Child Marriage Act as well as the Domestic Violence Act in the district only goes to show how low
a priority it is being given. As with all initiatives that begin with a great intent, it may just die a

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\(^{774}\) ibid
\(^{775}\) ibid
\(^{776}\) ibid.
\(^{777}\) Centre for Budget and Governance Accountability, \textit{How Inclusive is the Eleventh Five Year Plan? People’s Mid Term Appraisal, A Review of Selected Sectors}, New Delhi p 158
slow death unless there is some concerted effort made to ensure its successful implementation with results achieved.

The following statistics were provided by the Minister for Women and Child Development in a written reply to a question in the Rajya Sabha on 20 August 2010. The State-wise number of street/destitute children benefited under the scheme ‘An Integrated Programme for Street Children’ during 2008-09 were as under:

Table 8.13: The State-wise number of street/destitute children benefited under the scheme ICPS, 2008-2009

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the State/Union Territory</th>
<th>No. of Beneficiaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>2,570</td>
</tr>
<tr>
<td>2.</td>
<td>Assam</td>
<td>700</td>
</tr>
<tr>
<td>3.</td>
<td>Gujarat</td>
<td>2,850</td>
</tr>
<tr>
<td>4.</td>
<td>Karnataka</td>
<td>1,150</td>
</tr>
<tr>
<td>5.</td>
<td>Maharashtra</td>
<td>1,112</td>
</tr>
<tr>
<td>6.</td>
<td>Orissa</td>
<td>600</td>
</tr>
<tr>
<td>7.</td>
<td>Punjab</td>
<td>1,200</td>
</tr>
<tr>
<td>8.</td>
<td>Rajasthan</td>
<td>1,600</td>
</tr>
<tr>
<td>9.</td>
<td>Tamil Nadu</td>
<td>200</td>
</tr>
<tr>
<td>10.</td>
<td>Uttar Pradesh</td>
<td>4,540</td>
</tr>
<tr>
<td>11.</td>
<td>West Bengal</td>
<td>13,300</td>
</tr>
<tr>
<td>12.</td>
<td>Chandigarh</td>
<td>600</td>
</tr>
<tr>
<td>13.</td>
<td>Delhi</td>
<td>2,166</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>32,588</strong></td>
</tr>
</tbody>
</table>

The State-wise, number of children in need of care and protection and children in conflict with law including destitute/orphan/ street children covered under ICPS during 2009-10 were as under:

Table 8.14: The State-wise, number of children in need of care and protection and children in conflict with law including destitute/orphan/ street children covered under ICPS during 2009-10

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the State</th>
<th>No. of Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>3,644</td>
</tr>
<tr>
<td>2</td>
<td>Manipur</td>
<td>630</td>
</tr>
<tr>
<td>3</td>
<td>Orissa</td>
<td>420</td>
</tr>
<tr>
<td>4</td>
<td>West Bengal</td>
<td>10,515</td>
</tr>
<tr>
<td>5</td>
<td>Assam</td>
<td>1,010</td>
</tr>
<tr>
<td>6</td>
<td>Rajasthan</td>
<td>4,620</td>
</tr>
<tr>
<td>7</td>
<td>Gujarat</td>
<td>5,534</td>
</tr>
<tr>
<td>8</td>
<td>Kerala</td>
<td>1,264</td>
</tr>
<tr>
<td>9</td>
<td>Haryana</td>
<td>364</td>
</tr>
<tr>
<td>10</td>
<td>Karnataka</td>
<td>4,392</td>
</tr>
<tr>
<td>11</td>
<td>Tamil Nadu</td>
<td>2,772</td>
</tr>
<tr>
<td>12</td>
<td>Nagaland</td>
<td>100</td>
</tr>
<tr>
<td>13</td>
<td>Chattisgarh</td>
<td>415</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>35,680</strong></td>
</tr>
</tbody>
</table>
The State-wise, number of children in need of care and protection and children in conflict with law including destitute/orphan/ street children covered under ICPS during 2009-10

Table 8.15: The State-wise central share of funds sanctioned, released and utilized by the State Governments under ICPS during 2009-10

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the State</th>
<th>Amount sanctioned (in Rupees)</th>
<th>Amount released (in Rupees)</th>
<th>Amount Utilized (in Rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>5,04,49,000</td>
<td>5,04,49,000</td>
<td>*</td>
</tr>
<tr>
<td>2.</td>
<td>Nagaland</td>
<td>1,90,11,586</td>
<td>1,90,11,586</td>
<td>*</td>
</tr>
<tr>
<td>3.</td>
<td>Madhya Pradesh</td>
<td>4,81,61,769</td>
<td>4,81,61,769</td>
<td>Nil</td>
</tr>
<tr>
<td>4.</td>
<td>Manipur</td>
<td>1,05,42,333</td>
<td>1,05,42,333</td>
<td>*</td>
</tr>
<tr>
<td>5.</td>
<td>Orissa</td>
<td>1,46,41,609</td>
<td>1,46,41,609</td>
<td>67,44,035</td>
</tr>
<tr>
<td>6.</td>
<td>West Bengal</td>
<td>5,00,86,000</td>
<td>5,00,86,000</td>
<td>*</td>
</tr>
<tr>
<td>7.</td>
<td>Chattisgarh</td>
<td>2,06,12,866</td>
<td>2,06,12,866</td>
<td>*</td>
</tr>
<tr>
<td>8.</td>
<td>Assam</td>
<td>1,29,92,000</td>
<td>1,29,92,000</td>
<td>*</td>
</tr>
<tr>
<td>9.</td>
<td>Rajasthan</td>
<td>2,25,07,035</td>
<td>2,25,07,035</td>
<td>1,60,15,250</td>
</tr>
<tr>
<td>10.</td>
<td>Gujarat</td>
<td>2,69,42,133</td>
<td>2,69,42,133</td>
<td>*</td>
</tr>
<tr>
<td>11.</td>
<td>Kerala</td>
<td>1,49,15,627</td>
<td>1,49,15,627</td>
<td>74,27,985</td>
</tr>
<tr>
<td>12.</td>
<td>Tamil Nadu</td>
<td>1,93,11,851</td>
<td>1,93,11,851</td>
<td>1,93,11,851</td>
</tr>
<tr>
<td>13.</td>
<td>Haryana</td>
<td>25,61,327</td>
<td>25,61,327</td>
<td>Nil</td>
</tr>
<tr>
<td>14.</td>
<td>Karnataka</td>
<td>2,03,10,783</td>
<td>2,03,10,783</td>
<td>*</td>
</tr>
</tbody>
</table>

(*) Utilization Certificates are awaited from the State Governments.

There are some interesting observations that need to be made on this reply. The data provided for rehabilitation of only 2008-09 is for only street children under a particular programme is more than the number of children in more than one category in the following year.

A growing awareness of the extent of violent crimes against children in the country and poor conviction rates led the Ministry for Women and Child Development to draw up the *Offences Against Children Bill, 2005* which it had touted as a major weapon to prevent repeats of incidents such as the Nithari killings. However, the bill had received a serious setback when it was rejected by the Law Ministry, saying that the bill was just a repetition of provisions in other laws. The law Ministry said that offences of sexual and physical abuse against children are covered under different sections of the Indian Penal Code and Code of Criminal Procedure, 1973. However, another bill focusing on sexual offences against children called the Protection of Children from Sexual Offences was introduced and passed by the Rajya Sabha and is under discussion before a Parliamentary Standing Committee.

8B.5 Budget Allocation and Expenditure

In the Sub Group Report on Child Protection for the Eleventh Five Year Plan it was acknowledged that poor investment on child protection is a reflection of the low priority this sector has received in government’s planning and implementation. Ever since child budget analysis has been undertaken in India, the share

779 ibid.
of child protection in the Union Budget has remained even lower than what the States show.\textsuperscript{781} Allocation made for child protection is negligible when compared to the number of children falling out the safety and protective net.\textsuperscript{782}

It was address this anomaly that the ICPS had been conceived. Unfortunately it also never received the funding that was estimated (Rs. 1338.06 of which the Central share was 10.71 billion for the years 2008-09 to 2011-12) and worse, the allocations were not utilised. Mid-term appraisal of the Eleventh Five Year Plan Rs. 3 billion was needed for only one year 2010-11.\textsuperscript{783} Envisaged as part of the much publicised new scheme under the Eleventh Plan - The Integrated Child Protection Scheme (ICPS), this outcome seems still far away given that the scheme is yet to take off and has several other ambitious components with very little budget (Rs. 10 billion altogether for five years). It aims at creating a protective environment for children so that they do not fall out of the protective net and become ‘children in difficult circumstances’. Up until now, all government’s initiatives had been directed to children who were already in distress.

Figure 8.5 shows the percentage share of protection within Union Budget for the past ten years (2000-01 to 2011-12).\textsuperscript{784} On an average only 0.04 percent has been the share of child protection within the total Union Budget during 2000-01 to 2011-12.\textsuperscript{785} While protection gets the least allocation in the Union Budget as compared to other child specific sectors, protection also has highest under spending.\textsuperscript{786} During 2000-01 -2006-07 under spending has been 15.06 percent.\textsuperscript{787}

In the Union Budget for 2011-12 the allocation for ICPS is Rs. 2.43 billion which in the last year (2010-11) was Rs. 2.70 billion.\textsuperscript{788} This is because the implementation of ICPS from the very beginning can as best be describes as tardy.\textsuperscript{789} In 2009-10 Revised Estimates were reduced to 540 million as against the allocation

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Fig_8.5.png}
\caption{Fig. 8.5: Share of Allocation and Expenditure of Protection within Union Budget 2000-01 to 2011-12}
\end{figure}

<table>
<thead>
<tr>
<th>Year</th>
<th>Protection (Rs crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-01</td>
<td>76.84 68.65 67.451</td>
</tr>
<tr>
<td>2001-02</td>
<td>108.19 101.69 93.6127</td>
</tr>
<tr>
<td>2002-03</td>
<td>147.74 122.36 111.1305</td>
</tr>
<tr>
<td>2003-04</td>
<td>137.13 113.3 113.6905</td>
</tr>
<tr>
<td>2004-05</td>
<td>162.25 152.61 147.49</td>
</tr>
<tr>
<td>2005-06</td>
<td>176.1 172.73 173.31</td>
</tr>
<tr>
<td>2006-07</td>
<td>239.45 183.12 183.27</td>
</tr>
<tr>
<td>2007-08</td>
<td>368.55 292.04 NA</td>
</tr>
<tr>
<td>2008-09</td>
<td>497.56 284.43 NA</td>
</tr>
<tr>
<td>2009-10</td>
<td>273 194 NA</td>
</tr>
<tr>
<td>2010-11</td>
<td>504.5 269.9 NA</td>
</tr>
<tr>
<td>2011-12</td>
<td>798 NA NA</td>
</tr>
</tbody>
</table>

\textit{Source: Budget For Children Analysis from 2000-01 to 2011-12, Compiled by HAQ Centre for Child Rights, New Delhi}

\textsuperscript{781} ibid.
\textsuperscript{782} ibid.
\textsuperscript{783} HAQ: Centre for Child Rights, \textit{No Protection for Aam Bachcha, Budget for Children in the Union Budget 2011-12}, 28 February, 2011
\textsuperscript{784} \textit{Budget For Children Analysis from 2000-01 to 2011-12, Compiled by HAQ Centre for Child Rights, New Delhi}
\textsuperscript{785} ibid.
\textsuperscript{786} ibid.
\textsuperscript{787} ibid.
\textsuperscript{788} ibid.
\textsuperscript{789} ibid.
of Rs. 1.80 billion, and the actual expenditure was only 426.3 million. In 2010-11 too revised expenditure was brought down to Rs. 880 million. It was only in the last year of the Eleventh Plan period that 33 MoUs have finally been signed leading the way for its implementation in the states, which is when the resources are required.

Conclusion

Though there has been a paradigm shift in the approach of the government on issues related to child protection, the reach and effect has not been substantial. Programmes and policies have to encompass a larger vision, as child protection is not limited to schools or the community – it extends to all areas accessed by a child beginning from the home to the playground to the community at large. Several laws have been amended, new ones introduced and policies and schemes initiated; however, they have to be complemented with supporting infrastructure and human resources for these measures to bear fruit. Also, since the issue of protection extends across the Ministries of Women and Child Development, Labour and Employment, Social Justice and Empowerment and Health, a plan should be drawn up for better inter-departmental coordination.

"Child protection" needs to be accorded the highest priority in the Centre’s and state’s policies, programmes and schemes. Since it is a state subject, the states have far greater responsibility of ensuring implementation of the country’s political commitments towards its children. With the highest child population in the world it is necessary that the country works towards creating a protective environment for children without further delay.
9. Ecological Rights of Children

Introduction

A symbiotic relationship between living organisms and their surroundings plays a critical role in equitable growth and sustainable development. However, the greed for control over natural resources and a generally careless attitude towards the ecosystem have affected humankind adversely despite the various efforts being made towards sustainable development. While many effects of ecological blunders are becoming visible, plenty remain beyond our comprehension. Equity and justice for all have thus become significant in the debates and discussions on ecology, sustainable development and human rights.

Part A

Ecological Rights as a Concept

<table>
<thead>
<tr>
<th>Roots of the Crisis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic growth and energy use</td>
</tr>
<tr>
<td>Low level of environmental literacy</td>
</tr>
<tr>
<td>Non-incorporation of environmental principles in policies and programmes of the State</td>
</tr>
<tr>
<td>Pressure on resources from growing human and animal populations</td>
</tr>
<tr>
<td>Indifference of the industrial sectors on environmental safety</td>
</tr>
<tr>
<td>Tensions between growth and equity</td>
</tr>
<tr>
<td>Uncontrolled consumerism of the upper classes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fundamental Causes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intra-generational, inter-generational and inter-species inequity</td>
</tr>
</tbody>
</table>

Source: Ecological rights of children, ecological changes and threats posed to children in perspective of ecological rights of children today and in future. Power Point Presentation by Mr. Pranab Ranjan Chowdhury at the Eastern Zone Project Partners meeting of terre

Ecological rights are natural rights that human beings derive from nature and as part of their natural state of being. They are rights that we are born with. To that extent, they are universal (owned by all people, everywhere) and inalienable (they cannot be taken away from us). Hence, they cannot be violated or denied by any legal regime or social contract.

Environment, biodiversity and cultural diversity are intrinsically related to the realisation of human rights. With land comes livelihood (for a majority of India’s population). Culture is largely determined and influenced by one’s environment as well. Although in common parlance, “ecology” is seen and understood in the light of biodiversity and environmental issues only, for the sustenance of human civilisation, the notions of co-existence and the plurality of cultures must be held integral to the definition of “ecology” and to all policy, law and action for ensuring ecological rights. The arguments of indigenous peoples’ groups have ensured the need to focus on cultural diversity as the fourth pillar of sustainable development – the other three being economic development, social development and environmental protection. All these are fundamental to human existence.

On a factual level, it has already become apparent that preservation, conservation and restoration of the environment are a necessary and integral part of the enjoyment of, inter alia, the rights to health, to food and to life including a decent quality of life. The close link with these rights clearly shows that a right to environment can easily be incorporated into the core of the human rights protection whose ultimate purpose is the blooming of the personality of all human beings in dignity.


Violation of ecological rights could be manifested in several ways – a loss of access to clean air and water; loss of access to productive land; loss of energy sources and biomass; loss of food and health security; social and economic marginalisation; physical displacement; loss of cultures, etc.

Ecological rights are therefore about the rights and corresponding responsibilities of all. Unfortunately, the less developed countries and people and the voiceless natural resources have shared the burden of responsibility while others have enjoyed the rights at their cost. Thus, at the core of ecological rights lies the question of survival and development with equity and justice; the question before us is not just about securing our today but also one of ensuring inter-generational justice – our responsibility towards future generations.

The 1972 UN Conference on the Human Environment in Stockholm recognised the need “to defend and improve the human environment for present and future generations” as “an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development”. “Our Common Future”, the 1983 Report of the World Commission on Environment and Development (popularly known as the Brundtland Commission), defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. This has become the most widely accepted definition of “sustainable development”. The Declaration of the UN Conference on Environment and Development held

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794 CJ George, Regional Coordinator - South Asia, terre des hommes Germany. Intergenerational Justice, a paper presented at a meeting of the Reflection Group on Global Development Perspective, New York, 4-6 March, 2011


in Rio de Janeiro in 1992 reiterated that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”.  

### Intergenerational Justice

It is the concept of fairness or equitable rights between generations, children, youths, adults and survivors and also between present, past and future generations… Theoretical discussions on these aspects have been mainly a concern of the post human rights declaration era …. Justice considerations apply to relations, which are beyond the present one. This is particularly true in the case of distributive justice. In some sense, the present generation exercises power over the future ones and has the possibility of using up resources in such a way that it negates the rights of the future ones. The future has no way of controlling the present. Moreover, the present generation even has powers on the very existence of the future ones. This could be an even greater influence than that on the current generation, where the influence would at most affect the survival of the people. This is enough ground for asserting rights to future persons, though there could be contrary arguments.

Source: Intergenerational Justice. Paper by CJ George, Regional Coordinator - South Asia, terre des hommes Germany, Presented at a meeting of the Reflection Group on Global Development Perspective, New York, 4-6 March 2011.

Along with sustainable development and inter-generational justice, the ambit of discourse on ecological rights has widened over the years to include climate change caused by human activity and its adverse impact on biodiversity.

Recognising the Earth’s increasing average surface temperature caused by deforestation, emission of greenhouse gases (GHG) etc., the first attempt at mitigating the adverse impacts of climate change was made in 1992 itself. One of the three Conventions adopted at the Rio Earth Summit in 1992 was the United Nations Framework Convention on Climate Change (UNFCCC), which came into force on 21 March 1994. It called upon countries to consider limiting average global temperature increases and the resulting climate change, and to cope with the inevitable impacts. The parties to the Convention have met annually from 1995 in Conferences of the Parties (CoP) to assess progress in dealing with climate change.

To strengthen the global response to climate change, the Kyoto Protocol was adopted in 1997; it finally came into force in February 2005. The Kyoto Protocol legally binds developed countries to emission-reduction targets. The Protocol’s First Commitment Period started in 2008 and ends in 2012. In 2010, governments met in Cancun at the 16th Conference of Parties (CoP-16) and agreed to reduce emissions to limit the global temperature increases to below 2 degrees Celsius. It was agreed that apprehensions about not being able to meet this target should be taken up at the next Conference of Parties (CoP-17) scheduled to be held at Durban in 2011 between 28 November and 9 December.

According to CJ George, Regional Coordinator-South Asia, terre des hommes, the Johannesburg World Summit on Sustainable Development, August-September 2002 and the Copenhagen Climate Conference (COP 15, 2009) and the Copenhagen Accord have not really inspired much confidence among people the world over. The very recent Cancun conference even ran the risk of negating whatever gains remained out of the Kyoto Protocol agreements.

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799 CJ George, Regional Coordinator - South Asia, terre des hommes Germany, Intergenerational Justice, a paper presented at a meeting of the Reflection Group on Global Development Perspective, New York, 4-6 March, 2011

800 Background on the UNFCCC: The international response to climate change. Available at: http://unfccc.int/essential_background/items/6031.php

801 CJ George, Regional Coordinator - South Asia, terre des hommes Germany Intergenerational Justice, a paper presented at a meeting of the Reflection Group on Global Development Perspective, New York, 4-6 March, 2011
For the realisation of ecological rights, equitable and just sustainable development and mitigation of climate change must be supplemented with the right to information and participation in decision-making, freedom of opinion and expression, including the right to resist unwanted developments. This is reiterated in the principles laid down in the Earth Charter (see Annexure 9A), which was initiated by the UN and later finalised after a decade-long, worldwide, cross-cultural dialogue on common goals and shared values and launched as a people’s charter in 2000 by the Earth Charter Commission, an independent international entity.

It is in this backdrop that an attempt has been made in this chapter to throw light on the ecological rights of children, who happen to be the worst affected today and are most likely to be the worst affected in the future too.

**Part B**

**Ecological Rights of Children**

As part of the human rights discourse, there have been conscious attempts in the past to protect ecological rights, largely in the context of sustainable development, indigenous peoples’ rights and eco-feminism. As is the case with the rights of all other groups of people, children’s rights too cannot be achieved in times of ecological imbalance and destruction of ecosystems and biodiversity. In fact, children as a group are the most vulnerable in an ecologically imbalanced world. When looked at in the context of human rights of children, what comes forth is a strong need to develop an understanding on children’s ecological rights by engaging with them and taking their views for policy considerations.

- There is an increasingly convincing body of evidence that many of the main killers of children (malaria, diarrhoea and undernutrition) are highly sensitive to climatic conditions. These are expected to worsen because of climate change. Overall, 25 percent of deaths in the population can be attributed to environmental factors. Among children under 14, however, the figure rises to 36.
- Smoke in the home claims the lives of nearly 800,000 children each year. Newborns and infants are often carried on their mothers’ backs while they are cooking, or kept close to the warm hearth.
- Food production could decline by as much as 50 percent by 2020, causing widespread child undernutrition.
- Malaria causes more than a million deaths each year, up to 80 percent of which are among children under five; almost 2 million children under five die each year from diarrhea; an estimated that 2.1 million children under five die from acute respiratory illnesses worldwide.

A clear consequence of climate change is displacement and migration of families. Displacement, migration and emergency situations have a negative impact on children. They increase the possibility of child abuse and trafficking. In the aftermath of disasters, children may be pulled out of school and put to work to help their families recover.


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Why Ecological Rights for Children?

- Children are as much a part of the ecosystem as others and have the “need” and “right” to interact with their surroundings.
- Their survival, growth and development depend on both their and adults’ relationship and interaction with their surroundings.
- The path to development followed by most developed countries and people affect children’s rights both now and in the future.
- Ensuring ecological rights for all depends on a systematic vulnerability assessment of all groups of people, especially children, and more importantly, poor and vulnerable children in marginal economies.
- Ecological rights for all cannot be ensured without engaging with children meaningfully as rights holders, or without making them aware of the debates and discussions on sustainable development, biodiversity and cultural diversity, or without involving them as social change actors.

### Children at Ecological Risk
- Farm children to agrochemical pollution
- Street children to plastic, carcinogens and heavy metals
- Children in mining areas to heavy metals and dust
- Children in coastal areas to salinity, flood and cyclones
- Urban children to traffic noise and air pollution
- Rural poor and tribal children to health and malnutrition
- Autisms to food pollution

This is merely part of a very long list.

Source: Ecological rights of children, ecological changes and threats posed to children in perspective of ecological rights of children today and in future, Power Point Presentation by Mr Pranab Ranjan Chowdhury at the Eastern Zone Project Partners Meeting of terre des hommes (Germany), India Programme, 15-17 September 2011

### What do the ecological rights of children entail?

- Right to survival
- Right to a clean environment
- Right to health, nutrition, happiness and well-being
- Right to clean and safe drinking water
- Right to development
- Right against exploitation, violence, abuse and neglect
- Right to a biologically and culturally diverse and resilient environment
- Right of information and exposure to elements and diversity of ecosystem
- Interaction and reciprocation with the elements of an ecosystem
- Right to peaceful existence
- (Rights to and the responsibility of) acting to rejuvenate, maintain and sustain life support ecosystem and eco-elements
- Right to be heard

Source: Ecological rights of children, ecological changes and threats posed to children in perspective of ecological rights of children today and in future, Power Point Presentation by Mr Pranab Ranjan Chowdhury at the Eastern Zone Project Partners Meeting of terre des hommes Germany, India Programme, 15-17 September 2011
The 1989 Convention on the Rights of the Child (CRC) is an international human rights treaty that focuses on children not just as individuals with rights, but also as individuals who are part of the larger world and community, and whose overall development is a function of a number of factors (psychological, social, educational, and cultural) and contexts (home, school, community, and country). According to CJ George, the CRC is oriented towards guaranteeing just and fair treatment to all children and to include the future generations as well. Quoting the World Summit for Children’s Declaration on the Survival, Protection and Development of Children, 1990 and the Declaration and Plan of Action of ‘A World Fit for Children’ that resulted from the UN General Assembly and Special Session for Children (UNGASS) in May 2002, George reiterates that the global commitment to future generations is established in the process of operationalising the CRC.

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Convention on the Rights of the Child and Realisation of Ecological Rights of Children

Preamble

The States Parties to the present Convention, … convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities in the community.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views 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.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.

Article 24 (2) (c) and (e)

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Article 29

1. States Parties agree that the education of the child shall be directed to:

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(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.

Article 30
In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

World Summit for Children, 30 September 1990
Declaration on the Survival, Protection and Development of Children
“We do this not only for the present generation but for all generations to come. There can be no task nobler than giving every child a better future.”

UN General Assembly and Special Session for Children (UNGASS), 8-10 May 2002
‘A World Fit for Children’ Declaration
7(10). Protect the Earth for children.
We must safeguard our natural environment, with its diversity of life, its beauty and its resources, all of which enhance the quality of life, for present and future generations. We will give every assistance to protect children and minimize the impact of natural disasters and environmental degradation on them.

‘A World Fit for Children’ Plan of Action
A. Creating a World Fit for Children
26. A number of environmental problems and trends, such as global warming, ozone layer depletion, air pollution, hazardous wastes, exposure to hazardous chemicals and pesticides, inadequate sanitation, poor hygiene, unsafe drinking water and food and inadequate housing, need to be addressed to ensure the health and well-being of children.
28. We will take measures to manage our natural resources and protect and conserve our environment in a sustainable manner. We will work to change unsustainable patterns of production and consumption, bearing in mind principles, including the principle that, in view of different contributions to global and environmental degradation, States have common but differentiated responsibilities. We will help to educate all children and adults to respect the natural environment for their health and well-being.

B. Goals, strategies and actions
1. Promoting healthy lives
25. Develop legislation policies and programmes, as appropriate, at the national level and enhance international cooperation to prevent, inter alia, the exposure of children to harmful environmental contaminants in the air, water, soil and food.

