



# **Children in India and their Rights**

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# P r e f a c e

## **Dr. Justice Shivaraj V. Patil**

Acting Chairperson, NHRC

For full development as human beings, exercise and enjoyment of Human Rights by all the people is necessary. Human Rights and fundamental freedoms help us to develop our intrinsic qualities, intelligence, talents and conscience to meet our material and spiritual needs. It is needless to state that without the recognition of the right to education, realization of the right to development of every human being and nation is not possible. Article 26 of the Universal Declaration of the Human Rights (1948) inter alia states that ‘education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, social or religious groups and shall further the activities of the United Nations for the maintenance of peace’. Historically, education is an instrument of development and an important factor for social change. In this view, Human Rights education is / has to be an integral part of the right to education. Of late, it is recognized as a Human Right in itself.

The knowledge of the rights and freedoms, of oneself as much as of the others, is considered as a fundamental tool to guarantee the respect of all human rights for each and every person.

On 10<sup>th</sup> December 2004, the General Assembly of the United Nations proclaimed the World Programme for Human Rights Education (2005-ongoing) to advance the implementation of human rights education programmes in all sectors. Building on the foundation laid during the United Nations Decade for Human Rights Education (1995-2004), the new initiative reflects the international community’s increasing recognition that human rights education produces far-reaching results, by promoting respect for human dignity and equality and participation in democratic decision-making.

Human Rights Education cannot merely be an intellectual exercise. It acts as a linkage between education in the classroom and developments in a society.

Study of Human Rights should be included in the curriculum or syllabus in schools and colleges making it an essential part of the learning process. India has accepted elementary education as one of the basic needs of everyone. The Constitution mandates to provide free education to all children in the age group of 6-14 years. The World Conference on 'Education for All' held in Jomtien, Thailand in 1991 pleaded universal primary education in particular on education for girls and women.

The Karnataka Women's Information and Resource Centre (KWIRC), Bangalore involved various activists, advocates and key persons associated with the movement for the rights of certain vulnerable sections of the society, for developing reference material for human rights education in universities. The dossiers prepared by the experts with commitment along with the National Human Rights Commission are presented here as reference material for university students.

The main objective of these dossiers is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the university students on issues concerning human rights.

The focus of these dossiers has been on various movements that have taken place at the grass root level rather than on individual entities. These have been written in an interactive style, rather than being narrative.

The overall content of the dossiers consists of milestones at the national and international levels, critical analysis of the situation, role of various stake holders and players, action agenda etc.

Dissemination of knowledge of human rights must aim at bringing about attitudinal change in human behaviour so that human rights for all become the spirit of the very living. The Commission hopes that the educational institutions and students pursuing human rights education and others interested in human rights will be benefited immensely by this series of books.



(Dr. Justice Shivaraj V. Patil)

24 November, 2006

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## A c k n o w l e d g e m e n t s

Promoting Human Rights literacy and awareness is one of the main functions of the NHRC, as per section 12(h) of the Protection of Human Rights Act, 1993. The Commission has been serving this encompassing purpose within its best means.

Since its inception, the Commission has been endeavouring to spread human right education at both school and university levels. Pursuant to Commission's efforts, the UGC introduced human rights education at the university level, which is now being imparted in over 35 Universities/Colleges across the country, besides in the National Law Schools.

It is said that the awareness of human rights is largely limited to the educated sections of society, while ideally it is necessary to create awareness about human rights at all levels. There has been a growing realization that human rights cannot be taught only from formal documents.

For the purpose of developing reference material on human rights education in Indian universities, the Commission endeavoured to request the authors along with the Karnataka Women's Information and Resource Centre, Bangalore.

Each of these dossiers that are listed below have been authored by activists and experts who are deeply involved in, or closely associated with, the relevant movement:

1. Rights of Disabled by Anuradha Mohit, Meera Pillai & Pratiti Rungta
2. The Human Rights to Housing and Land by Miloon Kothari, Sabrina Karmali and Shivani Choudhary
3. Dalit Rights by Martin Macwan
4. Rights of Home Based Workers by Shalini Sinha
5. Women's Right to Health by N. B. Sarojini and others
6. Environment and Human Rights by Ashish Kothari and Anuprita Patel
7. The New Environmentalism – The Struggle in Narmada Valley by Sanjay Sangvai.
8. Coasts, Fish Resources and Human Rights of Fish Workers by Nalini Nayak.
9. Children in India and their Rights by Dr. Savita Bhakhry

A set of nine books is now being published in the series. Two more books on 'Right to Information' and 'Gandhian struggle for Rights such as Bhoodan and Gramdhan' are intended to be published shortly.

The Commission is grateful to the authors of these dossiers.

A handwritten signature in black ink, appearing to read 'Aruna Sharma', with a stylized flourish at the end.

**(Aruna Sharma)**  
Joint Secretary

*Children and childhood* across the world, have broadly been construed in terms of a 'golden age' that is synonymous with innocence, freedom, joy, play and the like. It is the time when, spared the rigours of adult life, one hardly shoulders any kind of responsibility or obligations. But, then, it is also true that children are vulnerable, especially when very young. The fact that children are vulnerable, they need to be cared for and protected from 'the harshness of the world outside' and around (Holt, 1975 : 22). This being so, the adult-child relation, parents in particular, is said to provide 'care and protection' – serving thereby the 'best interests of the child' and meeting their day-to-day 'needs of survival and development'. The adult is presumed to be the guardian and in that respect expected to take the responsibility of child's welfare and development. Whether or not, the premise underlying this is correct or not, the childhood 'reality' on the whole is questionable, demanding critical evaluation. Accordingly, idealistic notions and representations associated with children and childhood have been challenged, especially in relation to poverty, disease, exploitation and abuse rife across the globe. Many also believe that childhood is that period during which children are subject to a set of rules and regulations unique to them, and one that does not apply to members of other social categories. It is indeed a period in a person's life during which she/he is neither expected nor allowed to fully participate in various domains of social life. It is thus not a world of freedom and opportunity but one of confinement and limitation in which children are 'wholly subservient and dependent'. This being so, childhood is nothing short of a world of isolation, sadness, exploitation, oppression, cruelty and abuse.

To dichotomize and juxtapose these theoretical models of the child-adult relation reveals fundamentally different ways of seeing and understanding the very essence of childhood and children. In this sense, childhood is not a static, objective and universal fact of human nature, but a social construction which is both culturally and historically determined. The history of Hebrews, Greeks and Romans, whose cultures had a great impact upon the Western society, bears testimony to the fact that children, by and large, were taken for granted by their parents and the patriarchal society at large. The resultant effect of all this was that they were treated as objects of intervention rather than as legal subjects in their own right. Many labelled them as a 'problem population' whereas others reduced them to being seen as property and thus treated them as non-entities. The Roman law, for instance, provided for the

*patriae potestas* whereby the father was endowed with absolute power and authority over his family. It included *just vitae necisque*, the power of life and death, and *a fortiori*, of uncontrolled corporal chastisement over wife, children and other family members (Oppenlander, 1981: 386). Ancient Greeks left girls and children born with disabilities on the wild hillsides, where exposure or animals were sure to kill them, and the practice was continued routinely in Rome until Christianity became the State religion. The killing of unwanted children may have become less common in the centuries since then, but it never completely disappeared. In the given adult-child power relation, the usual cliché of childhood being a ‘golden age’ not only seemed to be a myth but a distant dream for majority of these children.

The French historian, Philippe Ariès, in his landmark book *Centuries of Childhood*, also claimed that ‘the idea of childhood did not exist at all in earlier times’, as once the ‘child’ moved from the biological dependence of ‘infancy’ it ‘belonged to adult society’ (Ariès, 1962: 125). According to his analysis, children were ‘miniature adults’ as they dressed, behaved and conversed similarly, and were engaged in the same social activities and work. And that the concept of childhood as a discrete life stage emerged in Europe between the fifteenth and eighteenth centuries as part of a process driven by two primary imperatives. First, there was an affective or ‘coddling’ dimension ‘in which the child, on account of his (sic) sweetness, simplicity and drollery, became a source of amusement and relaxation for the adult’ (Ariès, 1962: 126). Second, there was an educational dimension inspired by ‘churchmen or gentlemen of the robe ... moralists and pedagogues’ (Ariès, 1962: 128-30). This secured control over children’s innate ‘depravity’ and was developed through the influence of the Reformation, with its emphasis on discipline and knowledge of theology, humanities and sciences. It was consolidated during the period of European Enlightenment with the ascendancy of ‘rationality’. Initially restricted to the domain of upper-class childhood, Ariès contended that the affective and educational dimensions eventually diffused across society and childhood became institutionalised (Goldson, 1997: 3).

The work of Ariès, however, has not been without criticism. It has been argued that his thesis underestimated the nature of childhood within changing household structures and family forms. Further, his account negated the historical constancy of the parent-child relation characterised by love and affection and above all his evidence was over-simplistic. Our intention here is not to scrutinise and evaluate the details of Ariès work but to acknowledge the profound significance of his contribution in presenting childhood as a social, cultural and historical construction that challenged populist and intellectual orthodoxy.

Lloyd de Mause, another historian, in *The History of Childhood* painted a very negative image of childhood and family life in the past. In fact, he went to the extent of saying that ‘the history of childhood is a nightmare from which we have only recently begun to awaken’. He further contended that ‘the further back in history one goes, the lower the level of child care, and the more likely children are to be killed, abandoned, beaten, terrorised and sexually abused’ (Mause, 1975: 1-2). According to him, childhood was not discovered in the way that Ariès suggested. On the contrary, it was a human universal that gradually evolved itself from one stage to the other. These stages were: (i) Infanticidal (Antiquity to 4<sup>th</sup> century A.D.); (ii) Abandonment (4<sup>th</sup> – 13<sup>th</sup> centuries); (iii) Ambivalent (14<sup>th</sup> – 17<sup>th</sup> centuries); (iv) Intrusive (18<sup>th</sup> century); (v) Socialisation (19<sup>th</sup> – mid-20<sup>th</sup> century); and (vi) Helping (mid-20<sup>th</sup> century onwards).

Today, of course, we view abandonment of children in fairy tales and in legends, as if it were all fantasy. Early Western historians writing about children and their childhood were of the view that till the Middle Ages, abandonment, harsh punishment and the use of fear and other life-inhibiting measures were all part of the era’s social history, economics and pattern of families. No doubt, the era of Middle Ages was rightly referred to as the Dark Ages. Perhaps, an important step in the definition of rights came in 1215, in England. After a period of Civil War, the English nobility forced King John to limit his power, which had been absolute and virtually unchecked, through the *Magna Carta*. Among other things, the *Magna Carta* guaranteed that no free man should be deprived of life, liberty, or property without the due process of law. This in a way provided for the system of *parens patriae* meaning thereby that the sovereign was authorised to act as the ‘supreme parent of the child’. The superior ‘protective’ authority and role of the sovereign provided a basis for interfering with the idea of family privacy and the control of the male head of the household over other members of the family. In other words, the need to protect children’s interests gradually began to surface. In a similar development, courts in Roman-Dutch law jurisdiction began to exercise the State’s responsibilities as *parens patriae* and came to be considered as the ‘upper’ or superior guardian of minor children.

While tracing the position of children and childhood in the Western society, it would be crucial to go through the writings of Michael Freeman too. In his book ‘*The Moral Status of Children*’ (1997), which is a second edition to ‘*The Rights and Wrongs of Children*’ (1983), Freeman’s contention is that with the passage of time childhood may have changed and perhaps would continue to do so. But those who toll the knell of its passing, often interpreting, what they consider to be, its demise to moral decadence, oversimplify, exaggerate and, in making the link with children’s rights movement, dangerously distort the true facts. According to Freeman, then, the supposed ‘disappearance of childhood’, as propounded by Neil Postman (1982), at a time when there was a growing

institutional recognition that children have rights, was 'facile'. His contention is that 'Childhood has not disappeared and it will not do so. A childhood in which children are granted a moral status, in which their rights are taken seriously, will be a better childhood, not a worse one' (Freeman, 1997: 5-7).

At this juncture, it would be worthwhile to pause and look at the overall status of children in India, especially with regard to the overall treatment meted out to them by their parents and the society at large. Historically, we all know that the major caretaker of a child was the mother, the immediate family or, at best, the joint family and secondarily *jati* (caste) relationships. Sudhir Kakar, who has made a detailed analysis of Indian childhood and society in his book *The Inner World — A Psycho-Analytic Study of Childhood and Society in India*, has dwelled at length on mother-child relationship and how this profoundly influences the 'quality' and 'dynamics' of social relations throughout one's life (Kakar, 1982: 52-112). Consistent with the belief that life begins with conception rather than at birth, five stages of childhood were identified in the Indian tradition. These were: (i) *Garbha*, or the foetal period; (ii) *Ksheerda* (0-6 months), when the infant lives entirely on milk; (iii) *Ksheerannada* (6 months-2 years), the period of early childhood in which weaning takes place; (iv) *Bala* (2-5 years); and (v) *Kumara* (5-16 years). Each of these divisions of childhood were associated with major rites and rituals, which marked its transition from one period to another. Many of these childhood *samskaras* — like *namakarana* (naming ceremony), *mundan* (tonsure ceremony) and *upanayana* (initiation into religion and wider community) are being performed even today with fanfare by the people of India. These *samskaras*, in a way, emphasised the critical period both in biological as well as social development thus paving the way for the gradual integration of the child into society. Ironically, girls and children belonging to the lower castes were largely excluded from these *samskaras* (Kakar, 1981: 204-07). For instance, the *sohras*— joyous songs of celebration sung at the birth of a child in the Hindi-speaking belt— are almost never sung for newborn daughters. In fact, many *sohras* express the relief of mother's over the fact that she has been blessed with a son and not a daughter (Kakar, 1981: 207). The preference for a son when a child is born, thus, seems to be as old as the Indian society itself.

Our two great epics, the *Ramayana* and the *Mahabharata* also eulogise the Indian view of childhood whereby there is an intense parental longing for children, and their upbringing is characterised by affectionate indulgence. This 'child-centeredness', however, was found to be limited to boys only. The Indian tradition all along has been indifferent, if not overtly hostile, to the developmental fate of girls. Secondly, the Indian tradition subscribed to an ideology that downgraded the role of the environment and nurture in the development of a child, and instead emphasised upon a deterministic conception of mystical heredity. This mystical heredity in the *Mahabharata* was reduced to

the *karmas* of the previous life and the attributes of the father (especially his caste) transmitted through his 'seed' (Kakar, 1981: 199-200). These epics also displayed as to how young children, especially boys, were placed under the tutorship and guidance of respected gurus wherein moral precepts enjoined in the *shastras* were taught on a one-to-one basis. But, this too, was confined to the boys of the ruling upper-castes.

