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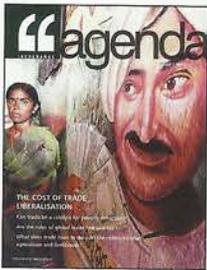
ISSUE 8 2007



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The rights approach

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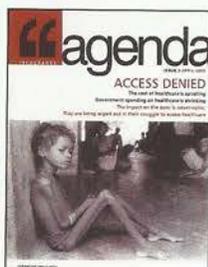
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*InfoChange Agenda* is a quarterly journal published by the Centre for Communication and Development Studies, a social change resource centre focusing on the research and communication of information for change

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Centre for Communication and Development Studies  
301, Kanchanjunga Building, Kanchan Lane, Off Law College Road, Pune 411 004

**Suggested contribution: Rs 60 (1 issue); Rs 240 (4 issues); Rs 480 (8 issues)**

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## Children as citizens

CHILDHOOD IN INDIA is not homogeneous; several childhoods co-exist. Social and economic status, physical and mental ability, geographical location and other differences determine the degree of vulnerability of India's children. The bitter core of this diversity is the wide inequality between various sections of society. The child in India is discriminated against by virtue of these inequalities, in addition to being subjugated by the hierarchy of age. Thus, all children in India suffer certain violations on account of their status as a child. The recently published study on child abuse by the Ministry of Women and Child Development bears testimony to this. Several campaigns, policies and demands for laws later, children in India are still at the receiving end of the most egregious forms of human rights abuse.

And yet, children's issues get peripheral and often superficial political attention in India. On most occasions this attention is triggered by tragedies such as the recent killings of more than 30 children in Nithari, on the outskirts of Delhi, the knee-jerk reaction to which was immediate consensus on the passing of the Offences Against Children Bill, 2005. But everyday cases of child exploitation or neglect are rarely recognised as violations or registered as offences. The State infrastructure and services for children in need are poor both in terms of number and quality; the infrastructure is crumbling thanks to skewed budgetary allocations of funds for child rights.

The government's responses to child rights have until recently been erected through a welfarist approach — where children are looked at as passive recipients, and the State as the benevolent giver. The State therefore came up with policy formulations, rather than non-discriminatory and accountable delivery systems for the realisation of child rights.

In 1974, India adopted a National Policy for Children (NPC), declaring children to be the nation's most precious asset. Hence, from the Fourth Five-Year Plan (1969-74) onwards, children have found mention in national development plans, but there has been 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 same year, it also ratified the United Nations Convention on the Rights of the Child (UNCRC) and thereafter in its Periodic Country Reports submitted to the UN Committee on the Rights of the Child, India has dwelt at length on the measures taken to ensure 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.

We still do not have a law against child sexual abuse; child marriage is rampant in spite of amendments to the law; although education is a fundamental right, the process of delivery of this most vital right faces major funds constraints and administrative hurdles; and the huge increase in the number of

missing girls has not yet been arrested despite the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act.

However, there has been a recent spurt of legislative action on child rights issues. Take, for example, the recent Protection of Child Rights Act 2005, the Juvenile Justice (Care and Protection of Children) Act 2006, the proposed Immoral Traffic (Prevention) Amendment Bill 2006, Offences Against Children Bill, and the Child Marriage Bill that has recently been passed by the Rajya Sabha. Surely this decade is seeing the highest rate of legislative action on any one constituency or issue in the history of India, and a definitive shift from addressing children's issues as a matter of charity to a matter of justiciable and deliverable entitlements.

This issue of *InfoChange Agenda* explores the fallout of the systemic malaise that denies children guarantees to the protection of their rights, and profiles some civil society interventions, including governmental schemes, that challenge this malaise. The issue brings together essays by practitioners, policy experts and activists who provide an insider's view of the processes of implementation of government commitments. It looks at some civil society initiatives that are both innovative and effective in guaranteeing the realisation of child rights and creating enabling conditions for such realisation. And, most importantly, it foregrounds the voices of the primary stakeholders, the children, through their narratives of triumph and creativity.

Thus, even as this issue lays bare the unavoidable reality of the suffering of children in India, it looks at children as active agents of change and citizens who demand participation in the processes of policy/law-making.

The following four-point agenda might help us formulate policies and legislation on child rights issues that ensure maximum positive impact:

- 1 The rights of the child must be articulated as non-negotiable and universal to ensure that the State does not use the rhetoric of 'progressive realisation' to de-prioritise child rights on the basis of economic inability.
- 2 The stress must be on enabling rights rather than on policy formulations only, with the State made accountable not only for the recognition of a particular right but also for putting in place a non-discriminatory delivery system.
- 3 The civil and political rights of children, such as the right against abuse and exploitation, must be connected with their economic, social and cultural rights, such as education and work.
- 4 Children should have special rights, but at the same time their rights should not be isolated from larger rights issues. This will ensure that they are also considered citizens and guaranteed all existing constitutional rights. Respecting children as citizens is a step towards recognising their voices as stakeholders and as participants, not just mute beneficiaries.

# Status of children in India

With more than a third of its population below the age of 18, India has the largest child population in the world. This backgrounder explores the levels of health, nutrition, education and social security of children, and government policy and action on child rights

INDIA HAS MADE SOME SIGNIFICANT commitments towards ensuring the basic rights of children. There has been progress in overall indicators: infant mortality rates are down, child survival is up, literacy rates have improved and school dropout rates have fallen. But the issue of child rights in India is still caught between legal and policy commitments to children on the one hand, and the fallout of the processes of globalisation on the other.

Over the last decade, countries across the world have been changing their existing economic models in favour of one driven by the free market, incorporating processes of liberalisation, privatisation and globalisation. The direct impact of free trade on children may not leap to the eye, but we do know that globalised India is witnessing worsening levels of basic health, nutrition and shelter. Children are suffering as a result of social sector cutbacks and policies, programmes and development initiatives that deprive communities and families of access to and control over land, forest and water resources they have traditionally depended on.

The negative fallout is visible: children are being deprived of even the scarce social benefits once available; they are displaced by forced and economic migration, increasing the number of children subsisting on the streets; more and more children are being trafficked within and across borders; and rising numbers of children are engaged in part- or full-time labour. (1)

## Ground realities

- With more than one-third of its population below 18 years, India has the largest young population in the world.
- Only 35% of births are registered, impacting name and nationality.
- One out of 16 children die before they attain the age of 1, and one out of 11 die before they are 5 years old.
- 35% of the developing world's low-birth-weight babies are born in India.
- 40% of child malnutrition in the developing world is in India.
- The declining number of girls in the 0-6 age-group is cause for alarm. For every 1,000 boys there are only 927 females — even less in some places.
- Out of every 100 children, 19 continue to be out of school.
- Of every 100 children who enrol, 70 drop out by the time

they reach the secondary level.

- Of every 100 children who drop out of school, 66 are girls.
- 65% of girls in India are married by the age of 18 and become mothers soon after.
- India is home to the highest number of child labourers in the world.
- India has the world's largest number of sexually abused children, with a child below 16 raped every 155th minute, a child below 10 every 13th hour, and at least one in every 10 children sexually abused at any point in time.

## Government policy on children

On November 20, 1989, the UN General Assembly adopted the Convention on the Rights of the Child (CRC). On January 26, 1990, the opening day of the session, 61 countries signed it. The CRC covers all children under the age of 18 years, regardless of sex, colour, language, religion or race. India ratified the CRC in 1992.

Several constitutional provisions protect children in India. Among them:

- Article 15 affirms the right of the State to make special provision for women and children.
- Article 24 provides that no child below the age of 14 shall be employed to work in any hazardous employment.
- Article 39 (e) of the Directive Principles of State Policy provides that children of tender age should not be abused and that they should not be forced by economic necessity to enter vocations unsuited to their age or strength.
- Article 39 (f) requires children to be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth be protected against exploitation and moral and material abandonment.
- Article 45 of the Directive Principles of State Policy provides for free and compulsory education for all children until they complete the age of 14.

Prior to the Fifth Five-Year Plan, the government's focus was on child welfare through the promotion of basic minimum services for children. This culminated in the adoption of the National Policy for Children, in 1974.

The Fifth Five-Year Plan (1974-79) saw a shift of focus from welfare to development and the integration and co-ordination of services after the Integrated Child Development Services (ICDS) 1975.

The Sixth Five-Year Plan strengthened child welfare and development. It led to the spatial expansion and enrichment of child development services through a variety of programmes.

The focus of the Eighth Five-Year Plan (1992-97) shifted to human development through advocacy, mobilisation and community empowerment.

The Government of India declared its commitment to every child in the Ninth Five-Year Plan (1997-2002).

The Tenth Five-Year Plan advocated a convergent/integrated rights-based approach to ensure the survival, development, protection and participation of children. It set targets for children: all children to complete five years of schooling by 2007; reduction in gender gaps in literacy and wage rates by at least 50%, by 2007; reduction in Infant Mortality Rate (IMR) to 45 per 1,000 live births by 2007, and 28 by 2012; reduction of Maternal Mortality Rate (MMR) to 2 per 1,000 live births by 2007 and to 1 per 1,000 live births by 2012; arresting the decline in the child sex ratio; and universalisation of the ICDS scheme.