C. Mobilizing resources
57. …We urge the private sector to assess the impact of its policies and practices on children and to make the benefits of research and development in science, medical technology, health, food fortification, environmental protection, education and mass communication available to all children, particularly to those in greatest need.
Often enough, children’s ecological rights have been best addressed in the context of the right to a clean and safe environment and more by way of involving children in the creation of a better future. The 21st Principle of the 1992 Rio Declaration states that “the creativity, ideals and courage of the youth of the world should be mobilised to forge a global partnership in order to achieve sustainable development and better future for all”.806

While children and youth are happy to be involved in environmental protection efforts and are provided with information to join the campaigns, they are seldom informed about their ecological rights and the global and national commitments to protect them.807

Of late, children’s engagement with the issue of ecological rights has emerged in varying degrees across the world, with South American countries taking the lead. In India too, children have started voicing their concerns and demanding for their ecological rights.

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**Children’s Rights, the MDGs and Climate Change**

**Increased child poverty due to reduced incomes and threatened livelihoods (affecting MDG 1):** Climate change could cause an additional 40,000 to 160,000 child deaths per year in South Asia and sub-Saharan Africa through Gross Domestic Product (GDP) losses alone.

**Increased hunger (MDG 1 and 4):** With temperature increases of 2°C, an additional 30-200 million people will be placed at risk of hunger globally rising to as many as 550 million with warming of 3°C.

**Fewer children able to attend school, especially girls (MDG 2 and 3):** The negative impact on livelihoods may make it more likely that parents remove their children from school – and in most cultures this will almost certainly mean removing girls first – so that they can collect water and fuel and supplement household income.

**Increased childhood disease (waterborne/communicable) (MDG 6 and 7):** Malaria: changes in environmental factors mean malaria - which already kills 800,000 children every year - is now being seen in areas which were previously outside the range of malarial mosquitoes, such as the highlands of Kenya and Jamaica. Diarrhoea: Climate change will increase the burden of diarrhoeal disease in low income countries by between 2 and 5 percent by 2020. Dengue: Estimates suggest the population at risk could increase to 3.5 billion by 2080 (from 1.5 billion today) due to climate changes.


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9B.1 Ecological Rights in India: International and National Commitments and Action

9B.1.1 Global Commitments

Table 9.1: Major International Environmental Conventions and India

<table>
<thead>
<tr>
<th>No.</th>
<th>Multilateral Environmental Agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nature conservation</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Ramsar Convention on Wetlands</td>
</tr>
<tr>
<td>2</td>
<td>Convention on International Trade in Endangered Species of Fauna and Flora (CITES)</td>
</tr>
<tr>
<td>3</td>
<td>The Wildlife Trade Monitoring Network (TRAFFIC)</td>
</tr>
<tr>
<td>4</td>
<td>Convention on the Conservation of Migratory Species (CMS)</td>
</tr>
<tr>
<td>5</td>
<td>Coalition Against Wildlife Trafficking (CAWT)</td>
</tr>
<tr>
<td>6</td>
<td>Convention on Biological Diversity (CBD)</td>
</tr>
<tr>
<td>7</td>
<td>International Tropical Timber Organization (ITTC)</td>
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<tr>
<td>8</td>
<td>United Nations Forum on Forests (UNFF)</td>
</tr>
<tr>
<td>9</td>
<td>International Union for Conservation of Nature and Natural Resources (IUCN)</td>
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<tr>
<td>10</td>
<td>Global Tiger Forum (GTF)</td>
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<tr>
<td><strong>Hazardous material</strong></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Cartagena Protocol on Biosafety</td>
</tr>
<tr>
<td>12</td>
<td>Strategic Approach to International Chemicals Management (SAICM)</td>
</tr>
<tr>
<td>13</td>
<td>Stockholm Convention on persistent organic pollutants (POPs)</td>
</tr>
<tr>
<td>14</td>
<td>Basel Convention on the Control of Trans-boundary Movement of Hazardous Waste and their Disposal</td>
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<tr>
<td>15</td>
<td>Rotterdam Convention on Prior Informed Consent (PIC) for certain Hazardous Chemicals and Pesticides in International Trade</td>
</tr>
<tr>
<td><strong>Atmosphere</strong></td>
<td></td>
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<tr>
<td>16</td>
<td>United Nations Framework Convention on Climate Change (UNFCCC)</td>
</tr>
<tr>
<td>17</td>
<td>Kyoto Protocol</td>
</tr>
<tr>
<td>18</td>
<td>Montreal Protocol Ozone (on Ozone Depleting Substances)</td>
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<tr>
<td><strong>Land</strong></td>
<td></td>
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<tr>
<td>19</td>
<td>United Nations Convention to Combat Desertification (UNCCD)</td>
</tr>
<tr>
<td><strong>Marine environment</strong></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>International Whaling Commission (IWC)</td>
</tr>
</tbody>
</table>

Source: MoEF (2008)

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9B.1.2 National Commitments

9B.1.2A Constitution of India

Part III. Fundamental Rights

Article 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Article 31A (Proviso). ...where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

Part IV. Directive Principles of State Policy

Article 39. The State shall, in particular, direct its policy towards securing—
(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;
(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 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 48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51 A – Fundamental Duties

It shall be the duty of every citizen of India
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
(f) to value and preserve the rich heritage of our composite culture;
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
Part IX. The Panchayats

Article 243M. (1) Nothing in this Part shall apply to the Scheduled Areas referred to in Clause (1) and the tribal areas referred to in Clause (2) of Article 244.

Enactment of the 73rd Amendment Act (Act No. 40) of 1996 provided legislative protection for the tribal people in support of the Fifth Schedule and accordingly, the Panchayats (Extension to Scheduled Areas) Act came to be adopted in most of the states with Scheduled Areas, with corresponding laws.

The Act clearly states the supremacy of the Gram Sabha (the decentralised unit of governance in the tribal areas) in the Scheduled Areas and right to self-rule and governance of the tribal people. It empowers the Gram Sabhas to have control over resources and the right to “customary law, social and religious practices and traditional management practices of community resources”.

Part IXA. The Municipalities

Article 243ZD (3) Every District Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—
   (i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation

Fifth Schedule (Related to Article 244 (1))

It provides the Constitutional safeguard for the tribal people in India. It deals with “Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes” and thus ensures ownership over lands and resources in the areas earmarked as the Scheduled Areas. Fifth Schedule Part B 5 (2) (a) provides for regulation that may prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; and 5 (2) (b) provides for regulating the allotment of land to members of the Scheduled Tribes in such areas.

9B.1.2B Policy Framework

India’s policy initiative on environment related issues dates back to 1952, when the first National Forest Policy was formulated. This policy was revised in 1988. The country has since put in place a strong policy framework on issues relevant to environment protection, sustainable development and climate change.

The National Forest Policy, 1988 is reported to have downplayed the importance of commercial forestry for the first time and emphasised the conservation of soil and environment as a part of forest protection initiatives. It recognised the role of local communities in protecting these precious natural resources.

The National Environmental Policy (NEP) of 2006 states that “only such development is sustainable which respects ecological constraints and the imperatives of social justice”.

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809 Gopa Joshi, Forests and Forest Policy in India, Social Scientist, vol 11, No. 1 (January 1983), pp 43-52
811 Ibid.
The three foundational aspirations of the Policy are that

- human beings should enjoy a decent quality of life;
- human beings should become capable of recognising the finiteness of the biosphere; and
- neither the aspiration of a good life nor the recognition of the limits of the biophysical world should preclude the search for greater justice in the world.

A summary of all relevant policies as presented by the Ministry of Environment and Forests (MoEF) in its recent effort at taking stock in the run-up to Rio+20 is as follows.\textsuperscript{812}

**Economic**

- New Industrial Policy, 1991
- Pharmaceuticals Policy, 2002
- National Electricity Policy, 2005
- National Mineral Policy, 2008
- New Exploration and Licensing Policy, 1999 (this is a resolution passed by the Ministry of Petroleum and Natural Gas through a Gazette Notification dated 10 February 1999 and is in line with the Government’s “liberalised policy for attracting private investments in the oil sector”\textsuperscript{813})
- National Telecom Policy, 2011

**Social**

- National Housing and Habitat Policy, 1998
- National Policy for Empowerment of Women, 2001
- National Policy for Urban Street Vendors, 2004
- National Rehabilitation and Resettlement Policy, 2007

**Environment**

- Auto Fuel Policy, 2002
- National Forest Policy, 1988

**Socio-ecological (environment and social)**

- National Agricultural Policy, 2002
- National Urban Sanitation Policy, 2008

**Green economy (economic and environment)**

- Integrated Energy Policy, 2008

**Sustainable development (social, environment and economic)**

- National Urban Transport Policy, 2006
- National Environmental Policy, 2006

\textsuperscript{812} Ministry of Environment and Forests, Government of India, Sustainable development in India: Stocktaking in the run up to Rio+20, 2011, p 23

\textsuperscript{813} Ministry of Petroleum and Natural Gas, Government of India, Resolution, Gazette of India Notification No. O-19018/22/95-ONG.DO.VI. Available at http://petroleum.nic.in/newga-zette/goi1.pdf
There are several laws to promote sustainable development and mitigate the impacts of climate change; laws that provide for protection of forests and wildlife, regulation of industries and waste management, energy conservation, protection of rights of people and cultures. These have been put together by the Ministry of Environment and Forests as laws relevant to sustainable development. The list is as given in the table below.

Table 9.2: Key Indian legislations relevant to Sustainable Development

<table>
<thead>
<tr>
<th>Environment Indicators</th>
<th>Multilateral Environmental Agreements and National Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environment</td>
<td></td>
</tr>
<tr>
<td>Key acts</td>
<td>The Forest Act, 1927</td>
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<tr>
<td></td>
<td>The Wildlife (Protection) Act, 1972</td>
</tr>
<tr>
<td></td>
<td>Water (Prevention and Control of Pollution) Act, 1974</td>
</tr>
<tr>
<td></td>
<td>The Forest (Conservation) Act, 1980</td>
</tr>
<tr>
<td></td>
<td>Air (Prevention and Control of Pollution) Act, 1981</td>
</tr>
<tr>
<td></td>
<td>Environmental (Protection) Act, 1986</td>
</tr>
<tr>
<td></td>
<td>Motor Vehicles Act, 1988</td>
</tr>
<tr>
<td>Social</td>
<td>Protection of Human Rights Act, 1993</td>
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<td>National Trust Act, 1999</td>
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<td></td>
<td>Commissions for the Protection of Child Rights Act, 2005</td>
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<td>Right to Information Act, 2005</td>
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<td></td>
<td>Gram Nyayalayas Act, 2009</td>
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<tr>
<td></td>
<td>Right of Children to Free and Compulsory Education Act, 2009</td>
</tr>
<tr>
<td>Economic</td>
<td>Foreign Trade (Development and Regulation) Act, 1992</td>
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<tr>
<td></td>
<td>Competition Act, 2002</td>
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<tr>
<td></td>
<td>Fiscal Responsibility and Budget Management Act, 2003</td>
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<td></td>
<td>Micro, Small and Medium Enterprises Development Act, 2006</td>
</tr>
<tr>
<td>Socio-ecological (environment and social)</td>
<td></td>
</tr>
<tr>
<td>Key acts</td>
<td>Public Liability Insurance Act, 1991</td>
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<tr>
<td></td>
<td>National Environment Tribunal Act, 1995 (Repealed)</td>
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<td></td>
<td>The National Environment Appellate Authority Act, 1997 (Repealed)</td>
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<tr>
<td></td>
<td>National Green Tribunal Act, 2010</td>
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</tbody>
</table>

### Social equity (economic and social)

<table>
<thead>
<tr>
<th>Key acts</th>
<th>Acts</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Person with Disabilities Act, 1995 (right to employment of the disabled)</td>
</tr>
<tr>
<td></td>
<td>The Geographical Indications of Goods (Registration and Protection) Act, 1999</td>
</tr>
<tr>
<td></td>
<td>Protection of Plant Varieties and Farmer’s Right Act, 2001</td>
</tr>
<tr>
<td></td>
<td>The Patents (Amendment) Act, 2005</td>
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<td></td>
<td>Maintenance and Welfare of Parents and Senior Citizens Act, 2007</td>
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</table>

### Green economy (economic and environment)

<table>
<thead>
<tr>
<th>Key acts</th>
<th>Acts</th>
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<tbody>
<tr>
<td></td>
<td>Energy Conservation Act, 2001</td>
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<tr>
<td></td>
<td>The Electricity Act, 2003</td>
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</tbody>
</table>

### Sustainable development (social, environment and economic)

<table>
<thead>
<tr>
<th>Key acts</th>
<th>Acts</th>
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<tbody>
<tr>
<td></td>
<td>Panchayat Extens ion to Scheduled Areas Act, 1996</td>
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<tr>
<td></td>
<td>Biological Diversity Act, 2002 and the Biological Diversity Rules, 2004</td>
</tr>
<tr>
<td></td>
<td>National Rural Employment Guarantee Act, 2005</td>
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<tr>
<td></td>
<td>Forests Rights Act, 2006</td>
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</table>

For the first time, the Biological Diversity Act, 2002 sought to present a legal understanding of the concept of sustainable development. It defined “sustainable use” as the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.815

### 9B.1.2D Action Plans and Programmes

As part of an analysis of the approaches and strategies for sustainable development adopted by 19 countries, it is reported that the Government of India initiated a process of preparing and implementing a national strategy for sustainable development by 2005 largely after the World Summit for Sustainable Development, 2002.816

The most recent in the list of major action plans and programmes is the National Action Plan on Climate Change, 2008.

**National Action Plan on Climate Change, 2008**817

On 30 June 2008, the National Action Plan on Climate Change (NAPCC) was adopted to stress the maintenance of a high growth rate for increasing the living standards of the vast majority of people of India and reducing their vulnerability to the impacts of climate change. The NAPCC focusses on promoting an understanding of climate change adaptation and mitigation, energy efficiency and natural resource conservation. Eight National Missions form the NAPCC’s core and represent multi-pronged, long-term and integrated strategies for achieving key goals in the context of climate change.

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816 ibid.

Five Year Plans

- 1997-2002
  Ninth Five Year Plan explicitly recognised the synergies among environment, health, and development, and identified the need for ensuring environmental sustainability of the development process through social mobilisation and participation of people at all levels as one of its core objectives. The plan specifically encouraged participation of schoolchildren in various activities related to ecological conservation and preservation of the environment through the National Green Corps scheme, which sought to establish school eco-clubs.

- 2002-2007
  Tenth Five Year Plan assigned primacy to enhancement of human well-being, including adequate consumption of food and other consumer goods and access to basic social services, especially education, health, drinking water and basic sanitation; an integrated approach to improve the agricultural sector to protect natural resources and combat poverty at the same time; expansion of economic and social opportunities for all individuals and groups and wider participation in decision-making; and, conservation and management of natural resources. Some of the targets to be reached for sustainable development were as follows.
  - Reduction of poverty ratio by 5 percentage points by 2007 and by 15 percentage points by 2012
  - All children in school by 2003 and all children to complete five years in school by 2007
  - Reduction in gender gaps in literacy and wage rates by at least 50 percent by 2007
  - Reduction in population growth between 2001 and 2011 to 16.2 percent
  - Increase in literacy rate to 75 percent by 2007
  - Reduction of Infant Mortality Rate (IMR) to 45 per 1000 live births by 2007 and to 28 per 1000 live births by 2012
  - Reduction of Maternal Mortality Rate (MMR) to 2 per 1000 live births by 2007 and to 1 per 1000 live births by 2012
  - Increase in forest cover to 25 percent by 2007 and 33 percent by 2012
  - All villages to have sustained access to potable drinking water by 2007
  - Cleaning of major polluted rivers by 2007 and other notified stretches by 2012

- 2007-2012
  Eleventh Five Year Plan aimed at faster and more inclusive growth through restructuring of policies and by reducing disparity through monitorable indicators of human development.

Some goals were
- poverty reduction;
- improving availability of safe drinking water and sanitation;
- sanitation campaigns to include special needs of women, adolescent girls, infants, disabled and the aged;

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sufficient focus on the needs of disaster prone areas such as hills, mountains, coastal areas etc. in the rural sanitation programmes; strengthening the River Conservation Programme;
• to incentivise recycling of the treated water for appropriate purposes;
• focusing attention on sewage treatment in urban planning;
• environmental education for youth;
• improving the livelihood potential of forests for enhancing the stake of the community in conservation;
• development and promotion of low-carbon and energy-efficient technologies with reasonable costs on a priority basis;
• creating an enabling environment for encouraging energy and carbon efficiency in public and private sectors, etc.

Some of the targets set were as follows.

- Agricultural GDP growth rate at an annual average of 4 percent.
- Generation of 58 million new work opportunities.
- Reduction of unemployment among the educated to less than 5 percent.
- A 20 percent rise in the real wage rate of unskilled workers.
- Reduction in the head count ratio of consumption poverty by 10 percentage points.
- Clean drinking water to be available for all by 2009, ensuring that there are no slipbacks by the end of the Eleventh Plan.
- IMR to be reduced to 28 and MMR to 1 per 1000 live births by the end of the Eleventh Plan.
- Malnutrition among children of the 0-3 age group to be reduced to half its present level by the end of the Eleventh Plan.
- Anaemia among women and girls to be reduced to half its present level by the end of the Eleventh Plan.
- Reducing the gender gap in literacy to 10 percentage points by 2011-12.
- Ensuring that at least 33 percent of the direct and indirect beneficiaries of all government schemes are women and girl children.
- Ensuring that all children enjoy a safe childhood without any compulsion to work.
- To provide homestead sites to all by 2012 and step up the pace of house construction for rural poor to cover all the poor by 2016-17.
- To increase forest and tree cover by 5 percentage points.
- To attain WHO standards of air quality in all major cities by 2011-12.
- To treat all urban wastewater by 2011-12 to clean river waters.
- To increase energy efficiency by 20 percent by 2016-17.

National Plans of Action for Children

In addition to the plans and programmes listed above, there are child-specific action plans that lay down commitments and goals specific to children’s ecological rights. Table 9.3 highlights some of these.
| National Plan of Action for Children, 1992 | • Nutrition: Creation of conducive environment by providing safe drinking water, clean environment, immunisation service, health care etc.  
• Literacy: Establishing linkages with other developmental programmes like health & family welfare, conservation of environment, agriculture, rural development, etc  
• Children and the Environment: To conserve and protect environment so that it is conducive to the health and well being of the children.  
• Awareness should be created among children regarding importance of protection of the environment and they should be encouraged to participate in activities aimed at protection of environment.  
• In organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment. |
| National Plan of Action for Children (NPAC), 2005 | • Water and Sanitation: To cover 100 percent urban population with low cost sanitation and safe water disposal facilities by 2010 and build an enabling environment for sanitation and hygiene that promotes prevention of pollution of all fresh water bodies.  
• NPAC has a full chapter dedicated to *Children and Environment*. The Goals/Objectives/Strategies listed there include:  
  • To conserve and protect the natural environment and safeguard natural resources, for the good and well being of all children  
  • To ensure children’s survival, health and food security through conservation and safe use of water, land and forest resources, and people’s access to forests, waterways and other such resources as a common good.  
  • To ensure creation of appropriate means for play, recreation and cultural development for the all round development of the child.  
  • To ensure control of air pollution to protect children from respiratory ailments, including asthma.  
  • Take measures to prevent or minimise and where possible reverse environmental hazards, (toxic) wastes, chemicals and pesticides, plastic wastes, lack of sanitation, inadequate housing and infrastructure.  
  • To ensure that damaged eco-systems are protected and/or restored to productivity, and are responsibly utilised for the benefit of children and their communities.  
  • Prevent unsustainable patterns of production and consumption including exploitation and depletion of natural resources for commercial purposes that undermine local livelihoods.  
  • Enact laws, policies, and programmes to prevent the exposure of children to harmful environmental contaminants in air, water, soil and food.  
  • Address and reduce micronutrient deficiencies caused by depletion of iodine, iron and other micronutrients in the environment.  
  • Ensure environmental sustainability by integrating principles of sustainable development into national policy and programme.  
  • Create community processes for local management and utilisation of natural resources, to promote and protect children’s health and well being, and encourage children’s informed involvement in such processes.  
  • Ensure reforestation and tree-planting, to meet fuel, fodder and green cover needs; provide children a constructive role in developing tree nurseries and involve children in promoting social forestry.  
  • Encourage children’s knowledge of and involvement in, watershed management and grassland use to strengthen viability of the local environment.  
  • Encourage children’s knowledge and use of water-saving and hygiene technologies in the home, home surroundings and local setting, to make them informed actors in safe and responsible water use and local sanitation.  
  • Promote community knowledge and use, consciously including children, to prevent damage from toxic and other wastes and contaminants that poison the environment.  
  • Take steps to improve standards and provision of urban housing and shelter, sanitation and waste disposal, to improve and protect the health and hygiene of children and families.  
  • Ensure municipal and/or local government action to meet child-safe norms in sanitation, drainage, garbage collection and public health services. |
Programmes and Schemes

In the run-up to Rio+20, a Ministry of Environment and Forests stocktaking exercise lists the following plans and action programmes.

**Economic**
- Marketing Assistance Scheme for Small and Micro Enterprises
- Export Promotion Capital Goods Scheme

**Social**
- Pradhan Mantri Gramodaya Yojana, 2000
- Sarva Shiksha Abhiyan, 2003
- National Rural Health Mission, 2005
- Debt Waiver and Debt Relief Scheme, 2008
- National Mission on Education, 2009

**Environment**
- National Forestry Action Programme, 1999
- National Afforestation Programme, 2002
- National Mission for a Green India, 2011
- Mission Clean Ganga Initiative

**Social equity (economic and social)**
- Rural Infrastructure Development Fund, 1995
- Annapurna Scheme, 2000-2001
- Rashtriya Krishi Vikas Yojana, 2007
- Indira Gandhi National Old Age Pension Scheme, 2007
- Indira Gandhi National Widow Pension Scheme, 2009

**Socio-ecological (environment and social)**
- Integrated Watershed Management Programme, 2009

**Green economy (economic and environment)**
- Technological Upgradation Fund Schemes, 1999
- Fodder and Feed Development Scheme, 2005
- Perform, Achieve and Trade (PAT)

**Sustainable development (social, environment and economic)**
- Mahatma Gandhi National Rural Employment Guarantee Scheme, 2005
- NAPCC, 2008
- National Rural Livelihood Mission, 2009
However, the MoEF missed an important programme initiated in 2001-02 to involve children in the national efforts at protection of environment and sustainable development – the National Green Corps scheme, which aimed at establishing school eco-clubs in every district.

9B.1.2E Institutional Mechanisms

Following the 1972 UN Conference on the Human Environment in Stockholm, the National Council for Environment Policy and Planning set up within the Department of Science and Technology, Government of India was converted into a full-fledged Ministry of Environment and Forests (MoEF) in 1985.

In 1992, a full-fledged Ministry of Non-conventional Energy Sources (MoNES) was created.

The National Environmental Council, chaired by the Prime Minister and the Minister of Environment and Forests, advises the MoEF in its work in environment policy and planning matters of national concern. It consists of representatives of
- Ministry of Environment and Forests,
- Ministry of Power,
- Ministry of Surface Transport,
- Ministry of Industry,
- Ministry of Chemicals and Petrochemicals,
- Ministry of Petroleum and Natural Gas,
- Ministry of Urban Affairs,
- Ministry of Non-conventional Energy Sources,
- Ministry of Mines,
- Members of Parliament,
- Planning Commission of India,
- Central Pollution Control Board,
- Federation of Indian Chambers of Commerce and Industry,
- Associated Chambers of Commerce and Industries of India,
- Confederation of Indian Industry,
- Federation of Small Industries,
- National Consumer Federation,
- National Environmental Engineering Research Institute,
- The Energy and Resources Institute (TERI),
- World Wide Fund - India,
- Centre for Policy Research,
- Centre for Environment Education,
- Indian National Trust for Art and Cultural Heritage, and
- Smt Nandita Krishna and several individuals.

In addition, there are several authorities and boards set up under different laws and several missions set up under the NAPCC of 30 June 2008.

9B.2 Status of Ecological Rights of Children in India

A plethora of laws, policies, plans and programmes and initiatives has been taken to involve children as change makers in the efforts to protect environment and spread awareness on climate change and its impacts; yet, the situation of children’s ecological rights remains grim.

This section attempts to highlight the violation of children’s ecological rights through a few examples set out in the context of impact of

- displacement, forced evictions, forced migration;
- loss of common places for children such as playgrounds and village ponds;
- lack of child-friendly infrastructure such as roads;
- right to clean air and water as common resources; and
- health impacts of pollution, poor water and sanitation conditions and climate change.

Impact of displacement, forced evictions and forced migration on children

The saga of human rights violations in the eventuality of displacement and forced evictions is well documented by now. In India too, people have suffered due to displacement and forced evictions in both rural and urban areas. Some of the documented causes have been—

- mining and industrial development, including construction of big dams, thermal power plants, creation of Special Economic Zones (SEZs) for industrial development etc.;
- forest and wild life conservation;
- natural disasters;
- civil unrest and ethnic violence; and
- international sports events.

What it leads to is not just loss of livelihood opportunities but loss of community ties, loss of cultural identity, exposure to alien environments, loss of access to health care and education and greater violence and exploitative conditions of life, leading to impoverished communities overall and a vicious cycle of poverty.

A report from Goa after the 2004 demolitions resulting from faulty implementation of the Goa High Court Order of 2003 points out that children are the most affected and the most neglected at times of natural disaster or man-made tragedy. Wherever it occurs, displacement has a profound, physical, psychosocial, emotional and developmental impact on children.