Likewise, in ancient Indian law, especially in the *Laws of Manu*, the child though located very near the bottom of a social pyramid was bestowed society's protection. And, this protective indulgence was best reflected in matters which concerned the children most – namely, their chastisement. Children were only to be beaten with a rope or bamboo stick split at the end. The split bamboo, as we may remember from circus clowns' mock fights, makes a loud noise but does not inflict much pain. Moreover, even this punishment was to be carried out only on the back and never on the head or the chest. All those who hold progressive views on child discipline, the beating of children may hardly seem like 'protective indulgence'. Nonetheless, the extent of this indulgence becomes strikingly clear when we compare Manu's *Laws* with legal texts of other ancient societies where brutal forms of child abuse and maltreatment existed. As already mentioned in the beginning, there is evidence in the law codes and digests of ancient Rome to suggest that brutal forms of child abuse were common mistreatment, which the more enlightened emperors attempted to mitigate. And, that it was only as late as 374 A.D. that infanticide was declared a capital offence in the Roman world. In short, though Manu's *Laws* by modern standards have been severely condemned as a repository of inequity, their attitude towards children – one of protective nurturance– is unexceptionable, at least within the premises of the patriarchal society which gave the *Laws* their birth. Surprisingly, Manu also expressed that kindness be shown to the daughter as she is 'physically more tender and her emotions are more delicate'.

Interestingly, though historical and sociological documentation of early Indian civilisation points out towards the pervasive biases of that time in the upbringing of children, on account of factors like caste, kinship, age, gender and the like, rulers like Ashoka (268-31 B.C.), Chandragupta Vikramaditya (c. A.D. 375-415) tried to propound moral edicts as a counter-balance in which obedience towards parents and respect for elders was extolled. In nutshell, the point driven home was that loyalty and obedience to one's elders, was not only moral but also socially approved and valued behaviour.

For an account of children and childhood in the Indian literary tradition, let us also take a look at the classical Sanskrit literature. Here, the child curiously seems to have appeared as a wish — that is, in the context of a couple's, or more often a father's, longing for offspring — or as the fulfilment of the wish — in

descriptions of parental happiness when a child was born and in lyrical accounts of parental love, usually of a father for his son. On the whole, children rarely figured as individuals in their own right, with activities, reactions and feelings separate from those of their all-powerful parents. Bhavabhuti's description of Rama's love for Lava and Kusha, and Banbhattacharya's rhapsodization over Prabhakarvardhan's love for his son, Harsha, are two well-known examples that could be cited here. Kalidasa, the greatest of all Sanskrit poets, too was lyrical in his descriptions about the father's feeling for his son, but at the same time he sensitively portrayed, with much empathy, the sage Kanva's love for his daughter Shakuntala. Needless to mention, the classics of the regional languages are also replete with rich accounts of children and childhood. It would be useful to mention here the medieval Hindi literature associated with the Bhakti movement, especially the songs of Surdasa on Krishna's childhood and that of Tulsidasa on Rama's childhood. The verses of these songs, till date, are a rich source for Hindu ideals of childhood and for delineating the topography of a culturally approved utopia of childhood. Besides, the Bhakti poetry laid enormous emphasis on the loving relationship between mother and child. Analogous to the mother-child interplay, or rather as its extension, we find a third theme in Bhakti literature in which the child is at the centre of an admiring circle of adults. If the mother is in the foreground, then the background consists of the adults in the community – the *gopis* of Gokul, the citizens of Ayodhya – milling around him. This particular theme reveals the child's primary need to be central to his world, rather than exist forlornly at its outskirts, to cause a glow in the eyes of adults rather than be looked at with indifference (Kakar, 1981: 200-204).

In traditional India, thus, in comparison to the West, it was early childhood rather than adulthood that was considered to be the 'golden age' in individual's life history. Shashi Pande has distinguished Western and Indian social relations by suggesting that in the West, intimacy in a relationship develops out of some shared activity, as when a father takes his son on hunting and fishing trips as a means of developing (or proving) a mutual trust and camaraderie, whereas no such 'hidden agenda' is needed for a cultivation of a relationship in Indian society (Pande, 1968: 425-32). However, before getting lost in any self-congratulatory adulation, we must also note that the gravest drawback of the Indian tradition was the inferior status accorded to girl children. For girls, in comparison to boys, learning the mandatory skills of household work, cooking and childcare, etc. constituted the daily activities around which their lives revolved. In this, of course, the mother, grandmother, aunts, sisters and sisters-in-laws, her allies against the discriminations and inequities of the existent patriarchal order and values groomed her. In fact, late childhood marked the beginning of an Indian girl's deliberate training in how to be a 'good woman', and hence the conscious inculcation of culturally designated feminine roles. M.N. Srinivas, in his book, *Marriage and Family in Mysore* writes that "It is the

mother's duty to train her daughter up to be an absolute docile daughter-in-law...' (Srinivas, 1942: 195). Girls were also married at an early age, which invariably marked the end of their childhood. The low status accorded to the girl child was perhaps one of the reasons for the prevalence of female infanticide in traditional India which continues to exist even today.

With the coming of the Arabs, Turks, Afghans and the Mughals, the medieval period stretching across from the eleventh to seventeenth centuries almost, saw an all-round impoverishment and degeneration in India. The foreign invasions not only plundered but completely destroyed the wealth and socio-cultural ethos of India. Due to the overall economic deterioration experienced by the people, the children too faced adverse vicissitudes. Imposition of foreign culture had a profound impact at all levels. Families, and particularly those of the preponderant rural population, could no longer afford wholesome food and amenities for their children. Emphasis on elementary education gradually withered away which was quite widespread earlier. Among the Hindus, elementary education was mostly confined to the higher castes like Brahmins, Rajputs and Vaishyas. Elementary education among the Muslims was given to those who belonged to aristocratic and rich families at home through the Maulvis. Others had to go to the *maktabs* situated in mosques. Girls, on the other hand, were seldom given education and their status in comparison to boys remained inferior. The rulers or the people took no remedial steps either.

During this period, in India too, the early legal statements were conspicuously silent on children's rights. The Ten Commandments, arguably the most influential of all legal codes, contains a clear normative pronouncement on parent-child relations but it is in terms of respect for parents and is silent on the obligation of parents to love and nurture children. One of the earliest recognitions of children's rights perhaps is found in the Massachusetts *Body of Liberties* of 1641 where parents are told not to choose their children's mates and not to use unnatural severity against their children. Children, furthermore, were given 'free liberty to complain to the Authorities for redress'. But this was also the law that prescribed the death penalty for children over 16 who disobeyed parents. There is no evidence though that children did successfully litigate against their parents but nor is there any that disobedient children were executed. The document, nevertheless, remains interesting in showing, as it does, that even some 365 years ago protection of children went hand in hand with adding the power of the State to parental authority (Freeman, 1997: 47-48).

The eighteenth century as well can hardly be said to be identified with children's rights. It is pertinent to remark that the documents emanating from the great libertarian revolutions, the American and the French, have nothing specifically to say about children (Freeman, 1997: 48).

The nineteenth century, however, saw the birth of the child-saving movement, the growth of the orphanage, the development of child protection legislations, schooling and the construction of separate institutions, including the juvenile courts, for delinquent children, in different parts of the Western world. One of the reasons for this kind of development was that in the wake of Industrial Revolution there was severe exploitation of many working-class children who were widely employed in textiles, mining, agriculture, domestic service, docks and navigation. Moreover, the so-called 'advances' of industrialisation and urbanisation had serious consequences. Displacement of communities, unemployment and socio-political unrest resulted in marginalization and abandonment of many children whose 'opportunities' were restricted to petty offending as means of survival. These children were left to their fate to fend for themselves.

At this point of time, the British ruled India. Being a colony of the British, the plight of its children especially those belonging to the lower strata of society was certainly gloomy. As Britain was negotiating its place within a new emerging economic, social and political world order, it was a time of great uncertainty for India and this inevitably affected its children too. Despite all this, moral panic and political reaction of that time dovetailed into the already existing reform and philanthropic efforts towards children which mobilised charity crusades and inspired voluntary effort. But, all this took a back seat in the face of growing imperialism of that time that had taken one of its worst forms. This development spelled doom for children as they were thought of as 'Bricks for Empire Building' and like others continued to be exploited in different ways. The ensuing freedom struggle, that nearly spread over 100 years – from mid-nineteenth to the mid-twentieth century – aimed not merely at achieving political independence from the British rule, but also at reinvigorating the debilitated sunken society of India which under decades of slavery had lost its initiative, values and vitality. It was the endeavour of leaders like Raja Ram Mohan Ray, Mahatma Gandhi and others to awaken the people and rouse them to overcome their backwardness, be it in the shape of illiteracy or socio-cultural practices like child marriage or neglect in the upbringing of children, etc. As a result, the long years of struggle for freedom saw an all-round spate of activities which may be termed as 'social action' so to come out of the prevailing weaknesses in society and to build self-reliance in the people. Consequently, the care of the child came to be viewed upon as a vital element in the resurrection of the nation. Mahatma Gandhi and later Pt. Jawaharlal Nehru, in person, gave much of their time to inculcate social concern for the citizens of tomorrow – the children. Advancing literacy, in Western societies, to a large extent, helped to change attitudes towards children. The resultant effect of all this was that a large number of dedicated visionaries, charitable and voluntary organisations moved by the harrowing tales of children, worked relentlessly to improve the overall position of children in society along with that of women. All of them invested their time, knowledge

and resources towards better health, education, and growth of the weaker children. It was during this period that some of the oldest voluntary organizations such as 'The Children's Aid Society' and '*Balkan Ji Bari*' came into being in 1920s in the service of children belonging to the poor, uneducated and helpless families. The entire century of freedom struggle may well be termed as the Evanescent Dawn of Voluntary Action when people learnt to pool their common resources to remove social ills rather than rely upon an alien regime which had no State Policy nor a programme to meet the needs of children. This was also the beginning of a spirit of independence at the group social action level (Luthra, 1979 : 90-91). This period also witnessed the enactment of laws such as the Apprentices Act, Reformatory Schools Act and Factories Act which became important factors in the shaping and structuring of a new childhood.

The period immediately following the First World War, posed a variety of challenges to Britain and other countries of Europe and North America. These were mainly connected to the question of how they could create a society which would preclude the cataclysm of violence and upheaval through which they had just passed. It would be worthwhile to mention that partly as a result of the ravages of war on the civilians in affected countries, and partly in response to the growing concern in most countries of Europe and North America for the protection of children, the newly formed League of Nations established a Committee on Child Welfare in 1919 (Lundy, 1997: 21).

Interestingly, private agencies felt the need to provide broad social standards for the protection of children. Of particular importance was the Save the Children International Union, inspired largely by the work of an English woman, Eglantyne Jebb, who had founded Save the Children in response to her own experience with child victims of war in the Balkans. In 1923, the Save the Children International Union adopted as its charter a five-point declaration which described the basic conditions a society should meet in order to provide adequate protection and care for its children. The next year, the Union persuaded the League of Nations to adopt the same declaration.

Since the League of Nations held its meetings in Geneva, this 1924 Declaration of the Rights of the Child came to be known as the "Declaration of Geneva". Recognising that 'mankind owes to the child the best that it has to give', the five simple principles of the Declaration established the basis of child rights in terms of both protection of the weak and vulnerable and promotion of the child's development. The Declaration also made it clear that the care and protection of children was no longer the exclusive responsibility of families or communities or even individual countries; the world as a whole had a legitimate interest in the welfare of all children. The gist of the "Declaration of Geneva" is given in Box on next page.

The League of Nations, as we all know, was not able to prevent another world war. The Second World War engulfed the entire planet, and caused even greater suffering for non-combatants, particularly children. In 1945, the United Nations Organisation replaced the League of Nations. In 1946, the Economic and Social Council of the United Nations recommended that the Geneva Declaration be reaffirmed as a sign of commitment to the cause of children. The same year, the United Nations established a specialised agency — UNICEF with a mandate to care for the world’s children. Initially known as the United Nations International Children’s Emergency Fund, it provided assistance to children in Europe and elsewhere who had lost homes, family, and opportunity as a result of the war. Its mandate was later redefined so as to give the agency responsibility for long-term assistance to children who suffered from deprivation caused by economic and political conditions, as well as the effects of war. The present nomenclature of UNICEF is United Nations Children’s Fund.

#### “Declaration of Geneva”

- Child must be given the means needed for its normal development, both materially and spiritually.
- Hungry child should be fed; sick child should be helped; erring child should be reclaimed; and the orphan and the homeless child should be sheltered and succoured.
- Child must be first to receive relief in times of distress.
- Child must be put in a position to earn a livelihood and must be protected against every form of exploitation.
- Child must be brought up in the consciousness that its best qualities are to be used in the service of its fellow men.

It would be seen from the above that the primary purpose of this chapter has been to provide a broad overview about children as well as provoke a rethinking of settled ideas about children and childhood so as to interrogate dominant notions which are underpinned by naturalistic and biologically determined conceptualizations. We all know that there is no universal picture of children or for that matter childhood. Moreover, for understanding childhood it is important to demystify the glory of any one class, caste, region, gender or time. The need of the hour is to unpack the manner in which children and childhood so far have been understood. Who would wish to beg or grovel, to be the recipient of *noblesse oblige* or charity when they can demand what is their due? Rights are entitlements; they are trumps; they are valuable commodities. And they are also, as we now learn, weapons to undermine power. A rights strategy is one way in which the hitherto excluded can be included, within the community and within the socio-economic and political structure.

## Chapter 2

### Milestones : National and International

We all know that India became independent on 15 August 1947. Independence ushered in a new era for children. The historical process, and its social, economic and political priorities from mid-nineteenth to mid-twentieth century, paved the way for shaping a more coherent concept of childhood located within the family as the principal institutional influence and as the prime site for socialization. Further, it determined the nature of the relationship between the child, the family and the State and thus created the essential foundations of a national childhood for all children. Correspondingly, the Constitution of India, which came into force in January 1950, contains provisions for survival, development and protection of children. These are included both in Part III and Part IV of the Constitution pertaining to 'Fundamental Rights' and 'Directive Principles of State Policy'. A list of major constitutional provisions relating to children is given in Box. Being one of the world's largest democracy, India has a federal system of government, with the States having their own democratically elected governments. The relative jurisdiction of the Central and State Governments over different matters has been indicated in the Seventh Schedule of the Constitution of India under the Union, State and Concurrent Lists. The survival, development and protection of children fall either in the Concurrent or in the State List. However, the implementation of schemes, including those of the Central Government, is carried out by the States. The 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments have recognised a third tier, below that of the State Government, viz., *Panchayati Raj Institutions* (PRIs), given them financial and administrative powers, and listed the subjects falling in their area of activities, a number of which relate to those services which have a direct bearing on children.

#### Major Constitutional Provisions

##### *Fundamental Rights*

- **Article 14:** ... shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- **Article 15:** ... shall not discriminate against any citizen... (3) Nothing in this article shall prevent the State from making special provision for women and children. (4) Nothing ... shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

- **Article 17:** “Untouchability” is abolished and its practice in any form is forbidden. ...
- **Article 19:** (1) All citizens shall have the right – (a) to freedom of speech and expression; ... (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India.
- **Article 21:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
- **Article 21 A:** ... shall provide free and compulsory education to all children of the age of six to fourteen years...
- **Article 23:** Traffic in human beings and begar 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.