The draft approach paper of the Eleventh Five-Year Plan (2007-2012) prepared by the Planning Commission emphatically stated that 'Development of the child is at the centre of the Eleventh Plan'. While continuing with the rights-based approach to child development, the plan recognises the importance of a holistic approach, focusing both on outcomes and indicators for child development as well as macro-perspective trends and governance issues.

Despite these laws, policies and commitments, however, what is the actual situation of India's children vis-a-vis health, education, early childhood care and protection?

#### **Survival**

The very survival of the Indian child is a matter of concern. Around 2.5 million children die in India every year, accounting for one in five deaths in the world, with girls being 50% more likely to die. (2) Eighty-seven children of every 1,000 born still have the probability of dying between birth and 5 years of age. According to a report on the state of India's newborns, the health challenges faced by a newborn child in India are bigger than those experienced by any other country. (3) Although India's Neonatal Mortality Rate (NMR) witnessed a significant decline in the 1980s (from 69 per 1,000 live births in 1980 to 53 per 1,000 live births in 1990), it has remained static since then (only dropping four points from 48 to 44 per 1,000 live births between 1995 and 2000). (4)

#### **Food insecurity: Malnutrition and starvation**

One in every three malnourished children in the world lives in India. (5) Child malnutrition is generally caused by a combination of inadequate or inappropriate food intake, gastrointestinal parasites and other childhood diseases, and

improper care during illness. Is it not ironical that in a nation with soaring GDP rates and Sensex indices, marking India's entry into the global market, children continue to die of malnutrition and starvation?

The major cause is lack of public health services in remote and interior regions of the country, poor access to subsidised healthcare facilities, declining State expenditure on public health, and lack of awareness about preventive child healthcare.

According to the Planning Commission, 50% of below the poverty line (BPL) families are out of the purview of the targeted public distribution system. The very method of identifying the poor using the official poverty line defined at an absolutely low level of income corresponding to the expenditure required to purchase the bare minimum of calories, is contentious. Therefore, in reality, many more people are living in food insecurity.

Ironically, the Supreme Court of India has had to intervene to ensure that children in this country get adequate and nutritious food — the most basic of rights for all citizens to stay alive and healthy.

#### **To be born a girl: Plummeting sex ratio**

The very existence of the girl-child is under threat. Defying the normal male-female balance, the higher survival capacity of girl babies, and greater life expectancy of women to men prevalent in human populations, the female-male balance in India has been adverse to females for at least 100 years. The 1901 National Census recorded a female-male ratio of 972 to 1,000 males, for all ages. Virtually every subsequent census showed a decline. (6)

While the overall female-male ratio for all ages rose slightly from the 1991 figure of 927 females per 1,000 males to 933 females per 1,000 males in 2001, the juvenile sex ratio in the 0-6 age-group fell from 945 girls per 1,000 boys to 927 girls per 1,000 boys. (7) This is a decline of 18 points in just one decade! The Government of India, in its report to the UN Committee on the Rights of the Child (8) said: "Every year, 12 million girls are born — 3 million of whom do not survive to see their 15th birthday. About one-third of these deaths occur in the first year of life and it is estimated that every sixth female death is directly due to gender discrimination."

Sex-selective abortion, more commonly known as foeticide, and what appears to be a re-emergence of infanticide, is taking a heavy toll, even as neglect of 'survivors' of this weeding out process persists.

Unlike all the other social evils attributed to poverty, the killing of female fetuses through sex-selective abortion cannot be attributed to poverty and ignorance. Indeed, it is the economically affluent states of Punjab, Haryana, districts of Gujarat, and Delhi that have the dubious distinction of having more people who can pay for expensive tests to help choose male children over females. Census figures based on 2001 data from 640 cities and towns across 26 states and union territories reveal that posh metropolitan India, with 904 girls per 1,000 boys, has a lower sex ratio for children below 6 years than

Sudharak Olive



overcrowded slums where there are 919 girls per 1,000 boys. The capital city Delhi has 919 and 859 for slum and non-slum areas respectively. Clearly it is those who can “afford to choose,” who use the technology to do so.

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

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

There is no guarantee that the girl-child who escapes foeticide, infanticide and is in the 0-6 age-group will escape the cycle of deliberate neglect that may even result in death because she is

less fed, less encouraged to explore the world, more likely to be handed jobs to do and given less healthcare and medical attention. Out-patient data from hospitals in northern Indian cities shows lower admissions of girl-children, and girls who are in a more serious condition than boys when brought for treatment. An August 2004 spot-check at one hospital showed 25,538 boy-children and 12,645 girl-children in the OPD records, 3,822 boy-babies as against 3,160 girl-babies born in hospital, and 1,954 boy-children admitted to a paediatric ward as compared to 1,091 girls. (9)

#### Elementary education

While enrolment levels propelled by the flagship Sarva Shiksha Abhiyan show an increase, levels of retention in schools remain a matter of concern. There has been a marginal improvement in the percentage of students who stay in school until Class 5 — from 61.2% to 62% — but this is way below the global average of 83.3%. (10) There is a sharp decline in the enrolment ratio at the upper primary level. Also, the dropout rate increases cumulatively as it proceeds towards higher levels. Although showing improvement, the enrolment of girls is still below that of boys. The dropout rate for girls too is higher. Children belonging to scheduled castes and scheduled tribes continue to face discrimination in schools and have lower enrolment and higher dropout rates. Despite the promise of education for all, 46% of children from scheduled tribes and 38% from scheduled castes continue to be out of school, as

against 34% in the case of others. (11) This is not surprising considering the discrimination that these children face at school. The same can be said of the discrimination faced by disabled children.

The Constitution of India fails to even recognise education as a 'right' for those aged 15-18 years. Many children drop out after the elementary level. Indeed, the system is designed to push children out of education — there is a lack of adequate school infrastructure, the quality of education is poor, the educational system is gender-unfriendly, disabled-unfriendly, caste-discriminatory and violent because of a high degree of corporal punishment.

A Model Education Bill has been developed and circulated to the states for adoption into state law. There will thus be no central legislation on education, only state legislation since education is a state subject. If states decide to adopt the Model Education Bill as it is, they will be eligible for 75% assistance from the Centre for education programmes. But if they modify the Model Bill in their formulation of the state education law, they will only be eligible for 50% of central government assistance. The Model Education Bill is not available for public scrutiny, posing serious questions about the government's accountability and transparency.

#### Child labour and right to education: A contradiction

India has the highest number of child labourers in the world.

- Census reports clearly point to an increase in the number of child labourers in the country, from 11.28 million in 1991 to 12.59 million in 2001. (12)
- Reports from the M V Foundation in Andhra Pradesh reveal that nearly 400,000 children, mostly girls between 7 and 14 years of age, toil for 14-16 hours a day in cotton seed production across the country. Ninety per cent of them are employed in Andhra Pradesh alone. (13)
- According to Yamina de Laet of the International Chemical, Energy and Mine Workers' Federation (ICEM), children aged 6-14 years represent 40% of the labour force in the precious-stone-cutting sector. (14)
- Rescue operations in Mumbai and Delhi in 2005-2006 highlight the employment of children in zari and embroidery units.
- Although the number of children employed in the agricultural sector, in domestic work, roadside restaurants, sweetmeat shops, automobile mechanic units, rice mills, Indian Made Foreign Liquor (IMFL) outlets and most such sectors considered to be 'non-hazardous' is unknown, there is ample evidence to suggest that more and more children are entering the labour force and are being exploited by their employers.

The existing law on child labour that allows children to work in occupations that are not part of the schedule of occupations that are considered harmful to children contradicts the right of every child to free and compulsory education. And yet no attempt is made to resolve this contradiction. How can children be at work and at school at the same time? Surely this means that any attempt to give them access to education will be

second-rate, parallel non-formal education?

The Social Jurist, HAQ: Centre for Child Rights and M V Foundation have filed a joint PIL with the Supreme Court of India challenging the validity of the Child Labour Act in the wake of the constitutional guarantee to right to education for children in the 6-14 age-group. In the meantime, vide a notification in the official gazette dated October 10, 2006, the Centre has expanded the list of hazardous occupations banning employment of children under 14 years as domestic help or in restaurants and the entertainment industry.

#### The disabled child: Always on the periphery

Census 2001 reports that 2.19 crore (2.13%) of the total population of the country are persons living with disability, and that 1.67% of the total population within the age-group 0-19 years (46,38,26,702) are disabled (see table below).

Of all persons living with disability, 35.9% are children and young adults in the 0-19 age-group. Three out of five disabled children in the age-group 0-9 years are reported to be visually impaired. Movement disability has the highest proportion (33.2%) in the 10-19 age-group. This is largely true of 'mental' disability also. (15)

Barely 50% of disabled children reportedly reach adulthood, and no more than 20% survive to cross the fourth decade of life. (16) Although there is very little information regarding the nutritional status of children with disabilities, disabled children living in poverty are among the most deprived in the world. Those who suffer mental disorders are much worse off, as there is still very little recognition of the problem.