822 Situation Of Women And Children In Bain: After Demolitions In Bain, p 1, ARZ Goa. Available at: http://arzindia.org/docs/situ_baina.pdf
Impact of Development Projects

According to the National Commission for Women, the number of people displaced due to development is around 20 million – 21.6 million people were reported to be displaced due to dams alone (Vijaya Paranjpye, 1988)\textsuperscript{823}. Another estimate was 20 million people displaced due to development programmes over roughly four decades, with as many as 75 percent of them without any rehabilitation and restoration of income and livelihood (Walter Fernandes, 1991)\textsuperscript{824}. A 2008 article by Walter Fernandes suggests an increase in this number to roughly 60 million displaced and project-affected persons: “That’s four times the estimated 15 million refugees exchanged between India and the two wings of Pakistan at the time of Partition. The majority of the development-displaced are tribals and landless \textit{dalits} who live on or off common property resources. And scarcely 20% have been rehabilitated... How many have suffered? Not even the Planning Commission knows their number.”\textsuperscript{825}

The number of children affected by development-related displacement is not known. By applying the oft-quoted calculation of 40 percent of India’s population being children below the age of 18 to Fernandes’s 2008 estimates, there are 24 million displaced and project-affected children in India.

It is a well-established fact that displacement and inadequate resettlement have resulted in a decrease in landholding among the evicted families and in loss of access to agricultural and forest produce that met the needs of domestic consumption, income generation and medical treatment. The poor nutrition among \textit{adivasi}

\begin{center}
\textbf{Excerpts from the ARZ Report on Demolitions in Baina, Goa following a High Court Order}
\end{center}

\textbf{Children’s sufferings are the same whatever may the cause of displacement and forced evictions...}

In October 2003, a Bench of the Goa High Court directed the state to control trafficking and to rehabilitate the victims of trafficking. On 14 June 2004, under the pretext of implementing the High Court order, the Government of Goa demolished half of the red light district. Around 750 rooms were demolished and 3000 people affected. It was a nightmare for most of the children who witnessed the demolition. Children in their school dress could not understand the whirlwind that had hit their houses.

The aftermath of demolitions left children without food for the first 24-48 hours. The problem of malnourishment can be seen among women and children even after two years of displacement.

Adolescent girls belonging to the displaced families of Baina face sexual abuse in day-to-day situations. Children have also been trafficked for commercial sexual exploitation.

There was an immediate halt and even permanent discontinuation of schools for numerous children. Children of displaced families also lost their school friends.

Majority of children from displaced families at Baina go for rag picking. Children are lacking cultural and recreational activities necessary for their overall development.

Children belonging to a particular religion felt that they had been targeted due to their religion.

Further deterioration of economic situation of the families and two years of displacement without any assistance has made children very aggressive, violent, abusive and at times extremely lonely. There is constant fear of police personnel among the children.


\textsuperscript{823} National Commission for Women, Development Induced displacement of Women, Section 1, p 1. Available at: http://ncw.nic.in/pdcreports/Development%20Induced%20Displacement%20of%20Women.pdf

\textsuperscript{824} ibid.

and tribal people, particularly women and children, bears testimony to this.\(^{826}\) In addition, reduced incomes due to displacement have meant loss of access to timely healthcare and education and increasingly results even in children being forced out of school and into work.\(^{827}\)

In 1998, the Asian Development Bank (ADB) had recognised that “cash for land acquisition has never been a satisfactory mode of compensation if it is not paid at replacement values. There is also the risk that affected persons (APs) might spend their cash quickly and become impoverished, or that women and children’s subsistence needs might not be met if cash compensation is paid to the head of the household. In many cases, land-based resettlement programmes work better than non-land options”.\(^{828}\) Yet, the rehabilitation policy and the new tribal policy are reported to have diluted the provision of land-for-land compensation, allowing for mere monetary compensation if there is no possibility of providing land.\(^{829}\)

- In urban areas, displacement due to development is a regular phenomenon. The 2010 Commonwealth Games is one of the most recent examples of displacement and forced evictions in Delhi. It is reported that most of the 27,000 families displaced from Yamuna Pushata had come to Delhi to build the Games Village and stadia for the 1982 Asian Games and were being ushered away in the follow-up to the Commonwealth Games in 2010.\(^{830}\) Families living in the heart of the city were relocated to its outskirts. Their woes in the new locations include:
  - increased travel expenses, as they have to travel very long distances to reach their place of work or school;
  - no opportunities of productive and sustainable employment in the vicinity of the colony;
  - lack of safety of women and children;
  - education of children suffers due to shortage of schools; and
  - issues of health and sanitation, are unaddressed as affordable medical and sewerage facilities are absent at the resettlement colonies.\(^{831}\)

The Special Economic Zones (SEZs), also better known as “Special Exploitation Zones”, have taken their own toll. Special Economic Zones were introduced in some parts of India in 2002 to accelerate economic development by restructuring the old industrial set-up and attracting new entrepreneurs with liberal laws, with the ultimate objective to achieve higher levels of development and human welfare. However, the objective lost its value in the way land began to be acquired for the SEZs. PricewaterhouseCooper’s Executive Director Vivek Mehra holds: “The present SEZ hiccup is a fall-out of bad land acquisition policy and politics. Clearly, the state governments need to adopt pragmatic land acquisition policies so that it does not lead to deprivation among the displaced, but becomes a win-win situation… There is a need for devising effective rehabilitation packages so that the displaced are not deprived of the fruits of development.”\(^{832}\)

The notice for acquiring land for the proposed chemical hub in Nandigram as part of the Government of West Bengal’s drive for an SEZ in January 2007 and the massacre that followed are still fresh in children’s minds. “In the politics surrounding Nandigram, the impact of the events on children has been completely ignored”, laments the CRY (Child Relief and You) team that documented case histories of affected children,

\(^{826}\) ibid.
\(^{827}\) Enakshi Ganguly Thukral, *Children and the Right to Commons, Vocabulary of Commons, Foundation for Ecological Security, 2011*, p 190
\(^{828}\) National Commission for Women, *Development Induced displacement of Women*, 2004, Section 1, p 6. Available at: http://ncw.nic.in/pdfreports/Development%20Induced%20Displacement%20of%20Women.pdf
\(^{831}\) ibid.
and conditions of the schools in the area, highlighted police brutalities at the time of eviction and violation of children’s rights. The report further states: “The vocabulary of these children now has words like shilpo (industrialisation), santrash (terror) and proshashon (administration). Six-year-old Mamoni Bai knows the word shilpo, but to her it means displacement and land grabbing. Proshashon is synonymous with the police and santrash the children understand as something dangerous.”

Account of a twelve-year-old eyewitness to the sequence of events that took place in Nandigram on 14 March 2007

Along with some of his friends, he ran away from the Tekkhali bridge. None of them was hurt in the police firing but once the police crossed over from Khejuri into Nandigram they did not spare even the children. He saw the police grab a child from its mother and kill the little one. Until this day, he says he cannot bear the bright sun as his eyes begin to burn because of the teargas the police used that day. He left school. He feels mentally disturbed with the incessant noise of bombing and gunfire from Khejuri that takes away his attention from studies. He cannot sleep properly at night. Along with the men in the family, he keeps watch at nights even now.


Mining and Children

The first thing that comes to mind while addressing the issue of mining and children in India is child labour. However, the effects of mining far exceed economic exploitation. It has resulted in denial of other basic rights, such as education, health and protection. “Mining has, throughout history, been a symbol of the struggle between human need and human greed; the human need to dig into the Earth and take control over its resources. Industry, infrastructure and investments have been decisively stated as basic vehicles to drive India into this race, which automatically translates into mineral extraction and processing being of utmost importance to implement this dream.”

In the 2008 National Mineral Policy, the government recognises that: “As a major resource for development, the extraction and management of minerals has to be integrated into the overall strategy of the country’s economic development. The exploitation of minerals has to be guided by long-term national goals and perspectives.”

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However, closer observation of the current mining sector reveals that both the Central and state governments view mineral production as a means of short-term revenue generation and to fuel current economic growth rates. Neither considers it part of the country’s wider, long-term development goals, including the goal of improving the national human development indicators and of preserving the environment and other natural resources such as water.835

A recent report on the effects of mining on children in India brought to light not only the paradox of “India’s inclusive growth” that still ignores the majority of children but also the extent of violations of children’s rights. Neither the National Rehabilitation and Resettlement Policy, 2007 nor the National Mineral Policy, 2008 is reported to have addressed or even mentioned children’s issues.836

**Direct and Indirect Impacts of Mining on Children**837

1. *Increased morbidity and illnesses:* Mining children are faced with increased morbidity. Children are prone to illness because they live in mining areas and work in mines.

2. *Increased food insecurity and malnutrition:* While almost half the children in many states across the country are malnourished, mining areas are even more vulnerable to child malnutrition, hunger and food insecurity.

3. *Increased vulnerability to exploitation and abuse:* Displaced, homeless or living in inadequate housing conditions, forced to drop out of schools, children become vulnerable to abuse and exploitation and are being recruited for illegal activities by mafia and even trafficking.

4. *Violation of Right to Education:* India is walking backwards in the mining-affected areas with respect to its goal of education for all. Mining area children are unable to access schools or are forced to drop out of schools because of circumstances arising from mining.

5. *Increase in child labour:* Mining regions have large numbers of children working in the most hazardous activities.

6. *Further marginalisation of adivasi and dalit children:* Large-scale mining projects are mainly in adivasi areas and the *adivasi* child is fast losing his/her Constitutional rights under the Fifth Schedule due to displacement, land alienation and migration from mining projects. As with *adivasi* children, mining area and *dalit* children are displaced, forced out of school and employed in the mines.

7. *Migrant children are the nowhere children:* The mining sector is largely dependent on migrant populations where children have no security of life and where children are also found to be working in the mines or other labour as a result of mining activity in the area.

8. *Mining children fall through the gaps:* The Ministry of Mines is not responsible for children or the violation of their rights. The mess that mining has created of children’s lives must be addressed by departments like child welfare, education, tribal welfare, labour, environment and others. Without convergence and cooperation between various departments and agencies, the mining child falls through the gaps. None of the laws and policies related to mining and associated processes address specific rights and entitlements of mining children.

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836 ibid. p 22
837 ibid. p 10
Impact of Forest and Wildlife Conservation

Case Study: Palpur-Kuno Wildlife Sanctuary

Ghanshyam Parihar has some land in Nai Basti. In the forest, he had 10 acres of land, while now he only has 6.5 acres. Ghanshyam has three children. Two boys, Beeru and Durgesh, aged 10 and 8 years respectively, and daughter Rachna, aged 3 years. Rachna is the only child out of the three who was born in a hospital. The Primary Health Centre is 5 km away from the village where they have resettled. Children are unable to tell anything about themselves, but Ghanshyam says that in the new place children are dying of hunger. There is land, but it is not fertile. They cannot keep cattle as there is no fodder/grazing land available in the resettlement area and you cannot enter the forest anymore. According to him, children do not know what milk and ghee taste like. At the same time, in the last few days, the situation has been so bad that there has been no money to buy even the cooking oil. Somehow they are eating boiled food. Last year, they found work under the Employment Guarantee Scheme for 60 days, but the money was paid after three to six months. That is why people from the village are migrating to Jaipur and Mumbai for work. Earlier the contractors would take people out for work, but now it is the people who are already working in the cities who do this.

Source: Chinmay Mishr, Bachpan Se Visthapan, Vikas Samvad, 2010, p 53

While forest protection and wildlife conservation is important for maintaining ecological balance, indigenous people of the forests often have to face dislocation due to these efforts. They have come to be referred to as conservation refugees. India is reported to be on the verge of creating the largest mass eviction for conservation ever. Reports have repeatedly pointed to the need for more participatory and egalitarian processes of conservation management ensuring the provision of tenurial and livelihood security to those most dependent on biodiversity, particularly the landless, tribal societies and women and children. Moreover, forest-dwelling communities are known to have strong territorial attachment and therefore are likely to be more committed than outside companies to sustainable forest management and to enhance community assets for their children.

In the spring of 2003 about 8,000 tribal people and low-caste farmers living in the Kuno area of Madhya Pradesh were summarily uprooted from the rich farmlands they had cultivated for generations and moved to 24 villages on scrubland outside the borders of a sanctuary created for a pride of six imported Asiatic lions. “I’ll never forget when we left,” recalled village headman Babulal Gaur. “Even the men cried that day. Is it fair to do this to 1,600 families for a few lions?” By then almost 500 villages occupied by 300,000 families around India had experienced similar forced relocation to protect the habitat of tigers, rhinos and Asiatic lions residing in the 580 national parks and sanctuaries that have been created in India since the colonial period.

In the past three decades 28 major relocations of adivasis have been documented, seven more are known to have occurred, but not officially recorded, and there are several more in early planning stages. There are no hard numbers available, but estimates of conservation refugees in India range from 100,000 to 600,000, with millions more slated for future forced, voluntary and induced displacements.

The Wildlife Protection Act and the Forest (Conservation) Act have set the stage for what might become the largest mass eviction of indigenous peoples in any one country.


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Voices of children

Displacement from Kanha Tiger Reserve Area and loss of culture

At the time he was displaced from Raunda, 56-year-old Sukhlal Udal (Gond) was married. Complaining about devastation of life due to displacement, he says that his family is still unable to cope with the change brought into their life. According to him, as displaced persons, they were neither able to give modern education nor pass on traditional knowledge to their children. Their traditional language and culture have been destroyed in the resettlement area, and he felt that they and their children are without any culture today. In the last 35 years, he recalled that they have not danced “karma”, their traditional folk dance, and therefore their children too do not know how to dance and sing “karma”.

Displacement from Palpur-Kuno Wildlife Sanctuary and loss of opportunities

A student of Class 7, 15-year-old Kamal remembers a lot about life in the forest. He says that he had a school there also. He would get to drink milk and consume ghee. He would also get to eat wild fruits and “kand” (please describe). Besides, you never felt hot. Here you have to travel a mile even to bathe. Kamal does not feel secure and protected in the new place. He has been in this resettlement for 10 years now, but is unable to forget the forests. On being told that he perhaps has greater opportunities in the resettlement area for studying and can find a good job when he grows up, he reacted saying that he did not know of a single person around him who has been able do something in life. People here have studied at most up to Class 10 and there are no jobs in this area. Most people from the village go to the cities to work as labour. In such a situation what was wrong with living in the forest? He says, “I don’t want to become a big man. Send me back to the forest.”

Source: Chinmay Mishr, Bachpan Se Visthapan, Vikas Samvad, 2010, p 42 and 53

A 2009 report on conservation-induced displacement by Asmita Kabra states that in two villages affected by the Kuno Wildlife Sanctuary (Jakhoda and Paira), the responsibility of collecting non-timber forest produce (NTFP) after displacement fell mainly on women and children as men went in search of wage work. Displacement damaged traditional livelihoods and created a footloose population.841

Impact of displacement due to natural disasters

The super cyclone in the coastal areas of Orissa on 29 October 1999 affected an estimated 3.3 million children. NGOs reported that for five days after the cyclone, no special attention was focussed on the needs of children and there was very little information on about them – where they were or where they were going or being taken.842

According to UNICEF, in the 2001 Gujarat earthquake, 2.5 million children were reported to have lost their homes and schools.843 In the tsunami of 2004, one-third of the affected persons in India were reported to be children.844 Often enough even relief assistance fails to provide for children, especially the little ones. Baby food and infant clothing are the last on people’s minds as part of relief assistance.

It is being emphasised that most natural disasters today are due to climate change and hence not as “natural” as they used to be. In 2005, children were amongst the thousands that lost their life to the floods in Mumbai.

844 Ibid.
Fifteen-year-old Koshila Kumari from Jharkhand spoke of the drought in her village. “Due to heat seven of our 15 goats have died. For water, we have to walk to the village tank as the well dries up. The cattle suffer and die. The farmers borrow money and are unable to pay back. And parents withdraw kids from school.”

Rajesh from Gujarat said that drought leads to crop loss. “I was withdrawn from school and sent to work in the carpet industry. I earned Rs 50 a month,” he said.

Source: The Times of India, Booklet on rural kids and climate change released, TNN, Pune, 2 February 2010, 03.27am IST. Available at: http://articles.timesofindia.indiatimes.com/2010-02-02/pune/28127222_1_climate-change-tribal-children-booklet

Case Study: Sundarbans, West Bengal

The Sunderban Islands in West Bengal are sinking. 7,000 people have already been displaced and by 2030, it is anticipated that over 70,000 people from this area will be exposed to the risk of losing their homes and livelihoods due to the rise in sea level which increased cyclone intensity and flooding. These environmental refugees are forced to reside in refugee colonies where poor sanitation and limited water supply can lead to the spread of disease and further health implications.

In addition to the widespread community displacement, the mangrove forests, which are the largest of such forests in the world and are well known for their biodiversity and habitat for threatened species (including the Royal Bengal Tiger), will have diminished by over 75% in the next 20 years due to climate change.

(Hazra, S. 2006. Vulnerability Assessment of the Sundarbans Island System in the Perspective of Climate Change)

Source: www.weblog.greenpeace.org

Inadequate drainage and sewer network was largely blamed for the floods.845 The largest disasters of 2009, floods and storms in India, together displaced at least five million people. In 2009, floods in India displaced an estimated 2.5 million people, and Cyclone Aila displaced 2.3 million.846 These displaced persons are also known as global warming refugees.

846 Displacement due to natural hazard-induced disasters, Global estimates for 2009 and 2010, Internal Displacement Management Center (IDMC) and the Norwegian Refugee Council (NRC), June 2011, p 9 and 12
The Representative of the Secretary General on the Human Rights of Internally Displaced Persons has stated in his report that “in the emergency response to the 2004 tsunami, there were reports of discrimination in assistance based on caste, as Dalits in India claimed that their villages had not been restored as quickly as those of higher castes”.

Natural disaster-led displacement is never recorded after the initial dose of relief and rehabilitation assistance.

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**Figure 1: Countries with the highest levels of new displacement in 2009**

Source: Displacement due to natural hazard-induced disasters, Global estimates for 2009 and 2010, Internal Displacement Management Center (IDMC) and the Norwegian Refugee Council (NRC), June 2011, p 9.

**Figure 2: Countries with the highest levels of new displacement in 2010**

Source: Internal Displacement Management Center (IDMC) and the Norwegian Refugee Council (NRC), Displacement due to natural hazard-induced disasters, global estimates for 2009 and 2010, June 2011, p12.

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**Impact of displacement due to conflict, civil unrest and ethnic violence**

A submission made to the Committee on Economic, Social and Cultural Rights at its 40th Session in April 2008 reveals many stories of the sufferings of children of internally displaced persons (IDPs) and inadequate attention paid to their concerns in the relief camps or otherwise. Some highlights from the submission are presented below.849

849 Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Committee on Economic, Social and Cultural Rights: 40th Session Economic, Social and Cultural Rights of Internally Displaced Persons (IDPs) in India, April 2008, pp 5-6. Available at: http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/IDMCIndia40.pdf

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**Visit to relief camps for displaced persons**

What struck us was the basic lack of integrated services and support for these children and their families, in particular, the critical lack of health, sanitation and education facilities. A new generation has taken birth in these camps, yet, it is as if they don’t exist! There is no or marginal registration of births and deaths, hardly any immunisation, no health facilities or Primary Health Centres, no functional schools, no safe drinking water, poor sanitation, inadequate rations-disease and death shadows these children every day. It is this daily lived experience in encampments, which defines these children’s sense of identity, belonging and well-being.

In the month of August alone, there were 31 infant deaths in 2 camps due to malnutrition and disease and 11 maternity deaths in one camp.

A 15-year-old boy I met walks about 12 km a day to get to a private school. His parents are in camp. They starve in order to save money for education of this boy.

Source: Universality of child rights - the context of displacement and migration, address by Ms Dipa Dixit, Member, the National Commission for Protection of Child Rights (NCPCR) at the National Convention on Displaced People, 18 October 2008, India Islamic Centre, Lodi Road, New Delhi, based on an NCPCR team’s visit to relief camps for displaced persons in Assam (Chirang and Bongaigaon districts) and Tripura. Available at: http://ncpcr.gov.in/Reports/Universal_Rights_of_Children_and_Displacement_Dipa_Dixit.pdf

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**SCARS OF ABUSE**

Far from his home in the flood-ravaged village of Saupal in Bihar’s Madhipura district, 13-year-old Santosh Kumar plays football at a children’s home on the outskirts of New Delhi.

“We always had trouble putting food on the table, but we lost everything in the floods,” he said. “My father had no work, my mother was sick, our cattle died and when the agent came, my parents thought sending me to work would help feed my younger sisters.”

Santosh was sold to the owner of a small shop in Delhi where he worked from 9 am to midnight every day. He slept on the floor and said he was given meagre amounts of rice and lentils twice a day.

His employer forced him to carry heavy stock and threw large metal weights at him if he was too slow or dropped items, he said, pulling up his trousers to reveal scars.


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Hundreds of children left vulnerable after devastating floods in eastern India are being trafficked to work as bricklayers, domestic servants and even sold as brides, aid agencies say.

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**Visit to relief camps for displaced persons**

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In January 2007, the IDPs in the camps in Karbi Anglong in Assam received only some very basic provisions. Also, there was no baby food for the many children in the camps.

In 2004, four children of displaced tribal families in the relief camps in Tripura, all below six years of age, were reported to have died of enteric diseases after consuming wild plants to stave off hunger. 850

In September 2006, children of the IDPs living in camps in Chhattisgarh received only one meal a day as their families had lost their entire livestock, grain stocks and forest produce and were dependent on occasional labour in the surrounding villages for as little as Rs 20 per day (0.50 USD). Most children in the IDP camps of Baangapal and Dornapal in Chhattisgarh exhibited signs of malnutrition.

Children in IDP camps in many parts been diagnosed with trauma. They have suffered mood swings, bouts of depression, insomnia and anxiety. In IDP camps in Gujarat, many women and young girls exhibited signs of severe mental health disorders but received no medical help.

Loss of educational opportunities is visible in the tribal areas of North Eastern states as schools closed during conflict. Kashmir too had similar stories because school buildings were destroyed by the militants and occupied by others and children were forced to work. In Gujarat, in the aftermath of the communal violence, schools were reported to have received warnings from the Hindu fundamentalist groups to expel Muslim students. School attendance fell due to fear of safety and discrimination by school staff and students. Muslim students were attacked at schools. Many Muslim children’s educational certificates were destroyed and many were asked to join Muslim schools instead.

Many drawings made by children affected by the 2007-08 communal attacks on the tribal Christians of Kandhamal in Orissa carried the Cross. A fact-finding report suggests that while this could imply that most children use their religious belief and faith to cope and forgive, such “a heightened sense of religious identity, fanned by the violence, may be counter-productive in the long run and may also keep them from letting up and discussing their deep feelings”. 851

There is indeed very little understanding of how to deal with children’s emotions and help them cope in such situations of distress, especially as values of plurality, cultural and religious diversity, tolerance and co-existence stand at a threshold.

Loss of the Right to Commons

“Adults have traditionally determined usage, access and control over children’s spaces. Though the rallying cry of societies has been ‘women and children first’, and most people believe they are creating a better world for children – at least their children – the reality is that children’s rights and spaces are the first to be violated for adult needs.” 852

Ecological rights for children are not just about the right to land, water, air and other natural resources. It is about the loss of the village ponds, wells and water bodies in the rural areas that provided spaces for children to enjoy with their buffaloes and friends and helped girls fetch water easily and bathe together without the fear of being abused. It is also about the harm caused by the lead-based paint on the toy that the child plays with. It is about the right to play and about access to parks being pitted against the requirements of aesthetics for green and beautiful cities and against the elderly’s rights to the same space. It is also, of course, about the demands of the corporations that have set up training institutions and sports facilities for children instead of a park. It is also about a poor child not being allowed access to a ritzy mall that is open to well-dressed

850 ibid.
people. It is about denial of nutritious food. It is about denial to services like schools and healthcare and proper sanitation.

**Schools as Commons**

“Children drop out of school or find themselves squeezed out of the education system because of the situation of the schools as well as because of their own socio-economic status. Analysis of available data clearly indicates that it is some groups of children who find themselves excluded or pushed out more than others. Many others are unable to make inroads into schools because they are poor.”

**Health Facilities as Commons**

“Right to health” is not recognised as a Fundamental Right in our Constitution. However, it has been recognised as one in all international human rights instruments that India has ratified. As with any right, the right to health is also about equal access to health care services. However, an examination of the disease burden clearly shows that some groups are more vulnerable than others. There is an uneven distribution of the disease burden as well as access to health services across regions as well as socio-economic and religious categories. Clearly, discrimination and exclusion continues to affect children’s health status.”

**Basic facilities as commons**

Water, sanitation, roads and basic infrastructure is integral to every child’s right to adequate housing and standard of living.

Water is the most basic of needs. Yet it is one common facility that divides any urban or rural setting between those who have and those who do not. Conflict over water at a water tap line or a tanker or a drying well in which children and women are main contenders for the scarce resource is an almost common sight in any city in India. Children, especially girls, spend hours standing in queues to fetch water when it “comes”, often having to miss schooling for this.

The water crisis faced by India is known to all. It is reported that the water crisis in India affects one in every three persons. Water is being rationed in all big cities. Even in prosperous states like Punjab, the village ponds are reported to be drying up day by day. “For instance, water is rationed twice a week in Bangalore, and for 30 minutes a day in Bhopal; 250 tankers make 2,250 trips to quench Chennai’s thirst. Mumbai routinely lives through water cuts from January to June, when some areas get water once in three days in Hyderabad. Despite the installation of more than 3.5 million hand pumps and over 116 thousand piped water supply schemes, in many parts of the country, the people face water scarcity almost every year, there by meaning that our water supply systems are failing to sustain despite huge investments. … drought displacement due to dams and irrigation has contributed to increasing the water burden of women”. Indeed, women and girl children bear the brunt. In rural areas, they have to travel long distances in search of water; in urban slums and resettlement

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853 ibid. p 183
854 ibid. p 187
856 *Water Democracy, Water Crisis looms Countrywide.* Available at Navdanya, Dr. Vandana Shiva’s blog, url - http://www.navdanya.org/earth-democracy/water-democracy
857 ibid.
areas, they stand in queues for several hours before they can manage some water for the day. Education of girls suffers as they are expected to either fetch water or stay back home and look after the house.