### ***Directive Principles of State Policy***

- **Article 39:** ... (e) ... the tender age of children are not abused... and 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... protected against exploitation and against moral and material abandonment.
- **Article 45:** ...provide early childhood care and education for all children until they complete the age of six years.
- **Article 46:** ...shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes,...
- **Article 47:** ...raising of the level of nutrition and the standard of living of its people and the improvement of public health...
- **Article 51:** The State shall endeavour to – ... (c) foster respect for international law and treaty obligations ...
- **Article 51A:** ... (k) ... parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Development programmes in the country, including those for children, are carried out within the framework of the Five-Year Plans. Some of these programmes are wholly funded by the Central Government, some by both Central and State Governments, and some entirely by the State Government, depending on whether the programmes are classified as Central, centrally sponsored or State sector schemes. In addition, a wide variety of programmes are also being implemented in collaboration with international organisations and non-governmental organisations, which are now growing as a vibrant sector in the development and empowerment of children. In the ensuing paragraphs, let us now see the milestones achieved by India on the whole ever since it achieved independence with regard to survival, development, protection and participation of children both at the national and international level.

The *First Five-Year Plan (1951-56)* took a comprehensive review of resources and needs of children along with women to meet the problems that had emanated out of the *Second World War* and the partition of the country. Health, nutrition and education of children were identified as special areas of concern. In order to focus attention on these areas, it was decided to forge a viable partnership with the voluntary sector. Correspondingly, in 1953, the *Central Social Welfare Board (CSWB)* was constituted with the object especially of assisting voluntary agencies in organising welfare programmes for children, women and handicapped persons. The Board assisted 591 child welfare organisations during the First Five-Year Plan. Besides, in collaboration with State Governments, the Board set-up *State Welfare Boards* throughout the country. In 1954, *Welfare Extension Projects* were started to reach children and women in rural areas through the creation of *balwadis* and *mahila mandals*. Special programmes were also taken up to meet the needs of delinquents, destitute, handicapped and other groups of children. For this, extensive training was provided to childcare functionaries engaged in carrying out different kinds of programmes for children. In addition, the Government of India passed the *Protection of Civil Rights Act, 1955* and ratified the *International Labour Organization (ILO) Convention No. 5 of 1919* on minimum age of work in industry.

The *Second Five-Year Plan (1956-61)* aimed at stabilising the child welfare system. As such, the activities of CSWB were further strengthened. In 1956, the *Suppression of Immoral Traffic in Women and Girls Act (SITA)* was enacted in pursuance of Government of India's ratification of the United Nations Convention for the *Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* in the year 1950. Some of the other legislations enacted in the year 1956 were the *Hindu Adoption and Maintenance Act*, *Hindu Minority and Guardianship Act*, *Women's and Children's Institutions (Licensing) Act* and *Young Persons (Harmful Publications) Act*. In 1957, the Welfare Extension Projects were reviewed. This led

to the launching of *Coordinated Welfare Extension Projects* in 1958. The Central and State Governments also stepped in to share the responsibility of implementing the schemes and programmes for destitutes and delinquents under the *Children's Act, 1960*. Special programmes were also undertaken for education, training and rehabilitation of handicapped children. During the Plan period, existing health, nutrition and education services were further strengthened and expanded. In 1957, the *National Bravery Award Scheme* was instituted and 14 November, which also happens to be the birthday of our first Prime Minister, Pt. Jawaharlal Nehru was declared as *Universal Children's Day*.

At the international level, the United Nations General Assembly adopted the *Declaration of the Rights of the Child* on 20 November, 1959. Prior to this, in 1948, the United Nations General Assembly had adopted the *Universal Declaration of Human Rights* (UDHR). The UDHR contains three specific references about children and their rights. Article 25 states that "Motherhood and childhood are entitled to special care and assistance", and adds that "All children, whether born in or out of wedlock, shall enjoy the same social protection". In Article 26, which deals with the right to education, provision is made to ensure that "Parents have a prior right to choose the kind of education that shall be given to their children". Thus, when the UDHR was adopted, it was assumed that children's rights had been taken care of on the whole. But, this was, however, not found to be fully adequate to the situation of children in the post-Second World War era. Children were recognised as a particularly vulnerable group, who needed specific measures directed towards their protection and the provision of rights that would permit their full and healthy development. It was in this background that the *General Assembly* adopted the *Declaration of the Rights of the Child* mentioned above.

The 1959 Declaration expanded the five principles of the Geneva Declaration to ten basic principles. The gist of the ten principles adopted is given in Box (see next page). Like its predecessor, the 1959 Declaration was no more than a statement of good intentions. For, there was no way to bind the Member States of the United Nations in order to put the principles of the Declaration into practice. Besides, the Declaration looked at children purely as an investment. It did not accord any recognition to their autonomy, or for that matter to the importance of their wishes and feelings, nor any appreciation to their empowerment. The child only remained as an object of concern, rather than a person with self-determination.

However, much before the 1959 Declaration came into existence, Indian Constitution had reflected all these 10 principles including the articles contained in the UDHR. Nonetheless, the Government of India subscribed to the principles

enshrined in the Declaration and ensured that adequate steps were taken to guarantee these rights to children. It thus moved ahead with its *Third Five-Year Plan (1961-66)* with increased emphasis on inter-sectoral coordination of services for children. An attempt was simultaneously made to coordinate health, education and welfare services. The Third Plan also recognised that the child was a human being with special needs. A significant achievement was the establishment of the *Department of Social Security* in June 1964, so as to give concerted attention to the problems and needs of children. This Department was later renamed as the *Department of Social Welfare* in January 1966, and was finally elevated to the status of an independent *Ministry of Social Welfare* in August 1979. This Ministry is today known by the nomenclature of *Social Justice and Empowerment*. To counter poor levels of nutrition, *Applied Nutrition Programme* was introduced in 1963. Later, in the year 1965, *Food and Nutrition Board* was set-up in the Department of Food. Recognising the need to rectify the existent imbalance of educational facilities at the primary, middle and high school levels and the fact that the State was unable to fulfil its constitutional obligation of providing free and compulsory education to all children within a period of ten years, the Third Plan set-up an *Education Commission*

### UN Declaration of the Rights of the Child

- Non-discrimination.
- Special protection, opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.
- The right to a name and nationality.
- The right to social security, adequate nutrition, housing, recreation and medical services.
- The differently-abled child to be given special treatment, education and care.
- The need for love and understanding so that the child grows in the care and responsibility of his/her parents, and in an atmosphere of affection and moral and material security.
- Entitlement to education, which should be free and compulsory, at least in the elementary stages.
- The child should be among the first to receive protection and relief in all circumstances.
- Protection against all forms of neglect, cruelty and exploitation, including that associated with employment.
- Protection from practices that may foster racial, religious and other forms of discrimination.

under the chairmanship of Dr. D.S. Kothari to find out possible solutions. The recommendations of the Kothari Commission led to the formulation of the *National Education Policy* in 1968 which in a way gave fillip to the efforts being made in the education sector. A *Committee on Child Care* was also constituted whose recommendations gave way to a comprehensive *Scheme of Family and Child Welfare* in 1967 thereby providing integrated services to pre-school children in villages and basic training to women in craft, health education, nutrition and child care.

The *Fourth Five-Year Plan (1969-74)* focussed on development of a package of basic minimum services for children. It also drew attention to the problems of neglected and destitute children and introduced a *Scheme for Children in Need for Care and Protection*. In 1974, the *National Policy for Children* was adopted. The Policy Resolution recognised children as the nation's supremely important asset and declared that it is the responsibility of the State to nurture them. It further emphasised that it shall be the duty of the State to "provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development." And that the "State shall progressively increase the scope of such services so that within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth." To achieve these objectives, it called for the adoption of following measures – comprehensive health programme; provision of nutritional services, nutrition and nutrition education to expectant and nursing mothers; free and compulsory education to all children up to the age of 14 years; provision of non-formal education, promotion of physical education and other types of recreational as well as cultural and scientific activities in schools and community centres; provision of special assistance to children belonging to the weaker sections of society; upliftment of children in distress; protection against neglect, cruelty and exploitation of children; protection against child labour; provision of special facilities for children ailing from various kinds of disabilities and encouragement and assistance to gifted children especially those belonging to the weaker sections of the society. In achieving the above, the Policy gave special recognition to the role of voluntary organisations.

Right to health being a basic human right, the Fourth Plan accorded high priority to *Mother and Child Health Programme (MCH)*. The *Special Nutrition Programme*, *Balwadi Nutrition Programme* and *Prophylaxis Scheme against Blindness due to Vitamin A Deficiency among Children* were also introduced in 1970-71. The voluntary organisations too continued to work in partnership with the Government and some on their own.

The *Fifth Five-Year Plan (1974-79)* saw a shift in focus from child welfare to child development wherein emphasis was laid on further integration and coordination

of services, increased allocations and introduction of new schemes for children. The adoption of National Policy for Children led to the constitution of the *National Children's Board* in December, 1974 under the presidentship of the Prime Minister for planning, reviewing and coordination of services and programmes to meet the needs of children. The scheme of *Integrated Child Development Services (ICDS)* was launched on 2 October 1975. Launching of the ICDS was a logical culmination of efforts pursued through the earlier four Five-Year Plans. In 1975, the Government ratified the *ILO Convention No. 123 of 1965* relating to minimum age for underground work. The *Minimum Needs Programme* was also launched in order to enhance the capacity of families and communities.

The ICDS scheme is considered to be one of the largest outreach programmes for children in the world. It presently covers almost all the development blocks in India. The scheme adopts a multi-sectoral approach to child well-being, incorporating health, education and nutrition interventions, and is implemented through a network of *anganwadi* centres (AWCs) at the community level. At these centres, *anganwadi* workers and their helpers provide eight key services to 0-6 year old children along with expectant and nursing mothers, covering supplementary nutrition, immunisation, health check-ups and referral services, health and nutrition education to adult women, micronutrient supplementation and pre-school education for 3 to 6 year old children. As the programme has developed over the years, it has expanded its range of interventions to include components focussed on adolescent girls' nutrition, health, awareness and skills development, as well as income generation schemes for women.

The year 1979 holds great significance in the history of child welfare and development. Being designated as the *International Year of the Child (IYC)* by the United Nations General Assembly, number of activities and programmes were undertaken throughout the world in this year. In India, a *National Plan of Action* was prepared to observe the IYC. The main theme of the National Plan of Action was 'Reaching the Deprived Children'. Based on the model of National Plan of Action, many State Governments in India as well as non-governmental organisations formulated their own plans of action with specific programmes and activities to be taken up during the year in their respective areas. All this gave a great impetus to the on-going programmes related to children in India. The year also saw the United Nations Commission on Human Rights starting work on the drafting of the *Convention on the Rights of the Child (CRC)*. The initiative to draft the Convention came from Poland and the Commission responded by setting-up a multi-country Working Group.

In India, another important achievement during the year was setting-up of the *National Children's Fund* to provide assistance to voluntary organisations. During

IYC, the *National Awards for Child Welfare* was instituted. In the health sector, the Government of India signed the *Alma Ata Declaration* of 1978 and committed itself to the goal of 'Health for All by 2000 A.D'. The *Expanded Programme of Immunisation* was also introduced in 1978. In the area of nutrition, various nutrition intervention programmes being implemented were strengthened and expanded including the *Prophylaxis against Iron and Vitamin A Deficiency Programmes*. In 1975, the *Scheme of Crèches/Day Care Centres for Children of Working and Ailing Mothers* was launched by the CSWB. In 1976, the Child Marriage Restraint Act of 1929 was amended and in 1978, the SITA enacted in 1956 was modified. In 1976, the *Bonded Labour (System) Abolition Act* was enacted.

The *Sixth Five-Year Plan (1980-85)* reiterated the approach and strategy adopted for children during the Fifth Plan and further promoted integration and strengthening of child welfare and development programmes started earlier. During the *International Year of Disabled* in 1981 vigorous efforts were made to implement various education, training and rehabilitation programmes for the physically handicapped children. Preventive and development services of domiciliary nature were accorded priority over institutional care for destitutes, delinquents and handicapped children. The problem of working children and their welfare simultaneously received attention of the planners for the first time during the Sixth Five-Year Plan and appropriate programmes were undertaken to improve the health, nutrition and educational status of working children. In 1981, the *Central Child Labour Advisory Board* was set-up to review implementation of existing laws concerning child labour. In 1982, the *Scheme of Early Childhood Education* was introduced as a strategy to reduce dropout rate and improve the rate of retention in schools. The *Development of Women and Children in Rural Areas* was another scheme that was introduced in the year 1982.

Another important milestone in the Sixth Plan period was the formulation of the *National Health Policy* in the year 1983. The same year, the Government of India recognised the *International Code on the Marketing of Breast Milk Substitutes* that was adopted by the World Health Assembly and formulated the *Indian National Code for Protection and Promotion of Breast Feeding*. ICDS was used as a major nutrition intervention programme as well as a vehicle for promoting elementary education among children.

The *Seventh Five-Year Plan (1985-90)* led to spatial expansion and enrichment of child development services. In order to give focussed attention and direction to child development, a separate *Department of Women and Child Development* was set-up for the first time in the Ministry of Human Resource Development in September 1985. Its status was elevated to that of an independent *Ministry of Women and Child Development* in 2006 and issues concerning children that

were earlier being dealt by the Ministry of Social Justice and Empowerment have now been transferred to it. The ICDS continued to be the main integrated national programme for early childhood survival and development during the Seventh Plan period.

To deal effectively with the problem of neglected children and children in conflict with law, the *Juvenile Justice Act, 1986* was legislated, repealing the then Children's Act of 1960. To implement the provisions of the 1986 Act, a *Scheme of Prevention and Control of Social Maladjustment* was initiated in 1986-87. The Government also enacted the *Child Labour (Prohibition and Regulation) Act, 1986*. In 1987, the *National Policy on Child Labour* was announced. *National Child Labour Projects* were started in areas where there was high concentration of child labour. Simultaneously, efforts were made to expand crèche services for children of working women. The main thrust in the programmes for children who were handicapped was on prevention of disabilities and development of their functional skills. In 1985, the *Scheme of District Rehabilitation Centres* was introduced as a Pilot Project. In 1986, the Government further modified the SITA and also changed the name of the Act to *Immoral Traffic (Prevention) Act* to cover all persons, whether male or female, who were exploited sexually for commercial purposes. These apart, stringent punishments were prescribed for offences involving children. Another notable milestone of the Seventh Plan was setting up of a *Central Adoption Resource Agency (CARA)* in 1990 to deal with matters relating to adoption. The broad functions of CARA are given in the Box above. Later, during the Eighth Five-Year Plan, the Government pioneered a *Scheme of Assistance to Homes for Infants (Shishu Greh) to Promote In-country Adoption*. Under the MCH programme, efforts were made to reduce Infant Mortality Rate (IMR) and Maternal Mortality Rate (MMR). In the year 1985, the *Universal Immunisation Programme* was launched under the MCH programme to protect children from six major diseases which affected early childhood mortality and morbidity, viz., diphtheria, whooping cough, tetanus, polio, measles and childhood tuberculosis. In 1986-87, emphasis was

### Functions of CARA

CARA grants recognition to Indian placement agencies on the recommendations of the State Government for processing inter-country adoption. It also accords enlistment to foreign agencies that are engaged in sponsoring applications of foreign prospective adoptive parents. These agencies are licensed by the appropriate Government Department in their country of origin to mediate in-country and inter-country adoptions and their applications for enlistment/renewal are forwarded and recommended by India's Diplomatic Mission. At present, there are 74 recognised placement agencies in the country and 158 foreign enlisted agencies.

laid on *Oral Rehydration Therapy Programme* to prevent diarrhoeal deaths among children. The *National Diarrhoeal Disease Control Programme* was made part of the MCH Programme.