Poor enforcement of the Persons With Disability Act and the Mental Health Act means that disabled people in India continue to be discriminated against in terms of access to basic services and opportunities. There are few special services for disabled children. Paediatric wards at government hospitals are

Disabled population within the age-group 0-19 by type of disability, age and sex (Census 2001)						
Total disabled population	21906769	Type of disability				
		In seeing	In speech	In hearing	In movement	Mental
		10634881	1640868	1261722	6105477	2263821
Disabled population in 0-19 age-group	7732196	3605553	775561	90452	2263941	796689
Disabled children as per cent of total population in 0-19 age-group	1.67%	0.78%	0.17%	0.01%	0.48%	0.17%
Disabled children as per cent of total disabled population	35.29%	33.9%	47.26%	23.02%	37.08%	35.19%

Source: Census of India 2001: Table C20 India

incapable of dealing with children with disabilities, particularly in terms of infrastructure and resources.

**Government action**

Over the last few years, the government has taken a number of measures related to children. The most important has been the setting up of a full-fledged Ministry of Women and Child Development as against the Department of Women and Development that used to function as part of the Human Resource Development Ministry. Among the policy and law initiatives that were undertaken was the formulation of the National Charter for Children 2003, the National Plan of Action for Children 2005, and enforcement of the National Commissions for Protection of Child Rights Act 2006. However, the National Policy for Children 1974 has not been repealed, nor does the charter override it. Thus, the status of the charter is not very clear. The government announced the much-discussed and long-delayed National Plan of Action 2005 only in August 2005. Led by the Ministry of Women and Child Development, the government has completed a study on child abuse in India and is in the process of drafting a law on Offences Against Children. It has also initiated the process of amending the present law on child marriage.

Parliament has recently passed the Prohibition of Child Marriage Bill 2006, which enhances punishment for those involved in these practices, and people abetting or attending child marriages. It also declares all child marriages null and void. This is also the main criticism against the legislation that will come into force as a law applicable retrospectively, ie, all child marriages that have taken place in the past will be declared null and void and the status of children born out of such marriages will come under question.

The Juvenile Justice (Care and Protection) Act 2000 was amended in 2006 and the Central Model Rules in this regard are being formulated.

The Model Right to Education Bill is not available for public scrutiny/comment, as is also the case with the Offences against Children Bill. The Offences against Children Bill has drawn criticism based on drafts available through various sources. The first is that it is too vast in terms of the kind of offences it seeks to address under one umbrella legislation. The second is that, unlike the Immoral Traffic Prevention Act (ITPA) that extends to the whole of India, the proposed legislation keeps the state of Jammu and Kashmir out of its scope. The third, and most important criticism is that since many of the offences dealt with under the proposed Bill are of a very serious nature, the criminality of those offences should be established through the main criminal law of the land, ie the Indian Penal Code and not through a social legislation. India already has a strong juvenile justice law to deal with social and reformatory aspects of a crime; that law could be strengthened further to ensure that human rights standards of child protection are met whilst rehabilitating a child victim. Moreover, both the Home Ministry and the Law Ministry are working on amendments in the Criminal Procedure Code, and many activists feel that this is the right time to seek appropriate amendments to ensure child-friendly legal procedures within the CrPC and the Indian Evidence Act.

The government has set up a National Coordination Group on the Rights of the Child for implementation of child rights in the country, and has instituted a Chair on the theme of Protection of Child Rights as part of the 10 Rajiv Gandhi Chairs in Contemporary Studies in central and state universities. These mechanisms, however, are not functional.

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

All of the above are important measures. However, what is required is a complete re-examination of the legal framework for children as a whole, identification of gaps and reconciliation of existing anomalies within the law and the implementation of policies, programmes and schemes meant for children.

Only a recognition of children as individuals with rights can pave the way for future action. In the absence of this, all efforts will be sporadic, addressing only some symptoms and not the root cause of the problems that affect the children of this country.

*This backgrounder is based on a perspective paper on child rights by Enakshi Ganguly-Thukral, Bharti Ali and Saloni Mathur on [www.infochangeindia.org](http://www.infochangeindia.org), and Status of Children in India Inc, 2005, published by HAQ: Centre for Child Rights, New Delhi*

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## Who is a child?

The trouble with child rights begins with the very definition of a child in law. A child domiciled in India attains majority at the age of 18. But there are several grey areas in the law here. Under the child labour regulations, for instance, a child is a person under 14 years

ASHA BAJPAI

WHO IS A CHILD? When does childhood cease or begin? These simple questions have complex answers. Most of the old world's civilisations did not consider children human beings with full human value. Thus, childhood was not an independent social category until the beginning of the 18th century. Legislation did not deal with childhood as a period of life that needs special measures of protection until the early-19th century. In his book, Philippe Aries said that the child in the Middle Ages did not exist as an independent anthropological category and therefore children did not need to be taken into consideration.

The law, policy and practice of child welfare have undergone significant changes from a historical perspective. Before 1839, authority and control was important. It was an established common law doctrine that the father had absolute rights over his children. After this, the welfare principle was reflected in the dominant ideology of the family. Victorian judges, who developed the welfare principle, favoured one dominant family form.

The traditional Indian view of welfare is based on *daya*, *dana*, *dakshina*, *bhiksha*, *ahimsa*, *samya-bhava*, *swadharma* and *tyaga*, the essence of which were self-discipline, self-sacrifice and consideration for others. It was believed that the wellbeing of children depended on these values. Children were recipients of welfare measures.

It was only during the 20th century that the concept of children's rights emerged. This shift in focus from the 'welfare' to the 'rights' approach is significant. Rights are entitlements. They also imply obligations and goals. The rights approach is primarily concerned with issues of social justice, non-discrimination, equity and empowerment. The rights perspective is embodied in the United Nations Convention on the Rights of the Child (CRC), 1989, which is a landmark in international human rights legislation. India ratified the Convention on the Rights of the Child in December 1992.

According to Article 1 of the CRC, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". The Article thus grants individual countries the discretion to determine by law whether childhood ceases at 12, 14, 16 or whatever age is found appropriate.

Today, nearly all cultures share the view that the younger the child the more vulnerable she/he is physically and psychologically and the less able to fend for herself/himself. Age

limits are a formal reflection of society's judgement about the evolution of children's capacities and responsibilities. Almost everywhere, age limits formally regulate children's activities: when they can leave school; when they can marry; when they can vote; when they can be treated as adults by the criminal justice system; when they can join the armed forces; and when they can work. But age limits differ from activity to activity, and from country to country.

### Legal age of the child in Indian law

Several provisions in the Constitution of India impose on the State the primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. Article 21 A of the Constitution of India says that the State shall provide free and compulsory education to all children within the ages of 6 and 14 in such manner as the State may by law determine. Article 45 of the Constitution specifies that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6. Article 51 (k) lays down a duty that parents or guardians provide opportunities for education to their child/ward between the age of 6 and 14 years.

The age at which a person ceases to be a child varies under different laws in India. Under the Child Labour Prohibition and Regulation Act, 1986, a child is a person who has not completed 14 years of age. The Constitution of India protects children below the age of 14 from working in factories and hazardous jobs. But below 14, they can work in non-hazardous industries. An area of concern is that no minimum age for child labour has been specified. But for the purposes of criminal responsibility, the age limit is 7 and 12 under the Indian Penal Code, 1860. For purposes of protection against kidnapping, abduction and related offences, it's 16 years for boys and 18 for girls. For special treatment under the Juvenile Justice (Care and Protection of Children) Act 2000, the age is 18 for both boys and girls. And the Protection of Women from Domestic Violence Act 2005 defines a child as any person below the age of 18, and includes an adopted step- or foster child.

Some provisions relating to age under different laws are:

### Age of majority

Under the Age of Majority Act 1875, every person domiciled in India shall attain the age of majority on completion of 18 years and not before. The Indian Majority Act was enacted in order

to bring uniformity in the applicability of laws to persons of different religions. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of 18 years of age. However, in the case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been assumed by the Court of Wards, age of majority will be 21 years and not 18.

The Hindu Minority and Guardianship Act (HMGA), 1956, in Section 4 (a), defines a 'minor' as a person who has not completed the age of 18 years.

The age of majority for the purposes of appointment of guardians of person and property of minors, according to the Dissolution of Muslim Marriages Act, 1939, is also completion of 18 years.