The irony lies in that people are expected to buy water, once a common property resource, as they gradually lose to water privatisation policies. Bottled water is available even in the villages, though local people have no money to buy it and continue to struggle for water. The struggle of the people of Plachimada in Kerala against the Coca Cola Company for depriving them of their own water to sell bottled water and Coca Cola led to similar struggles in other parts of the country. Protests by residents of Mehdirigunj near the holy city of Varanasi and Kudus village in Thane district followed. Coca Cola is reported to bring in the highest foreign direct investment (FDI) into India; therefore, often enough, people’s struggles against it for not only depriving them of their water but also contaminating the remaining available water is not easy. “Every drop of water that Coca Cola extracts is water taken away from the children, women and men who are unable to meet their basic water needs, leave alone the farmers who are seeing their crops fail”, explains Mahesh Yogi of the Kala Dera Sangharsh Samiti. The Samiti is a local community group that has been opposing the Coca Cola plant since 2002 in Kala Dera, Rajasthan, which has been declared as a drought area.

In 2003, the Central Pollution Control Board of India (CPCB) found that sludge from Coca Cola’s Uttar Pradesh factory was contaminated with high levels of cadmium, lead and chromium.

The 2010 Commonwealth Games in India witnessed large-scale construction and redesigning of roads. The Bus Rapid Transport (BRT) Corridor in Delhi is one such example. The bus stops are built in the middle of the road where even able-bodied adults can reach only with difficulty through heavy and almost uncontrollable traffic; they are almost inaccessible to children, the aged and the disabled. While urban transport policies are encouraging “green travel habits” and emphasis is being laid on bringing about such awareness amongst children through inputs in their school curricula, there are no corridors that can be used by children to cycle down to their neighbourhood schools. Felling of trees for the corridor has added to the woes. In Andhra Pradesh too, there have been reports of the suburbs feeling the heat as trees were cut down in the laying of the two Bus Rapid Transit System (BRTS) corridors. An estimated 1,400 trees have been uprooted for expansion of the road on the Pendurdi corridor.

Neighbourhood markets are fast diminishing with the shopping mall culture expanding in urban townships. Children can no longer learn how to purchase something based on an assessment of quality. What they get in malls is what they have to buy and, of course, malls are not for the children of the poor.

Discrimination and Gender Disparity

When costs are high and availability is scarce, discriminatory practices set in. The already marginalised find themselves pushed back even further. This is especially apparent in education and healthcare. Discrimination in education manifests itself through higher dropout rates of girls than boys, higher dropout rates for SC/ST children, denial of mid-day meals for the dalit child, etc. The list of inaccessible public spaces is also endless for the dalit child. The problem of gender disparity also manifests in various forms – declining female-to-male ratio, social stereotyping, violence at the social and domestic levels and continuing, open discrimination against the girl child, adolescent girls and women in access to healthcare and nutrition. Discrimination

858 Amit Srivastava, Communities Reject Coca-Cola in India, India Resource Centre, 10 July 2003. Available at: http://www.corpwatch.org/article.php?id=7508
860 Coca-Cola charged with groundwater depletion and pollution in India, Coca Cola bottling plants may be taking groundwater from local villages, Earth Talk. Available at: http://environment.about.com/od/waterpollution/a/groundwater_ind.htm
861 National Urban Transport Policy. Available at: http://www.urbanindia.nic.in/policies/TransportPolicy.pdf
863 Ibid, p 188
prevails elsewhere as well – physically handicapped children are unable to access basic facilities like schools, public transportation, playgrounds and other common spaces such as theatres, cinemas, etc. because of their disability and because these spaces are not designed to be accessible to disabled.864

Climate change and children’s health

India is far from achieving the Millennium Development Goals, especially goals related to hunger, IMR, under-5 mortality, MMR, disease and the physical environment. “The proportion of children in India who are chronically undernourished remains very high. So too does the MMR and IMR. And the goal of environmental sustainability is not being achieved, as parts of India are suffering from worsening crises of water, soils and deforestation.”865

In fact, “India has been ranked as the seventh most environmentally hazardous country in the world by a new ranking released recently. The study is based on an evaluation of ‘absolute’ environment impact of 179 countries, whose data was available and has been done by researchers in Harvard, Princeton, Adelaide University and University of Singapore on January 12, 2011.”866

The MoEF acknowledges that “the impact of air and water pollution is maximum on vulnerable sections of society particularly the poor, women and children, who contribute the least to its generation. Accordingly, the costs and benefits of abatement may have important implications for intra-generational and inter-generational equity.”867 Children continue to suffer and be the worst sufferers despite efforts at not only mitigating impacts of climate change but also improving conditions of living, health, water and sanitation. Here are some glimpses.

Air Pollution

“Bangalore holds the title of being the asthma capital of the country. Studies estimate that 10 percent of Bangalore’s 60 lakh (6 million) population and over 50 percent of its children below 18 years suffer from air pollution.”868 Cities like Chennai, Mumbai, Delhi and Pune too report high levels of air pollution caused by vehicular emissions and industrial wastes.

Vehicle emissions are reported to be responsible for 70 percent of the country’s air pollution869 as exhaust from vehicles has increased eight-fold over the level 20 years ago and industrial pollution has risen four times over the same period.870 Yet, we have doubled our auto production “from 7 million units in fiscal year 2004 to over 14 million units in year 2010, largely on the back of a buoyant domestic market”.871

“Over 700 million people in India suffer from high levels of indoor air pollution affecting women and young children as 75 percent homes use biomass fuel like wood, crop residue and dung cakes.”872

Of all the cases of cancer in India, 1.6 to 4.8 percent occurs in children under 15. Despite there being a higher proportion of childhood cancer in India relative to the developed world, it has not been a priority in health

864 ibid. p 182
869 Pollution Facts. Available at: http://m.pals.in/pollution-facts.php
870 Environment Pollution in India, Available at: http://www.gits4u.com/envo/envo4.htm
871 ibid.
The incidence is higher in urban areas than in rural areas. The relationship between childhood cancer and urban lifestyle, overcrowding and air pollution cannot be ruled out and needs to be investigated further.

A 2001 report claims that “poor household environment and lack of basic infrastructure and energy services are responsible for upwards of 70,000 deaths a year of children under the age of 5, and 20 percent of the total burden of disease in Andhra Pradesh”. The study further estimates that “environmental factors account for about 20 percent of the total burden of disease in Andhra Pradesh. Over 90 percent of this is associated with traditional environmental risks, such as lack of access to a protected water supply and sanitation (73% of AP’s population has no sanitation facilities) and indoor air pollution resulting from the use of biomass fuels”. Combining all the improvements in the household environment would together reduce the number of infant and child deaths in Andhra Pradesh by at least 77,000 per year. Since the burden of disease is highest in rural areas, the most cost-effective interventions tend to be those that focus on improving the rural household environment.


The mental health impacts of urbanisation and an unhealthy physical environment too cannot be ignored. All research points to the fact that “children who have insufficient fresh air to breathe, open ground to play and healthy environmental surrounding are quite unable to promote social and psychological interaction and develop ultimately inferiority complex and a feeling of inadequacy in them”.874

Water Pollution

“Around 37.7 million Indians are reported to be affected by waterborne diseases annually, 1.5 million children are estimated to die of diarrhoea alone and 73 million working days are lost due to waterborne disease each year. The resulting economic burden is estimated at $600 million a year.”875

A 20-year study by the School of Environmental Studies in West Bengal reports that 14,000 children were screened in the state as arsenic patients. It states: “Out of 1,40,150 samples analysed, 48.1% had arsenic above 10µg/L (the WHO guide line value) and 23.8% above 50µg/L (the Indian standard value). Importantly, 3.3% of the analysed tubewells had arsenic concentrations above 300µg/L (the concentration predicting overt

Excerpts from the State of Environment Report: Maharashtra

“The records during 1995-2002 in a hospital in Mumbai show that, on an average, about 50 percent of the cases are related to water borne diseases like diarrhoea (gastro), enteric fever (typhoid) and hepatitis B (jaundice). The effects of these diseases are more prevalent in the children below 12 years of age” (p 84 and 269).

“The use of traditional fuels in rural areas of India is as high as 80 percent, giving rise to various health problems such as acute respiratory infections (ARI) in children, chronic obstructive lung diseases (such as asthma and chronic bronchitis), lung cancer and pregnancy-related problems. It is estimated that premature deaths on account of indoor air pollution in the country could be as high as 2.78 million annually” (p 115).


arsenical skin lesions (Rahman et al, 2001). A total of 187 (0.13%) hand tube-wells were highly contaminated (>1000 µg/L).

Excerpts from Climate Change and Child Health in India: Special case 0-6 year old children. Abstract. Prof. A. P. Pandey and Surendra Kumar Gupta, Department of Economics, BHU Varanasi


Environment degradation or climate change affects the child health in two ways, firstly the direct impact of climate change on child health and secondly the indirect impact of climate change on child health...

In Gorakhpur district of Uttar Pradesh many children are affected by Japanese encephalitis, which is the result of climate change.

A study of Dean et al, 2008 reveals that population based estimates of cholera incidence in Indonesia, India and Mozambique confirm that young children bear the greatest burden of cholera and this was the case in all regions.

In India, 34 million population lives in this condition. Under nutrition, which includes stunting, poor foetal growth and micronutrient deficiencies, is the underlying cause of at least 3.5 million deaths, and 35 percent of the disease occur in children younger than 5 years of age.

Worldwide asthma rates have doubled in the past 15 years with the greatest rise in children.

Source: http://banaras.academia.edu/SurendraGupta/Papers/827985/Climate_Change_and_Child_Health_in_India_Special_case_0-6_year_old_children

Land Pollution

Endosulfan might have affected learning abilities of pupils

“Did aerial spraying of endosulfan by the Plantation Corporation of Kerala in Kasaragod district affect the learning abilities of a generation of pupils? A study by Thanal, a public interest research, advocacy, education and action trust here, has come across a correlation between the academic performance of pupils in two high schools in the area and the spraying of endosulfan. The study found that the SSLC results of the schools improved considerably after discontinuation of the spraying of endosulfan in their neighbourhood. (Endosulfan, a neuro toxin, is known to cause learning disorders and memory loss.)

The Government Higher Secondary School at Padre in the district had an average pass percentage of 49.32 percent in the SSLC Examinations in the 1981-91 period when the spraying was going on. The nineties saw a steady decline in pass percentages with the percentage touching an all-time low of 26 percent in 1999-2000. The results improved almost steadily thereafter and touched 100 percent in 2008-09. (Protests had grown against the spraying in the late nineties and the Corporation had discontinued spraying of endosulfan from 2001.)

The results from Government Higher Secondary School at Kottodi in Kallar panchayat also showed a similar trend with the nadir in the mid-nineties with pass percentages of less than 25 percent. It crossed 80 percent in 2003-04 and recorded the highest pass percentage of 96.8 percent last year.

The study report said that further studies would have to be done on the issue considering others factors such as strength of teachers in schools that could affect academic performance before a conclusion could be drawn. The study was done by Dr. Y. S. Mohankumar, M. Lakhsmi Narasimhan, K. Rarima and C. Jayakumar”.

Source: http://www.thehindu.com/health/policy-and-issues/article1118638.ece
Use of pesticides and fertilisers is reported to be one of the major causes of land pollution in addition to corrosion. Its impact on children’s health cannot be negated. Developmental Task Performance in Indian Children, a study published in “Children, Youth and Environments” in 2003, found that children living in Indian villages that had high pesticide use performed significantly worse as a group on memory and coordination tests than children in villages that used less pesticides.\(^7\)

In 2001, a series of abnormalities noted in children in Kerala was linked to the spraying of endosulfan, a highly toxic agricultural pesticide. A report by the National Institute of Occupational Health stated that endosulfan was behind the dreadful state of farmers and children in Kasaragod. Endosulfan was banned, but the pesticide industry had the ban revoked and children continued to suffer the harmful effects. Finally, a much-awaited court order in May 2011 banned endosulfan.

**Industry - one of the major causes of pollution in India**

Industrial pollution is one of the main causes of air, water and noise pollution. The information put forth in this section is only a tip of the iceberg. The problem is huge and needs to be studied in relation to impacts on children in detail. Why must action always wait for an epidemic?

Industrial dumping of waste in water bodies breeds bacteria, which cause about 250 million waterborne diseases annually and 5-10 million deaths.\(^8\)

It is well known that exposure to mercury is hazardous for pregnant women and small children. “During the first several years of life, a child’s brain is still developing and rapidly absorbing nutrients. Prenatal and infant mercury exposure can cause mental retardation, cerebral palsy, deafness and blindness. Even in low doses, mercury may affect a child’s development, delaying walking and talking, shortening attention span and causing learning disabilities.”\(^9\) About 70 percent of the global non-iron industry mercury pollution comes from Asian countries.\(^90\) Some studies undertaken between 1997 and 2001 reveal the following.

<table>
<thead>
<tr>
<th>Publication details</th>
<th>Mercury Pollution Detail</th>
<th>Date of Study</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 December 1997 The Week</td>
<td>After the Gwalior Rayons Factory was set up in Mavoor in Kozhikode district, the river turned dark, dead fish floated on the surface and the air smelled foul. The villagers attributed the high incidence of cancer and respiratory and skin diseases in the villages to the factory. After conducting test, it was found that contamination due to mercury was the main reason.</td>
<td>Calicut University West Bengal 1974</td>
</tr>
<tr>
<td>31 August,1999 Down to Earth</td>
<td>The Directorate of Technical Education (DTE)/IIT test conducted on a water sample from a hand pump in Mehak district of Andhra Pradesh showed that the level of mercury was 115 times the permissible limit. Arsenic and nickel concentration level were also too high. People of this area complained of the plethora of diseases such as epilepsy, skin and throat problem, respiratory diseases, cancer and paraplegia, while pregnant women are giving birth to stillborn children.</td>
<td>IIT &amp; DTE New Delhi</td>
</tr>
</tbody>
</table>

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\(^8\) Pollution Facts. Available at: http://m.pals.in/pollution-facts.php

\(^9\) Learn About Mercury and Its Effects: Mercury pollution can be a serious health threat, especially for children and pregnant women. Natural Resources Defense Council. Available at: http://www.nrdc.org/health/effects/mercury/effects.asp

\(^90\) Environment Pollution in India. Available at: http://www.gits4u.com/envo/envo4.htm
10 February 2000
The Indian Express

Study conducted in the Thane bay area revealed that mercury peroxide, an effluent, from a nearby paint factory, caused serious health problems. It settled in the muscles of children and permanently disabled them. Neurological disabilities developed in other children.

Dr Rashmi Mayur, an advisor to the United Nations on Environmental Issues, 1991

15 July 2001
Down to Earth

The Tamil Nadu Pollution Control Board (TNPCB) has confirmed that mercury-contaminated glass pieces were dumped at various locations in Kodaikanal by a thermometer factory of Unilever, a multinational company. The waste described as “scrapyard” contains more than 50 milligramme per kilogramme (mg/kg); this means mercury is approximately 1 percent of the total waste, or 10,000 mg/kg, clearly an offence under the Hazardous Waste Management Act.

Greenpeace, New Delhi March 2001

September 2001
India Together
www.indiatogether.com

Paryavaran Suraksha Samiti in an exhaustive investigation in Ankhleshwar (Gujarat) industrial estate, tested 120 ground water sources, affecting 100,000 people, was highly contaminated. Later DTE studies found high quantities of mercury, lead and zinc. As an effect of this pollution, people are suffering skin ailments, respiratory problems, headaches and presumably many others that have not been noticed yet.

December 2000

Source: RC Srivastava, Summary Table - Mercury Pollution In India: Year and place of study in “Guidance and Awareness Raising Materials under the new UNEP Mercury Programme (Indian Scenario)”, Member UNEP Working Group & Co Chairman Mercury Drafting Group, Center for Environment Pollution Monitoring and Mitigation

Hundreds of villagers took out a march in Tonsa town of Nawanshahr district to protest against rising pollution from chemical units that they claimed was causing diseases, including cancer, especially among children.881

THE TIMES OF INDIA
CHANDIGARH

Uranium deforms kids in Faridkot

Priya Yadav, TNN Apr 2, 2009, 01.41am IST

FARIDKOT: Big heads, bulging eyes, twisted hands that don’t reach their mouths and bent legs that can barely support their frail frames. Intrigued by these abnormalities among children in a pocket of Faridkot, visiting South African toxicologist Dr Carin Smit had their hair samples sent to a German laboratory. The results, which have just come in, are shocking: the deformities were caused by alarmingly high levels of uranium.

“The test results have left us baffled as there’s no apparent source of uranium in Punjab,” said Prithpal Singh, head of Baba Farid Centre for Special Children in Faridkot. More tests are now being organised among the 150 affected children with the help of a team of German and South African doctors to establish whether the traces found are from depleted uranium or natural sources.


The Bhopal gas tragedy of 1984 remains fresh in our minds as civil and criminal cases are still pending and victims are yet to receive compensation. The gas leak from the Union Carbide Corporation’s Bhopal plant is considered one of the world’s worst industrial catastrophes. While there were many short-term ill effects on people’s health as a direct result of exposure to the gas leak, the inter-generational long-term effects continue to be seen in the birth defects in children born to affected mothers. The area around the plant was used to

881 Gourav Salli, Villagers protest against industrial pollution, Times News Network, The Times of India, 1 October 2011
dump hazardous chemicals and studies have shown that the polluted soil and groundwater continues to harm the present generation.

**The Bhopal Catastrophe**

The Bhopal plant, owned by the Union Carbide Corporation, produced methyl isocyanate, an intermediate in the production of the insecticide carbaryl. On December 2, 1984, a 150,000-gallon storage tank containing methyl isocyanate apparently became contaminated with water) initiating a violent reaction and the release of a cloud of toxic gas to which 200,000 people living near the plant were exposed. Low wind speed and the high vapor pressure of methyl isocyanate exacerbated the severity of toxic exposure, resulting in the immediate death of at least 6,000 people.

The dominating nonlethal effects of this emission were severe irritation of the eyes, lungs and skin. Effects on the nervous system and reproductive organs were also reported. The reaction of methyl isocyanate with water had a corrosive effect on the respiratory tract, which resulted in extensive necrosis, bleeding and edema. Treatment was impeded by the unknown and disputed composition of the gas cloud and a lack of knowledge about its health effects and about antidotes.

Ohara and Ohara 2002.


Mining, as discussed earlier, leads to several adverse impacts on the health of people living in those areas, especially children. These are largely a result of mining-related environmental hazards such as air, water and noise pollution. The examples below illustrate this.

**Mining and Pollution**

‘In 2005 itself, 64 sponge iron plants were registered' and 18 more are in the pipeline waiting for clearance with many operating with no clearance. Clearance procedures and public hearings are unheard of in these areas despite the fact that the emissions from these plants contain dangerous pollutants like cadmium, nickel, hexavalent chromium, arsenic, manganese and copper contaminating water and air with an adverse impact on the crop and people’s health’.

‘National Aluminium Company Limited (NALCO), a public sector unit, has a bauxite mining and refinery unit in Damnajodi, Koraput district and has a smelter in Angul district of the state. According to a study done for the State Pollution Control Board, the discharge of effluents from the aluminium smelter plant of NALCO at Angul has caused fluoride pollution in drinking water sources - mainly wells and tanks while fly ash effluents from the captive power plant at Damanjodi contain heavy metals like chromium, lead and iron that are deposited in water bodies. River Nadira is said to have been most affected due to such fly ash deposits’.

Source: “Water Pollution in Orissa”, study done by Dr. S.K Sahu, D. Sarangi and K.C. Pradhan, January 2006, quoted in This is our Homeland: A Collection of Essays on the Betrayal of Adivasi Rights in India, p. 79 and 105. Equations, July 2007

The NALCO bauxite mines and alumina refinery at Damanjodi, Koraput district, Orissa are reported to be causing noise pollution due to blasting and the functioning of the conveyor belt. In villages like Kargiguda, small children and old men are losing their hearing power due to noise pollution.

Children in the southern parts of Tamil Nadu report on their experience of the impacts of climate change

Children from Virudunagar district of Tamil Nadu, who have formed an ‘Ecological Child Rights Club’ in the ‘Palar Panchayat’ (Children’s Parliament) promoted by RCPDS and SPEECH, local development NGOs, carried out a participatory study in the southern districts of Tamil Nadu. The findings put forth in their own words in the form of an appeal are as follows.

- “We witness erratic rainfall and long months of dry spell.
- We are children from remote corners of Tamil Nadu, very poor, marginalised rain fed farming community, but our agriculture scenario is rapidly changing.
- Our lands which used to be our fresh traditional millet banks and our summer camp areas for hands on learning have now become barren and mushroomed with prosophis shrubs.
- We feel it is shame on our part for not being able to identify most of the minor millets which used to be our staple food, as we hear from our grandparents.
- Most of the lands are now owned by external factory or industrial owners whose face we do not know at all and who do not show any concern to our livelihoods.
- Our lands are thoroughly deserted (may be a wrong move of industrialisation) without even a grass cover, where to speak of a tree?
- In addition many more trees are cut, as we witness today, in the name of infrastructure development. Our basic question still remains – whose development? And what is the priority, is it food security/sovereignty of the small and marginal farm families or just MONEY!?
- We witness our parents struggling hard to meet our family requirements which has very adverse impact on our food habits, health and education.
- We walk miles to get a pot of protected drinking water since most of the bore holes are dried up in the recent past (year by year).
- Our ponds are completely dry, whereas these used to be our fishing centre as well as swimming school – learning a life skill – but now no way.
- Even by taking loans if parents use the land for cultivation, the inappropriate timing of monsoon showers/rains spoils the crop and makes our efforts a futile one. We literally do not have anything to eat proudly as a product from our land. We feel it is self humiliation on our part to live at the mercy of subsidies and ration supply while we rightfully own a natural resource that is ours.
- Our parents have lost hope in agriculture and food production and they never want us to get engaged in land or animal husbandry anymore.
- Our parents face strong pressure from Agriculture sector because of the government, in the name of alternate energy, to use our little lands for cultivation of jethropa (oilseed plants), mono crops and other commercial crops, which deprive us of our access to our own produce. (the market and its consumption is controlled and decided by someone else).
- Due to recurrent crop failures many of our friends and contemporaries have moved along with their families in search of odd errands. This makes them vulnerable to many more child rights violations in various forms (for example, starving, increasing sickness, drop out from school to supplement family income, subject to sexual abuse, no physical protection, etc.).
- We do not see any more draught animals or cattle in our villages, which gave us substantial enjoyment and food supplement.”

The time has come to listen to these voices and document children’s experiences as well as set up surveillance mechanisms for children affected by such changes.

---

Part C

Expected Role of the State

The first international recognition to the environment in Stockholm, 1972 was as follows.

Humans have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and a solemn responsibility to protect and improve the environment for present and future generations.

Article 48A of the Constitution of India clearly states the government’s responsibility to protect and improve the environment and to safeguard forests and wildlife. Hence, it “requires States to refrain from activities harmful to the environment, and to adopt and enforce policies promoting conservation and improvement of the quality of the environment”.883 However, the harsh reality we face today due to conflicting interests is that the state is violating human rights in the name of development and economic progress. While people are claiming their right to their environment, “the state wants to cling to the concept of ‘eminent domain’, and claim all the natural resources as a property of the state. Not only does the state claim ownership of the natural resources, but they use brute power to take away the rights of the people – who have used these commons for as long as memory goes – and handover the commons to the corporate sector”.884

“For the indigenous people, privatisation of natural commons is not only loss of livelihood but the disintegration of their communal life, their egalitarian culture and bio-centric world outlook.”885 The development model has destroyed cultures and people’s cultural identities. The current generation has no culture to identify with.

Environmental conditions have deteriorated and worsened all over the country due to a variety of aggravating factors. The overall situation is certainly a matter of concern, especially because it is affecting adversely the quality of life of people today and eroding resources for tomorrow. The situation is compounded by slack and inadequate enforcement of laws and legislations.

Sustainability of the commons rests on an equitable sharing of costs and benefits.886 However, “the markets are competitive in nature and would follow the logic of survival of the fittest which is contrary to the tenet of equity. Equity is a necessary condition for sustainability … This situation too demands regulation. Thus regulation of the free market economy and transparent governance are what need to be achieved urgently”.887

Part D

An Appeal to the Committee on the Rights of the Child

As part of the CRC20BS exercise, all organisations, children and other individuals endorsing this report appeal to the CRC Committee on the Rights of the Child to recognise children’s ecological rights as a distinct and crucial set of rights and consider the possibilities of an Optional Protocol in this regard.

885 S Basu Mullick, Commons to Capital, Vocabulary of Commons. Foundation for Ecological Security, 2011, p 43
886 Anit and Edwin Cheria, Towards a Vocabulary of Commons, Vocabulary of Commons, Foundation for Ecological Security, 2011, p 22
887 CJ George, Regional Coordinator - South Asia, terre des hommes, Germany, Intergenerational Justice, a paper presented at a meeting of the Reflection Group on Global Development Perspective, New York, 4-6 March, 2011.
Ecological rights cannot remain a subject of discussion at the development and climate change forums alone. They must become an integral and distinct part of child rights and jurisprudence also.

Children’s ecological rights require greater attention as part of the efforts being made across the globe towards sustainable development. In the context of little statistics and inadequate documentation of children’s experiences of development and climate change, it becomes even more imperative to focus on children’s ecological rights. Efforts at assessing the impacts of development and climate change must lay equal emphasis on children belonging to the indigenous and forest based communities and those in urban cities. Moreover, children cannot be merely used for environmental campaigns. They need to understand and internalise the need to preserve biodiversity and cultural diversity both for protection of their rights and as a responsibility towards the future generation. Indeed, they are the torchbearers. They must, however, get necessary information and platform to engage with policy makers and planners.