In the education sector, the strategies of the Seventh Plan underwent a change in the middle of the Plan period with the adoption of a new *National Policy on Education (NPE)* in 1986. Taking a holistic view, the NPE visualised education as a dynamic, cumulative, life-long process, providing diversity of learning opportunities to all segments of society. It's main purpose was to fulfil the objective of "*Education for All*" by providing early childhood care and education, universalising elementary education through formal and non-formal methods, reducing wastage and involving the local community in the management of early education. As a result, new schemes were implemented like the *District Primary Education Programme* in 1986 and the *Operation Black Board* in 1987. Besides, the *Scheme of Non-formal Education* was revised. Few of the other important initiatives taken by the Government in selected areas especially in educationally backward States, were the *Shiksha Karmi Project* and *Lok Jumbish Project* in Rajasthan, *Bihar Education Project* and the *Andhra Pradesh Primary Education Project*. The NPE in its own way tried to provide scope for equal access to education to all, irrespective of class, caste, creed or gender. In addition, it envisaged a common educational structure like 10+2+3 and common core curriculum throughout the country. It also sought to remove disparities by catering to the needs of Scheduled Castes, Scheduled Tribes, the handicapped and other minority groups. To look into the problems of street children, the Ministry of Social Justice and Empowerment introduced the *Integrated Programme for Street Children*.

At the regional level, India actively promoted and supported the 1986 decision of *South Asian Association for Regional Cooperation (SAARC)* to take up the issue of children as a summit concern, and to declare first a year and then a decade for the girl child (1990-2000). At the international level, the Convention on the Rights of the Child (CRC) was approved by the General Assembly of the United Nations on 20 November 1989 (the thirtieth anniversary of the adoption of the Declaration of the Rights of the Child). This Convention was formally opened for signature and ratification on 26 January 1990, and various nations vied to be the first to sign and ratify, a race that was won by Ghana when the Secretary General of the United Nations received that country's instrument of ratification on 5 February 1990. Previous United Nations human rights treaties had taken several years to receive the minimum number of ratifications necessary for their entry into force. The CRC had behind it the full resources of UNICEF which, having decided that the Convention was in the best interest of the child, determined to achieve the target of universal ratification as a top priority. Allied

with UNICEF in this effort was a worldwide network of non-governmental organisations, focussed in the NGO Group on the Convention. These included Save the Children Alliance, which had a long standing claim of priority in the field of child rights, and Defence for Children International, which chaired the NGO Ad-hoc Group that worked on the negotiation of the Convention. Many of the proposals made by the NGO Ad-hoc Group for the Convention were adopted by the Government representatives on the Working Group, and are reflected in the final text of the Convention. The resultant effect of all this was that in virtually every country there was a coherent and concerted pressure for ratification applied by UNICEF, from the outside, and by national non-governmental coalitions or coordinating committees for child rights, from the inside. The net outcome was that, by 2 September 1990, just over 8 months after the Convention had been opened for signature, the twentieth ratification had been received and the Convention came into effect – more quickly than any other human rights treaty. The previous record for this kind was held by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which also had a strong non-governmental lobby pushing for its ratification in many countries, but it took almost three times as long as the CRC to come into effect.

When a country ratifies a UN Convention, it becomes law within its territory. To monitor progress achieved in the realisation of children's rights, the CRC has established an international expert body, the *Committee on the Rights of the Child*, which provides awareness and understanding of the principles and provisions of this treaty. The CRC Committee consists of ten experts which ensures that the law is being enforced. The Government of India ratified the CRC on 11 December 1992. As of now, except for Somalia and the United States of America, all the countries around the world have ratified the CRC. The latter, however, has signed the Convention, thereby indicating general support for its principles and an intention not to take actions that would actively undermine those principles.

The CRC is “the most complete statement of child rights ever made”. It takes the ten principles of the 1959 Declaration of the Rights of the Child, and expands them to 54 articles, of which 41 relate specifically to the rights of children, covering almost every aspect of a child's life. It is indeed an innovative document in overall human rights theory and practice. In fact, it is the first United Nations human rights instrument since the UDHR which brings together as inextricable elements of the life of an individual human being the full range of civil and political rights, and economic, social and cultural rights. It can do this because it treats children as complete individuals, rather than as elements in an economic or socio-political system. The Convention aims to create a balance between the rights of children and those of the parents or adults responsible for their survival,

development and protection. This is achieved by according children the right to participate in decisions concerning them and their future. It is, thus, a holistic document for each article is intertwined with the others. Not only this, the various articles exert an influence on the interpretation and implementation of each other. In other words, the rights defined in the Convention are *interdependent*; as none of the articles can be dealt in isolation. They have to be applied and implemented simultaneously if at all the rights of every child is to be respected. The articles of the CRC could be seen at a glance in Box below.

### CRC at a Glance

#### Preamble

#### Part I Operational Articles

<b>Article 1</b>	Defines child as a person who is below the age of 18 years.
<b>Article 2</b>	Non-discrimination
<b>Article 3</b>	Best interest of the child
<b>Article 4</b>	Measures for implementation of rights
<b>Article 5</b>	Parents, family, community rights and responsibilities
<b>Article 6</b>	Right to life
<b>Article 7</b>	Right to name and nationality
<b>Article 8</b>	Preservation of identity
<b>Article 9</b>	Non-separation from parents
<b>Article 10</b>	Family reunification
<b>Article 11</b>	Illicit transfer and non-return of children abroad
<b>Article 12</b>	Expression of opinion
<b>Article 13</b>	Freedom of expression and information
<b>Article 14</b>	Freedom of thought, conscience and religion
<b>Article 15</b>	Freedom of association and peaceful assembly
<b>Article 16</b>	Privacy, honour, reputation
<b>Article 17</b>	Access to information and media
<b>Article 18</b>	Parental responsibility
<b>Article 19</b>	Abuse and neglect (while in family or in care)
<b>Article 20</b>	Protection of child who is deprived (temporarily or permanently) of family environment
<b>Article 21</b>	Adoption
<b>Article 22</b>	Refugee children
<b>Article 23</b>	Disabled children
<b>Article 24</b>	Health care

- Article 25** Periodic review of children in care
- Article 26** Social security
- Article 27** Standard of living
- Article 28** Education
- Article 29** Aims of education
- Article 30** Children of minorities, indigenous children
- Article 31** Play, recreation and participation in cultural life and the arts
- Article 32** Economic exploitation
- Article 33** Protection from narcotic and psychotropic substances abuse
- Article 34** Sexual exploitation
- Article 35** Abduction/sale/trafficking of children
- Article 36** Other forms of exploitation
- Article 37** Torture, capital punishment, deprivation of liberty
- Article 38** Armed conflicts
- Article 39** Recovery and reintegration (following abuse, torture, armed conflicts etc.)
- Article 40** Juvenile Justice
- Article 41** Rights in other national or international instruments

## **Part II Enforcement**

- Article 42** Dissemination of the principles and provisions of the Convention
- Article 43** Establishment of the Committee
- Article 44** Reports from States Parties
- Article 45** Method of work of the Committee

## **Part III Administrative Issues**

- Article 46** Signature
- Article 47** Ratification
- Article 48** Accession
- Article 49** Entry into force
- Article 50** Amendments
- Article 51** Reservations
- Article 52** Denunciation
- Article 53** Depositary
- Article 54** Authentic texts

As can be seen from the Box, the Convention not only provides for monitoring of the performance of States Parties at the international level but also what is being done for children at the national level. Article 43 sets out the criteria for the establishment of the United Nations Committee on the Rights of the Child, which receives and reviews reports prepared by States Parties about their progress in implementing the Convention as required by Article 44. Unlike other international initiatives that have been taken on behalf of children, in particular, the *Declaration and Plan of Action* that emerged out of the *World Summit for Children* that was held at New York in September 1990, there is no requirement *per se* that the Convention is to be fully implemented by all countries within a stipulated date. Instead, all countries are required to make constant progress towards its implementation, but at a rate that suits their economic and political situation within the resources that are available to them. In nutshell, the CRC does not have a time limit nor does it have an expiry date. The obligations on countries to live up to the rights of children will not cease, but will continue to require action and attention of each one of us, including the Government, to take the onus of protecting and respecting rights of children not because of an international agreement but because “that’s just the way children are to be treated”. A *Special Rapporteur* has also been appointed on the *Sale of Children, Child Prostitution and Child Pornography* by the United Nations General Assembly who analyses instances of sexual exploitation of children in various countries.

The focus in the *Eighth Five-Year Plan (1992-97)* was on human development through advocacy, mobilisation and community empowerment and it accorded high priority to survival and development of children. The ICDS continued to be the basic strategy for child survival and development focussing on areas predominantly inhabited by the tribal people, Scheduled Castes as well as drought-prone regions and urban slums. In fact, the scheme of ICDS was universalised covering all the Community Development Blocks and major slums in the country. As has been pointed out earlier, the Government of India ratified the CRC in the year 1992. This provided a strong base for initiating necessary legal and other developmental measures for protecting and promoting the rights of children in consonance with the CRC.

During 1993-94, the *National Crèche Fund (NCF)* was set-up to meet the growing demand for crèches. The NCF extended financial assistance for the opening of crèches besides conversion of the existing *Anganwadis-cum-Crèches*. Concerted efforts were simultaneously made to tackle the problem of social deviance, juvenile delinquency and juvenile crime through preventive, correctional and rehabilitative services. On 15 August 1994, a programme to *Eliminate Child Labour in Hazardous Employment by 2000* was announced. Prior to this, in Government

of India joined the *International Programme on Elimination of Child Labour* launched by ILO. Subsequently, the *National Authority for Elimination of Child Labour* was constituted on 26 September 1994 to lay down policies and programmes for elimination of child labour. The enforcement of Child Labour (Prohibition and Regulation) Act, 1986 was also strengthened. In pursuance of the National Policy on Child Labour, specific projects were undertaken in industries where the incidents of child labour were found to be very high. Measures were taken to cover families of child labourers under income generation schemes. Public opinion on the evils of child labour was mobilised through investigative journalism, use of electronic media and the support of activists' groups.

In the "Health for All" strategy, health for underprivileged including children was promoted consistently. The *Child Survival and Safe Motherhood (CSSM)* programme was launched during the year 1992-93 to strengthen MCH services. Other measures promoted were: greater access for mothers to pre-natal care; training of mid-wives so that a larger percentage of births took place with the aid of trained attendants; and spreading of awareness in families about the special health and nutrition needs of pregnant women. With a view to regulate and prevent the misuse of modern pre-natal diagnostic techniques, particularly abortion of female foetuses, *Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994* was introduced. Prior to this, the *Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation and Production, Supply and Distribution), Act* was formulated in 1992. This came into force on 1 August 1993. During the Eighth Five-Year Plan, the *National AIDS Control Organisation* was established under the Ministry of Health and Family Welfare to strengthen the management capacity for prevention and control of HIV/AIDS. In the year 1993, the *National Nutrition Policy* was adopted to combat the problem of malnutrition. The *Pulse Polio Immunisation Programme* was also started in the year 1995.

In the education sector, the main strategy for achieving the target of "Education for All by 2000 A.D." was adoption of a decentralised approach to planning. In pursuance of the revised National Policy on Education, 1992 and the Programme of Action, various steps were taken to expand early childhood care and education activities, and universalise elementary education. An *NGO Cell* was specifically set-up in 1994 to facilitate networking with NGOs on varied issues concerning children. In the year 1994, *District Primary Education Programme (DPEP)* was launched as a centrally sponsored scheme in 42 districts of seven States, with the aim of revitalizing and strengthening the existing system, tackling problem areas, developing innovative approaches with the district as a unit of planning. In adopting a holistic approach, emphasis was laid on converting existent programmes and services, and encouraging community participation.

The Eighth Plan specifically recognised the 'Girl Child' as an important target group, demanding attention of the Government for her development and to fight against the prevailing gender discrimination. The Eighth Plan marked the adoption of two *National Plans of Action* in 1992 – one for children and the other exclusively for the girl child. These Plans of Action committed themselves to achieve the goals pronounced in the 1990 World Summit on Survival, Protection and Development of Children. In conformity with these National Plans, many States prepared their own *State Plan of Action for Children/for the Girl Child*. Two separate *Inter-Departmental Coordination Committees* reviewed the progress of the implementation of these two Plans of Action at regular intervals. A few States also embarked upon specific schemes to improve the plight of the girl child. For example, Haryana instituted the '*Apni Beti Apna Dhan*' Scheme, Tamil Nadu initiated the '*Cradle Scheme*', Rajasthan introduced the '*Raj Lakshmi Scheme*' and Madhya Pradesh the '*Bhagyalakshmi*' Scheme. Another very important Act enacted by the Government of India in this Plan period was the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* that came into force in February 1996. This law is an important landmark and is a significant step in the direction of ensuring equal opportunities for people with disabilities and their full participation in the nation- building.

At the international front, the *World Conference on Human Rights* was held in Vienna in the year 1993. The *Vienna Declaration and Programme of Action* urged States to ratify and implement promptly the CRC and the CEDAW. Taking a cue from all these developments, the Government of India submitted *India's Initial State Party Report on CRC* to the Committee on the Rights of the Child in March 1997. This Report was due for submission in 1995. In the year 1995, however, a four Member team of the CRC Committee visited India in October to make on the spot assessment about the specific problems of children in India. The CRC Committee as mentioned above, is made up of ten independent experts. Governments that ratify the Convention must report to the Committee, first within two years of ratification, and then every five-years. The Committee has circulated detailed guidelines to States Parties as to what their reports should cover as the process of reporting involves a rigorous review of actions taken by them. It encourages "popular participation and public scrutiny of Government policies", which goes on to show that States Parties are publicly and internationally accountable for the treatment meted out to their children.

Another important milestone of the Eighth Five-Year Plan was that during the *1995 Beijing World Conference on Women*, India was successful in convincing others to have a separate section on the girl child incorporated in the *Beijing Platform for Action for the Advancement of Women*.