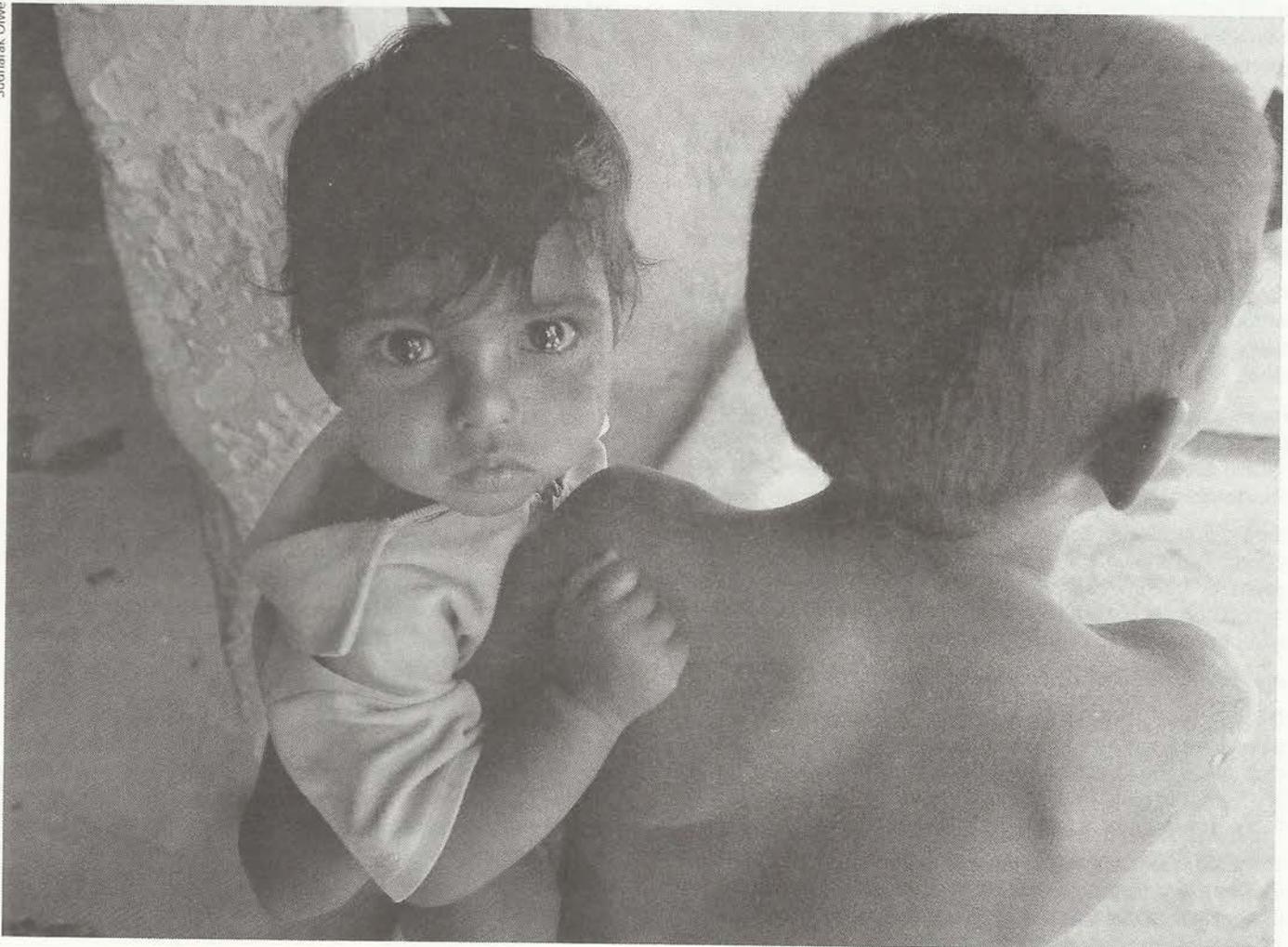
Christians and Parsis also reach majority at 18. Significantly, under the Child Marriage Restraint Act, 1929, which is a secular law, the age of marriage is 21 years for males and 18 years for

females. But the age of marriage in Muslim personal law is the age of puberty (around 14 years). It was held that Muslims are not exempted from this law. If the marriage of a Muslim girl is performed while she is a minor, the marriage cannot be void, but the persons who participated in the marriage are not immune from the legal punishment provided under Sections 4, 5 and 6 of the Child Marriage Restraint Act. A Muslim girl can marry on attaining the age of puberty, and her marriage cannot be declared void because she is below the age of 18, according to the Child Marriage Restraint Act.

#### ***Juvenile justice and claim of juvenility***

The Juvenile Justice (Care and Protection of Children) Act 2000 is a legislation that conforms to the United Nations Minimum Standards for Administration of Justice to Children. It is an Act to consolidate and amend the law relating to juveniles in conflict with the law and children in need of care and protection, by providing for proper care, protection and treatment, by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children, and for

Sudharak Olwe



their ultimate rehabilitation through various institutions established under this enactment. Under the 2000 Act, juvenile means a boy or a girl who has not attained the age of 18 years.

Under the Juvenile Justice (Care and Protection of Children) Amendment Act, 2005, the following amendments were introduced and applicable to all cases involving detention, prosecution or sentence of imprisonment of juveniles under any such law:

- “Juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed his 18th year as on the date of the offence being committed.
- Whenever a claim of juvenility is raised before any court, or a court is of the opinion that the accused person produced before it was a juvenile on the day the offence was committed, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of the person, and shall record a finding as to whether or not the person is a juvenile or a child, stating his age as nearly as may be.
- An important provision is that a claim of juvenility may be raised before any court and it shall be recognised at any stage even after disposal of the case in terms of the provisions. If the court finds a person to be a juvenile on the day the offence was committed, it shall forward the juvenile to the Board.

It has been observed that, in many instances, if the police that takes a child 'into custody' finds the child well-built he is considered an 'adult' and denied the beneficial provisions of the juvenile justice system.

#### **Minimum Age of Criminal Responsibility (MACR)**

The legal definition of a child will also affect how the courts deal with offenders, so age is very significant here. A person who is a minor or a child cannot be convicted in the same manner as an adult.

For instance, if a juvenile is accused of an offence under the provisions of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, he is entitled to necessary benefits under the special enactment of the Juvenile Justice Act.

If there is legislation dealing with the criminal liability of minors, the accused should not be tried under the ordinary law for adults. Children have to be dealt with under the juvenile justice system and not the adult criminal justice system. Children can never be imprisoned or given the death sentence.

#### **Age verification of rescued victims of trafficking**

The age of a rescued victim is an important factor in law enforcement and justice delivery. Anyone under 18 years is a child under the Juvenile Justice Act 2000 and cannot be sent to jail. He has to be looked after in a home and treated according to the provisions of the Juvenile Justice Act.

There are several anomalies relating to the issue of age verification of trafficked minor girls after rescue. The Indian Penal Code, 1860, states that sexual intercourse with a girl-child under 16 years of age, even with her consent, constitutes an offence of

rape under Section 375 of the IPC. Under Section 366 (A), procurement of a minor girl below 18 years of age is an offence. Under Section 366 (B), importation of girls less than 21 years of age from the state of Jammu and Kashmir to any other state, or from a foreign country to anywhere in India, is an offence. Under Section 372 and 373 of the IPC, selling/buying of minor girls below 18 years of age for purposes of prostitution, etc, is an offence.

It has been found, however, that traffickers, brothel owners, etc, make sure that the age of the rescued minor is entered as 18 years or above, making her an adult in the records. So, when they are sent to jail, the traffickers/brothel owners bail them out and the victims are returned to their effective confinement.

There is a need to ensure the accountability of doctors who carry out age verification. Also of police officers who record the age immediately after a rescue. Age verification reports usually place the victims within an age bracket. There are countless police records where the age of the girl is recorded as “appears to be of 18-19 years of age”. Even medical examinations place the age within a bracket. The Supreme Court has held that when the expert's opinion is given in an age bracket, the lower age in the bracket should be the one taken into consideration, so that the benefit of the doubt favours the victim. Therefore, if the age verification report says that the girl is in the age bracket 17-19 years, for the purposes of law enforcement the age has to be taken as 17 years.

#### **Age of consent for sexual intercourse**

In India, the law considers anyone less than 18 years to be a child/minor, not competent to take major decisions affecting herself or others for the purposes of the Indian Majority Act, Contract Act, Juvenile Justice Act, Child Marriage Restraint Act, or Representation of Peoples Act. However, under Section 375 of the Indian Penal Code, the girl (aged 16-18) is given the right of consent to sexual intercourse. Yet, she cannot marry at that age even with the consent of her parents. She cannot be taken out of the keeping of her lawful guardian, even with her consent, for lesser purposes. But she can consent to sexual intercourse so long as she does not go out of the keeping of her lawful guardian. The Law Commission of India did attempt, in its 84th report, to bring the age of consent in rape to 18 years, in tune with other enactments and consistent with refined and modern notions regarding the concern and compassion that society should bestow on its younger members. But this was not accepted. As a result, the age of consent in an offence of rape continues to be 16 years even today. Raising the age of consent for sexual intercourse to 18, consistent with the stipulations in subsequent enactments, appears to be the unavoidable imperative before the system.

#### **Child witnesses**

The courts have held that evidence from a child witness, if found competent to depose facts, could be the basis for a conviction. In other words, even in the absence of an oath, the evidence of a child witness can be considered under Section 118 of the Evidence Act, provided such a witness is able to

Vicky Roy



understand the answers thereof. The evidence of a child witness and credibility would depend on the circumstances of each case. The only precaution the court should bear in mind whilst assessing the evidence of a child witness is that the witness must be reliable, his/her demeanour must be like that of any other competent witness, and that there is no likelihood of him/her being tutored.