**Conclusion**

Environmental protection is intrinsically related to a number of other human rights and comes out as both a precondition and an outcome of the enjoyment of many rights. However, the criticality of the commons, of one’s ecology in everyday life is often taken for granted. Moreover, it is rarely examined through the lens of those excluded, especially the children. Yet children continue to be affected through current policies as well as those of the past. A number of environmental problems and trends such as global warming, ozone layer depletion, air pollution, hazardous wastes, exposure to hazardous chemicals and pesticides, inadequate sanitation, poor hygiene, unsafe drinking water and food and inadequate housing need to be addressed to ensure the health and well-being of children in India today and in the future.
# Annexure 1A

## Status of Ratification of International Human Rights Instruments

<table>
<thead>
<tr>
<th>International Legal Instruments</th>
<th>Status of Ratification/Signature/Adoption</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CPR and ESCR</strong></td>
<td></td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights, 1966</td>
<td>ACCEDED on 10 April 1979</td>
</tr>
<tr>
<td>Optional Protocol to the International Covenant on Civil and Political Rights, 1966 on setting up of individual complaint mechanism</td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td>Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989, aiming at the abolition of death penalty</td>
<td>NOT SIGNED</td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights, 1966</td>
<td>ACCEDED on 10 April 1979</td>
</tr>
<tr>
<td><strong>Women</strong></td>
<td></td>
</tr>
<tr>
<td>Convention on the Political Rights of Women, 1953</td>
<td>SIGNED ON 29 April 1953</td>
</tr>
<tr>
<td>Convention on the Nationality of Married Women, 1957</td>
<td>RATIFIED ON 1 November 1961</td>
</tr>
<tr>
<td>Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), 1979</td>
<td>SIGNED ON 15 May 1957</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999</td>
<td>SIGNED ON 30 July 1980 and</td>
</tr>
<tr>
<td>Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, 1995</td>
<td>RATIFIED on 9 July 1993 with a declaration/reservation</td>
</tr>
<tr>
<td><strong>Children</strong></td>
<td></td>
</tr>
<tr>
<td>Convention on the Rights of the Child, 1989</td>
<td>RATIFIED on 11 December 1992 with a declaration on Article 32</td>
</tr>
<tr>
<td>Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography</td>
<td>SIGNED on 15 November 2004 and</td>
</tr>
<tr>
<td>Optional Protocol to CRC on involvement of Children in Armed Conflict</td>
<td>RATIFIED on 16 August 2005</td>
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<tr>
<td>Amendment to article 43 (2) of the Convention on the Rights of the Child, 1995</td>
<td>SIGNED on 15 November 2004 and</td>
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<td>RATIFIED on 30 November 2005</td>
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<tr>
<td><strong>Persons with Disabilities</strong></td>
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<tr>
<td><strong>Discrimination on grounds of caste/religion/ethnicity/language</strong></td>
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<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965</td>
<td>RATIFIED ON 3 December 1968</td>
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<td></td>
<td>RATIFIED on 27 August 1959</td>
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<td>Convention</td>
<td>Status</td>
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<tr>
<td>of Apartheid, 1973</td>
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<tr>
<td>International Convention against Apartheid in Sports, 1985</td>
<td>ACCEDED on 12 September 1990</td>
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<tr>
<td>Refugees and Statelessness</td>
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<tr>
<td>Convention on the Status of Refugees, 1951</td>
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<tr>
<td>Protocol to the Convention on Status of Refugees, 1967</td>
<td>NOT SIGNED</td>
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<tr>
<td>Convention relating to the Status of Stateless Persons, 1954</td>
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<td>Convention on the Reduction of Statelessness, 1961</td>
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<tr>
<td>Environment</td>
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<tr>
<td>Montreal Protocol on Substances that Deplete the Ozone Layer, 1987</td>
<td>ACCEDED on 19 June 1992</td>
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<tr>
<td>Basel Convention on the Control of Transboundary Movements of Hazardous</td>
<td>SIGNED on 15 March 1990</td>
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<tr>
<td>Wastes and their Disposal, 1989</td>
<td>RATIFIED on 24 June 1992</td>
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<tr>
<td>Amendment to the Basel Convention on the Control of Transboundary</td>
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<td>Movements of Hazardous Wastes and their Disposal, 1995</td>
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<tr>
<td>Basel Protocol on Liability and Compensation for Damage Resulting from</td>
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<td>Transboundary Movements of Hazardous Wastes and their Disposal, 1999</td>
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<tr>
<td>Amendment to the Montreal Protocol on Substances that Deplete the Ozone</td>
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<td>Layer, 1990</td>
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<tr>
<td>Amendment to the Montreal Protocol on Substances that Deplete the Ozone</td>
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<tr>
<td>Layer, 1999</td>
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<tr>
<td>United Nations Framework Convention on Climate Change, 1992</td>
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<tr>
<td>Kyoto Protocol to the United Nations Framework Convention on Climate</td>
<td>ACCEDED on 23 March 2003</td>
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<tr>
<td>Change, 1992</td>
<td>SIGNED on 10 June 1992</td>
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<tr>
<td>Amendment to Annex B of the Kyoto Protocol to the United Nations</td>
<td>RATIFIED on 1 November 1993</td>
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<tr>
<td>Framework Convention on Climate Change, 2006</td>
<td>ACCEDED on 26 August 2002</td>
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<td>Convention on Biological Diversity, 1992</td>
<td>ACCEDED on 18 November 2008</td>
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<tr>
<td>Cartagena Protocol on Biosafety to the Convention on Biological Diversity,</td>
<td>SIGNED on 5 June 1992</td>
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<td>2000</td>
<td>RATIFIED on 18 February 1994</td>
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<tr>
<td>Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable</td>
<td>SIGNED on 23 January 2001</td>
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<tr>
<td>Sharing of Benefits Arising from their Utilization to the Convention on</td>
<td>RATIFIED on 17 January 2003</td>
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<tr>
<td>Biological Diversity, 2010</td>
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<tr>
<td>United Nations Convention to Combat Desertification in those Countries</td>
<td>SIGNED on 11 May 2011</td>
</tr>
<tr>
<td>Experiencing Serious Drought and/or Desertification, Particularly in Africa,</td>
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<tr>
<td>United Nations Framework Convention on Climate Change, 2006</td>
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<tr>
<td>Convention on Access to Information, Public Participation in Decision-</td>
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<tr>
<td>Making and Access to Justice in Environmental Matters, 1998</td>
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<tr>
<td>Protocol on Pollutant Release and Transfer Registers to the Convention on</td>
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<tr>
<td>Access to Information, Public Participation in Decision-Making and Access</td>
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<td>to Justice in Environmental, 2003</td>
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<tr>
<td>Amendment to the Convention on Access to Information, Public Participation</td>
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<td>in Decision-Making and Access to Justice in Environmental Matters, 2005</td>
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<tr>
<td>Rotterdam Convention on the Prior Informed Consent Procedure for Certain</td>
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<td>Hazardous Chemicals and Pesticides in International Trade, 1998</td>
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<td>Disarmament</td>
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<tr>
<td>Convention on the prohibition of military or any other hostile use of</td>
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<td>Convention on Prohibitions or Restrictions on the Use of Certain</td>
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<td>Conventional Weapons which may be deemed to be Excessively Injurious or</td>
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<td>to have Indiscriminate Effects, 1980</td>
<td>ACCEDED on 18 May 2005</td>
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<td>Additional Protocol to the Convention on Prohibitions or Restrictions on</td>
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<td>the Use of Certain Conventional Weapons which may be deemed to be</td>
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<td>Excessively Injurious or to have Indiscriminate Effects (Protocol IV,</td>
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<td>and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3</td>
<td>GAVE CONSENT TO BE BOUND/RATIFIED on 18 May 2005</td>
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<tr>
<td>May 1996) annexed to the Convention on Prohibitions or Restrictions on</td>
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<td>the Use of Certain Conventional Weapons which may be deemed to be</td>
<td>ACCEPTED on 18 May 2005</td>
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<tr>
<td>Excessively Injurious or to have Indiscriminate Effects, 1996</td>
<td>ACCEPTED on 18 May 2005</td>
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<tr>
<td>Amendment to the Convention on Prohibitions or Restrictions on the Use</td>
<td>ACCEPTED on 18 May 2005</td>
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<td>of Certain Conventional Weapons which may be deemed to be Excessively</td>
<td>ACCEPTED on 18 May 2005</td>
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<td>Injurious or to have Indiscriminate Effects, 2001</td>
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<td>or Restrictions on the Use of Certain Conventional Weapons which may be</td>
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<td>deemed to be Excessively Injurious or to have Indiscriminate Effects,</td>
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<td>2001</td>
<td>ACCEPTED on 18 May 2005</td>
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<tr>
<td>and Use of Chemical Weapons and on their Destruction, 1992</td>
<td>ACCEPTED on 18 May 2005</td>
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<td>Convention on the Prohibition of the Use, Stockpiling, Production and</td>
<td>ACCEPTED on 18 May 2005</td>
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<tr>
<td>Transfer of Anti-Personnel Mines and on their Destruction, 1997</td>
<td>ACCEPTED on 18 May 2005</td>
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<tr>
<th>Corruption</th>
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<tr>
<th>Drugs and Substance Abuse</th>
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<tr>
<td>Single Convention on Narcotic Drugs, 1961, as amended by the Protocol</td>
<td>SIGNED on 14 December 1978</td>
<td>ACCEDED on 23 April 1975</td>
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<tr>
<td>amending the Single Convention on Narcotic Drugs, 1961</td>
<td>ACCEDED on 27 March 1990</td>
<td>ACCEDED on 27 March 1990</td>
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<tr>
<td>United Nations Convention against Illicit Traffic in Narcotic Drugs and</td>
<td>ACCEDED on 27 March 1990</td>
<td>ACCEDED on 27 March 1990</td>
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<tr>
<td>Psychotropic Substances, 1988</td>
<td>ACCEDED on 27 March 1990</td>
<td>ACCEDED on 27 March 1990</td>
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<tr>
<th>Child Marriage</th>
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<tr>
<td>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962</td>
<td>NOT SIGNED</td>
<td>NOT SIGNED</td>
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<tr>
<td>Torture</td>
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<tr>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading</td>
<td>SIGNED on 14 October, 1997</td>
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<tr>
<td>Treatment or Punishment, 1984</td>
<td>NOT RATIFIED (despite recommendation in this regard by the CRC</td>
<td></td>
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<tr>
<td></td>
<td>Committee in its Concluding Observations in India’s Second</td>
<td></td>
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<tr>
<td></td>
<td>Periodic Report, India has not ratified this Convention)</td>
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<tr>
<td>Optional Protocol to the Convention Against Torture and Other Cruel,</td>
<td>NOT SIGNED</td>
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<tr>
<td>Inhuman or Degrading Treatment or Punishment, 2002</td>
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<td>Amendments to articles 17 (7) and 18 (5) of the Convention against</td>
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<tr>
<td>Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,</td>
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<tr>
<td>1992</td>
<td>NOT SIGNED (Since India has not ratified the main Convention the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>question of signing the amendment does not arise)</td>
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<table>
<thead>
<tr>
<th>Enforced Disappearance</th>
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<tbody>
<tr>
<td>International Convention for the Protection of All Persons from</td>
<td>SIGNED ON 6 February 2007</td>
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<tr>
<td>Enforced Disappearance, 2006</td>
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<table>
<thead>
<tr>
<th>Slavery and Trafficking</th>
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<tbody>
<tr>
<td>International Agreement for Suppression of White Slave Traffic, 1904</td>
<td>Declared Applicable to India at the time of transfer to the</td>
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<tr>
<td></td>
<td>Secretary-General</td>
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<tr>
<td>International Convention for Suppression of White Slave Traffic, 1910</td>
<td>Declared Applicable to India at the time of transfer to the</td>
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<tr>
<td></td>
<td>Secretary-General</td>
</tr>
<tr>
<td>International Convention for the Suppression of the Traffic of the</td>
<td>RATIFIED on 28 June 1922 with reservations on age on Article 5</td>
</tr>
<tr>
<td>Women and Children, 1921</td>
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<tr>
<td>Slavery Convention, 1926</td>
<td>RATIFIED in 1954</td>
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<tr>
<td>Supplementary Convention on the Abolition of Slavery, Slave Trade and</td>
<td>SIGNED on 7 September 1956</td>
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<tr>
<td>Institutions and Practices of Slavery, 1956</td>
<td>RATIFIED on 23 June 1960</td>
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<tr>
<td>Convention for the Suppression of the Traffic in Persons and of the</td>
<td>SIGNED on 9 May 1950 and</td>
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<tr>
<td>Exploitation of the Prostitution of Others 1951</td>
<td>RATIFIED on 9 January 1953</td>
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<tr>
<td>Convention against Transnational Organised Crime, 2000</td>
<td>SIGNED on 12 December 2002</td>
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<tr>
<td>Protocol to Prevent, Suppress and Punish Trafficking in Persons,</td>
<td>RATIFIED on 5 May 2011</td>
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<tr>
<td>Especially Women and Children, supplementing the Convention against</td>
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<tr>
<td>Transnational Organized Crime, 2000</td>
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<table>
<thead>
<tr>
<th>Labour</th>
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<tbody>
<tr>
<td>Eight Core ILO Conventions</td>
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<tr>
<td>ILO Convention No. 29 (Forced Labour, 1930)</td>
<td>RATIFIED on 30 November 1954</td>
</tr>
<tr>
<td>ILO Convention No. 87 (Freedom of Association and Protection of Rights,</td>
<td>NOT RATIFIED</td>
</tr>
<tr>
<td>1948)</td>
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<tr>
<td>ILO Convention No. 98 (Right to Organise and Collective Bargaining</td>
<td>NOT RATIFIED</td>
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<tr>
<td>Convention, 1949)</td>
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<tr>
<td>ILO Convention No. 100 (Equal Remuneration Convention, 1951)</td>
<td>RATIFIED on 25 September 1958</td>
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<tr>
<td>ILO Convention No. 111 (Discrimination (Employment and Occupation</td>
<td>RATIFIED on 3 June 1960</td>
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<td>Convention, 1958)</td>
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<tr>
<td>ILO Convention No. 138 (Minimum Age Convention, 1973)</td>
<td>NOT RATIFIED</td>
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<tr>
<td>ILO Convention No. 182 (Worst Forms of Child Labour, 1999)</td>
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<td>Convention</td>
<td>Status</td>
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<td>---------------------------------------------------------------------------</td>
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<tr>
<td>International Convention on Protection of Rights of All Migrant Workers and Members of their Families, 1990</td>
<td>NOT SIGNED</td>
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<tr>
<td><strong>SOME RELEVANT HAGUE CONVENTIONS</strong></td>
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<tr>
<td>Convention on the Civil Aspects of International Abduction, 1980</td>
<td>NOT SIGNED</td>
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<td>Convention on the law applicable to maintenance obligations towards children, 1956</td>
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<tr>
<td>Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, 1958</td>
<td>NOT SIGNED</td>
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<td>Convention concerning the powers of authorities and the law applicable in respect of the protection of infants, 1961</td>
<td>NOT SIGNED</td>
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<tr>
<td>Convention of on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, 1961</td>
<td>NOT SIGNED</td>
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<tr>
<td>Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996</td>
<td>NOT SIGNED</td>
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<tr>
<td>Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 2007</td>
<td>NOT SIGNED</td>
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<tr>
<td><strong>REGIONAL CONVENTIONS</strong></td>
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</tr>
<tr>
<td>SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002</td>
<td>SIGNED on 5 January 2002 at the Eleventh SAARC Summit in Kathmandu on 4-6 January 2002</td>
</tr>
<tr>
<td>Proclamation on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region, 1992</td>
<td>Adopted on 5 December, 1992</td>
</tr>
</tbody>
</table>

Source:
Annexure 1B

State Plans of Action for Children

1. **Arunachal Pradesh** - State Plan of Action for Children, Department of Social Welfare 1997
   http://wcd.nic.in/crpdf/BIBLIO.PDF (Not found on Department’s website)

   http://wcd.nic.in/crpdf/BIBLIO.PDF

   http://www.unicef.org/india/child_protection_5836.htm

   http://wcd.nic.in/crpdf/BIBLIO.PDF (Not found on Department’s website)

5. **Haryana** - State Plan of Action for the Child, 1996
   http://www.crrid.res.in/research.htm

   http://www.crrid.res.in/research.htm

7. **Karnataka** - State Plan of Action for Children, 2003-10
   Karnataka State Plan of Action for Children, 2011-2020 (Draft)

   wcd.nic.in/statetwcd/State%20Secretaries%20Meeting,24.../Kerala.ppt


    http://wcd.nic.in/crpdf/BIBLIO.PDF

11. **Meghalaya** - State Plan of Action for Children,
    http://megsocialwelfare.gov.in/publication.htm

12. **Mizoram** - State of Plan of Action for Children, (Year not Available)

http://wcd.nic.in/crcpdf/BIBLIO.PDF

http://wcd.rajasthan.gov.in/docs/Child_Policy.pdf

16. **Tamil Nadu** - State Plan of Action for Children, November 1993  

17. **West Bengal** - State Plan of Action for Children, 1993  
Calcutta - Plan of Action for Children, 1995  
## Annexure 1C

### Problems in the establishment and functioning of the State Commissions for Protection of Child Rights

<table>
<thead>
<tr>
<th>State</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>The Commission has been operating for over a year without rules to aid its functioning</td>
</tr>
<tr>
<td>Bihar</td>
<td>In compliance</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>Not in compliance</td>
</tr>
<tr>
<td>Delhi</td>
<td>Rules not in compliance with international standards and principles on human rights institutions</td>
</tr>
<tr>
<td>Goa</td>
<td>Not in compliance</td>
</tr>
<tr>
<td>Karnataka</td>
<td>Not in compliance</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>Not in compliance</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>Not in compliance</td>
</tr>
<tr>
<td>Orissa</td>
<td>Not in compliance</td>
</tr>
<tr>
<td>Punjab</td>
<td>Rules are yet to be framed</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Rules not in compliance with international standards and principles on human rights institutions</td>
</tr>
<tr>
<td>Sikkim</td>
<td>Not in compliance</td>
</tr>
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</table>

### Constitution of Selection Committee for the Selection of Chairperson and Members to the Commission

<table>
<thead>
<tr>
<th>State</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>The Commission has been operating for over a year without rules to aid its functioning</td>
</tr>
<tr>
<td>Bihar</td>
<td>Rules do not specify the composition of the Selection Committee</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>Rules fail to specify the composition of the Selection Committee and the procedures for selection</td>
</tr>
<tr>
<td>Delhi</td>
<td>Delhi Rules specify the composition of the Selection Committee, but it is entirely comprised of representatives of the executive.</td>
</tr>
<tr>
<td>Goa</td>
<td>Rules fail to specify the eligibility criteria and composition of the Selection Committee</td>
</tr>
<tr>
<td>Karnataka</td>
<td>Rules do not specify the composition of the selection committee or the procedure for selection of Chairperson and Members.</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>Rules fail to specify the composition of the Selection Committee</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>Rules fail to expressly specify the composition of the Selection Committee</td>
</tr>
<tr>
<td>Orissa</td>
<td>Rules also fail to specify the eligibility criteria and composition of the selection committee</td>
</tr>
<tr>
<td>Punjab</td>
<td>Rules are yet to be framed</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Rules provide for a Selection Committee comprised entirely of representatives of the executive</td>
</tr>
<tr>
<td>Sikkim</td>
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</tr>
</tbody>
</table>

### Deviation in the status of the Chairperson and Members of the National and State Commissions, especially in terms of parity in remuneration

<table>
<thead>
<tr>
<th>State</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>The Commission has been operating for over a year without rules to aid its functioning.</td>
</tr>
<tr>
<td>Bihar</td>
<td>Chairperson and Members will receive salary equivalent to that of the Chief Secretary, State Government and Secretary, State Government, respectively.</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>Rules fail to specify the salary and allowances of the Chairperson and Members.</td>
</tr>
<tr>
<td>State</td>
<td>Status</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Delhi</td>
<td>No parity in remuneration.</td>
</tr>
<tr>
<td>Goa</td>
<td>No parity in remuneration.</td>
</tr>
<tr>
<td>Karnataka</td>
<td>No parity in remuneration.</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>Rules fail to specify the salary and allowances that payable to the Chairperson and Members.</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>No parity in remuneration.</td>
</tr>
<tr>
<td>Orissa</td>
<td>No parity in remuneration.</td>
</tr>
<tr>
<td>Punjab</td>
<td>Rules not framed.</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>No parity in remuneration.</td>
</tr>
<tr>
<td>Sikkim</td>
<td>No parity in remuneration.</td>
</tr>
</tbody>
</table>
Annexure 1D

Children’s Bill of Rights:

Included in Class VIII Social Science Text Books of NCERT

CHILDREN’S BILL OF RIGHTS

A child is every person under the age of 18 years. Parents have the primary responsibility for the upbringing and development of the child. The State shall respect and ensure the rights of the child.

Dignity and Expression

- I have the right to know about my Rights [Art.42]
- I have rights being a child and no matter who I am where I live, what my parents do, what language I speak, what religion I follow, whether I am a boy or a girl, what culture I belong to, whether I am disabled, whether I am rich or poor. I should not be treated unfairly on any basis. Everyone has the responsibility to know this. [Art. 2]
- I have the Right to express my views freely, which should be taken seriously, and everyone has the Responsibility to listen to others. [Art.12,13]
- I have the Right to make mistakes, and everyone has the Responsibility to accept we can learn from our mistakes. [Art 28]
- I have the Right to be included whatever my abilities, and everyone has the Responsibility to respect others for their differences. [Art 23]

Development

- I have the Right to a good education, and everyone has the Responsibility to encourage all children to go to school. [Art. 23, 28, 29]
- I have the Right to good health care and everyone has the Responsibility to help others get basic health care and safe water. [Art. 24]
- I have the Right to be well fed and everyone has the Responsibility to prevent people starving. [Art. 24]
- I have the Right to a clean environment, and everyone has the Responsibility not to pollute it. [Art. 29]
- I have the Right to play and rest. [Art 31.]

Care & Protection

- I have the Right to be loved and protected from harm and abuse, and everyone has the Responsibility to love and care for others. [Art.19]
- I have the Right to a family and a safe and comfortable home and everyone has the Responsibility to make sure all children have a family and home. [Art. 9,27]
- I have the Right to be proud of my heritage and beliefs, and everyone has the Responsibility to respect the culture and belief of others. [Art 29,30]
- I have the Right to live without violence and corporal punishment (verbal, physical, emotional), and everyone has the Responsibility not to be violent to others. [Art. 2, 28, 37, 39]

- I have the Right to be protected from economic exploitation and sexual exploitation, and everyone has the Responsibility to ensure that no child is forced to work and is given a free and secure environment. [Art. 32, 34]

- I have the Right to protection from any kind of exploitation and everyone has the Responsibility to ensure that I am not being subjected to be taken advantage in any manner. [Art 36]

**IN ALL ACTION CONCERNING CHILDREN THE BEST INTERESTS OF THE CHILD SHALL BE A PRIMARY CONSIDERATION.**

All these rights and responsibilities are enshrined in the United Nations Convention on the Rights of the Child, 1989. It contains all the rights that children have all over the world.

Annexure 1E

Concluding Observations of the Committee on the Rights of the Child: General measures of implementation

Concluding Observations dated 23 February 2000

CRC/C/15/Add.115

D. Principal subjects of concern and Committee recommendations

D.1. General measures of implementation

Legislation

10. In the light of article 4 of the Convention, the Committee notes the unclear status of the Convention in the domestic legal framework and is concerned about the insufficient steps taken to bring existing federal, state and personal status laws into full conformity with the Convention.

11. The Committee recommends that the State party pursue efforts to ensure full compatibility of its legislation with the Convention, taking due account of the general principles of the Convention. In this regard, the Committee encourages the State party to consider adopting a code for children.

12. The Committee notes that insufficient efforts have been made to implement legislation and decisions of the courts and the commissions (i.e. the National Human Rights Commission, the National Commission for Women, and the Scheduled Castes and Scheduled Tribes Commission); and to facilitate the work of such institutions with respect to children’s rights.

13. The Committee recommends that the State party take all necessary measures, including the allocation of the required resources (i.e. human and financial) to ensure and strengthen the effective implementation of existing legislation. The Committee further recommends the State party to provide adequate resources and to take all other necessary steps to strengthen the capacity and effectiveness of national human rights institutions, including the National Human Rights Commission, the National Commission for Women, and the Scheduled Castes and Scheduled Tribes Commission.

Coordination

14. Noting the complexities arising from the federal structure of government with regard to the delineation of responsibilities between federal and state levels, the Committee is concerned that insufficient administrative coordination and cooperation appears to be a serious problem in the implementation of the Convention.

15. The Committee recommends that the State party adopt a comprehensive national plan of action, based on a child rights approach, to implement the Convention. The Committee recommends that attention be given to intersectoral coordination and cooperation at and between central, state and municipal levels of government. The State party is encouraged to provide support to local authorities, including capacity building, for implementation of the Convention.
Independent/monitoring structures

16. The Committee is concerned at the absence of an effective mechanism to collect and analyse disaggregated data of all persons under 18 years for all areas covered by the Convention, including the most vulnerable groups (i.e. children living in slums, belonging to different castes and tribal groups, living in rural areas, children with disabilities, children who are living and/or working on the streets, children affected by armed conflicts and refugee children).

17. It recommends that the State party develop a comprehensive system for collecting disaggregated data as a basis to assess progress achieved in the realization of children’s rights and to help design policies to be adopted to implement the Convention.

18. The Committee welcomes the State party’s intention to establish a national commission for children.

19. The Committee encourages the State party to establish a statutory, independent national commission for children with the mandate of, inter alia, regularly monitoring and evaluating progress in the implementation of the Convention at the federal, state and local levels. Further, such a commission should be empowered to receive and address complaints of violations of child rights, including with respect to the security forces.