In the *Ninth Five-Year Plan (1997-2002)*, efforts were made to expedite effective implementation and achievement of the goals set in the two Plans of Action besides instituting a *National Charter for Children* to ensure that no child remains illiterate, hungry or lacks medical care. To ensure the 'survival, protection and development' of children, especially that of the girl child, the Ninth Plan concentrated on arresting the problem of declining sex-ratio as well as its other related problems of female foeticide and infanticide. These problems were attacked through a two-pronged strategy of both direct and indirect measures. While the direct measures included effective implementation of the existing legislation, the indirect measures were directed to change the mindset of the people in favour of the girl child, besides empowering women to exercise their reproductive rights and choices. In this endeavour, UNICEF made special efforts to launch a 10-year old cartoon character named *Meena* along with her pet parrot Mithu and brother Raju. The Meena Initiative, popular till date with both adults and children, uses the CRC and the CEDAW as tools with which to advocate for the rights of the girl child in South Asia. Meena makes a claim for the rights of all children and highlights the duties of families and obligations of States to realize those rights. Meena's questioning and reasoning seeks to enable families and communities to come up with positive solutions to deep-rooted discrimination, answers that are realistic and culturally sensitive. Special efforts were made to ensure effective enforcement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

In order to fulfil the birth right of every child to 'development', especially of those belonging to the disadvantaged and deprived groups as well as those with special needs, the Ninth Plan continued to focus on three major areas of child development, viz. health, nutrition and education. In the field of 'Health', the scope of the erstwhile programme of CSSM was further widened into a comprehensive programme of *Reproductive and Child Health (RCH)* that laid special emphasis on child survival and other related measures. Continued emphasis was laid on the ICDS. Under the Universal Immunisation Programme, significant achievements were made to arrest the problem of diphtheria, pertussis, neonatal tetanus, tuberculosis, poliomyelitis and measles. The special drive of Pulse Polio launched during 1995-96 was continued to eliminate the problem of poliomyelitis. All this had a definite impact in reducing the Infant Mortality Rate. The Government of India also committed to provide safe drinking water and sanitation facilities to every village to achieve the goal of 'Health for All'.

In the field of 'Nutrition', children below the age of 6 years along with expectant and nursing mothers, received highest priority in line with the provisions of the National Nutrition Policy, 1993 and the National Plan of Action on Nutrition, 1995. Despite the shortfalls that were recorded in terms of feeding and funding

by the State Governments, the coverage under Special Nutrition Programme reached 31.5 million children in the age group of 0-6 years. Similarly, the coverage under the National Programme of Nutritional Support to Primary Education commonly known as *Mid-day Meals* reached 105 million school children in the age group of 6-14 years by the end of the Ninth Plan.

In the field of 'Education', in consonance with the National Policy on Education as revised in 1992 and the Programme of Action, special thrust was given to the measures of Universal Primary Education. As a result of this, the country made impressive achievements whereby the number of schools increased four-fold from 2.31 lakh in 1950-51 to 9.88 lakh in 1999-2000, while the enrolment at the primary level jumped up by about six times from 19.2 million to 113.6 million. In 2001-02, the *Sarva Shiksha Abhiyan (SSA)* was launched with the aim of providing quality elementary education to all children in the 6-14 age group by 2010, besides bridging all gender and social category gaps at primary stage by 2007.

Concerted efforts were made to eliminate all forms of discrimination and violations against the rights of the girl child. The Ninth Plan also provided special incentives to the mother and the girl child so that the birth of a girl child in a family was rejoiced. To this effect, in the year 1997, *Balika Samridhhi Yojana (BSY)* was launched whereby a special package consisting of Rs.500/- to the mother and annual scholarship ranging from Rs.300/- to Rs.1,000/- for education of girl children from class 1 to 10 was provided to all those families living below the poverty line to ensure that all girl children went to schools. The incentive of Rs.500/- to the mother on the delivery of a girl child was limited to two girl children only. Similar initiatives were also launched by other State Governments. In 1999, the BSY was reviewed and recast to make it more effective. In 1998, the Government with the support of UNICEF launched a special service for children called *Childline*. This is a free phone service that can be accessed by a child or anyone on his/her behalf simply by dialling the number 1098. At present, Childline is working in 68 cities through a network of NGOs which not only responds to the needs of children but also plays a major role in crises intervention, long term care and rehabilitation. Realizing the need for an effective service delivery to children in need of care and protection, a *National Initiative for Child Protection* was launched through the National Institute of Social Defence and Childline India Foundation. It aimed at building partnerships with the State Departments of Social/Child Welfare, Childline Service and allied systems for protection and promotion of children's rights. In 1998, the Government of India instituted a *Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children*.

Strong regulatory and administrative measures were taken to prevent exploitation of child labour. A thorough review of the Juvenile Justice Act,

1986 was undertaken whereby the Act was repealed by the *Juvenile Justice (Care and Protection of Children) Act, 2000*. Likewise, a review of major existing child-specific and child related legislations was also undertaken to plug the loopholes in their implementation, viz. the Child Marriage Restraint Act, 1929; the Immoral Traffic (Prevention) Act, 1956; the Child Labour (Prohibition and Regulation) Act, 1986; and the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

As per the commitment made by the Government of India to the CRC Committee, a Bill for setting up of a *National Commission for Children* to safeguard their rights was drafted in 2001. Prior to this, a Special Expert Committee chaired by Justice Shri V.R. Krishna Iyer prepared a *Children's Code Bill 2000*. The UNICEF India Country Office facilitated this entire exercise. But this venture proved to be futile as the Ministry of Women and Child Development felt that it was an independent exercise where the Government was not consulted at all. The 2001 draft Bill thus never saw the light of the day.

Efforts were concurrently made to develop a national level '*Information Network System*' for women and children with emphasis on collection of gender-specific data with the objective of preparing a *Gender Development Index* so as to assess the socio-economic status of women and children on a continuing basis. A scheme entitled *Kishori Shakti Yojana (KSY)* was introduced as an enriched version of the *Scheme for Adolescent Girls* that was being implemented as part of the ICDS, to improve the nutritional and health status of girls in the age group of 11-18 years as well as equip them with vocational skills so that they could be gainfully engaged. In January 2000, the CRC Committee reviewed the Initial State Party Report that had been submitted by the Government of India and gave its *Concluding Observations and Recommendations. India's First Periodic Report (Second Report) on CRC Implementation* was due for submission in 2000. However, the Government of India could only submit the Report in 2001. The 2001 Report made all out efforts to address the Observations and Recommendations that were given by the CRC Committee in connection with India's Initial Report. The CRC Committee at its 932<sup>nd</sup> & 933<sup>rd</sup> meeting held on 21 January 2004 considered India's First Periodic Report and gave its Concluding Observations and also recommended that India should submit its next Periodic Report by 10 July 2008. Further, the due Report should combine the Third and Fourth Periodic Reports. Not only this, the proposed Report should not exceed 120 pages. Thereafter, the Committee expects India to report every five years as foreseen by the Convention.

In the ongoing *Tenth Five-Year Plan (2002 – 2007)*, overall emphasis has been on a rights-based approach with regard to 'survival, development and protection' of children. Accordingly, focussed attention is being given to arrest the problem

of declining sex ratio including its offshoots – female foeticide and female infanticide. Special efforts are being made to ensure effective enforcement of related legislations to prevent and eradicate the problem of female foeticide and female infanticide. In this context, in the year 2003, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was amended. The amended Act is now called the *Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act*. Emphasis is simultaneously being laid on *compulsory registration of births and deaths*, as visualised in the *National Population Policy (NPP) 2000*.

To ensure ‘development’ of children, especially those belonging to the disadvantaged and deprived groups, focussed attention is being given once again on three core sectors, viz. health, nutrition and education. All out efforts are being made to improve the coverage levels in respect of the six vaccine-preventable diseases. Special efforts are being made to improve the coverage levels through the Universal Immunisation Programme which is being implemented as part of the RCH programme. Attempts, in particular, are being made to assess the health needs of all children at PHC level so as to undertake area-specific micro planning whereby all their needs are met through high quality RCH services. Further, it is being ensured that the *Child Survival Programme* of RCH will entail universal screening of all pregnant women so as to identify and manage those at high risk from the point of view of bringing about reduction in the pre-natal and neo-natal mortality and morbidity. In addition, the NPP and the revised *National Health Policy, 2002* are expected to extend both policy and programmatic support with definite targets to ensure child survival.

Along with the above, the two on-going direct feeding programmes of Special Nutrition as part of the ICDS and the *National Programme for Nutrition Support to Primary Education* have been streamlined and strengthened. Moreover, as a follow-up of the announcement made by the Prime Minister in his Independence Day Speech of 2001, a *National Nutrition Mission* was set-up in 2002 with an overall responsibility of reducing/eliminating both macro and micro nutritional deficiencies in the country. The overall approach adopted for the holistic development of children through the ICDS has since continued along with the on-going scheme for the Adolescent Girls, viz. KSY. Recognising the increasing need for support services of crèches/day care centres for the children of working/ailing mothers, especially in the present day context where more and more women are coming out for employment both in the organised and unorganised sectors, the NCF has been further strengthened to provide a wide network of crèches all over the country.

With regard to education, the *Constitution (86<sup>th</sup> Amendment) Act* was notified in December 2002, making free and compulsory education a Fundamental Right

for all children in the age group of 6-14 years. The fact that Article 21A was added to the Constitution for recognising right to primary education implies that right to personal liberty guaranteed by Article 21 is now also the basis for a general right to education. Correspondingly, Article 45 of the Constitution has been substituted so as to provide for early childhood care and education for all children till they complete the age of 6 years. Article 51A was further modified by adding a clause – (k) – stating that it is the duty of the parents/guardians to provide opportunities for education to their children/ward between the age of six and fourteen years. Ever since education became a Fundamental Right, the Tenth Plan adopted a new approach towards achieving the goal of *Universalisation of Elementary Education (UEE)*. As pointed out earlier since most of the programmes in the field of elementary education were disjointed in nature, Sarva Shiksha Abhiyan was launched in 2001-02 for providing comprehensive elementary education to all children. The SSA is seen as a major vehicle for achieving the goals of UEE in the Tenth Plan period. SSA is expected to solve the present problems of low rates of enrolment and retention, besides high drop-out rates, especially amongst the girl children belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Minorities. Through this programme, the Government aims to cover children who have never enrolled or those who have dropped-out without completing eight years of elementary schooling. In terms of pre-school education, the *Early Child Care Education* component of ICDS continues to be a significant input for providing a sound foundation for development as well as the first step in the education ladder. Focussed attention is now being given to strengthening the early joyful period of play and learning in the young child's life to ensure a harmonious transition from the family environment to the primary school.

In its quest to guarantee quality basic education through-out the country, the Government of India, in the year 2004, imposed an *Education Cess @ 2 per cent* on direct and indirect Central Taxes. At the international level, it adopted the *Dakar Framework for Action on Education for All*. The Framework identifies six goals, which includes, *inter alia*, progressive expansion of Early Childhood Care and Education, Universalization of Elementary Education by 2015, achieving Gender Equality in Education by 2015, and improvement in the quality of education.

Another very prominent legislation passed in the interest of children during the Tenth Five-Year Plan was the *Goa Children's Act, 2003*. The Act ensures protection for children and the young against exploitation of all kinds and against moral and material abandonment. In 2003, the Government of India ratified the *1993 Convention for the Protection of Children and Cooperation for Inter-country Adoption (The Hague Convention)*. The Juvenile Justice Act of 2000

was also modified. This Act is now known as the *Juvenile Justice (Care and Protection of Children) Amendment Act, 2006*. The year 2006 has been especially significant as the *Commission for Protection of Child Rights Bill, 2005* was passed by the Parliament though the *Child Rights Commission* is yet to be set up. This is a big achievement not only for the children of the country but also for the Government for it was able to fulfil its commitment made to the CRC Committee for setting-up a Child Rights Commission. The children and the people of the country would now have to wait and see how this Commission really functions.

At the international level, the *UN General Assembly's Special Session on Children* was held in May 2002. It attracted 69 Summit-level participants and 190 high-level national delegations apart from delegates representing NGOs from countries all over the world. It was for the first time in the history of UN meetings that more than 400 children participated as delegates. This Special Session dealt at length with the *Millennium Development Goals* and set forward quantitative and qualitative goals for children to be achieved by all United Nations Member States by the year 2015. Having accepted the *Millennium Summit Declaration* of 2000 and in order to achieve the targets set by the UN General Assembly, the Ministry of Women and Child Development subsequently drew up a fresh *National Plan of Action for Children* in the year 2005 with a hope that it would provide a roadmap for steps to be taken for bringing about improvement in the lives of Indian children.

The year 2005 was noteworthy as the Government of India ratified the two Optional Protocols to the CRC, viz. the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*; and the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*. The UN General Assembly on 25 May 2000 had adopted both these Protocols. The former came into force on 18 January 2002 while the latter on 12 February 2002. It would be worthwhile to mention here that in the year 2002 the Government of India also signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, 2000*. In addition to this, in 2002, the Government of India endorsed the *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* and the *SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia*.

In 2006, the Committee on the Rights of the Child issued *General Comments No. 8 & 9* relating to the *Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment* and the *Rights of Children with Disabilities*. Prior to this, in the year 2005, it had issued *General Comments No. 6*

& 7 pertaining to *Treatment of Unaccompanied and Separated Children Outside their Country of Origin* and *Implementing Child Rights in Early Childhood*. In the year 2003, the Committee had issued *General Comments No. 3, 4 & 5* relating to *HIV/AIDS and the Rights of the Child, Adolescent Health and Development in the Context of the CRC and General Measures of Implementation of the Convention on the Rights of the Child*. Before this, in the year 2002, it had issued *General Comment No. 2* on the subject of the *Role of Independent Human Rights Institutions*. *General Comment No. 1* was issued in the year 2001 that deals with the *Aims of Education*.

From the Seventh Five-Year Plan onwards, the judiciary and the Supreme Court too have played an active role in upholding the rights of the child. The Supreme Court of India has developed the concept of jurisdiction under which any individual can approach the Court with regard to the violation of a fundamental right. The Supreme Court has also modified traditional concepts by allowing groups of persons or organizations to intervene in cases relating to violations of fundamental rights even though they may not have been affected personally in the matter. This concept of 'social action litigation' in India represents an effort to use the legal system to ensure action to realize constitutionally guaranteed rights. Some of the most important examples of social action litigation for children are the following cases, each of which has been a landmark in the process of ensuring children's rights:

- a) *Laxmikant Pandey vs. Union of India* [AIR (1984) SC 469, AIR (1986) SC 276, AIR (1987) SC 232] on Adoption of Children.
- b) *Shiela Barse vs. Union of India* [AIR (1986) SC 1883, AIR (1988) SC 2211] on Trafficking of Children.
- (c) *M.C. Mehta vs. State of Tamil Nadu* [JT 1990 SC 263] on Problem of Child Labour.
- (d) *Vishal Jeet vs. Union of India* [1990 (3) SCC 318] on Problem of Child Prostitution.
- (e) *Unni Krishnan vs. State of Andhra Pradesh* [1993 (1) SC 645] on Education of Children.
- (f) *Gaurav Jain vs. Union of India* [1997 (8) SCC 114] on Problems of Prostitution and Children forced into Prostitution.
- (g) *Gita Hariharan vs. Reserve Bank of India* [(1999) 2 SC 228] on Guardianship.
- (h) *Centre for Enquiry into Health and Allied Themes (CEHAT) & Others vs. Union of India & Others* [2000 SC 301].