Further, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to the questions, because of their young age, extreme old age, or disease — whether of mind or any other similar cause. However, a young child can be allowed to testify if he/she has the intellectual capacity to understand questions and provide rational answers.

While the law recognises the child as a competent witness, a child who is around 6 years old, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the court as a witness whose sole testimony can be relied on without other corroborative evidence. The evidence of a child must be evaluated carefully because he/she is easy prey to tutoring.

The word 'child' has therefore been used in law as a term denoting relationship; as a term indicating capacity; and as a term of special protection. Underlying these alternative specifications are very different concepts about the child. These include considering a child a burden, which invokes the right to

maintenance and support; regarding children as individuals with temporary disabilities, making for rights to special treatment and special discrimination; treating children as specially vulnerable, to ensure rights to protection; and recognising children as resources for the country's development, necessitating nurturing and advancement.

Thus there do not appear to be any criteria or scientific parameters for determining a child: the age limit in some laws appear arbitrary or based on socio-cultural perceptions. The Indian Mines Act defines children as those below 18 years, and the various state Shops and Establishment Acts define the age as between 12-15 years.

It is necessary that the definition of 'child' be brought in line with the Convention on the Rights of the Child — viz all those below 18 years of age. If the best interest of the child is the guiding norm, one can err on the side of a higher age limit for protective care and a lower age limit with respect to civil and cultural matters. A review of the definition of 'child', in light of Article 1 of the CRC, has been referred to the Law Commission of India as part of a comprehensive review of the Code of Criminal Procedure, the Indian Evidence Act and the Indian Penal Code.

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## 'Nitharis will happen until child rights become the focus of national policy'

In the rights-based approach, children are viewed as citizens, entitled to all that has been promised to them under the Constitution of India and the United Nations Child Rights Charter, rather than as objects of sympathy or charity, says CRY CEO Ingrid Srinath. But the Government of India's approach to children, she says, continues to be piecemeal — a bit of welfare, a dollop of rights, and large scoops of reactivity

LISA BATIWALLA

### What do you feel are the most important child rights issues at the moment, especially in the context of the crimes against children in Nithari?

Nithari (a small urban village on the outskirts of Noida near Delhi, where at least 38 children have gone missing over two years, many of them allegedly sexually abused and murdered) is yet another symptom of the larger malaise in Indian society, which ignores and makes invisible the rights of the marginalised until a situation with shock value attracts prurient media interest. All over our country, millions of children are abused, exploited and deprived of the bare necessities of life, every single day. In each case, this is because their families are economically, socially and politically marginalised.

Lasting change for children can only occur when child rights in their entirety become the focus of national policy, and decision-making replaces the platitudes mouthed for short-term political gain. Caste, gender and communalism, in particular, are at the root of most of the deprivation we encounter in our work. The feudal nexus between the wealthy and powerful and the State in all its forms prevents real change from becoming a reality.

Overall, the child's right to survival is a key concern — maternal health is a key determinant of infant health, female foeticide and infanticide, malnutrition, and the availability and quality of healthcare services. There has actually been a decline in government services offered in everything from the Integrated Child Development Services (ICDS) scheme to Primary Healthcare Centres (PHCs). For example, women in Thane (self-help groups) are being expected to fund the ICDS programme. On the one hand you advocate community participation but on the other that has become an excuse for the government to completely absolve itself of the responsibility of running these services.

### What does the 'rights-based approach' mean in the context of child rights?

The rights approach recognises children as citizens who are entitled to all that has been promised to them under the Constitution of India and by the United Nations Child Rights Charter, rather than as objects of sympathy or charity. For CRY (Child Rights and You) that entails four things: looking at children's issues in their entirety, rather than through the narrow prisms of education, health, child labour, child abuse, foeticide/infanticide, etc; seeking the underlying root causes of the deprivation — gender, caste, livelihoods, displacement, mis-governance, etc; mobilising each local community to find long-

term solutions to these problems by ensuring the relevant laws and policies that guarantee their rights are actually implemented. And, lastly, catalysing coalitions of individuals and organisations across all sectors of society to advocate for child-rights-centric State policies.

But it was only in 2006 that CRY decided to adopt the rights-based approach, which led to the change in name to Child Rights and You from the well-established Child Relief and You.

Donors are stuck in sympathy mode. CRY has never done sympathy. However, now we are looking to bring an attitudinal change to the whole business of children's issues, from charity-focused to issue-based support. If this approach means getting less donor support, that's a risk I'm willing to take in the interest of bringing about long-term changes in donors' mindsets.

CRY's NGO partners have been transitioning to a rights-based approach for over a decade. In Ghorawal, Uttar Pradesh, for instance, our partner, Child Welfare Society (CWS), has helped the adivasi community successfully achieve minimum wages and sustainable livelihoods and so liberate their children from bonded labour. They have successfully restored land to the community and enabled them to get real representation in local governance. CWS is just one of almost 200 such CRY initiatives across 20 states.

The thing is, how do you scale that up, how do you build a coalition of communities everywhere — of the marginalised, the middle class, media, bureaucrats, the administration, judges, the corporate sector and so on — that can be persuaded to actually work together. We think child rights should be a national priority. Millions of children are dying every year before they reach their fifth birthday: that's a national calamity on a scale much bigger than the tsunami and everything else put together.

Our methods will be largely the same as before — advertising, direct mailing, events, the Internet. It will be the same media-type advocacy, but focusing all these methods into a rights-based message rather than a relief message.

During the last parliamentary elections in 2004, for instance, CRY mobilised lakhs of individuals across all sections of society to advocate for a children's manifesto. Many of these demands found representation in the United Progressive Alliance (UPA) government's Common Minimum Programme. The approach was replicated in the recent municipal elections in Mumbai and

"Millions of children are dying every year before they reach their fifth birthday: that's a national calamity on a scale much bigger than the tsunami and everything else put together"

state elections in Manipur.

Similarly, CRY's disaster-relief interventions in Gujarat, in south India and in Kashmir have focused on ensuring that relief and rehabilitation reach the most marginalised communities; that children are protected from trafficking and abuse; and that education, healthcare and long-term livelihoods are ensured for affected children and their families.

**Does a focus on rights advocacy mean a departure from care and delivery services?**

No. You need direct action in the here and now, in the form of *balwadis*, you need the community mobilisation component, but you also need the advocacy. What has changed is how we approach the middle classes, in terms of what we're asking them to do. Until now, in many ways, it hasn't really been about volunteerism, it's primarily been about them giving up money. For example, we set up these community action groups in the five cities where we've got a range of people, educated urban middle class, slum-dwellers, professionals — the entire microcosm of that community — coming together to see what our issues are and how we are going to deal with them collectively, not as adversaries, as urban middle class vs slum-dwellers' associations. Some of these groups are working on identifying how many children in their neighbourhoods are in school, or not, why, what their conditions are, how they can improve them, or using the right to information to get better services from the government.

The response you or I would get if we started asking questions in a government school is very different from the answer a parent of one of these students would get. It's about getting them to see that any solution that gives priority to one group's concerns over the others is inherently unsustainable.

**Does CRY's idea of rights-based work involve the participation of children as stakeholders? If yes, how is it being effected?**

Eliciting genuine participation from children in securing their rights, rather than tokenism, is extremely difficult. CRY works

with children and youth in marginalised communities through our NGO partners. Some examples of this are the *kumari dals* at Rachana, in Pune, which are actively engaged in ensuring their own rights by preventing child marriage and abuse in their community.

In Jharkhand, tribal children are actively promoting forest conservation as part of the *Jungle Bachao Andolan*, and in Diksha, in Kolkata, children in the city's red-light district work together to protect each other from exploitation and abuse. CRY also works directly with middle class children in schools and colleges in five cities — Mumbai, Delhi, Kolkata, Chennai and Bangalore — to sensitise and mobilise them as advocates for child rights.

**What action has the government taken on the Charter on Child Rights and on the proposed National Commission for Protection of Child Rights?**

The Government of India's approach to children is piecemeal — a bit of welfare, a dollop of rights, and large scoops of reactivity. Knee-jerk responses and window-dressing rather than thought-through strategies. Thus, while a commission is set up and a charter drafted, the policy framework of the early-1970s that defines all decision-making about and for children has never even been reviewed.

The present conception of the National Commission for Protection of Child Rights is flawed. In its current form, it will be one more government agency jousting for space and funds on behalf of children. The commission will report to the central government, not Parliament. This makes it vulnerable to becoming a puppet of ruling governments and taking stances based on populism rather than principles.

One positive aspect of the commission is that it has the remit to take the entire Constitution as the base for expanding the understanding of child rights. The question is, will the commissioners be willing to do this?

**What do you think about Minister of Women and Child Welfare Renuka Chowdhury's recent announcement of the Palna scheme for girl-children as a way to prevent sex-selective abortions and infanticide?**

Female foeticide and infanticide will only be truly addressed when families value their daughters as much as their sons. This requires more fundamental change in gender relations within Indian society. In the interim, families need to be empowered to care for their daughters. The Palna scheme is another half-baked scheme that deprives girls of their right to a family without addressing the root causes of their situation. In fact, one could say it legitimises the prevalent gender bias that consigns girls and women to second-class status at all levels of Indian society.