Allocation of budgetary resources (art. 4)

20. The Committee welcomes the commitment of the State party to increase budgetary allocation for education from 4 to 6 percent of the national budget. However, the Committee is concerned that insufficient attention has been paid to article 4 of the Convention regarding the implementation to the “maximum extent of... available resources” of the economic, social and cultural rights of children.

21. The Committee recommends that the State party develop ways to establish a systematic assessment of the impact of budgetary allocations on the implementation of child rights and to collect and disseminate information in this regard. The Committee also recommends that the State party ensure the appropriate distribution of resources at the central, state and local levels, and where needed, within the framework of international cooperation.

Cooperation with NGOs

22. The Committee notes that cooperation with non-governmental organizations in the implementation of the Convention, including preparation of the report, remains limited.

23. The Committee encourages the State party to consider a systematic approach to involve NGOs and civil society in general throughout all stages of the implementation of the Convention, including policy-making.

Training/dissemination of the Convention (art. 42)

24. In the light of article 42, the Committee notes the low level of awareness of the Convention amongst the general public, including children, and professionals working with children. The Committee is concerned that the State party is not undertaking adequate dissemination and awareness-raising activities in a systematic and targeted manner.

25. In this regard, the Committee recommends that the State party develop an ongoing programme for the dissemination of information regarding the implementation of the Convention among children.
and parents, civil society and all sectors and levels of government. The Committee encourages
the State party to pursue efforts to promote children’s rights education in the country, including
initiatives to reach those vulnerable groups who are illiterate or without formal education.
Moreover, the Committee recommends that the State party develop systematic and ongoing
training programmes on the provisions of the Convention for all professional groups working with
children (i.e. judges, lawyers, law enforcement officials, civil servants, local government officials,
personnel working in institutions and places of detention for children, teachers, health personnel,
including psychologists, and social workers). The Committee encourages the State party to seek
assistance from, inter alia, UNICEF, in this regard.

Concluding Observations dated 26 February 2004
CRC/C/15/Add.228

D. Principal subject of concern and recommendations

1. General measures of implementation

Previous recommendations of the Committee

5. The Committee regrets that some of the concerns it expressed and the recommendations it made
(CRC/C/15/Add.115) after its consideration of the State party’s initial report (CRC/C/28/Add.10) have not
been sufficiently addressed, inter alia those contained in paragraphs 13 (implementation of legislation);
15 (coordination); 17 and 19 (monitoring); 29, 31, and 33 (non-discrimination); 37 (birth registration); 39-
41 (torture); 45 (violence); 47 (children with disabilities); 49 and 51 (basic health); 53 and 55 (standard of
living); 57-60 (education); 64 (armed conflict); 66-71 (child labour); and 80-82 (administration of juvenile
justice).

6. The Committee urges the State party to make every effort to address the previous recommendations
that have been only partly implemented or not implemented at all, and the list of recommendations
contained in the present concluding observations.

Declaration to article 32

7. In light of the State party’s numerous measures to implement progressively article 32 of the Convention,
the Committee has serious doubts as to the need for this declaration.

8. In line with its previous recommendations (CRC/C/15/ADD.115, para. 66), and in light of the
Vienna Declaration and Programme of Action, the Committee urges the State party to withdraw
the declaration made to article 32 of the Convention.

Legislation

9. The Committee welcomes the fact that the Convention can be invoked before the courts and that
the Supreme Court has adopted various decisions based on the Convention; however, the Committee
remains concerned that domestic legislation, and in particular religious and personal laws which govern
family matters, are not yet fully in conformity with the provisions and principles of the Convention.
10. In light of its previous recommendations (ibid., para. 11), the Committee recommends that the State party:
   (a) Scrutinize carefully existing legislative and other measures, including religious and personal laws, both at the federal and state levels, with a view to ensuring that the provisions and principles of the Convention are implemented throughout the State party;
   (b) Ensure the implementation of its legislation and its wide dissemination.

Resources

11. While noting the efforts undertaken to increase the budget allocation for some social services, the Committee is concerned at the slow increase of the budget allocations for education and at the stagnation, or even the decrease of funds allocated to other social services.

12. The Committee recommends that the State party:
   (a) Make every effort to increase the proportion of the budget allocated to the realization of children’s rights to the “maximum extent … of available resources” and, in this context, to ensure the provision, including through international cooperation, of appropriate human resources and to guarantee that the implementation of policies relating to social services provided to children remain a priority; and
   (b) Develop ways to assess the impact of budgetary allocations on the implementation of children’s rights, and collect and disseminate information in this regard.

Coordination

13. The Committee notes that the Department of Women and Child Development is the body responsible for the coordination of all activities regarding the implementation of the Convention on the Rights of the Child and that a national coordinating mechanism was constituted in January 2000, but only met once, in September 2000. The Committee is, however, of the view that greater coordination is still required among the different bodies responsible for the implementation of the Convention at the federal and state levels and between the federal Government and the states.

14. The Committee recommends that the State party strengthen its national mechanism to coordinate the effective implementation of the Convention at the federal level, between the federal and the state levels and between states, with a view to, inter alia, improving the efficiency of the implementation process and decreasing or eliminating any possibility of discrimination as a result of that process.

National Plan of Action/National Charter for Children

15. The Committee notes the existence of the 1974 National Policy for Children as well as the 1992 National Plan of Action for Children and notes the current discussions regarding the National Charter for Children to replace the Policy, as well as the drafting of a new Plan of Action for Children. The Committee is nevertheless concerned that the National Charter for Children does not adopt a child-rights-based approach and does not explicitly include all rights and principles of the Convention.

16. The Committee recommends that the State party take all necessary measures to adopt, in consultation with all relevant partners, including the civil society, a new Plan of Action for Children that covers all areas of the Convention, includes the Millennium Development Goals, and fully
reflects “A world fit for children”; to allocate the necessary human and financial resources for its full implementation; and provide for a coordination and monitoring mechanism. In addition, the Committee recommends that the State party expedite the adoption of the National Charter for Children and make sure that the Charter adopts a child-rights-based approach and covers all the rights and principles of the Convention.

Independent monitoring structures


18. In light of its previous recommendations (ibid., para. 19), the Committee recommends that the State party expedite, as much as possible, the establishment of an independent national commission for children in accordance with the Paris Principles relating to the status of national institutions (General Assembly resolution 48/134) and the Committee’s general comment No. 2 on national human rights institutions, to monitor and evaluate progress in the implementation of the Convention at the federal and at the state levels.

Cooperation with NGOs

19. The Committee notes the cooperation with NGOs in the area of service delivery and their involvement in the preparation of various programmes relevant to the Convention, but is concerned that this cooperation is not systematic and that there is a lack of supervision of NGOs’ activities.

20. The Committee emphasizes the important role of NGOs as partners in implementing the provisions of the Convention and, in line with its previous recommendations (ibid., para. 23) recommends that the State party involve them in a more systematic and coordinated manner in all stages of the Convention’s implementation, including policy formulation, at the national, state and local levels, and in the drafting of future periodic reports. It also recommends that the State party take into account the recommendations arising from the day of general discussion held in 2002 on the theme “The private sector as service providers and its role in implementing child rights” (CRC/C/121, para. 630) and improve its supervision of private organizations delivering services by, inter alia, improving the system of registration and authorization of service providers.

Data collection

21. The Committee notes with appreciation the efforts undertaken to improve data collection, notably through the new system to collect data regarding budget allocations and trends relating to schemes and programmes addressing all issues concerning children. However, the Committee remains concerned at the insufficient data for some areas covered by the Convention.

22. The Committee recommends that the State party develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, social status (Scheduled Castes and Tribes, or religious community), and urban and rural area and make it publicly available. This system should cover all children up to the age of 18 with specific emphasis on those who are particularly vulnerable. It further encourages the State party to use these indicators and data for the formulation of policies and programmes for the effective implementation of the Convention. The Committee recommends that the State party seek technical assistance from UNICEF, UNDP and UNFPA, among others.
Training and dissemination

23. The Committee welcomes the dissemination of its previous concluding observations and the various awareness-raising campaigns, but remains concerned that children and the public at large, as well as all groups of professionals working with and for children, are not sufficiently aware of the Convention and the rights-based approach enshrined therein.

24. In line with its previous recommendations (ibid., para. 25), the Committee recommends that the State party:

(a) Strengthen its efforts to disseminate the principles and provisions of the Convention, and make those efforts systematic, in order to sensitize society about children’s rights through social mobilization;

(b) Systematically involve parliamentarians and community and religious leaders in its programmes to eradicate customs and traditions that impede the implementation of the Convention, and adopt creative measures of communications for illiterate people and for people in remote areas;

(c) Undertake systematic education and training on the provisions of the Convention for all professional groups working for and with children, in particular, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;

(d) Further promote human rights education, including the rights of the child, in primary and secondary school curricula as well as in the curricula for teacher training;

(e) Seek technical assistance from, among others, OHCHR, UNESCO and UNICEF.
Annexure 2A

Concluding Observations of the Committee on the Rights of the Child: Definition of the child

Concluding Observations dated 23 February 2000

CRC/C/15/Add.115

D. Principal subjects of concern and Committee recommendations

D.2. Definition of the child

26. In the 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 seven 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. the 1929 Child Marriages Restraint Act).

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

D.8. Special measures of protection

Economic exploitation (art. 32)

65. … The Committee is concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

71. … The Committee recommends that the State party ratify ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Administration of juvenile justice (arts. 37, 40 and 39)

79. The Committee is concerned over the administration of juvenile justice in India and its incompatibility with articles 37, 40 and 39 of the Convention and other relevant international standards. The Committee is also concerned at the very young age of criminal responsibility - 7 years - and the possibility of trying boys between 16 and 18 years of age as adults. Noting that the death penalty is de facto not applied to persons under 18, the Committee is very concerned that de jure, this possibility exists. The Committee is further concerned at the overcrowded and unsanitary conditions of detention of children, including detention with adults; lack of application and enforcement of existing juvenile justice legislation; lack of training for professionals, including the judiciary, lawyers and law enforcement officers, in relation to the Convention, other existing international standards and the 1986 Juvenile Justice Act; and the lack of measures and enforcement thereof to prosecute officials who violate these provisions.
81. The Committee recommends that the State party abolish by law the imposition of the death penalty on persons under 18. The Committee also recommends that the State party consider raising the age of criminal responsibility and ensure that persons under 18 years are not tried as adults. In accordance with the principle of non-discrimination contained in article 2 of the Convention, the Committee recommends article 2 (h) of the 1986 Juvenile Justice Act be amended to ensure that boys under 18 years are covered by the definition of juvenile, as girls already are. The Committee recommends that the 1986 Juvenile Justice Act be fully enforced and that the judiciary and lawyers be trained and made aware of it. The Committee further recommends that measures be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to improve prison facilities as quickly as possible. The Committee recommends that the State party ensure regular, frequent and independent monitoring of institutions for juvenile offenders.

Concluding Observations dated 26 February 2004

CRC/C/15/Add.228

7. Special protection measures

Economic exploitation, including child labour

72. The Committee notes the tenth Plan for the National Child Labour Project but is extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal sector, in household enterprises, as domestic servants and in agriculture. The Committee is further very concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

17. The Committee recommends that the State party:

... (d) Ratify ILO Conventions No. 138 concerning the Minimum Age for Admission to Employment...

Administration of juvenile justice

78. The Committee notes the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 but remains concerned that no minimum age of criminal responsibility is fixed in the new Act and that the minimum age of 7 years found in the Penal Code is still in force. The Committee is further concerned that the Supreme Court has decided that the date of the commission of one offence is irrelevant for determining whether the alleged offender is a juvenile (CRC/C/93/Add.5, box 8.7). The Committee is further concerned that the mechanisms to enforce the Act have not been set up in most states and that the Act does not apply to the State of Jammu and Kashmir...

80. In addition, the Committee recommends that the State party:

(a) Amend the Juvenile Justice (Care and Protection of Children) Act, 2000 to set a minimum age of criminal responsibility that shall be higher than that fixed in the Penal Code and reflect internationally accepted norms, and consider this age as the age when the offence was committed;
Concluding Observations of the Committee on the Rights of the Child: General principles

Concluding Observations dated 23 February 2000

CRC/C/15/Add.115

D.3. General principles

The right to non-discrimination (art. 2)

28. In the light of article 2 of the Convention, the Committee is deeply concerned at the widely disparate levels of enjoyment of the rights in the Convention by children living in different states, living in rural areas, living in slums and belonging to different castes, tribal and indigenous groups. 

29. The Committee recommends that concerted efforts at all levels be taken to address social inequalities through a review and reorientation of policies, including increased budgetary provision for programmes targeting the most vulnerable groups.

30. In the light of article 2 of the Convention, the Committee is concerned at the existence of caste-based discrimination and discrimination against tribal groups, despite these practices being prohibited under the law.

31. In accordance with article 17 of the Constitution and article 2 of the Convention, the Committee recommends that the State party take steps to ensure states abolish the discriminatory practice of “untouchability”, prevent caste- and tribe-motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses. Moreover, in compliance with article 46 of the Constitution, the State party is encouraged to implement, inter alia, affirmative measures to advance and protect these groups. The Committee recommends the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the 1993 Employment of Manual Scavengers Act. The Committee encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat caste-based discrimination. In line with the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.13), the Committee stresses the importance of the equal enjoyment by members of these groups of the rights in the Convention, including access to health care, education, work, and public places and services, such as wells.

32. The Committee notes the persistence of discriminatory social attitudes and harmful traditional practices towards girls, including female infanticide, selective abortions, low school enrolment and high drop-out rates, early and forced marriages, and religion-based personal status laws which perpetuate gender inequality in areas such as marriage, divorce, custody and guardianship of infants, and inheritance.

33. In accordance with article 2 of the Convention, the Committee encourages the State party to ensure the enforcement of protective laws. The Committee encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat gender discrimination, particularly within the family. To assist in these efforts, political, religious and
community leaders should be mobilized to support efforts to eradicate traditional practices and attitudes which discriminate against girls.

Respect for the views of the child (art. 12)

34. In the light of article 12, the Committee notes that the views of the child are accorded insufficient importance, especially within the family, the school, care institutions, the courts and the juvenile justice system.

35. The Committee encourages the State party to promote and facilitate within the family, the school, care institutions, the courts and the juvenile justice system respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention. In this regard, the Committee recommends that the State party develop skills-training programmes in community settings for teachers, social workers and local officials in assisting children to make and express their informed decisions and to have their views taken into consideration.

Concluding Observations dated 26 February 2004

CRC/C/15/Add.228

2. General Principles

The right to non-discrimination

25. In light of article 2 of the Convention, the Committee is deeply concerned at the widely disparate levels of enjoyment of the rights in the Convention by girls, children living in certain states, rural areas and slums, and children belonging to certain castes and tribal and indigenous groups.

26. The Committee recommends that concerted efforts at all levels be taken to address social inequalities by reviewing and reorienting policies, including increasing budgetary allocations for programmes targeting the most vulnerable groups, and that technical assistance be sought from, among others, UNICEF.

27. The Committee is deeply concerned at persistent and significant social discrimination against children belonging to Scheduled Castes and Tribes and other tribal groups, reflected, inter alia, by the many violations of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the low number of such violations dealt with by the courts, and the fact that a majority of the states have failed to set up the special courts provided for under this Act.

28. The Committee recommends that the State party, in accordance with article 17 of its Constitution and article 2 of the Convention, take all necessary steps to abolish the discriminatory practice of “untouchability”, prevent caste- and tribe-motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses. Moreover, in compliance with article 46 of the Constitution, the State party is encouraged to implement, inter alia, special measures to advance and protect these groups. The Committee recommends the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The Committee encourages
the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat caste-based discrimination with a view to changing social attitudes, by involving, inter alia, religious leaders.

29. The Committee welcomes the National Plan of Action for the Girl Child and the Platform for Action, but is deeply concerned at the persistence of discriminatory social attitudes and harmful traditional practices towards girls, including low school enrolment and high dropout rates, early and forced marriages, and religion-based personal status laws that perpetuate gender inequality in areas such as marriage, divorce, custody and guardianship of infants, and inheritance.

30. The Committee urges the State party to take all necessary measures for the implementation of the National Plan of Action for the Girl Child and encourages the enforcement of protective laws. The Committee also encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat gender discrimination, particularly within the family. Political, religious and community leaders should be mobilized to support efforts to eradicate harmful traditional practices and attitudes which still discriminate against girls.

31. While welcoming the special temporary programmes and other activities to improve the enjoyment of rights by girls and vulnerable groups such as children belonging to Scheduled Castes and Tribes, the Committee expresses its concern at the possibility that other children in situations similar to that of those groups are not receiving the same benefits.

32. The Committee recommends that all existing and future special temporary programmes be provided with specified goals and timetables, in order to evaluate their success and justify their continuation, expansion and dissemination. The Committee further recommends that the State party start to develop special programmes for the allocation of educational and other benefits that are based on the child’s needs and rights rather than on the basis of sex, caste or tribe, or any other characteristic that may result in unjustifiable discrimination.

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

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

   (a) Take all necessary steps to ensure the implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994;
   (b) Further develop massive awareness campaigns, involving parents, communities, law enforcement officers, etc., and take the necessary measures, including imposing sanctions to end the practice of selective abortions and female infanticide; and
   (c) Undertake gender impact studies when planning programmes relating to economic and social policies.

35. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking account of the Committee’s general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).
Respect for the views of the child

36. The Committee welcomes initiatives to increase child participation by the establishment of children’s councils, associations and projects in several states and districts, but remains concerned that traditional attitudes towards children in society, especially girls, still limit the respect for their views within the family, at school, in institutions and at the community government level. The Committee further notes with regret that there are virtually no legal provisions guaranteeing children’s participation in civil proceedings affecting their rights and well being.

37. The Committee recommends that the State party:

   (a) Promote, within the family, the schools, institutions, as well as in judicial and administrative proceedings, respect for the views of children, especially girls, and facilitate their participation in all matters affecting them, in accordance with article 12 of the Convention;

   (b) Provide educational information to parents, teachers, government administrative officials, the judiciary, children themselves and society at large on the right of children to have their views taken into account and to participate in all matters affecting them; and

   (c) Regularly review the extent to which children’s views are taken into consideration, including their impact on relevant policies and programmes.
Concluding Observations of the Committee on the Rights of the Child: Civil Rights and Freedoms

Concluding Observations dated 23 February 2000

CRC/C/15/Add.115

D.4. Civil Rights and Freedoms

Name and nationality (art. 7)

36. Given that lack of timely birth registration can have negative consequences on the full enjoyment of fundamental rights and freedoms by children, the Committee is concerned, in the light of article 7 of the Convention, that the births of a very significant number of children in India are not registered.

37. The Committee recommends that the State party make greater efforts to ensure the timely registration of all births, in accordance with article 7 of the Convention, and take training and awareness-raising measures as regards registration in rural areas. The Committee encourages steps such as the establishment of mobile registration offices, and registration units in schools and health facilities.

Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

38. With respect to article 37 (a) of the Convention, the Committee is concerned by numerous reports of routine ill-treatment, corporal punishment, torture and sexual abuse of children in detention facilities, and alleged instances of killings of children living and/or working on the streets by law enforcement officials.

39. The Committee recommends that the registration of each child taken to a police station be mandatory, including time, date and reason for detention, and that such detention be subject to frequent mandatory review by a magistrate. The Committee encourages the State party to amend sections 53 and 54 of the Code of Criminal Procedure so that medical examination, including age verification, is mandatory at the time of detention and at regular intervals.

40. The Committee recommends that the State party implement the recommendations made by the National Police Commission in 1980 and the Parliamentary Committee in 1996, which, inter alia, call for a mandatory judicial inquiry in cases of alleged rape, death or injury of persons in police custody; the establishment of investigative bodies; and payment of compensation to people who have been victims of custodial abuse. Amendment to the Juvenile Justice Act is recommended to provide for complaints and prosecution mechanisms for cases of custodial abuse of children. In addition, the Committee recommends the amendment of section 197 of the Code of Criminal Procedure, which requires government approval for prosecution of law enforcement officials when complaints of custodial abuse or illegal detention are alleged; and section 43 of the Police Act, so that police cannot claim immunity for actions while executing a warrant in cases of illegal detention or custodial abuse.

41. The Committee encourages the State party to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it signed in 1997.
Concluding Observations dated 26 February 2004

CRC/C/15/Add.228

3. Civil rights and freedoms

Birth registration

38. The Committee welcomes the intention to review the birth registration system in the State party (CRC/C/93/Add.5, para. 281) but remains seriously concerned that about 46 per cent of children are not registered at birth.

39. In line with its previous recommendation (CRC/C/15/Add.115, para. 37), the Committee recommends that the State party make greater efforts to ensure the timely registration of all births by the year 2010 as planned (CRC/C/93/Add.5, para. 284), and take training and awareness-raising measures as regards registration in rural areas. The Committee encourages steps such as the establishment of mobile registration offices and registration units in schools and health facilities, and recommends that the State party seek technical assistance from, among others, UNICEF and UNFPA.

Right to nationality

40. The Committee is concerned that Pakistani refugee and Mohajir children residing in India (Rajasthan and Andhra Pradesh, respectively) are stateless.

41. The Committee recommends that the State party take measures to provide these children with a nationality, in accordance with article 7 of the Convention.

Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

42. The Committee is concerned at numerous reports of ill-treatment, torture and sexual abuse of children in detention facilities, and alleged instances of killings of children by law enforcement officials.

43. In line with its previous recommendations (CRC/C/15/Add.115, paras. 39-41), the Committee recommends that the State party:

(a) Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Set up child-sensitive mechanisms to receive complaints against law enforcement officials regarding ill-treatment during arrest, questioning and police custody and in detention centres;

(c) Investigate and prosecute complaints in a child-sensitive manner;

(d) Strengthen its efforts to train the law enforcement personnel on the human rights of children; and

(e) In light of article 39, take all appropriate measures to ensure the physical and psychological recovery and social integration of child victims of torture and/or ill-treatment.
**Corporal punishment**

44. The Committee notes the decision of the New Delhi High Court of December 2000 regarding prohibition of corporal punishment in the schools under its jurisdiction, but remains concerned that corporal punishment is not prohibited in the schools of other states, in the family, nor in other institutions for children, and remains acceptable in the society.

45. The Committee strongly recommends that the State party prohibit corporal punishment in the family, in schools and other institutions and undertake education campaigns to educate families, teachers and other professionals working with and/or for children on alternative ways of disciplining children.

**Concluding Observations under Other International Human Rights Treaties**

India is also under obligation to fulfil the rights of children contained in some other conventions that it has ratified. Therefore it becomes necessary to glance through the concluding observations made by different UN Committees such as the Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, the Human Rights Committee etc. These observations were made following the country reports submitted by India.

**Concluding observations of the Committee on the Elimination of Discrimination against Women**

5. The Committee notes with great concern that acts of violence specifically targeting women and girls were prevalent in the communal violence which took place in 2002, including torture, murder, gang rape, forced nudity, parading women naked, mutilation of breasts and other body parts, insertion of wooden and metal objects into genitals and other forms of sexual violence. In that context, the Committee recalls that in its general recommendation No. 19 (1992), gender-based violence against women is defined as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention, whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

CEDAW/C/IND/SP.1

Committee on the Elimination of Discrimination against Women

Forty-seventh session

4–22 October 2010
Concluding Observations of the Committee on Economic, Social and Cultural Rights

26. The Committee is concerned about the exceptionally high incidence of domestic violence against women and children in the State party, as well as the high proportion of children who are subjected to sexual abuse at home, in spite of the enactment of the Protection of Women from Domestic Violence Act of 2005. In this regard, the Committee deeply regrets the lax enforcement of the existing legislation for the protection of victims of domestic violence and the low rate of prosecution for such crimes under Section 498-A of the Indian Penal Code.

E/C.12/IND/CO/5
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
Fortieth session
28 April - 16 May 2008

Concluding observations of the Human Rights Committee

33. The Committee expresses its concern at the plight of street children and at the reported high level of violence against children within society. It is particularly concerned at reports of child mutilation. Therefore: the Committee recommends that urgent measures be taken to address the problem of violence against children and that specific mechanisms be set up for the protection of children.

CCPR/C/79/Add.81
HUMAN RIGHTS COMMITTEE
4 August 1997
Annexure 5A

Concluding Observations of the Committee on the Rights of the Child: Family environment and alternative care

Concluding Observations dated 23 February 2000

CRC/C/15/Add.115

D.5. Family environment and alternative care

Adoption (art. 21)

42. In the light of articles 21 and 25 of the Convention, the Committee is concerned at the absence of uniform adoption law in India and effective measures to monitor and follow up placement within the State party and abroad.

43. The Committee recommends the State party to review the legislative framework of domestic and inter-country adoption. The Committee recommends that the State party become a party to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

Violence/abuse/neglect/maltreatment (art. 19)

44. In the light of articles 19 and 39 of the Convention, the Committee is concerned at the widespread ill-treatment of children in India, not only in schools and care institutions but also within the family.

45. The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and care institutions. The Committee recommends that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children. The Committee recommends that the State party promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools. Programmes for the rehabilitation and reintegration of abused children need to be strengthened, and adequate procedures and mechanisms established to receive complaints, monitor, investigate and prosecute instances of ill-treatment.
4. Family environment and alternative care

Parental responsibility

46. While noting the judgement of the Supreme Court that the mother was as much the child’s natural guardian as the father (Githa Hariharan v. Bank of India, 18 February 1999), the Committee expresses its concern that under the law, the father still has the main responsibility with regard to the child.

47. In line with article 18 of the Convention, the Committee recommends that the State party take all necessary measures to ensure recognition and implementation of the principle that both parents have common responsibilities for the upbringing and development of their child.