In accomplishing the milestones, both at the national and international level, the non-governmental and civil society organizations have played an equally important role along with the Government in virtually every aspect concerning children. The media too has played a critical role in shaping public opinion and creating mass awareness. The Government of India and UNICEF collaborative initiatives over the years have focussed on enhancing the capacities of the electronic and print media personnel in the Ministry of Information and Broadcasting so as to integrate and represent issues concerning children and their rights effectively. As a result, the media is gradually focussing on children's issues in a qualitative way. This is certainly a positive sign for the future and it is hoped that the media will increase its responsibility to include monitoring of child rights violations in a significant and persistent manner.

It would be seen from this chapter that India has come a long way from 1947 to 2006 in achieving the milestones at the national and international level. All these efforts bear testimony to the overall concern of the Government and other stakeholders in reaching out to its children which are considered to be the supreme wealth of the nation. India is a home to more than 400 million children who are below the age of 18 years. While dealing with the complex dimensions of child rights, both in terms of numbers and in quality, we do feel satisfied about our country's progress in several fronts such as immunization and enhancement of literacy rates in recent years. At the same time, we are aware and deeply concerned about certain other critical indicators such as infant mortality, malnutrition and regional disparities. Our efforts should therefore be directed towards overcoming obstacles in these areas. Children in India represent diverse cultures, religions, castes, communities and economic groups. The development of this human resource should be considered as a key national concern not only by the Government but also by all stakeholders. It is the prime responsibility of all concerned to ensure that proper foundation is laid in the early stages of children's life, so that their potential is properly harnessed for the growth and development of the nation. The Government, of course, is committed to do its best. However, despite its best efforts, there are children who suffer from hunger, diseases and discriminations of varied kinds. Not only this, they are subjected to exploitation and atrocities of all kinds. The next section makes an earnest effort to examine some of those issues which need to be pondered over if at all we consider children as our national priority.

## Chapter 3

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### Critical Analysis of the Situation of Children in India

The preceding chapter exemplifies the manner in which independence facilitated the overall process of acquiring equality, dignity and protection for the children of the country. Other than the constitutional provisions, India adopted a National Policy for Children in 1974, declaring children to be nation's most precious asset. Hence, from the Fourth Five-Year Plan onwards, perhaps a little earlier than that, children have certainly found mention in national development plans, but insufficient attention in terms of investment. In the wake of the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992, with goals for the decade. In the year 1992 itself, it also ratified the CRC and thereafter in its Periodic Country Reports submitted to the UN Committee on the Rights of the Child has dwelled at length about the measures taken for ensuring children's rights. These Reports and the India Report on the World Summit for Children undoubtedly record some positive changes in the situation of children in India. But, there are significant problems and performance gaps too. The intent of this chapter is to focus on the critical areas which calls for immediate attention of all concerned.

#### *Vulnerability of Child Population*

From 548 million persons in 1971, the population of India crossed the billion mark officially on 11 May 2000. The 2001 Census gives the total population for the country as 1,028.7 million persons. This population is expected to reach 1,264 million in 2016 which means that approximately 236 million persons are likely to be added to India's population in the current and ensuing decades. Such a massive increase in numbers will, to a large extent, offset the gains of economic development and require massive inputs for social services, civic amenities and infrastructure development. The population of States constituting the Indian Union varies considerably in size. Uttar Pradesh, the biggest State has retained its position with a population of 166 million in 2001 even after a separate State (Uttaranchal) was carved out of it in 2000. Some 18 States (Uttar Pradesh, Maharashtra, Bihar, West Bengal, Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Rajasthan, Karnataka, Gujarat, Orissa, Kerala, Assam, Punjab, Haryana, Jharkhand, Chhattisgarh and Jammu & Kashmir), as per Census 2001, had a population of more than 10 million, while two States (Himachal Pradesh and

Uttaranchal) had a population of more than 5 million but less than 10 million. All this indicates how critically important it is to improve the child development profile in these States if the national aggregate of child development indicators is to show a significant improvement. Currently, several States are lagging behind on social as well as economic development indicators. Given their current political and administrative situation, the position is unlikely to change much in the near future in most of these States. The children of these States will, therefore, continue to be more vulnerable than those in most other parts of the country, especially those living in rural areas and urban slums (Bose, 2003:21-24). This situation needs to be looked into and tackled in a very concerted manner.

### ***Adverse Child Sex Ratio***

The child sex ratio is calculated as number of girls per 1,000 boys in the 0-6 years age group. In India, the 2001 Census reported a child sex ratio of 927 girls per 1,000 boys, that is definitely adverse to girls. The 1991 Census had reported child sex ratio of 945 girls per 1,000 boys, which signifies that a decade later, the child sex ratio has worsened further by 18 points. Prior to the 1991 Census, this ratio had fallen from 976 in 1961, to 964 in 1971, and 962 in 1981. A stage may soon come when it would become extremely difficult, if not impossible, to make up for the missing girls. The declining child sex ratio has already started showing its ramifications in States like Punjab, Haryana, Gujarat, Delhi, Rajasthan, Maharashtra, Tamil Nadu and Himachal Pradesh. In States like Punjab, Haryana and Gujarat, this ratio has declined to less than 800 girls per 1,000 boys. The Government needs to recognize this discrimination. Girls have a right to live just as boys do. Moreover, missing numbers of either sex, and the resulting imbalance, is bound to destroy the social and human fabric.

### ***Impact of Poverty on Children***

Poverty exercises an adverse influence on the health and nutrition status of children. Inadequate and irregular earnings affect the quantity and quality of food that a family can consume throughout the year, its standard of living, and access and use of healthcare. The extent of poverty varies considerably between States. Data from the Planning Commission with regard to the number and percentage of population below poverty line in States shows that in 1999-2000, among the bigger States, Orissa had the largest percentage of population below the poverty line (47.15), followed by Bihar (42.60). In numbers, Uttar Pradesh and Bihar together had 96 million persons below the poverty line or 37 per cent of the country's poor. Bihar (undivided) also had 38 districts, the largest number in the list of 100 most backward and poorest districts in the

country identified in 1997, followed by Madhya Pradesh (undivided) with 19 districts and Uttar Pradesh (undivided) with 17 (Bose, 2003:36-36).

Removal of poverty is one of the central concerns of Indian planners and its reduction a key indicator of success in implementation of policies and programmes, including those relating to children. On the whole, though there has been a decline in the number of persons living below the poverty line, yet this is an area which requires utmost attention of the Government. A family living below the poverty line is bound to impact on the survival and development of the child.

### ***Need for a Uniform Definition of the Child***

As mentioned earlier, the Constitution of India and the laws enacted over the years have some unique and far-reaching provisions to protect children. Yet, there are laws in which the age of the child is not in consonance with the CRC, which the Government ratified way back in 1992. Besides, the age of the child has been defined differently in different laws. These different age-specifics under different laws not only create a dilemma, but also set the stage for injustice. This is because, whether the same human being is or is not a child depends upon the law that is being invoked in a given case. Moreover, when the laws are in conflict with one another due to diverse definitions, it is but natural a difficult task to decide the 'best interests of the child'. It is thus necessary that the definition of the term 'child' be brought in conformity with the CRC, viz. "below 18 years of age", by establishing one standard 'age of majority'.

### ***Need for Modifications in Other Constitutional and Legislative Provisions Related to Children***

#### **Education**

The 86<sup>th</sup> Amendment to the Constitution, on the Fundamental Right to Education for the 6 to 14 years age group, has also led to the inclusion of an additional clause under article 51A that imposes a fundamental duty upon parents or guardians to provide opportunities for education of their children/wards between the ages of 6 and 14 years. The amendment has provoked agitation and criticism from all sections across the country. Their contention is that the State is abdicating its responsibility for the provision of free and compulsory quality education that must be accessible and appropriate, both socially as well as physically. In effect, it is penalising the poor parents twice – for being poor and for their inability to send their children to schools, the causes for which may be beyond their control. Lack of quality, appropriate and accessible education

is one of the major reasons for children dropping-out of school. The other reasons, of course, are poverty and to some extent the need for elder children to look after their younger siblings. In the absence of a well drawn out plan to ameliorate poverty and lack of alternative childcare facilities for children who have been deliberately kept out in the amendment, the Government needs to rethink and reconsider its stand.

## **Child Marriage**

There is legal recognition of the fact that children must not be married before they are physically and mentally ready for it. The Child Marriage Restraint Act, 1929 (CMRA) prescribes a minimum age of 21 years for males and 18 years for females. As the title of the Act suggests, it is merely a law to prevent the solemnisation of child marriages, but does not address the situation of a child who has been married off before the law could prevent it. It does little to protect children who have been married off, sometimes even before they can stand on their feet. Efforts to amend the CMRA have been going on for almost four years, yet there is no consensus on the issues on which amendments are required.

## **Child Labour**

The Child Labour (Prohibition and Regulation) Act was enacted in 1986, to specifically address the situation of child labour. However, this law is inadequate both in its understanding and the framework that it provides for dealing with the problem of child labour. By distinguishing between hazardous and non-hazardous forms of labour, and identifying certain processes and occupations from which children are prohibited from working, it leaves out a large range of activities that children are engaged in and thus continue to be exploited and abused. The large-scale exploitation and abuse of children employed in domestic work and hotels are cases in point. On August 1, 2006, the Ministry of Labour added the following occupations to the list of hazardous occupations: domestic servants, workers in *dhabas*, restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres. The notification for this came into effect on 10 October 2006. This is a welcome step but far from adequate. Bonded child labour and other extremely exploitative forms of child labour including slavery, prostitution, drug trafficking, etc. are other grey areas which require priority attention. The *ILO Convention No. 182 on the Worst Forms of Child Labour*, which is currently being examined by the Government of India from the point of view of its ratification, also seeks the immediate elimination of these types of child labour.

## **Coercive State Population Policies and Their Impact on Children**

The coercive laws based on the State Population Policies are also having a negative impact on children. Since adults will now not be able to stand for elections in some of the States if they have more than two children, some are choosing to give away their 'excess' children in adoption or disown them. The withdrawal of facilities after the second child is bound to have an impact on the status and value that the girl child in the family will have. It is a recipe for gender discrimination and continuation of female foeticide.

### ***Discrimination Against Children***

The Government has adopted a policy of affirmative action towards addressing issues of socially backward groups, such as the Scheduled Castes/Tribes and the Other Backward Classes as well as the girl child. Despite these, discrimination – overt and covert – occurs in various forms. The guiding principles underpinning the Constitution of India are equality before law, equal protection to all and non-discrimination. There is affinity between the standards set by the Constitution and the standards set by Article 2 of the CRC. Equality is a dynamic concept with many aspects and dimensions and therefore cannot be confined within traditional limits. Articles 14, 15, 17, 25-28, 29 and 30 of the Constitution aims to secure social and economic justice to all as well as remove all kinds of biases. Yet, children born in the categories of Scheduled Castes/Tribes and Backward Classes including religious minorities start life with severe handicaps. Considering that these children account for a clear majority of India's child population, it is necessary to look deeply into their problems from all angles rather than paying a lip-sympathy to them.

### ***Other Policy Measures Requiring Attention***

#### **Adoption of a New National Policy for Children**

India adopted a National Policy for Children in 1974, declaring children to be the nation's most precious asset. From 1974 till date, there has been a gradual shift in approach towards its children from a needs-based to a rights-based approach. However, India has yet to translate this change into actual programming, which remains largely 'welfare' oriented. The fact that India is signatory to a plethora of international/regional instruments concerning children, this needs to be reflected in its National Policy for Children too. And, this could be carried out only if the 1974 National Policy for Children is revised.

## **Child-Centred Planning**

It has also been found that so far as children are concerned, they have been devoid of holistic child-centred planning that requires inter-departmental and inter-ministerial coordination. As a consequence of this, policies and actions concerning them have not brought out the desired result. The Ministry of Women and Child Development is the Nodal Ministry responsible for all matters concerning children. With the objective of strengthening central level coordination, a National Coordinating Mechanism (NCM) was constituted way back in January 2000 through an executive order issued by the Ministry of Women and Child Development. However, the task of this NCM is perhaps restricted to monitoring the implementation of the CRC only. It is not known whether the NCM is still in operation after it met for the first time in September 2000.

## **Review of Other Policies Impacting on Children**

Correspondingly, it is important to undertake an examination of all those policies which at the outset may seem distantly remote but overall have an impact on the status of children. For example, the agricultural policy or for that matter the forest policy or the environmental policies. There is thus need to objectively gauge the impact of such policies on children. There is ample evidence that there is increase in malnutrition level among children due to change over from food crops to cash crops as a result of the agriculture policies or the loss of access to traditional sources of food and nutrients and livelihood of adults due to the loss of access to forests because of the forest policy.

## ***Struggle for Child Survival***

Right to health is a basic human right that cascades from the right to life. The Constitution of India under Article 21 makes right to life a Fundamental Right. Health being a key factor in a nation's growth and development, it has been a subject of national attention, public debate and Government intervention for several decades. A number of national programmes have been launched in the past to control and eradicate the major diseases. While there has been success in some areas, in general, public health services have been characterized by poor performance. The burden of disease has fallen disproportionately heavily on the poor, the worst affected being children. Frequent episodes have not only caused pain and suffering to children, but also affected their growth and development and influenced performance in school. Here, it is important to remember that child survival is not synonymous with child health, and that morbidity data are also very important. Unfortunately, the collection of morbidity data is not done systematically, particularly community based data. Also, due

to the absence of standardization in the presentation of data, making a comparison of findings of different studies over time or across regions is often rendered difficult (Bose, 2003:45-46).

The most widely used indicator of child survival is infant mortality rate (IMR), which measures the number of infant deaths per 1,000 live births during the year. In India, as per the latest Census, the IMR is still very high. Infant deaths (deaths below age of one year) are indicative of wastage of human life. They also reflect the state of maternal and child health services, access to them, and extent of utilisation. A target of less than 60 Infant Mortality Rate (IMR) in 2000 was set by the National Health Policy 1983. This was not achieved. The rural-urban difference in IMR is also very marked. In 2000, urban India had an IMR of 43, but in rural areas it was 74. The survival scenario is thus far more fragile in rural India where three-fourths of the population lives. Our hopes are now pinned on the revised National Health Policy of 2002. Inter-State variations in IMR are also very marked. Female IMR is also higher than the male IMR. Higher IMR among females is due to social causes related to other practices which are morbid manifestations of gender bias and female foeticide and female infanticide.

The poor health and nutrition status of pregnant woman is a major contributory factor to infant mortality. Maternal malnutrition continues to be another area of concern. The health care services in the country are to be blamed for not functioning satisfactorily. The population segments worst affected are the rural and urban poor who suffer the most when the public health care system malfunctions. All this in an indirect manner impacts on the maternal health services as their reach is limited. We know that proper medical attention at delivery is a critical factor for safe motherhood and child survival. The Universal Immunisation Programme that limped initially has now gathered some momentum and is one of the biggest preventive public child health programmes in the world. However, much still remains to be done. Similarly, the Government has visualised an elaborate primary health infrastructure in rural areas for providing preventive, promotive and curative services. However, the functioning of the primary health infrastructure has drawn flak, and its deficiencies brought out, in the evaluations by the Indian Council of Medical Research and other bodies. The poor delivery system which includes inadequate supplies, poor equipment, poor services, and malpractices have been mainly responsible for slippages in national health targets. The CSSM programme has not made a visible impact on reduction in infant mortality either. The newly conceived RCH programme seeks to ensure child survival, safe motherhood, and reproductive health care through upgradation of services at different levels. Its impact will, however, depend upon the extent to which the health care infrastructure would bring about an improved performance (Bose, 2003:135-140).