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*Lisa Batiwalla is an independent journalist who reports on issues related to social justice*

## Stumbling from the start

The Achievements of Babies and Children (ABC) index measures four very basic aspects of child wellbeing — survival, immunisation, nutrition and schooling. India scores no more than 66% overall. But states such as Tamil Nadu and Himachal Pradesh, and even Sri Lanka and Bangladesh, have made rapid strides in child development

IT HAS BEEN SUGGESTED that the first question the Indian prime minister should ask his ministers is not, “How is the economy growing,” but “How are children growing”. The ministers, however, would probably rather answer the former, for the state of Indian children is nothing short of a humanitarian emergency. Few countries, in fact, have worse indicators of child development. Progress in this field has been very slow, with countries like Bangladesh 'overtaking' India during the last few years. This crisis casts a deep shadow on India's progress in other fields.

The average Indian child gets a rather poor start in life. Even before birth, he or she is headed for disaster due to poor antenatal care and maternal undernutrition. About one-third of expectant mothers in India are deprived of tetanus vaccinations, an important defence against infection at birth. Similarly, about one-fourth of pregnant women do not have a single antenatal checkup, and a majority of deliveries take place without the assistance of a health professional (Table 1). Worse, the average Indian mother is frail and anaemic. This is likely to result in low birth weight, a major cause of child undernutrition.

After birth, life continues to be precarious. About one-third of all newborn babies in India weigh less than the acceptable minimum of 2.5 kg. Undernutrition levels continue to increase during the first two years of life, largely due to poor

breastfeeding and faulty weaning. About half of all children below 3 are undernourished, more than half are deprived of full immunisation, and a large majority suffer from anaemia (Table 2). Illness is also widespread, with a fifth of all children suffering from diarrhoea and almost a third suffering from fever. A substantial proportion of Indian children (about one-tenth) never reach the age of 5.

As children grow up, poor nutrition and ill health affects their learning abilities and preparedness for schooling. In 1998-99, almost one-third of all children in the 15-19 age-group failed to complete Class 5, and half did not complete Class 8. So much for the 'fundamental right to education'! By the time Indian children are supposed to complete upper primary school, many of them have actually been pushed into the labour force, further ruining their health by working long hours

India: Maternal health and related indicators		
	1998-99 (NFHS-2)	2005-06 (NFHS-3)
Proportion (%) of mothers who had*:		
No tetanus immunisation during pregnancy	33	NA
No antenatal checkup	34	*
No iron or folic supplement	42	NA
No assistance from a health professional during delivery	58	*
Proportion (%) of adult women with:		
Anaemia	52	*
Body Mass Index (BMI) below 18.5	36	*
* Data pertains to births during three years preceding the survey		
Source: National Family Health Survey 1998-99 (NFHS-2) and National Family Health Survey 2005-06 (NFHS-3) data presented in the International Institute for Population Sciences (2000, 2006); also available at <a href="http://www.nfhsindia.org">www.nfhsindia.org</a> . The figures apply to ever-married women in the age-group 15-49 years		

State of India's children		
	1998-99 (NFHS-2)	2005-06 (NFHS-3)
Proportion (%) of young children with the following characteristics:		
Low birth weight		
Not breastfed within an hour after birth	84	*
Undernourished*	47	46
Stunted*	45	*
Wasted*	16	*
Not fully vaccinated+	58	56
Not vaccinated at all+	14	NA
Birth was not preceded by any antenatal checkup	34	*
Suffer from anaemia	74	79
Proportion (%) of young children who suffered from the following, during the last two weeks:		
Fever	30	NA
Diarrhoea	19	NA
Acute respiratory infection	19	NA
* Based on standard anthropometric indicators: weight-for-age for 'undernourished', height-for-age for 'stunted', weight-for-height for 'wasted'		
+ Age: 12-23 months		
Source: National Family Health Survey. Unless stated otherwise, the reference group consists of children aged below 3 years (excluding children aged below 6 months, if appropriate). For 'low birth weight', the estimate is from Human Development Report 2006		

in harsh conditions.

In short, millions of Indian children are condemned to stumble right from the start. During the first six years of life, and especially the first two, they sink into a dreadful trap of undernutrition, ill health and poor learning abilities. This burden is extremely difficult to overcome in later years.

### Slow progress

Another disturbing aspect of this situation is that the rate of improvement over time is also very slow. Extreme forms of hunger and undernutrition, such as marasmus and kwashiorkor, have sharply declined over the years. But the general progress of nutrition indicators (such as the height and weight of Indian children) is sluggish.

The findings of the third National Family Health Survey (NFHS-3), released just a few days before the completion of this abridged report, are quite alarming in this regard. For instance, the proportion of undernourished children, based on standard weight-for-age criteria, was virtually the same in 2005-06 as in 1998-99: in both years, nearly half of all Indian children were underweight. Even the decline of stunting in that period, from 45% to 38%, is far from impressive — about one percentage point per year. If the incidence of stunting continues to decline at this rate, it will take another 25 years or so to reach levels similar to those in China today.

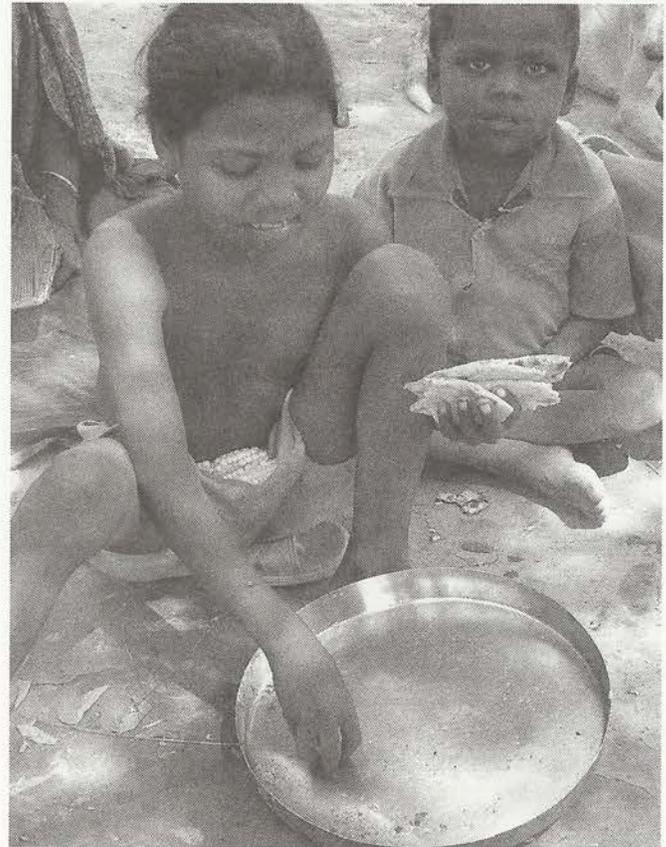
Health-related indicators from the third National Family Health Survey are no less disturbing. For instance, they suggest that child immunisation rates were much the same in 2005-06 as in 1998-99 (Table 2). The incidence of anaemia among children was also similar in both years; in fact, it was a little higher in 2005-06, according to the available NFHS-3 data. While some indicators have improved, the general pace of change is excruciatingly slow — much slower, for instance, than in neighbouring Bangladesh.

Similar concerns arise if we look at mortality indicators. In India, as in most other countries, the infant mortality rate has steadily declined during the last 50 years or so: from about 150 per 1,000 live births in the late-1950s, to 60 or so per 1,000 today. However, the decline in infant mortality slowed down significantly in the '90s, compared with earlier decades. Although the rate of decline seems to have picked up again during the last few years, the overall progress made since 1990 is limited compared to many other countries.

This slow progress in the field of child health and nutrition is all the more striking as the Indian economy is one of the fastest-growing economies in the world. In the last 15 years, India's GDP has been growing at around 6% per year, on average, and per-capita income has more than doubled. Few countries have had it so good as far as economic growth is concerned. Yet, progress on child development indicators has been much slower in India than in many countries with comparable or even much lower rates of economic growth.

### India and South Asia

When India is compared with other countries, the comparison



Desmond Roberts

is usually made with 'big' countries — say China or the United States. Yet there is a great deal to learn from looking around us within South Asia, especially in matters of nutrition and health. Far from being 'backward' in comparison with India, other South Asian countries are generally doing better than India in this field (see Table 3). It may come as a shock to learn that India has the lowest child immunisation rate in South Asia. For instance, the proportion of children who have not had a BCG vaccine in India is twice as high as in Nepal, more than five times as high as in Bangladesh, and almost 30 times as high as in Sri Lanka! Turning to child undernutrition, India emerges in a poor light again, with only Nepal doing worse. And despite its sophisticated medical system and vast army of doctors, India has not been able to achieve higher rates of child survival than any of its neighbours except Pakistan. Almost any 'summary index' of these child development indicators would place India at the bottom of this list of countries.