Adoption

48. The Committee welcomes the recent ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the emphasis put on domestic adoption, but reiterates its concern at the absence of uniform adoption law and procedures in the State party and of effective measures to monitor respect for the rights of the children concerned and to follow up adoptions within the State party and abroad. The Committee is further concerned at the lack of registration and control of adoptions carried out by non-accredited agencies.

49. The Committee recommends that the State party:

(a) Review the legal framework for domestic adoption and take all necessary measures, including the adoption of new guidelines by the central authority, to implement the newly ratified 1993 Hague Convention;

(b) Extend to the whole territory the application of the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act 2000; and

(c) Ensure that adoption is possible for children of all religions, in accordance with the strict regulations reflected in article 21 of the Convention.

Violence, abuse, neglect and maltreatment

50. The Committee is concerned at the high prevalence of violence, abuse, including sexual abuse, and neglect of children within the State party, and at the lack of effective measures to combat this problem. The Committee is further concerned at outdated laws concerning sexual abuse.

51. In light of article 19 of the Convention and in line with its previous recommendations (ibid., para. 45), the Committee recommends that the State party:

(a) Adopt new legislative measures and amend outdated legislation to prohibit all forms of physical and mental violence, including sexual abuse of children in the family, in schools and in institutions;

(b) Carry out public education campaigns and any other appropriate measures concerning the negative consequences of ill-treatment of children;
(c) Establish effective procedures and mechanisms to receive, monitor and investigate complaints, including intervention where necessary;

(d) Investigate and prosecute cases of ill-treatment, ensuring that the abused child is not victimized in legal proceedings and that his/her privacy is protected;

(e) Provide facilities for the care, recovery and reintegration of victims;

(f) Train parents, teachers, law enforcement officials, care workers, judges, health professionals and children themselves in the identification, reporting and management of cases of ill-treatment, using a multidisciplinary and multisectoral approach; and

(g) Seek assistance from, among others, UNICEF and WHO.

Concluding Observations under Other International Human Rights Treaties

Concluding observations relating to children’s right to family environment and alternative care under treaty bodies other than CRC are listed below.

Concluding observations Human Rights Committee: India. 08/04/1997.

The Committee expresses its concern at the plight of street children and at the reported high level of violence against children within society. It is particularly concerned at reports of child mutilation. Therefore: the Committee recommends that urgent measures be taken to address the problem of violence against children and that specific mechanisms be set up for the protection of children.

CCPR/C/79/Add.81
Human Rights Committee
4 August 1997

Concluding Observations of the Committee on Economic, Social and Cultural Rights

26. The Committee is concerned about the exceptionally high incidence of domestic violence against women and children in the State party, as well as the high proportion of children who are subjected to sexual abuse at home, in spite of the enactment of the Protection of Women from Domestic Violence Act of 2005. In this regard, the Committee deeply regrets the lax enforcement of the existing legislation for the protection of victims of domestic violence and the low rate of prosecution for such crimes under Section 498-A of the Indian Penal Code.

E/C.12/IND/CO/5
Committee on Economic, Social and Cultural Rights
Fortieth session
28 April - 16 May 2008
## Annexure 5B

**Data for Delhi on the number of parents waiting to adopt (both in-Country and inter-Country)**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>NAME OF THE AGENCIES</th>
<th>IN COUNTRY ADOPTION</th>
<th>INTER COUNTRY ADOPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>PALNA (DCCW)</td>
<td>394</td>
<td>100</td>
</tr>
<tr>
<td>2.</td>
<td>MAATRE CHHAYA, Paharganj</td>
<td>94</td>
<td>They don’t do Inter-country Adoption</td>
</tr>
<tr>
<td>3.</td>
<td>Udayan SOS</td>
<td>347</td>
<td>70</td>
</tr>
<tr>
<td>4.</td>
<td>UPAVAN</td>
<td>No Information provided</td>
<td>No Information provided</td>
</tr>
<tr>
<td>5.</td>
<td>HOLY CROSS</td>
<td>30</td>
<td>32</td>
</tr>
<tr>
<td>6.</td>
<td>WELFARE HOME FOR CHILDREN</td>
<td>162</td>
<td>14</td>
</tr>
<tr>
<td>7.</td>
<td>Missionaries of Charity</td>
<td>No Information provided</td>
<td>No Information provided</td>
</tr>
<tr>
<td>8.</td>
<td>MAMTA CHILD CARE</td>
<td>87</td>
<td>27</td>
</tr>
<tr>
<td>9.</td>
<td>ASHARAN</td>
<td>96</td>
<td>NIL</td>
</tr>
<tr>
<td>10.</td>
<td>SOPAN</td>
<td>No Information provided</td>
<td>No Information provided</td>
</tr>
<tr>
<td>11.</td>
<td>MAATRE CHHAYA, Miyanwali</td>
<td>56</td>
<td>0</td>
</tr>
</tbody>
</table>
## Annexure 5C

### State-wise list of RIPAs, Shishu Grihs and Other Specialised Adoption Agencies

<table>
<thead>
<tr>
<th>State/UT</th>
<th>RIPAs (Recognised Indian Placement Agencies) for In-country and Inter-country adoption</th>
<th>Shishu Grihas</th>
<th>SAA (Specialised Adoption Agencies) [earlier known as LAPAs -Licensed Adoption Placement Agencies) for Promoting Domestic Adoption of Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andaman</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>1</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>Assam</td>
<td></td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Bihar</td>
<td></td>
<td>1</td>
<td>7</td>
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<tr>
<td>Chhattisgarh</td>
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<tr>
<td>Delhi</td>
<td>8</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Goa</td>
<td>2</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Gujarat</td>
<td>4</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Haryana</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Jharkhand</td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Karnataka</td>
<td>6</td>
<td>3</td>
<td>9</td>
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<tr>
<td>Kerala</td>
<td>5</td>
<td>3</td>
<td>6</td>
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<tr>
<td>Maharashtra</td>
<td>24</td>
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<td>28</td>
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<tr>
<td>Madhya Pradesh</td>
<td></td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Orissa</td>
<td>3</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Pondicherry</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Punjab</td>
<td>2</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Rajasthan</td>
<td></td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>9</td>
<td></td>
<td>13</td>
</tr>
<tr>
<td>Tripura</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>1</td>
<td>5</td>
<td>14</td>
</tr>
<tr>
<td>Uttaranchal</td>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>West Bengal</td>
<td>5</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Mizoram</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>75</strong></td>
<td><strong>65</strong></td>
<td><strong>126</strong></td>
</tr>
</tbody>
</table>

Source: CARA Website
http://www.cara.nic.in/database.htm;
http://www.cara.nic.in/north_portal.htm
http://www.cara.nic.in/south_portal.htm
http://www.cara.nic.in/west_portal.htm
http://www.cara.nic.in/east_portal.htm
http://www.cara.nic.in/north_east_portal.htm
http://www.cara.nic.in/ipas_list.htm
Concluding Observations of the Committee on the Rights of the Child: Basic health and welfare

Concluding Observations dated 23 February 2000

CRC/C/15/Add.115

D.6. Basic health and welfare

Children with disabilities (art. 23)

46. Noting the 1995 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, the Committee nonetheless is concerned at the very poor level of and access to care for children with disabilities, especially those living in rural areas; and the lack of assistance provided to persons responsible for their care. In the light of article 23 of the Convention, the Committee emphasises the need to ensure the implementation of policies and programmes to guarantee the rights of mentally and physically disabled children and to facilitate their full inclusion in society.

47. In the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of the Committee’s recommendations adopted on its Day of General Discussion on Children with Disabilities (CRC/C/69), the Committee recommends that the State party increase the capacity of institutions for the rehabilitation of children with disabilities and improve access to services for such children living in rural areas. Awareness campaigns which focus on prevention, inclusive education, family care and the promotion of the rights of children with disabilities need to be undertaken. Adequate training should also be made available to persons working with these children. The Committee encourages the State party to undertake greater efforts to make available the necessary resources and to seek assistance from, inter alia, UNICEF, WHO and relevant NGOs.

Right to health and health services (art. 24)

48. In the light of article 24 of the Convention, the Committee notes that the State party has already focused and placed priority on the main health issues by establishing several national programmes. Nevertheless, the Committee is concerned at high maternal mortality, and very high levels of low birth weight and malnutrition among children, including micronutrient deficiencies, linked to the lack of access to prenatal care and, more generally, limited access to quality public health care facilities, insufficient numbers of qualified health workers, poor health education, inadequate access to safe drinking water and poor environmental sanitation. This situation is exacerbated by the extreme disparities faced by women and girls, especially in rural areas.

49. The Committee recommends that the State party take all necessary steps to adapt, expand and implement the Integrated Management of Child Illness strategy, and to pay particular attention to the most vulnerable groups of the population. The Committee also recommends that the State party undertake studies to determine the socio-cultural factors which lead to practices such as female infanticide and selective abortions, and to develop strategies to address them. The Committee recommends continued allocation of resources to the poorest sections of society and continued cooperation with and technical assistance from UNICEF, WHO and relevant NGOs.
50. The Committee is concerned that the health of adolescents, particularly girls, is neglected, given, for instance, a very high percentage of early marriages, which can have a negative impact on their health. Adolescent suicides, especially among girls, and HIV/AIDS affected children are serious concerns for the Committee.

51. The Committee recommends that the State party strengthen the existing National Reproductive and Child Health programme, targeting the most vulnerable groups of the population. The Committee recommends that the State party combat discrimination against HIV/AIDS affected persons by strengthening awareness-raising and sensitisation programmes for the public and particularly health professionals. The Committee recommends continued allocation of resources to the poorest sections of society and continued cooperation with and technical assistance from, inter alia, WHO, UNICEF, UNAIDS and civil society.

Right to an adequate standard of living (art. 27)

52. The Committee is concerned at the high percentage of children living in inadequate housing, including slums, and their inadequate nutrition and access to safe drinking water and sanitation. The Committee is concerned at the negative impact on families and the rights of children of structural adjustment projects.

53. In accordance with article 27 of the Convention, the Committee recommends that the State party take appropriate measures to give effect to its commitments made at Habitat II in 1996 regarding children’s access to housing. In the light of Commission on Human Rights resolution 1993/77 on forced evictions, the Committee encourages the State party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements. The Committee recommends that resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services.

54. The Committee is concerned at the large and increasing number of children living and/or working on the streets, who are among the most marginalised groups of children in India.

55. The Committee recommends that the State party establish mechanisms to ensure these children are provided with identity documents, nutrition, clothing and housing. Moreover, the State party should ensure these children have access to health care; rehabilitation services for physical, sexual and substance abuse; services for reconciliation with families; education, including vocational and life-skills training; and access to legal aid. The Committee recommends that the State party cooperate and coordinate its efforts with civil society in this regard.

Concluding Observations dated 26 February 2004

CRC/C/15/Add.228

5. Basic health and welfare

52. The Committee notes the numerous national plans and programmes initiated during the 9th and 10th five-year plans to address health issues. Nevertheless, it remains seriously concerned at the unavailability and/or inaccessibility of free, high quality primary health care; the slow decline in infant mortality; the worsening maternal mortality rates, due in part to the high increase of unattended home deliveries; the low immunization rate; the high incidence of low-birth-weight babies; the high number of children with stunting, wasting, or who are underweight; the prevalence of micronutrient deficiencies; and the low rate
of exclusive breastfeeding and appropriate introduction of infant diet. The Committee further expresses its concern at the environmental pollution prevalent in some states, specifically arsenic and lead pollution and at the lack of access to safe drinking water and adequate sanitation by a large percentage of the population. Finally, the Committee expresses its concern at the practice of traditional and modern medicine by untrained and unqualified personnel.

53. The Committee recommends that the State party reinforce its efforts in developing effective policies and programmes to improve the health situation of children. It also recommends that the State party ensure access for all children to primary, free and quality health services; regulate and monitor traditional and modern medicinal practice; combat malnutrition; promote healthy nutrition habits, including breastfeeding; improve immunization rates; increase access to safe drinking water and adequate sanitation; and address the issue of environmental pollution effectively. Additionally, the Committee encourages the State party to pursue additional avenues of cooperation and assistance for child health improvement with, inter alia, WHO and UNICEF, HIV/AIDS.

54. The Committee welcomes the adoption of the National AIDS Prevention and Control Policy, 2001, aiming at achieving no new infections by 2007. It also welcomes the decision to provide antiretroviral drugs to children and adults free of charge, but remains concerned at the rising number of children infected and/or affected by HIV/AIDS. It further expresses its concern at the discrimination experienced by these children in society and in the educational system.

55. The Committee recommends that the State party:

(a) Increase its efforts to prevent HIV/AIDS, taking into account the Committee’s general comment No. 3 on HIV/AIDS and the rights of children;

(b) Strengthen its measures to prevent mother-to-child transmission, inter alia by combining and coordinating them with the activities to reduce maternal mortality, and take adequate measures to address the impact upon children of the HIV/AIDS-related deaths of parents, teachers and others, in terms of children’s reduced access to family life, adoption, emotional care and education;

(c) Strengthen its efforts to raise awareness about HIV/AIDS among adolescents, particularly those belonging to vulnerable groups, and among the population at large, notably in order to reduce discrimination against children infected and/or affected by HIV/AIDS;

(d) Seek further technical assistance from, among others, the Joint United Nations Programme on HIV/AIDS.

Children with disabilities

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

57. In line with its previous recommendations (ibid., para. 47) and in light of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee at its day of general discussion on the rights of children with disabilities (see CRC/C/69), it is recommended that the State party:
(a) Establish a comprehensive policy for children with disabilities;
(b) Take effective measures to collect adequate and disaggregated statistical data on children with disabilities and use such data in developing policies and programmes to prevent disabilities and to assist disabled children;
(c) Reinforce its efforts to develop early detection programmes to prevent and remedy disabilities;
(d) Establish special education programmes for disabled children and include them in the regular school system to the extent possible;
(e) Undertake awareness-raising campaigns to sensitize the public, and parents in particular, about the rights and special needs of children with disabilities, including those with mental health concerns;
(f) Increase resources, both financial and human, for special education, including vocational training, and the support given to families of children with disabilities;
(g) Seek technical cooperation for the training of professional staff, including teachers, working with and for children with disabilities from, among others, WHO.

**Harmful traditional practices**

58. The Committee is deeply concerned at the existence of harmful traditional practices such as incidents relating to dowries and to Devadasis.

59. The Committee recommends that the State party:
   (a) Enforce the Dowry Prohibition Act, 1961 and the Karnataka Devadasis (Prohibition of Dedication) Act, 1982 and Rules, 1982;
   (b) Take legislative and awareness-raising measures to prohibit and eradicate all kinds of traditional practices harmful to the health, survival and development of children, boys as well as girls; and
   (c) Reinforce its sensitization programmes, with the involvement of community leaders, practitioners and the general public, to change traditional attitudes and discourage harmful practices, in particular in rural areas.

60. The Committee is concerned at the very high percentage of early and forced marriages of girls, which can have a negative impact on their health, education and social development.

61. The Committee recommends that the State party:
   (a) Take all necessary steps to implement the Child Marriage Restraint Act 1929;
   (b) Strengthen educational and awareness programmes, in cooperation with NGOs and community leaders, with a view to preventing early and forced marriage; and
   (c) Strengthen sexual and reproductive health education, mental health and adolescent-sensitive counselling services and make them accessible to adolescents.

**Adequate standard of living**

62. In spite of the growth of the gross domestic product, the Committee is concerned about the widespread poverty in the State party and the still high number of children who do not enjoy the right to an adequate standard of living, including access to clean drinking water, adequate housing and latrines. The Committee is further concerned at the negative consequences of displacement and rehabilitation projects which intend to improve living conditions but which remove children from their habitat to a new environment often not prepared for children’s needs.
63. In accordance with article 27 of the Convention, the Committee recommends that the State reinforce its efforts to provide support and material assistance to economically disadvantaged families and to guarantee the right of children to an adequate standard of living. In light of its previous recommendations (ibid., para. 53), the Committee further recommends that the State party prevent any occurrence of forced relocation, displacement and other types of involuntary population movements.

Concluding Observations of the Committee on Economic, Social and Cultural Rights

33. The Committee is concerned that, despite the economic growth achieved by the State party, health care expenditures remain exceptionally low at around 1% of GDP, and that a significant proportion of the population continues to have limited or no access to basic health services, resulting in alarmingly high rates of maternal and infant mortality, as well as high incidences of tuberculosis and other communicable diseases. The Committee is also concerned by the rising HIV/AIDS infections, and the lack of reliable information available regarding persons affected by mental health illnesses.

37. The Committee is concerned that the prevailing widespread phenomenon of early marriages, the high rate of maternal mortality and the rapid spread of HIV/AIDS and other sexually transmitted diseases in the State party, can be attributed largely to the lack of sex and reproductive education that is still viewed to be taboo in the State party.

38. The Committee notes with concern that the universal healthcare scheme in the State party falls short of providing for universal coverage, excluding a considerable portion of the population. The Committee is also concerned that the quality and the availability of the health services provided under the scheme have been adversely affected by the large-scale privatisation of the health service in the State party, impacting in particular on the poorest sections of the population.

56. The Committee recommends the State party to sensitize and train medical professionals on the criminal nature of sex selection with a view to ensuring stringent enforcement of the Pre-conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act.

73 The Committee recommends the State party to significantly increase its healthcare expenditure, according the highest priority to reducing maternal and infant mortality rates and to preventing and treating serious communicable diseases, including HIV/AIDS....

77. The Committee recommends that the State party expand availability and accessibility of reproductive and sexual health information and services for everyone, and ensure that the educational programmes, including within the school curriculum, as well as services on sexual and reproductive health, are widely available.

78. The Committee recommends the State party to substantially increase funds allocated to public health and to provide additional incentives in order to prevent further loss of medical professionals from the public health services. The Committee also urges the State party to take all necessary measures to ensure universal access to affordable primary health care. The Committee also requests the State party to provide information on the measures to regulate the private healthcare sector.

Concluding Observations of the Committee on Economic, Social and Cultural Rights
E/C.12/IND/CO/5
May 2008
Concluding observations of the Committee on the Elimination of Racial Discrimination

24. The Committee is concerned about reports that members of scheduled castes and scheduled and other tribes are disproportionately affected by hunger and malnutrition, infant, child and maternal mortality, sexually transmitted diseases, including HIV/AIDS, tuberculosis, diarrhoea, malaria and other water borne diseases and that health care facilities are either unavailable in tribal areas or substantially worse than in non-tribal areas. (art. 5 (e) (iv))

The Committee recommends that the State party ensure equal access to ration shops, adequate health care facilities, reproductive health services, and safe drinking water for members of scheduled castes and scheduled and other tribes and to increase the number of doctors and of functioning and properly equipped primary health centres and health sub-centres in tribal and rural areas.

CERD/C/IND/CO/19
5 May 2007

Concluding comments of the Committee on the Elimination of Discrimination against Women: India

40. It is also concerned that the State party lacks reliable data on women’s health status, including on pregnancy and non-pregnancy-related morbidity and mortality and HIV infections, owing to which it is unable to establish benchmarks and monitor progress. In addition, the Committee is concerned that the privatization of health services has an adverse impact on women’s capacity to access such services.

41. The Committee urges the State party to pay increased attention to female health throughout the life cycle, including in key areas of pregnancy and non-pregnancy-related morbidity and mortality, in light of general recommendations 24 and 25. It calls upon the State party to strengthen food security, primary health care and adequate sanitation, especially in rural areas; establish mechanisms to monitor women’s access to health care and health delivery systems; and increase the allocation of resources to health care.

CEDAW/C/IND/CO/3
2 February 2007

The Special Rapporteur on Right to Health, Mr. Paul Hunt, in his report on India the right of everyone to the enjoyment of the highest attainable standard of physical and mental health visited India from 22 November to 3 December 2007 to examine maternal mortality through the lens of the right to health. According to his report, “in India there are numerous grave right-to-health issues, including mental health, tuberculosis, malaria, HIV/AIDS, water and sanitation and palliative care”.

“Under the Constitution, India’s health services are the responsibility of state Governments. The national Government sets the policy framework and provides financial support for maternal and child health. When the Special Rapporteur was speaking with state and national Governments, each sometimes pointed accusingly at the other. As a matter of international law, the national Government is responsible for ensuring conformity with India’s international human rights treaties, including those encompassing the right to health. Nonetheless, state Governments also have international human rights obligations.”

## Annexure 6B

### Some Major Health Indicators

<table>
<thead>
<tr>
<th>Health Indicators</th>
<th>1990</th>
<th>2000</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Infant Mortality Rate</strong></td>
<td>80</td>
<td>70</td>
<td>1</td>
</tr>
<tr>
<td>Probability of dying between birth and exactly one year of age, per 1000 live births.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Under Five Mortality Rate</strong></td>
<td>109</td>
<td>94.9</td>
<td>15.2 (2008)</td>
</tr>
<tr>
<td>Probability of dying between birth and exactly five years of age, per 1000 live births.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Maternal Mortality Ratio</strong></td>
<td>437</td>
<td>540</td>
<td>4</td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Use of Safe Drinking Water</strong></td>
<td>68.2 percent</td>
<td>77.9 percent</td>
<td>88 percent (2008)</td>
</tr>
<tr>
<td>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</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Use of Sanitary Means of Excreta Disposal</strong></td>
<td>30 percent</td>
<td>36 percent</td>
<td>31 percent (2008)</td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Antenatal Care</strong></td>
<td>62.3 percent</td>
<td>65.1 percent</td>
<td>75 percent (2008)</td>
</tr>
<tr>
<td>Proportion of women aged 15-49 attended at least once during pregnancy by skilled health personnel.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Child Birth Care</strong></td>
<td>34.2 percent</td>
<td>41.7 percent</td>
<td>53 percent (2008)</td>
</tr>
<tr>
<td>Proportion of births attended by skilled health personnel.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Birth Weight Below 2.5 Kg</strong></td>
<td>30.0 percent</td>
<td>22.7 percent</td>
<td>28 percent (2005-2009)</td>
</tr>
<tr>
<td>Proportion of live births that weigh below 2,500 grams.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Children Receiving Vitamin A Supplements</strong></td>
<td>Data not collected</td>
<td>32 percent</td>
<td>66 percent (2009)</td>
</tr>
<tr>
<td>Proportion of children 6-59 months of age who have received a high dose of vitamin A supplement in the last 6 months.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Exclusive Breastfeeding Rate</strong></td>
<td>51.0 percent</td>
<td>55.2 percent</td>
<td>46 percent (2005-09)</td>
</tr>
<tr>
<td>Proportion of infants less than 4 months (120 days) of age who are exclusively breastfed.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Polio Cases</strong></td>
<td>10,408</td>
<td>265</td>
<td>41 (as of 30.11.2010)</td>
</tr>
<tr>
<td>Annual number of cases of Polio.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Neonatal Tetanus Cases</strong></td>
<td>9,357</td>
<td>2,197</td>
<td>811 (2008)</td>
</tr>
<tr>
<td>Annual number of cases of neonatal tetanus.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Measles Cases</strong></td>
<td>89,612</td>
<td>25,259</td>
<td>48,181 (2008)</td>
</tr>
<tr>
<td>Annual number of cases of measles in children under five years of age.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indicator</td>
<td>2009</td>
<td>2008</td>
<td>2007-08</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>------------</td>
<td>------------</td>
<td>------------</td>
</tr>
<tr>
<td><strong>DPT Immunisation Coverage</strong></td>
<td>52 percent</td>
<td>55.1 percent</td>
<td>66 percent (2009)</td>
</tr>
<tr>
<td>Proportion of one-year-old children immunised against diphtheria, pertussis and tetanus (DPT).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Measles Immunisation Coverage</strong></td>
<td>42 percent</td>
<td>50.7 percent</td>
<td>71 percent (2009)</td>
</tr>
<tr>
<td>Proportion of one-year-old children immunised against measles.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tuberculosis Immunisation Coverage</strong></td>
<td>62.2 percent</td>
<td>67.5 percent</td>
<td>87 percent (2009)</td>
</tr>
<tr>
<td>Proportion of one-year-old children immunised against tuberculosis.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Children Protected Against Neonatal Tetanus</strong></td>
<td>61.9 percent</td>
<td>67.0 percent</td>
<td>86 percent (2009)</td>
</tr>
<tr>
<td>Proportion of one-year-old children protected against neonatal tetanus through immunisation of their mother.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ORT Use</strong></td>
<td>38.8 percent</td>
<td>47.7 percent</td>
<td>33 percent (2005-09)</td>
</tr>
<tr>
<td>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)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Home Management Of Diarrhoea</strong></td>
<td>Data not collected</td>
<td>35.5 percent</td>
<td>34.2 percent (2007-08)</td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Dracunculiasis Cases</strong></td>
<td>47.98 percent</td>
<td>0 percent</td>
<td>0 percent</td>
</tr>
<tr>
<td>Annual number of cases of Dracunculiasis (guinea worm) in the total population.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Underweight Prevalence</strong></td>
<td>53.4 percent</td>
<td>47.0 percent</td>
<td>46 percent</td>
</tr>
<tr>
<td>Proportion of under-fives who fall below minus 2 and below minus 3 standard deviations from median weight for age of NCHS/WHO reference population.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Stunting Prevalence</strong></td>
<td>52.0 percent</td>
<td>45.5 percent</td>
<td>38 percent</td>
</tr>
<tr>
<td>Proportion of under-fives who fall below minus 2 and below minus 3 standard deviations from median height for age of NCHS/WHO reference population.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Wasting Prevalence</strong></td>
<td>17.5 percent</td>
<td>15.5 percent</td>
<td>19 percent</td>
</tr>
<tr>
<td>Proportion of under-fives who fall below minus 2 and below minus 3 standard deviations from median weight for height of NCHS/WHO reference population.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Under-Five Mortality Rate; Female/Male</strong></td>
<td>118</td>
<td>93</td>
<td>66 (2009)</td>
</tr>
<tr>
<td>Probability of dying between birth and exactly five years of age, per 1000 live births – disaggregated by gender.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iodised salt consumption</strong></td>
<td>Data not collected</td>
<td>49.3 percent</td>
<td>51 percent (2003-09)</td>
</tr>
<tr>
<td>Proportion of households consuming adequately iodised salt.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Timely complementary feeding rate</strong></td>
<td>31.4 percent</td>
<td>33.5 percent</td>
<td>57 percent (2005-09)</td>
</tr>
<tr>
<td>Proportion of infants 6-9 months (180 to 299 days) of age who are receiving breast milk &amp; complementary food.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Polio immunisation coverage</strong></td>
<td>53 percent</td>
<td>62.8 percent</td>
<td>67 percent (2009)</td>
</tr>
<tr>
<td>Proportion of one-year-old children immunised against poliomyelitis.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annexure 7A

Concluding Observations of the Committee on the Rights of the Child: Education, leisure and cultural activities

Concluding Observations dated 23 February 2000

CRC/C/15/Add.115

D.7. Education, leisure and cultural activities

Right and aims of education (arts. 28 and 29)

56. Welcoming the 83rd Constitutional Amendment Bill concerning the fundamental right to education, the Committee, however, expresses its concern at the prevailing poor situation in the State party with respect to education, which is characterized by a general lack of infrastructure, facilities and equipment, insufficient numbers of qualified teachers and a drastic shortage of textbooks and other relevant learning materials. There is serious concern regarding the striking disparities in terms of access to education, attendance at primary and secondary levels and drop-out rates between: different states, rural and urban areas, boys and girls, the affluent and poor, and children belonging to scheduled castes and tribes. The Committee emphasizes the importance of focusing attention on improving the provision and quality of education, especially in view of its potential benefit for addressing various concerns, including the situation of girls and reducing the incidence of child labour.