Malnutrition has been another major public health problem in the country. It has somehow escaped public visibility despite its harmful potential. In India, about half the children less than three years of age were found by the National Family Health Survey 1998-9 to be undernourished. The worst affected are the children of the rural and urban poor. Today, the prevalence of severe under-nourishment has declined, but this should not lead to any complacency. Malnutrition is often categorized as only a medical problem, but it is the outcome of several factors – socio-cultural as well as economic factors, and has important behavioural dimensions and, therefore needs to be tackled cautiously through coordinated inter-sectoral intervention strategies that are properly executed.

### ***Education as a Tool for Development of Children***

The ability to read and write is an essential element of human capability. Experiences of countries across the world have time and again shown the overall role played by education in national development and in individual and social well-being. It is the first step towards acquiring other tools of learning. Not only this, it equips people to make informed choices, empowers them to resist oppression and enables them to claim their rights. Its usefulness thus has led planners to give high priority to education as it is considered to be ‘an investment in human capital’.

This apart, in the measurement of development, literacy and level of education are invariably listed among the key indicators. Female education, in particular, is recognized as a means to a better quality of life for the child and the family, as well as woman’s own quest for self-fulfilment. A higher level of education of a woman considerably enhances the child’s chances of survival and of entry and continuance in schooling. Elementary education is considered crucial because it lays the foundation for secondary and higher education and training, which is critically important in today’s fast-changing technology propelled growth. We have seen above the steps taken by the Government in making right to education a fundamental right. However, if the educational scenario in the country were to be critically reviewed, it would be seen that though there has been some progress towards universalization of elementary education since independence, but for the attainment of this goal completely, there is still a long road ahead.

Official enrolment figures show a massive increase in numbers at primary as well as middle stages in the case of both boys and girls. But, not all children who figure in the enrolment statistics attend school. A positive development, on the whole, has been the consistently higher rate of decadal growth rate of

enrolment of girls, both at the primary and middle stages. The gender gap in enrolment also seems to be declining. As of now, the school drop-out rate continues to be very high. The main causes of drop-out are school related, and factors concerning family and home. Of late, there seems to be some improvement in the physical infrastructure of schools. But, by and large, they are still deficient, particularly in rural areas where poor construction and bad maintenance has often caused fast deterioration of the available structures. Needless to mention, in majority of the schools there is still shortage of space. This leads to several classes being held in the same room by dividing the space or having a class out in the open. The former certainly is not a learner-friendly situation. Drinking water and toilet facilities, particularly for girls, are still poor. Teaching aids and methods used in schools are still far from satisfactory. Primary schools suffer not only from poor physical infrastructure, but also because they do not have enough teachers. Assessments are not done on a continuing basis. Teacher motivation is low. There is hardly any supervision of teaching. Several malpractices have cropped up. Many villages in rural areas have a negative opinion about the commitment of school teachers and feel that their children do not get a fair deal due to the indifference of teachers, absenteeism, and poor functioning of schools.

In addition, there has, unfortunately, come into existence a big caste and class divide coupled with a rural-urban divide in education, in terms of facilities and quality, which has serious social consequences and could lead to social upheaval. Schools in backward rural and tribal areas are the most neglected, and the standard of teaching deplorable. Even in other areas, schools to which children of the underprivileged have access are run by the State or local authorities. By and large, these have a poor record of performance. The low quality of education in schools meant for the masses adversely affects their employment prospects in the long run. Children from the middle and upper classes attend private schools, which charge exorbitant fees that are not affordable by the poor, but which are far better in terms of providing quality education. It is thus the children of the poor who need most a good public sector school as their families cannot muster financial support for private schools, compensatory teaching, and coaching, and have, further, the disadvantage of little or no academic support at home due to the generally low levels of education of their family members. Though theoretically the State seeks to provide equal opportunities through heavily subsidized education, its poor quality adversely affects the life chances of the socially and economically disadvantaged sections of the society and is likely to further accentuate the divide between the haves and the have-nots. Access and quality are, therefore, issues which need to be seriously addressed by the Government along with other stakeholders.

## **Children in Especially Difficult Circumstances**

In our country today, there are a large number of children who are living in especially difficult circumstances and require attention of all stakeholders. Unfortunately, not much is known either of the nature of the problems faced by these children or of the numbers involved. It was only as an aftermath of the 1990 World Summit for Children and the World Declaration on the Survival, Protection and Development of Children to which India is a signatory, the Government of India through its National Plan of Action, for the first time, not only made a direct reference about this group of children but simultaneously devoted an exclusive section on them. This apart, for the first time again, the section tried to spell out and bring together at one place all the different categories of children in especially difficult circumstances, such as the physically handicapped, mentally handicapped, those affected by drugs, victims of natural and manmade disasters, refugee children, street children, slum and migrant children, orphans, destitutes and beggars, children suffering from HIV/AIDS, children of parents with HIV/AIDS and HIV/AIDS orphans, trafficked children, children of prostitutes and children forced into prostitution, children in conflict with law and children whose labour is being exploited, so that improved protection could be provided to them and the root cause which has led them to such situations could be deciphered (NPA, 1992: 25). There are other categories of vulnerable children too, like children affected by terrorism, insurgency and riots which could be added to this long list. Girl child, children who have been victims of sexual abuse are another category that needs attention. The number of such categories of children is increasing day by day, but because of their dispersed character, they have escaped the attention of policy makers. Response to their needs has been ad-hoc and largely in the form of relief. It is important that such categories of children are identified, their problems studied and programmes developed whereby these children could be rescued and rehabilitated. We also need to bring about improvement in the standards of service in most State run institutions and those run by voluntary organizations. The best way to reach these children would be through non-institutional forms of care. Legal measures to protect these children are also necessitated.

## Chapter 4

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### **Role of National Human Rights Commission in Protecting and Promoting Children's Rights**

The 'rights of children', is one area on which the National Human Rights Commission (NHRC) has tried to focus continuously ever since it was constituted in October 1993. It observed from the very beginning that despite there being major provisions in the Constitution of India for survival, development and protection of children as well as laws to safeguard their interests including the fact that the Government of India had ratified the CRC, children all over the country, especially those belonging to weaker sections of the society, were found to be vulnerable and their dignity and human rights were often trampled. Though, the initial few months of the Commission were spent on making an overall assessment about the range of issues that affected children, but once this task was completed, the Commission concentrated its attention on preventing and eradicating the problems of child labour, child marriage, child trafficking and prostitution, child sexual violence, female foeticide and infanticide, child rape, HIV/AIDS in children and the problem of juveniles.

#### **Child Labour**

The Commission, first and foremost, concentrated on ending the problem of child labour, especially those employed in hazardous industries. In order to provide suitable remedies to the problem of child labour, it made a special effort to study the plight of these children employed in the glass work and carpet making industries of Uttar Pradesh, the beedi, match-sticks and fireworks industries in Tamil Nadu and the slate-pencil making industry in Madhya Pradesh. It particularly paid attention on the glass work industry in the district of Ferozabad, Uttar Pradesh, where some 50,000 children were reported to be working. For this, it evolved an integrated programme, involving the coordinated efforts of a number of Central Ministries, the Government of Uttar Pradesh, non-governmental organisations and other stakeholders. This programme was based on three inter-related concepts: income-support for the families from where children went to work in the glass work industry; schooling, including the creation of new facilities, for children weaned away from employment; and rigorous implementation of the Child Labour (Prohibition and Regulation) Act 1986, under which there have been conspicuously few prosecutions and lamentably fewer convictions. Simultaneously, the Commission consistently took a supplementary and, in a sense, a different approach to that of the Government.

This approach laid emphasis on the provision of free and compulsory education for children upto the age of 14 years, and the allocation of an appropriate level of resources to achieve this objective.

This issue was of such critical significance to the Commission that the then Chairperson of the Commission addressed a letter in January 1996 to the Presidents of all the major political parties in India. In it, he observed that ‘despite the promise of Article 45 of the Constitution, ....., one incontrovertible fact faces the nation: the number of those who are illiterate in the country exceeds the entire population of India at the time of independence. This grim reality enfeebles the country in every way, whether civil and political, or economic, social and cultural. It affects the dignity and self-esteem of countless Indians and exposes them to constant violations of their human rights. In its most aggravated form, this finds painful expression in tens of millions of our youth working as child labour, or even as bonded labour, in hazardous or utterly demeaning circumstances’. The Chairperson thus urged that definite steps be taken to give comprehensive legislative backing to the Directive Principle contained in Article 45 of the Constitution.

In taking this stand, the then Department of Education deliberated on this matter carefully and instead of an all-India legislation on free and compulsory education, it chose to adopt a different strategy to achieve the goal of the “universalization of elementary education”. Later, taking a cue from the landmark judgement delivered by the Supreme Court on 10 December 1996, in writ petition (civil) no. 465/1986 *M.C. Mehta vs. State of Tamil Nadu and Ors.*, the Commission ensured that the directions given in the judgement were implemented. In this task, the Chairperson, Members and Special Rapporteurs of the Commission have toured rigorously to monitor States where child labour is prevalent. These States are Bihar, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan and Uttar Pradesh. It is due to Commission’s continued efforts that education has today become a Fundamental Right for the children between the age group of 6 and 14 years vide 86<sup>th</sup> Amendment of the Constitution.

To end the scourge of child labour from the country, the Commission’s efforts have also been directed towards generating greater awareness and sensitivity in the District Administration and Labour Departments of concerned States. In order to create awareness among the masses, it has come out with a ‘*Know Your Rights*’ series, in which one of the booklets deals with the issue of child labour exclusively. Besides, it has issued specific directions to the concerned State Governments in respect of the detection and withdrawal of children employed in hazardous occupations/processes, the admission of such children into the formal and non-formal system of schooling, particularly the schools established

under the National Child Labour Project, the economic rehabilitation of the affected families, and the prosecution of offending employers.

The Commission through its Core Group of Lawyers has also examined the draft legislation – The Child Labour Prohibition Bill that was prepared by the V.V. Giri National Institute, an institution under the Ministry of Labour. The Commission is now pursuing with the Government of India to enact a new law prohibiting all forms of child labour. Now that free and compulsory elementary education has been made a fundamental right of every child up to the age of 14 years, the Commission hopes that all State Governments will ensure cent percent enrolment and retention of school going children, which alone can provide a lasting solution to the problem of child labour.

It has also undertaken a study on the 'Impact, Community Response and Acceptance of Non-Formal Education under the National Child Labour Project' in the carpet weaving districts and glass bangles region of Ferozabad in Uttar Pradesh. The details of the study are available on NHRC's website ([www.nhrc.nic.in](http://www.nhrc.nic.in)).

### **Children as Domestic Help**

In 1996-97, the Commission received disturbing reports of the employment of children below the age of 14 years as domestic servants in the homes of government officials. Unacceptable as the practice is in any circumstance, the Commission felt that the employment of such children as domestic help in the homes of government officials was particularly reprehensible. Following a meeting in January 1996, the Commission decided to recommend that an appropriate rule be included in the conduct rules of government servants, both at the Central and State levels, which while prohibiting such employment would also make it a misconduct inviting a major penalty. The Commission accordingly requested the Minister of State in the Ministry of Personnel, Public Grievances and Pensions to take appropriate steps to introduce the rule into the Government Service (Conduct) Rules 1964, and proposed the precise wording required for this purpose. This view of the Commission effected necessary amendments to Conduct Rules of the Central and State Government servants. By virtue of these amendments, employment of children below 14 years by the government servants as domestic help now attracts disciplinary action.

### **Problem of Child Marriage**

The widespread persistence of child marriage in certain parts of the country coaxed the Commission to examine this problem in its enormity. On examination

of the problem, the Commission realised that the Child Marriage Restraint Act, 1929 (CMRA) should be recast so as to provide for higher penalty for the violations of the provisions of this Act and also to make the offence cognizable and non-bailable. In December 1999, it also considered the question of whether it would be preferable to provide for compulsory registration of marriages in the Hindu Marriage Act, 1955 itself through appropriate amendments, instead of making such a provision in the CMRA. This was later discussed with the Secretary, Legislative Department in September 2000. In order to know as to how many States had made rules under section 8 of the Hindu Marriage Act, the Chief Secretaries of all the States were requested to send the requisite information. After considering the entire issue, the Commission decided to review and recast the CMRA. While reviewing the CMRA, it recommended to the Government of India a number of amendments. Prominent among them being the need to make a statutory provision for compulsory registration of marriages as this would deter communities from indulging in child marriages. In pursuance of these recommendations, the Government of India introduced "The Prevention of Child Marriage Bill" in the Rajya Sabha on 20 December 2004 incorporating all the recommendations of the Commission. Later, the Bill was tabled in the Lok Sabha on 29 November 2005. The Bill was sent for examination of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. The proposed Bill is still pending. One of the reasons for this being that after the report of the Parliamentary Related Committee, the Group of Ministers considered the amendments requested by the Committee. Thereafter, approval of the Cabinet was obtained on 21 September 2006 for bringing about amendments in the Bill under consideration. It is now proposed to move the Bill again in the Rajya Sabha during the Winter Session of the Parliament in 2006. It is hoped that the proposed Bill on becoming an Act would go a long way in curbing the menace of child marriage in the country. Pending the passage of the Bill into an Act, the Commission has written to concerned Ministries/ Departments in the Central Government and the State Governments/Union Territories to organise mass-scale awareness programmes/campaigns, in association with the personnel of Integrated Child Development Services, local self-governments/Panchayats and Legal Service Authorities to educate and sensitise people about the demerits of child marriages.

### **Trafficking in Children**

Alerted by press reports to the alarming increase in child trafficking and its ramifications like commercial sexual exploitation, pornography, etc. in Tamil Nadu and Goa in the year 1995-96, the Commission issued notices to the two State Governments as well as to the Ministry of Women and Child Development, Government of India, calling for reports on the situation. Simultaneously, it

also decided to have this issue considered on a regular basis by a Core Group, consisting of representatives from the National Commission for Women, the Ministry of Women and Child Development, UNICEF and selected NGOs. The Core Group reviewed the existing laws and ways of improving their enforcement; it discussed the efforts made and difficulties faced in rehabilitating children who were victims of trafficking. Besides, it pressed for greater efforts at the level of SAARC to strengthen laws as well as devise cooperative measures so as to deal with trans-border movements; and encouraged organisation of workshops. Taking into consideration the global consequences of this problem, the Commission also represented itself at the *First World Congress Against Commercial Sexual Exploitation of Children* that was held in Stockholm from 26-31 August 1996.