Some aspects of this picture are relatively well-known. For instance, Sri Lanka's outstanding achievements in the field of child health have been widely noted. In spite of being almost as poor as India, in terms of per-capita income, Sri Lanka has an infant mortality rate of only 12 per 1,000 — less than one-fifth of India's (about 62 per 1,000). Similarly, child immunisation is virtually universal in Sri Lanka, in sharp contrast with India where this is still a distant goal (Table 3). What is less well known is that Sri Lanka's success in this field is largely based on public intervention. Free and universal provision of essential

	Bangladesh	Bhutan	India	Nepal	Pakistan	Sri Lanka
Immunisation (% of children under 3 years who have not received the stated vaccine)						
BCG	5	8	27	15	20	1
DTP3	15	11	36	20	35	3
MCV	23	13	44	27	33	4
Pol3	15	10	30	20	35	3
Child undernutrition (% of children with the stated condition)						
Underweight	48	19	47	48	38	29
Stunting	43	40	46	51	37	14
Wasting	13	3	16	10	13	14
Infant and child mortality (per 1,000 live births)						
Infant mortality rate	56	67	62	59	80	12
Under-5 mortality rate	77	80	85	76	101	14

Source: Unicef (2006), 'State of the World's Children'

services, especially in health and education, became an important feature of social policy in Sri Lanka at an early stage of development. For instance, most children in Sri Lanka have been integrated in a common schooling system of reasonable quality, under government auspices. In fact, private schools have been banned since the 1960s, up to the secondary level. Indian readers may also be surprised to hear that in Sri Lanka “few people live more than 1.4 km away from the nearest health centre” (Oxfam International, 2006). The fact that Sri Lankan children are doing so well in comparison with their Indian siblings is no accident — it reflects highly divergent levels of public commitment to the wellbeing of children in these two countries.

No less interesting is the contrast between Bangladesh and India. In spite of being poorer (much poorer) than India, Bangladesh has better indicators of child development in many respects, as Tables 3 and 4 illustrate. The contrast in immunisation rates is particularly sharp: the proportion of children who have not been vaccinated is two to five times as high in India as in Bangladesh, depending on which vaccine one looks at. Similarly, infant and child mortality rates are significantly lower in Bangladesh than in India.

It is worth noting that this pattern is a relatively recent development: it is during the last 15 years or so that Bangladesh has 'overtaken' India in this field. While Bangladesh had a much higher infant mortality rate than India in 1990 (91 and 80 per 1,000 live births, respectively), today the positions are reversed: 56 per 1,000 in Bangladesh compared with 62 per 1,000 in India. India has been neatly leapfrogged, that too during a period when economic growth was much faster in India than in Bangladesh.

It is also worth noting that the contrast between India and other South Asian countries would be even sharper if we were to focus on deprived regions or communities in each country, instead of national averages. This is because internal inequalities are typically larger in India. Other South Asian countries tend to be less 'heterogeneous', not only in terms of regional differences

	India	Bangladesh
Infant mortality rate (per 1,000 live births)	62	56
Proportion (%) of 1-year-olds immunised		
BCG	73	95
Measles	56	77
Proportion (%) of undernourished children, 1995-2003*		
Based on weight-for-age	49	48
Based on height-for-age	45	43
Estimated maternal mortality rate, 2000 (per 100,000 live births)	540	380
Net primary enrolment ratio (female) (%)	87	95
GDP per capita (PPP US \$)	3,139	1,870

\* Data refers to the most recent year for which estimates are available during this period

Source: Human Development Report 2006. Unless stated otherwise, the reference year is 2004

but also in terms of socio-economic inequalities. It is doubtful whether any country in South Asia (other than India) has substantial pockets where children live in such dreadful conditions as, say, among the Musahars of Bihar or the Sahariyas of Madhya Pradesh. And it is worth remembering that the Musahars alone represent a population of about 2.5 million — more than the entire population of Bhutan, or for that matter of 45 of the 177 countries listed in the latest Human Development Report.

### Regional contrasts

National averages often hide major disparities between regions and socio-economic groups. This is particularly the case in a country like India, which is so large and so diverse. To illustrate, consider the immunisation rates as reported in the second National Family Health Survey (1998-99). For a child born in Tamil Nadu, the chance of being fully immunised by age 1 is around 90% (even higher among privileged Tamil families). But, chances of being fully immunised are only 42% for the average Indian child, dropping further to 26% for the average scheduled tribe child, and a shocking 11% for the average Bihari child. When different sources of disadvantage (relating, for instance, to class, caste and gender) are combined, immunisation rates dip to abysmally low levels. For instance, among scheduled tribe children in Bihar, only 4% are fully immunised and 38% have not been immunised at all. Startling disparities can also be observed in other aspects of child development.

Regional disparities are further explored in Table 5, based on NFHS-2 data. The table focuses on four crucial aspects of the wellbeing of children: survival, immunisation, nutrition and schooling (their SINS, if you like). For each of these, a standard indicator has been chosen (other indicators could have been used, but the choice does not matter much for our purpose). Each indicator is measured in percentage terms, and can be roughly interpreted as the 'probability' that an average child in

the relevant state achieves a particular goal: survival until age 5, full immunisation, adequate nourishment, and school participation, respectively. In the last column, we present a simple 'summary index' of child development, based on these four indicators. This index is an average of the four indicators. To stress the vital importance of the achievements reflected in this index, we call it the 'Achievements of Babies and Children' (ABC) index.

In interpreting the index, it is useful to remember that we are focusing here on very basic achievements of Indian children, as the acronym indicates. Ideally, we would like every child (or almost every child — nothing is perfect!) to survive until the age of 5, be fully immunised, well nourished, and go to school. In that case, the ABC index would be close to 100% — full marks. As Table 5 shows, however, this ideal situation is nowhere near being realised in any Indian state, even Kerala, the trailblazer in this field. At the bottom of the scale, the ABC index is barely 50% for the states formerly known (somewhat unkindly) as BIMARU states — Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh. Roughly speaking, this corresponds to a situation where the average child in these states achieves only half of the four elementary goals examined in Table 5.

One will perhaps not be surprised to see Kerala at the top of this ranking, since Kerala is well known for its achievements in the fields of health and education, which have a long history. However, it is interesting to note that Kerala is no longer "way ahead" of all the other states, as it once used to be. Further, the states that are "catching up" with Kerala do not seem to be doing it on the basis of economic growth alone. If the achievements of babies and children were driven by economic success, we would expect Punjab and Haryana (India's most prosperous states) to be ahead of the other states. But, in fact, Punjab and Haryana rank fourth and sixth, respectively, in terms of the ABC index. Both have been overtaken by Tamil Nadu and Himachal Pradesh, which are now quite close to Kerala as far as child development is concerned.

There is an important pointer here to the role of public action in this field. Indeed, both Tamil Nadu and Himachal Pradesh have made serious efforts to ensure that all citizens have access to basic health, nutrition and education services. In Himachal Pradesh, for instance, a "schooling revolution" of sorts has taken place in the last few decades. Widely considered as an educationally "backward" state not so long ago, Himachal Pradesh has rapidly caught up with Kerala, based on active state promotion of elementary education. In 1998-99, school attendance rates in the 6-14 age-group were as high as 99% and 97% for boys and girls respectively, compared with 97% for both in Kerala.

This schooling revolution, together with related social initiatives, has not only led to a dramatic increase in education levels, it has also (more recently) paved the way for rapid advances in other fields including health and nutrition. Himachal Pradesh's high ABC index is one manifestation of this general pattern of accelerated social progress based on public intervention.

Though Tamil Nadu has not been as successful as Himachal Pradesh in the field of elementary education, it has an

Selected child development indicators*					
State	Survival (% of children who survive to age 5)	Immunisation (% of children who are fully immunised)	Nutrition (% of children who are not underweight)	Schooling (% of children who attend school)	'Achievements of Babies and Children' (ABC) index
Kerala	98.1	80	73	97	87.0
Tamil Nadu	93.7	89	63	92	84.4
Himachal Pradesh	95.8	83	56	98	83.2
Punjab	92.8	72	71	91	81.7
Maharashtra	94.2	78	50	93	78.8
Haryana	92.3	63	65	89	77.3
Jammu and Kashmir	92.0	57	66	84	74.8
Karnataka	93.0	60	56	80	72.3
Andhra Pradesh	91.6	59	62	76	72.2
Gujarat	91.5	53	55	78	69.4
West Bengal	93.2	44	51	87	68.8
INDIA	90.5	42	53	79	66.1
Orissa	89.6	44	46	79	64.7
Assam	91.1	17	64	77	62.3
Uttar Pradesh+	87.8	21	48	77	58.5
Rajasthan	88.5	17	49	76	57.6
Madhya Pradesh+	86.2	22	45	76	57.3
Bihar+	89.5	11	46	63	52.4

\*Age-groups: 12-23 months for immunisation; below 3 years for nutrition; 6-14 years for schooling

+ Undivided (for example, including Jharkhand in the case of Bihar)

Note: The ABC index is an unweighted average of the four indicators (for further discussion, see text). States are ranked in descending order of the index

outstanding record of active state involvement in the provision of health and nutrition services. For instance, Tamil Nadu was the first state to introduce cooked midday meals in primary schools, way back in 1982 — almost 20 years before the Supreme Court nudged other states in the same direction. Tamil Nadu also has an outstanding network of anganwadis. Here again it is not an accident that Tamil children are doing relatively well; nor is it due primarily to economic growth. Rather, it reflects concerted efforts to provide children with the 'opportunities and facilities' that are due to them under the Constitution.