57. The Committee encourages the State party to enact the 83rd Constitutional Amendment Bill. In line with the 1993 and 1996 Supreme Court decisions (Unni Krishnan; and M.C. Mehta vs. State of Tamil Nadu and Others, respectively), the Committee recommends that the State party implement measures designed to comply with article 45 of the Constitution, which mandates free and compulsory education for all children up to 14.

58. The Committee recommends that the State party undertake studies on, and develop measures to address, the prevailing disparities in access to education; to improve the quality of teacher training programmes and the school environment; to ensure that the quality of non-formal education schemes is monitored and guaranteed and that working and other children who participate in such schemes are integrated into mainstream education. The Committee recommends that the State party ensure and facilitate opportunities for the most vulnerable groups of children to proceed to secondary education.

59. The Committee recommends that the State party take due regard of the aims of education laid down in article 29 of the Convention, including tolerance and equality between the sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous groups. The Committee recommends that the State party consider introducing human rights issues, including the Convention, into the school Curricula.

60. The Committee encourages the State party to make available the necessary resources and to seek assistance from inter alia UNICEF, UNESCO and relevant NGOs.
Concluding Observations dated 26 February 2004
CRC/C/15/Add.228

6. Education, leisure and cultural activities

64. The Committee welcomes the adoption of the Constitution (86th Amendment) Act, 2002 providing for free and compulsory education for all children aged 6-14, the continued efforts of the State party to increase girls’ enrolment in school and the Midday Meal Scheme. While noting an increased enrolment rate, the Committee is seriously concerned that 60 million children do not attend primary school. The Committee is further concerned at the high, although decreasing, level of illiteracy and the striking disparities in terms of access to education, attendance at primary and secondary school and dropout rates between boys and girls.

The Committee is also concerned that striking disparities regarding these rates also exist between different states, between rural and urban areas, and between the affluent and the poor and disadvantaged groups. The Committee is further concerned at the insufficient number of trained teachers, schools and classrooms, and the lack of relevant learning material, which affect the quality of education.

65. The Committee recommends that the State party:

(a) Improve the education system with a view to achieving the aims mentioned in article 29, paragraph 1 of the Convention and the Committee’s general comment No. 1 on the aims of education, and introduce human rights, including children’s rights, into the school curricula;
(b) Strengthen its efforts to progressively ensure that that all girls and boys, in urban, rural and least developed areas and children belonging to Scheduled Castes and Tribes, have equal access to educational opportunities;
(c) Raise awareness of the importance of early childhood education and introduce it into the general framework of education;
(d) Encourage the participation of children at all levels of school life;
(e) Take the necessary measures to improve the quality of education and to ensure better efficiency in the management of education, including by decreasing the dropout rate;
(f) Hire more qualified teachers and provide them with more opportunities for training;
(g) Take all necessary measures to curb teachers’ absenteeism;
(h) Build better infrastructure for schools; and
(i) Seek assistance from UNICEF and UNESCO.

Concluding Observations of the Committee on Economic, Social and Cultural Rights

1. The Committee is concerned that, despite the efforts made by the State party to achieve universal primary education, including the adoption of the Constitution (86th Amendment) Act in 2002 which makes the right to primary education a fundamental right, and the “Sarva Shiksha Abhiyan” (Education for All) programme, aimed at achieving 100% primary enrolment, the wide disparity in enrolment and dropout rates in primary schools continue to persist, negatively affecting, in particular, girls, Muslim children and children belonging to scheduled castes and scheduled tribes.

2. The Committee notes with concern the generally low quality of education in, and the under-funding of, public schools.
3. The Committee is concerned that adult illiteracy rates continue to remain high, especially among disadvantaged and marginalized groups, women and among those living in poverty.

4. The Committee notes with regret the absence of human rights education in the school curricula in the State party.

Concluding Observations of the Committee on Economic, Social and Cultural Rights
E/C.12/IND/CO/5
May 2008

Concluding Observations of the Committee on the Elimination of Racial Discrimination

25. While noting the constitutional guarantee of free and compulsory education for all children up to the age of 14 and the rapid growth of the literacy rate among Dalits, in particular girls, the Committee remains concerned about the high dropout rate among Dalit pupils at the primary and secondary levels, reports of classroom segregation and discrimination against Dalit pupils, teachers and mid-day meal cooks, and the poor infrastructure, equipment, staffing and quality of teaching in public schools attended by Dalit and tribal children. (art. 5 (e) (vi))

The Committee recommends that the State party take effective measures to reduce dropout and increase enrolment rates among Dalit children and adolescents at all levels of schooling, e.g. by providing scholarships or other financial subsidies and by sensitizing parents as to the importance of education, combat classroom segregation and discrimination against Dalit pupils and ensure non-discriminatory access to the Mid-Day Meal Scheme, adequate equipment, staffing and quality of teaching in public schools, as well as physical access by Dalit and tribal pupils to schools in dominant caste neighbourhoods and armed conflict areas.

CERD/C/IND/CO/19
5 May 2007

Concluding comments of the Committee on the Elimination of Discrimination against Women: India

30. While appreciating the important advances made with respect to women’s education, the Committee is concerned that the fundamental right to education guaranteed in 2002 by a Constitutional amendment, has not been made operational, despite the central Government’s circulation of a model bill to states and union territories for consideration.

31. The Committee calls upon the State party to take the lead, as it has done with regard to other educational schemes, including by considering using its powers under article 253 of the Constitution, to enable the passing of legislation to operationalize the fundamental Constitutional right to Education. It calls upon the State party to set a time frame for speedy enactment of such legislation and to allocate required resources for the same in its eleventh five year plan, which is currently being considered.

33. …. Moreover, it calls upon the State party to meet its commitment of allocating 6 per cent of its gross domestic product to education in its eleventh five-year plan.

CEDAW/C/IND/CO/3
2 February 2007
Annexure 8A

Concluding Observations of the Committee on the Rights of the Child: Special measures of protection


CRC/C/15/Add.115

D.8. Special measures of protection

Unaccompanied, asylum-seeking and refugee children (art. 22)

61. Welcoming administrative policies which have generally been in line with international refugee law principles, the Committee is concerned that in the absence of legislation there remains no guarantee that children asylum-seekers and refugees will be ensured the protection and assistance provided by the Convention. The Committee is concerned that there exists the potential for children born of refugee parents to become stateless; that there is no adequate legal mechanism to deal with family reunification; and that although refugee children attend school on a de facto basis, there is no legislation which entitles these children to education.

62. The Committee recommends that the State party adopt comprehensive legislation to ensure adequate protection of refugee and asylum-seeking children, including in the field of physical safety, health, education and social welfare, and to facilitate family reunification. In order to promote the protection of refugee children, the Committee encourages the State party to consider ratifying the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness.

Children and armed conflict, and their recovery (arts. 38 and 39)

63. The Committee is concerned that the situations in areas of conflict, particularly Jammu and Kashmir and the north-eastern states, have seriously affected children, especially their right to life, survival and development (art. 6 of the Convention). In the light of articles 38 and 39, the Committee expresses its very serious concern at reports of children who are involved in and are victims of these conflicts. Moreover, it is concerned at reports of involvement of the security forces in disappearances of children in these conflict areas.

64. The Committee recommends that the State party at all times ensure respect for human rights and humanitarian law aimed at the protection and care of children in armed conflict. The Committee calls upon the State party to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provide just and adequate reparation to the victims. The Committee recommends that clause 19 of the Protection of Human Rights Act be repealed to allow inquiries into alleged abuses committed by members of the security forces to be conducted by the National Commission on Human Rights. In line with the recommendations of the Human Rights Committee (CCPR/C/79/
Add.81), the Committee recommends that the requirement of governmental permission for criminal prosecutions or civil proceedings against members of the security forces be abolished.

**Economic exploitation (art. 32)**

65. The Committee notes that India was the first country to sign a Memorandum of Understanding with the ILO in 1992 to implement the ILO-IPEC programme. The Committee further notes the amendments to schedules A and B of the 1986 Child Labour (Prohibition and Regulation) Act. Nevertheless, the Committee remains concerned at the large numbers of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants, and in agriculture, many of whom are working in hazardous conditions. The Committee is concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

66. The Committee encourages the State party to withdraw its declaration with respect to article 32 of the Convention, as it is unnecessary in the light of the efforts the State party is making to address child labour. The Committee recommends that the State party ensure the full implementation of the 1986 Child Labour (Prohibition and Regulation) Act, the 1976 Bonded Labour (System Abolition) Act and the 1993 Employment of Manual Scavengers Act.

67. The Committee recommends that the 1986 Child Labour Act be amended so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children; and coverage is expanded to include agriculture and other informal sectors. The Factories Act should be amended to cover all factories or workshops employing child labour. The Beedi Act should be amended so that exemptions for household-based production are eliminated. Employers should be required to have and produce on demand proof of age of all children working on their premises.

68. The Committee recommends that the State party ensure that laws provide criminal and civil remedies, especially in the light of decisions of the Supreme Court in relation to compensation funds for child labourers (M.C. Mehta v the State of Tamil Nadu and M.C. Mehta v Union of India). The Committee recommends that court procedures be simplified, so that responses are appropriate, timely and child-friendly; and to vigorously pursue enforcement of minimum-age standards.

69. The Committee recommends that the State party encourage states and districts to establish and oversee child labour vigilance committees, and ensure that a sufficient number of labour inspectors are adequately resourced to carry out their work effectively. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations, and to file First Information Reports.

70. The Committee recommends that the State party undertake a national study on the nature and extent of child labour, and that disaggregated data, including violations, be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee further recommends that the State party continue its efforts to carry out campaigns to inform and sensitise the general public, especially parents and children, of work hazards; and to involve and train employers’, workers’ and civic organisations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals.

71. The Committee calls upon the State party to ensure that the competent authorities cooperate and coordinate their activities, including with respect to education and rehabilitation programmes; and that present cooperation between the State party and relevant United Nations agencies,
such as ILO and UNICEF, and NGOs be expanded. The Committee recommends that the State party ratify ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Drug abuse (art. 33)

72. In the light of article 33, the Committee is concerned about the increasing use and traffic in illicit drugs, especially in the large urban centres of Mumbai, New Delhi, Bangalore and Calcutta, and the growing use of tobacco among persons under 18 years, especially girls.

73. The Committee recommends that the State party develop a national drug control plan, or a Master Plan, with the guidance of the United Nations Drug Control Programme (UNDCP). The Committee encourages the State party to continue its efforts to provide children with accurate and objective information about substance use, including tobacco use, and to protect children from harmful misinformation through comprehensive restrictions on tobacco advertising. The Committee recommends cooperation with and assistance from WHO and UNICEF. The Committee further recommends that the State party develop rehabilitation services for children who are victims of substance abuse.

Sexual exploitation and sexual abuse (art. 34)

74. The Committee notes the Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children. However, in view of the scale of the problem, the Committee is concerned about the sexual abuse and exploitation of children especially those belonging to the lower castes and from poor urban and rural areas, in the contexts of: religious and traditional culture; child domestic workers; children living and/or working on the streets; communal violence and ethnic conflict; abuse by the security forces in areas of conflict, such as Jammu and Kashmir, and the north-eastern states; and trafficking and commercial exploitation, especially girls from neighbouring countries, particularly Nepal. It is also concerned about the absence of adequate measures to combat this phenomenon and the lack of adequate rehabilitation measures.

75. The Committee recommends that the State party ensure that legislation criminalises the sexual exploitation of children and penalises all the offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalised. While noting that Devadasi, or ritual prostitution, is prohibited under the law, the Committee recommends that the State party take all necessary measures to eradicate this practice. In order to combat trafficking in children, including for commercial sexual purposes, the Penal Code should contain provisions against kidnapping and abduction. The Committee recommends that the State party ensure that laws concerning the sexual exploitation of children are gender neutral; provide civil remedies in the event of violations; ensure that procedures are simplified so that responses are appropriate, timely, child-friendly and sensitive to victims; include provisions to protect from discrimination and reprisals those who expose violations; and vigorously pursue enforcement.

76. The Committee recommends that a national mechanism to monitor implementation should be established, as well as complaints procedures and help lines. Rehabilitation programmes and shelters should be established for child victims of sexual abuse and exploitation.

77. The Committee recommends that the State party undertake a national study on the nature and extent of sexual abuse and sexual exploitation of children, and that disaggregated data
be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee recommends that the State party continue its efforts to carry out extensive campaigns to combat harmful traditional practices, such as child marriages and ritual prostitution; and inform, sensitise and mobilise the general public on the child’s right to physical and mental integrity, and safety from sexual exploitation.

78. The Committee recommends that bilateral and regional cooperation be reinforced, involving cooperation with border police forces from neighbouring countries, especially along the eastern frontier areas in the states of West Bengal, Orissa and Andhra Pradesh. The State party should ensure that the competent authorities cooperate and coordinate their activities; and that present cooperation between the State party, and, inter alia, UNICEF, be expanded.

Administration of juvenile justice (arts. 37, 40 and 39)

79. The Committee is concerned over the administration of juvenile justice in India and its incompatibility with articles 37, 40 and 39 of the Convention and other relevant international standards. The Committee is also concerned at the very young age of criminal responsibility - 7 years - and the possibility of trying boys between 16 and 18 years of age as adults. Noting that the death penalty is de facto not applied to persons under 18, the Committee is very concerned that this possibility exists de jure. The Committee is further concerned at the overcrowded and unsanitary conditions of detention of children, including detention with adults; lack of application and enforcement of existing juvenile justice legislation; lack of training for professionals, including the judiciary, lawyers and law enforcement officers, in relation to the Convention, other existing international standards and the 1986 Juvenile Justice Act; and the lack of measures and enforcement thereof to prosecute officials who violate these provisions.

80. The Committee recommends that the State party review its laws in the administration of juvenile justice to ensure that they are in accordance with the Convention, especially articles 37, 40 and 39, and other relevant international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.

81. The Committee recommends that the State party abolish by law the imposition of the death penalty on persons under 18. The Committee also recommends that the State party consider raising the age of criminal responsibility and ensure that persons under 18 years are not tried as adults. In accordance with the principle of non-discrimination contained in article 2 of the Convention, the Committee recommends article 2 (h) of the 1986 Juvenile Justice Act be amended to ensure that boys under 18 years are covered by the definition of juvenile, as girls already are. The Committee recommends that the 1986 Juvenile Justice Act be fully enforced and that the judiciary and lawyers be trained and made aware of it. The Committee further recommends that measures be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to improve prison facilities as quickly as possible. The Committee recommends that the State party ensure regular, frequent and independent monitoring of institutions for juvenile offenders.

82. The Committee further suggests that the State party consider seeking technical assistance from, inter alia, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Juvenile Justice.
66. The Committee welcomes the establishment of toll-free “Childlines” in about 50 different cities/districts with the support of the Government, in accordance with section 32 (1) (iii) of the Juvenile Justice (Care and Protection of Children) Act 2000 and with the strong and crucial involvement of NGOs, but is concerned at the slow pace of establishment of these “Childlines” in all districts of the country. The Committee is further concerned that calls for help and support from children via these “Childlines” do not always receive an adequate response owing to the lack of capacity of existing services.

67. The Committee recommends that the State party provide the necessary human and financial support for the establishment and reinforcement of toll-free “Childlines” in all districts of the State party and set as a target the date of the submission of its next report to the Committee. Furthermore, the Committee recommends that the State party take the necessary measures to support the existing services, in particular the NGOs, to respond adequately to the calls for help from children (or on their behalf) and, if necessary, for the establishment of new services.

**Armed conflicts**

68. The Committee is concerned that the situation in areas of conflict, particularly Jammu and Kashmir and the north-eastern states, has seriously affected children, especially their right to life, survival and development (article 6 of the Convention). The Committee expresses its very serious concern at reports of children who are involved in and are victims of these conflicts.

69. In light of articles 38 and 39 of the Convention, the Committee recommends that the State party ensure respect for human rights and humanitarian law aimed at the protection, care and physical and psychosocial rehabilitation of children affected by armed conflict, notably regarding any participation in hostilities by children. The Committee calls upon the State party to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provide just and adequate reparation to the victims.

**Refugee children**

70. The Committee welcomes the generous policy of the State party in hosting refugees and asylum-seekers, but remains concerned at the absence of legislation regarding these groups.

71. In light of article 22 of the Convention, the Committee recommends that the State party consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and adopt comprehensive legislation to ensure adequate protection of refugee and asylum-seeking children, including in the fields of physical safety, health, education and social welfare, and to facilitate family reunification.
Economic exploitation, including child labour

72. The Committee notes the tenth Plan for the National Child Labour Project but is extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal sector, in household enterprises, as domestic servants and in agriculture. The Committee is further very concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

73. The Committee recommends that the State party:

(a) Ensure the full implementation of the Child Labour (Prohibition and Regulation) Act, 1986, the Bonded Labour (System Abolition) Act, 1976 and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;

(b) Amend the Child Labour Act, 1986 so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children;

(c) Promote community-based programmes for the prevention of child labour;

(d) Ratify ILO Conventions No. 138 concerning the Minimum Age for Admission to Employment, and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

(e) Strengthen its efforts to raise awareness of the public at large, especially parents and children, of work hazards and to involve and train employers, workers and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals; and

(f) Continue its collaboration with ILO/IPEC.

Sexual exploitation of children/trafficking in children

74. The Committee welcomes the ratification of the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution; the adoption of a plan of action to combat trafficking and commercial sexual exploitation of women and children; the initiative to undertake a study, inter alia, to collect data on the number of children and women who become victims of sexual exploitation and trafficking; and the Pilot Projects to Combat Trafficking of Children for Commercial Sexual Exploitation in Destination and Source Areas, but remains concerned that the Immoral Traffic Prevention Act, 1986 does not define trafficking and limits its scope to sexual exploitation. In addition, the Committee expresses its concern at the increasing number of child victims of sexual exploitation, including prostitution and pornography. Concern is also expressed at the insufficient programmes for the physical and psychological recovery and social reintegration of child victims of such abuse and exploitation.

75. In light of articles 34 and 35 and other related articles of the Convention, the Committee recommends that the State party:

(a) Extend the scope of the Immoral Traffic Prevention Act to all forms of trafficking of children and ensure that all trafficked children are always treated as victims;

(b) Conduct a comprehensive study to assess the causes, nature and extent of trafficking and commercial sexual exploitation of children;
(c) Provide sufficient human, financial and technical resources for the implementation of the National Plan of Action;

(d) Adopt multidisciplinary and multisectoral approaches and take measures to prevent and combat sexual exploitation and trafficking of children, including an awareness-raising campaign and educational programmes, particularly for parents;

(e) Ensure that perpetrators are brought to justice;

(f) Strengthen its policies to facilitate the reunification of child victims of trafficking with their families and provide adequate care and reintegration programmes for children who have been sexually exploited and/or trafficked, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;

(g) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and

(h) Collaborate with non-governmental organizations working on these issues and seek technical assistance from, among others, UNICEF.

**Street children**

76. The Committee welcomes the existence of the Integrated Programme for Street Children but remains concerned at the growing number of street children in the State party, due notably to the structural situation of the State party as well as to the lack of proactive policies and programmes of prevention and for the support of the family.

77. The Committee recommends that the State party:

   (a) Strengthen and extend its Integrated Programme for Street Children to address the large and increasing number of street children, with the aim of protecting these children, especially girls, and of preventing and reducing this phenomenon, in particular through assistance to families and the provision of adequate housing and access to education;

   (b) Ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development, providing official documents when necessary;

   (c) Ensure that these child victims of physical, sexual and substance abuse are provided with recovery and reintegration services, protection from arrest and maltreatment by the police, and effective services for reconciliation with their families and community;

   (d) Collaborate with non-governmental organizations working with street children in the State party and seek technical assistance from, among others, UNICEF.

**Administration of juvenile justice**

78. The Committee notes the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 but remains concerned that no minimum age of criminal responsibility is fixed in the new Act and that the minimum age of 7 years found in the Penal Code is still in force. The Committee is further concerned that the Supreme Court has decided that the date of the commission of one offence is irrelevant for determining whether the alleged offender is a juvenile (CRC/C/93/Add.5, box 8.7). The Committee is
further concerned that the mechanisms to enforce the Act have not been set up in most states and that the Act does not apply to the State of Jammu and Kashmir. In addition, the Committee expresses its concern at the fact that deprivation of liberty is not used only as a measure of last resort. Finally, the Committee is deeply concerned that the Prevention of Terrorism Act, 2002 allows for the prosecution of children by special courts and that the procedure used in these cases does not respect articles 37, 40 and 39 of the Convention.

79. The Committee recommends that the State party take all appropriate measures to implement a juvenile justice system that is in conformity with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.

80. In addition, the Committee recommends that the State party:
(a) Amend the Juvenile Justice (Care and Protection of Children) Act, 2000 to set a minimum age of criminal responsibility that shall be higher than that fixed in the Penal Code and reflect internationally accepted norms, and consider this age as the age when the offence was committed;
(b) Extend the application of the Juvenile Justice (Care and Protection of Children) Act, 2000 to the State of Jammu and Kashmir;
(c) Amend the Prevention of Terrorism Act, 2002 so that it fully respects articles 37, 40 and 39 and other related provisions of the Convention when it is applied to children;
(d) Take all necessary steps to establish, as a measure of urgency, the executing state mechanisms necessary for the full implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000;
(e) Strengthen training programmes on relevant international standards for all professionals involved with the system of juvenile justice;
(f) Strengthen rehabilitation and reintegration programmes;
(g) Use deprivation of liberty only as a measure of last resort; and
(h) Consider seeking technical assistance from, among others, OHCHR and UNICEF.

Minorities/indigenous children

81. The Committee is concerned at the situation of children belonging to minorities, including to the Primitive Tribal Groups, and at their limited access to social services, including health care, immunization and education, and the violation of their rights to survival and development, to enjoy their own culture and to be protected from discrimination.

82. In addition to its recommendation in paragraph 29, and in line with the recommendations made at its day of general discussion on the rights of indigenous children (CRC/C/133, para. 624), the Committee recommends that the State party implement and/or give the necessary follow-up to the recommendation made by the Standing Committee on Labour and Welfare on the Development of Primitive Tribal Groups (2002).
### Annexure 8B

**State-wise Status of the Implementation of major provisions of JJ Act, 2000**

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<th>Name of State</th>
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<th>CWCs</th>
<th>JJBs</th>
<th>SJPUs</th>
<th>IC</th>
<th>Observation Homes</th>
<th>Special Homes</th>
<th>Children’s Homes</th>
<th>Shelter Homes</th>
<th>ACIs</th>
<th>SAAs</th>
<th>SAB meeting during 2010-11</th>
<th>MOU with GOI for ICPS</th>
<th>SCPS formed on DCPS</th>
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### Core Principles of the Earth Charter

#### I. Respect and care for the community of life
1. Respect Earth and life in all its diversity.
2. Care for the community of life with understanding, compassion and love.
3. Build democratic societies that are just, participatory, sustainable, and peaceful.
4. Secure Earth’s bounty and beauty for present and future generations.

#### II. Ecological Integrity
5. Protect and restore the integrity of Earth’s ecological systems, with special concern for biological diversity and the natural processes that sustain life.
6. Prevent harm as the best method of environmental protection and, when knowledge is limited, apply a precautionary approach.
7. Adopt patterns of production, consumption, and reproduction that safeguard Earth’s regenerative capacities, human rights, and community well-being.
8. Advance the study of ecological sustainability and promote the open exchange and wide application of the knowledge acquired.

#### III. Social and Economic Justice
9. Eradicate poverty as an ethical, social, and environmental imperative.
10. Ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner.
11. Affirm gender equality and equity as prerequisites to sustainable development and ensure universal access to education, health care, and economic opportunity.
12. Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention to the rights of indigenous peoples and minorities.

#### IV. Democracy, Non-violence and Peace
13. Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision-making, and access to justice.
14. Integrate into formal education and life-long learning the knowledge, values and skills needed for a sustainable way of life.
15. Treat all living beings with respect and consideration.
16. Promote a culture of tolerance, nonviolence and peace.

*Source: [http://www.earthcharterinaction.org/content/pages/Read-the-Charter.html](http://www.earthcharterinaction.org/content/pages/Read-the-Charter.html)*