In the year 2001, a Member of the Commission was designated to serve as a *Focal Point on Human Rights of Women including Trafficking*. Under the guidance of the Focal Point, an *Action Research on Trafficking in Women and Children in India* was conducted along with the UNIFEM. The main objective of the Action Research was to find out the trends and dimensions of trafficking, role of different law enforcement agencies in preventing and combating trafficking, process of rescue/recovery, rehabilitation and reintegration and the role of other national institutions and the civil society in preventing and combating trafficking. The Action Research also examined the relationship between missing persons vs. trafficking, migration and trafficking, tourism and trafficking and culturally sanctioned practices and trafficking. The report of the Action Research was released to the general public on 24 August 2004. The report has brought forth startling facts, such as children are trafficked not only for commercial sexual exploitation but also for various other purposes. Based on the findings of the Action Research, its report has made some useful suggestions and recommendations to prevent and end trafficking that could be seen on Commission's website ([www.nhrc.nic.in](http://www.nhrc.nic.in)). Taking into consideration these recommendations as well as the recommendations of several other workshops on the issue of trafficking, the Commission has evolved a Plan of Action to Prevent and End Trafficking in Women and Children in India and disseminated to all concerned across the country. The Commission is now working on this issue along with the Ministry of Women and Child Development, Ministry of Home Affairs and the National Commission for Women and is collectively evolving an *Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women*. Ever since the Commission embarked on the Action Research, it has also been continuously sensitizing the judicial officers, police officers, administrative officers, functionaries of Homes, NGO representatives and the civil society at large. A network of Nodal Officers, two in each State – one from the police department and the other from the social welfare/women

and child development department, has been created to effectively deal with the problem of trafficking.

Further, the Commission and the Ministry of Women and Child Development, Government of India in partnership with UNICEF have prepared a Manual for the Judicial Workers on Combating Trafficking of Women and Children for Commercial Sexual Exploitation. The purpose of the Manual is to sensitise the judicial officers to the actual situation of the trafficked victims and to provide them with a perspective so that they could proactively safeguard the rights of victimised women and children, through a sensitive interpretation of the law.

### **Sexual Violence Against Children**

Sexual violence against children is another sensitive issue in which the Commission has taken concrete measures. Pained with the plight of child victims, vis-à-vis the manner in which the issue was being reported by the media, the Commission decided to intervene in the matter in the year 1998, when a two-month campaign was launched in New Delhi in collaboration with the Ministry of Women and Child Development, UNICEF and non-governmental organisations. A mid-term appraisal of the campaign revealed that irrespective of the medium, message or location, the campaign effectively raised awareness about sexual violence against children. The respondents were however of the view that in order to further enhance awareness among the people at large, the electronic media too would have to be involved and mobilised. As a result, the NHRC, in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers. The participants for these workshops were drawn from 20 States. It was during the course of these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. Based on the deliberations of these workshops, the Commission and the Prasar Bharati, with support from UNICEF, jointly prepared *A Guidebook for the Media on Sexual Violence Against Children*. The main objective of the guidebook is to encourage media professionals to address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interest of children. The Commission currently is also in the process of preparing guidelines for speedy disposal of child rape cases.

### **Female Foeticide and Infanticide**

Faced with the widely prevalent misuse of sex determination tests to commit female foeticide, the Commission approached the Medical Council of India during the year 1995-96, to take a position on the ethical aspects of such tests. After reviewing the matter, the Council decided to suggest suitable amendments to

the regulations governing the code of medical ethics, in order to enable undertaking of disciplinary proceedings against errant doctors. Thereafter, the issue of 'discrimination' as a cause of human rights violations was examined in great detail in the Commission's Annual Report for 1999-2000, especially in relation to gender and caste-based discrimination. In the light of recommendations made by the CRC Committee in its concluding observations with regard to the report on children submitted by the Government of India, the Commission reiterated that there was an urgent need to ensure that free and compulsory education was provided as a fundamental right to all children until they completed the age of 14 years. It also emphasised the need for undertaking a vigorous and comprehensive national campaign against female foeticide and infanticide. During the course of regional and national consultations on *Public Health and Human Rights* that were held during 2002-03, the Commission again took up the issue of combating female foeticide and infanticide. The issue featured again when the Commission organised a *Colloquium on Population Policy – Development and Human Rights* in January 2003. To counter this problem, the Commission has maintained that vigorous and comprehensive measures be taken by all States and Union Territories to put an end to the gruesome problem of female foeticide and infanticide.

### **Right to Health**

The violation of the rights of children has been considered in the Commission from the angle of health too. In 2000 and 2001, the Commission organised a *Workshop on Human Rights and HIV/AIDS* that was followed by a *Consultation on Public Health and Human Rights*. Both these had direct relevance to the rights of children. Later, in the year 2004, the Chairperson of the Commission addressed letters to the Union Ministers for Human Resource Development, Health and Chief Ministers of all States/Union Territories urging them to take steps to prevent discrimination of children affected by HIV/AIDS with regard to access to education and health care. In particular, the Commission asked them to enact and enforce a legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from school.

### **Juvenile Justice**

The Commission has been concerned about the plight of juveniles who come in conflict with law and those who are in need of care and protection in the country. Consequently, the Commission in 1996 wrote letters to Chief Secretaries/Administrators of all States/Union Territories on the reporting of deaths/rapes in Juvenile/Children's Homes within 24 hours. On monitoring the situation, it was found that some of the Homes were still not functioning properly. The

Commission, in 2002, thus once again directed the Chief Secretaries/Administrators of all States/Union Territories to ensure prompt communication of incidents of custodial deaths/rapes in Juvenile/Children's Homes. This apart, the Law Division of the Commission has been dealing with cases of violations concerning the juveniles and the Research Division has been collating information about the status of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 from all States and Union Territories. For the latter purpose, it has devised a format seeking information regarding implementation of the various provisions of the 2000 Act. It has also undertaken a research study on the subject along with a non-governmental organisation. The study on completion will suggest measures for better implementation of the Act.

### **Handling of Complaints Related to Children**

The Commission since its inception has been handling complaints of different kinds related to children. Majority of the complaints handled by the Commission so far have been on the issue of child labour, child marriage, juvenile justice, child trafficking, child rape, missing children, exploitation of children of varied kinds, deaths in juvenile/observation homes, etc. The Commission till 31 October 2006 had registered 2,885 cases of children. Out of these, 489 cases pertained to child labour, 266 cases were related to child marriage, 31 cases were of children who were being misused for commercial sexual exploitation, 385 cases were related to different kinds of exploitation and 61 cases pertained to trafficking in children. The other cases registered were related to disappearance, deaths in juvenile/observation homes, sexual harassment/abuse, rape, etc. While dealing with these cases, the Commission has awarded a total compensation of Rupees 45,20,000/- to children who were victims of different kinds of violations.

### **Optional Protocols to the CRC**

The Commission has vigorously pursued with the Government of India to ratify the two Optional Protocols to the CRC, viz. the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Accordingly, the Government of India ratified the latter Protocol on 16 August 2005 and the former Optional Protocol on 30 November 2005.

It is the intention of the Commission to continue monitoring all situations where children's rights are being affected.

## Chapter 5

### Looking Ahead

The foregoing chapters reveal that ever since India achieved independence, the executive, the legislature and the judiciary in India have taken several proactive measures to put in place an exhaustive legal and policy framework for safeguarding the rights of children so as to ensure their survival, development, protection and participation. Several new plans, schemes and programmes have been initiated to address issues concerning children. Yet, the plight of children across the country has not got better and continues to be precarious. The burning issues relating to children are the adverse child sex ratio, persistently high infant and child mortality ratios, wide gender gaps in literacy, escalating violence against children especially against the girl child and the rising incidents of female foeticide, female infanticide and child marriage. This apart, the existent loopholes in the laws concerning the definition of the child as well as those laws that try to protect their vulnerabilities are areas that cannot be ignored if at all the best interests of children are to be protected and promoted.

Undoubtedly, there have been reforms and in some the reforms are on the anvil, for instance, reform in legislations related to trafficking, child marriage, child labour and bonded labour. Then, there are certain other issues affecting children, in which the Government along with the civil society is planning to bring about a new legislation. It would not be out of place to mention that our country has plethora of laws, schemes and programmes for children. The real challenge lies in implementing the provisions of these laws, schemes and programmes. In India, the judiciary along with the police and various Government agencies, autonomous bodies, public enterprises, PRIs and NGOs are involved in the implementation of different laws, schemes and programmes for children. The need of the hour for all of them is to ensure that laws, schemes and programmes for protection and promotion of children's rights are implemented by them at the field level in the 'right' perspective.

Children being our supreme asset, nothing concerning their survival, development, protection and participation should be ignored or sidelined. However, in a country with a large number of floating population, vast disparities, social conflict and turmoil, the challenge to attend to all their rights is even greater. The Government of India's 2005 National Plan of Action for Children has identified 12 key areas keeping in mind priorities that require utmost and sustained attention in terms of outreach, interventions and resource allocation. These are:

- Reducing Infant Mortality Rate.
- Reducing Maternal Mortality Rate.
- Reducing malnutrition among children.
- Achieving 100% civil registration of births.
- Universalization of early childhood care and development and quality education for all children.
- Complete abolition of female foeticide, female infanticide and child marriage as well as ensuring the survival, development and protection of the girl child.
- Improving water and sanitation coverage both in rural and urban areas.
- Addressing and upholding the rights of children in difficult circumstances.
- Securing for all children all legal and social protection from all kinds of abuse, exploitation and neglect.
- Complete abolition of child labour with the aim of progressively eliminating all forms of economic exploitation of children.
- Monitoring, review and reform of policies, programmes and laws to ensure protection of children's interests and rights.
- Ensuring child participation and choice in matters and decisions affecting their lives.

The above key areas are quite exhaustive. It would be practical and worthwhile if along with the above, all stakeholders including the law enforcement machinery and the Government could strengthen the protective environment for children as well as address the issue of children in conflict with law. Building a protective environment for children would require strengthening of Government commitment and capacity to fulfil children's right to protection; promoting the establishment and enforcement of adequate legislation; addressing harmful attitudes, customs and practices; encouraging open discussion of child protection issues with all stakeholders; developing children's life skills, knowledge and participation; building capacity of families and communities who are socially and economically disadvantaged; providing essential services for prevention, recovery and reintegration, including basic health, education and protection; and establishing and implementing continuous and effective monitoring and reporting. It would be meaningful if Millennium Development Goals could also be kept in mind while working towards child protection

The term 'children in conflict with law' refers to anyone under the age of 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence. Most children in conflict with law are those who have committed petty crimes or such minor offences as vagrancy, truancy, begging or alcohol abuse. Many are trafficked girls who are being sexually exploited for commercial reasons whereby they are picked-up by the police and put behind bars. There are also some children who have been caught for their criminal behaviour on account of being used or coerced by adults. Many a times, prejudice related to social and economic status may also bring a child in conflict with the law even when no crime has been committed, or result in harsh treatment by law enforcement officials. Studies undertaken across the country, by and large, have shown that children who come in conflict with law are often treated at par with adult criminals. This kind of a situation often harms than improves a child's chances for reintegration into the society. These children too require focused attention of all stakeholders.

Last but not the least, there is need to increase the budgetary allocations with regard to children and also ensure that the entire amount allocated is spent on the child population.



## Check Your Progress

### Exercise No. 1

1. From the general observation in your family or neighbourhood write about the following in brief:
  - a) Reaction of parents to birth of a son and that of a daughter.
  - b) Ceremonies performed when sons and daughters are born.
  - c) Elucidate the kind of tasks carried out by sons and daughters in homes to help the family?
2. After going through the entire Dossier, do you feel that there has been a change in the overall status of children now, in comparison to what it was in the past?
3. Can you recall the principles elucidated in the “Declaration of Geneva”?
4. Can you think of any organizations working for children in your vicinity?
5. Can you think of any international organization working for children in India other than UNICEF?

### Exercise No. 2

Answer the following questions briefly:

1. Elucidate the articles from the Constitution of India that relate to children and their rights such as survival, development, protection and participation?
2. What do you understand by the term ‘child rights’ and ‘best interests of children’?
3. In which year was the CRC adopted by the UN General Assembly? Elucidate some of its distinctive features?
4. In which year did the Government of India ratify the CRC? What major steps have been taken for implementation of the CRC in India?

5. After reading the second Chapter of the Dossier, can you recall some of the major programmes being implemented for children?

### **Exercise No. 3**

Answer the following questions briefly:

1. Mention in bullet points the key areas that require utmost attention from all stakeholders so far as children are concerned?
2. What are the reasons for the neglect of girl child in India?
3. Write a paragraph as to how girls could be empowered in our country?
4. What do you understand by the term 'children in especially difficult circumstances'?

### **Exercise No. 4**

Answer the following questions briefly:

1. Mention the areas concerning children in which the NHRC has intervened?
2. Surf the website of NHRC and write briefly the measures taken by it to prevent and eradicate child labour?
3. Write in bullet points the demerits of child marriage and what steps can be taken to stop child marriage?

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## Important Websites

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(Ministry of Women and Child Development)
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(Ministry of Social Justice and Empowerment)
4. [www.mohfw.nic.in](http://www.mohfw.nic.in)  
(Ministry of Health and Family Welfare)
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(Department of School Education & Literacy and  
Department of Higher Education)
6. [www.labour.nic.in](http://www.labour.nic.in)  
(Ministry of Labour)
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10. [www.envfor.nic.in](http://www.envfor.nic.in)  
(Ministry of Environment & Forests)
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12. [www.mib.gov.in](http://www.mib.gov.in)  
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(Asia Pacific Forum of NHRIs)
25. [www.ohchr.org](http://www.ohchr.org)  
(UN High Commissioner for Human Rights)
26. [www.undp.org](http://www.undp.org)  
(UNDP)

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## Institutions/Networks Working for Children

### International

British Council. For details see website [www.britishcouncil.org](http://www.britishcouncil.org)

Children's Rights Development Unit, 235, Shaftesbury Avenue, London WC2H 8EL, England.

Child Rights Information Network (CRIN), c/o Save the Children, 1 St John's Lane, London EC1M 4AR, United Kingdom

Childwatch International, P.O. Box 1132 Blindern, N-0317 Oslo, Norway.

Defence for Children International, International Secretariat, 'Rue de Varembe' P.O. Box 88, CH1211 Geneva 20, Switzerland.

International Labour Office, CH-1211 Geneva 22, Switzerland.

Save the Children, for details see website [www.savethechildren.org.uk](http://www.savethechildren.org.uk)

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United Nations Human Rights Council, Palais des Nations, 1211 Geneva 10, Switzerland.

United Nations Bookshop, Concourse Level, 46<sup>th</sup> Street and 1<sup>st</sup> Avenue, New York, N.Y. 10017, U.S.A. (For purchases of all United Nations Publications. In some countries, there are also authored agents which distribute United Nations Publications; the Bookshop can provide names and addresses. In New Delhi United Nations Information Centre is located at 55 Lodi Estate, Tel: 24628877, 24623439).

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Don Bosco Ashalayam, Old Najafgarh Road, Palam Gaon, New Delhi –110045, India.

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