At the other end of the scale, the dismal levels of child development in Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh reflect a long history of public apathy towards the wellbeing of children in these states. In some of these states, or their 'offspring' (Chhattisgarh, Jharkhand and Uttaranchal), there have been positive signs of change in recent years. For instance, Chhattisgarh launched an innovative community health programme (the Mitani programme) in 2001-02 and recent evidence suggests that this programme may be having a significant impact on child health. However, the general level of attention to children's rights and wellbeing in these states remains abysmally low.

Excerpted from 'Focus On Children Under Six (FOCUS)', published by Citizens' Initiative for the Rights of Children Under Six

## Childcare as a social responsibility

The rights approach, which led to wider acknowledgement of elementary education as a fundamental right, contributed to the rapid expansion of school education in the 1990s. The rights approach should also be used to ensure the survival and wellbeing of children under 6, by demanding universalisation of the Integrated Child Development Services, the only major national programme aimed at this age-group

JEAN DREZE

MOST INDIAN CHILDREN are left to their own devices until the age of 6, when they are finally herded into school. Yet the first six years of life (and especially the first two years) have a decisive and lasting influence on a child's health, wellbeing, aptitude and opportunities. The consequences of this neglect are staring us in the face: about half of all Indian children are undernourished, more than half suffer from anaemia, and a similar proportion escape 'full immunisation'. Few countries have such disastrous indicators of child wellbeing. According to the latest Human Development Report, India has the highest proportion of undernourished children in the world, along with Bangladesh, Ethiopia and Nepal. In fact, in terms of the general situation of children, even Bangladesh now seems to be doing better than India. This contrast is all the more striking as Bangladesh is poorer — much poorer — than India.

Some time ago I attended a conference in a village in Kerala. The conference was a little boring, and, as a diversion, I visited the nearest anganwadi (childcare centre). It was located in a tidy and spacious building, well furnished with toys, charts, cooking utensils, a medical kit, a ceiling fan, even a smokeless chulha. The children, I was told, were given a glass of milk on their arrival in the morning, a full meal at noon, and some upma before they left at around 3 pm. There were also well-rehearsed routines for immunisation, de-worming, growth monitoring, micronutrient supplementation and health checkups. Details of the age, weight, height and immunisation status of every child in the neighbourhood were neatly posted on the walls. The registers, including detailed 'minutes' of monthly meetings with the children's mothers, were in good order. When I asked the anganwadi worker how many anganwadis there were in the gram panchayat, she casually replied "twenty-five". She said that about 90% of children below 6 years of age were enrolled in these anganwadis.

It is perhaps not an accident that Kerala has the best indicators of child wellbeing among all the Indian states, by a long margin. In other states, early childcare and development services (hereafter 'child development services') are grossly neglected.

Against this background, there is an urgent need to re-examine what India is doing for the survival, wellbeing and rights of children under the age of 6. Ultimately, this involves addressing the structural roots of child deprivation, including mass poverty, social discrimination, lack of education, and gender inequality. However, there is also an immediate need to protect children

under 6, by integrating them in an effective system of child development services that leaves no child behind. The best way of doing this is to universalise the Integrated Child Development Services (ICDS), the only major national programme addressing this age-group.

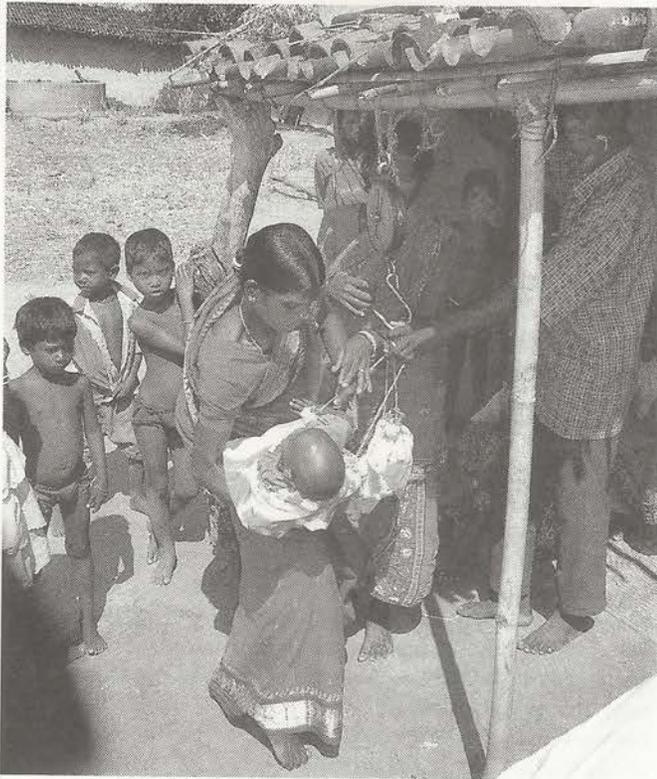
The quality of ICDS also needs to be radically enhanced. In other words, what is required is not just universalisation but "universalisation with quality". A more complete expression would be "universalisation with quality and equity". This stresses the need to prioritise underprivileged groups (for example, dalit and adivasi communities) in the process of universalisation, as well as to eradicate social discrimination of any kind in the implementation of ICDS.

### A rights perspective on ICDS

The value of a 'rights approach' to social development has been well demonstrated in recent years. Wider acknowledgement of elementary education as a fundamental right (recently expressed in the 86th constitutional amendment) has contributed to the rapid expansion of school education in the 1990s, evident in age-specific literacy data from the 1991 and 2001 censuses. The Right to Information Act 2005 has lifted the veil of secrecy from government documents, a major step towards restoring accountability in public life. Supreme Court orders on the right to food have forced the government to take major initiatives in this field, such as the provision of cooked midday meals in primary schools. Similarly, the National Rural Employment Guarantee Act has empowered rural labourers and reversed the long-standing neglect of rural employment in public policy.

In the light of these experiences, there is a case for more active use of the rights approach in the context of children's issues, including the survival and wellbeing of children under 6. Children's rights are not, of course, a new idea. The idea is conveyed in the Indian Constitution, notably Article 39 (f), which directs the State to ensure that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity". This Article belongs to the Directive Principles, and should be read along with Article 37, which states that these principles are "fundamental to the governance of the country," and that "it shall be the duty of the State to apply these principles in making laws". As Article 39 (f) illustrates, the Directive Principles (largely due to Dr Ambedkar) include a visionary emphasis on 'positive freedoms'. The

Desmond Roberts



government's formal commitment to child rights and positive freedoms was further affirmed in the international Convention on the Rights of the Child. In practice, however, little has been done to protect and promote the positive freedoms of children as a matter of right.

The primary role of the rights approach is to change public perceptions of what is due to Indian children. In particular, the rights approach can help to put children's issues on the political agenda, and to forge new social norms on these issues. To illustrate, the recent recognition of elementary education as a fundamental right of every child has helped to dispel the resilient notion that education is 'unnecessary' for some sections of society. A similar consensus needs to be built regarding the rights and entitlements of children under 6.

Aside from its political value, the rights perspective has practical implications for public policy on child development services. First, this perspective is the main foundation of the demand for 'universal' child development services. Indeed, one implication of the rights approach is that *all* children are entitled to certain "opportunities and facilities" (as the Constitution puts it) that do not have to be justified on a case-by-case basis, let alone submitted to cost-benefit tests. The main role of ICDS is to act as an institutional medium for the provision of these facilities.

Second, the rights perspective points to the need for strong monitoring and redressal mechanisms, so that people are able to claim their entitlements. There are few redressal mechanisms in the present scheme of things. In some states, for instance, nutrition programmes under ICDS have been interrupted for months at a time without any action being taken. One reason

for this apathy is that these services are regarded as a form of state largesse, rather than as enforceable entitlements.

Last but not least, the rights perspective highlights the possibility of putting in place legal safeguards for children's rights. Many Indian laws, of course, deal with children's rights in one way or another. But these legislative provisions tend to be of a 'negative' kind, in the sense that they are aimed at protecting children from various evils (such as child labour or child marriage), rather than at guaranteeing the positive "opportunities and facilities" mentioned in Article 39 (f). The proposed Right to Education Bill, flawed as it may be, is an example of the sort of legislation required to guarantee positive freedoms to Indian children. More can be done in this respect, including similar legislation for children under the age of 6.

Needless to say, the protection of children's rights involves much more than better laws and policies relating to "child development services". It also calls for far-reaching action in fields such as elementary education, gender relations and even property rights. Nevertheless, the universalisation of ICDS has a crucial role to play in this context.

#### Universalisation with quality

In concrete terms, what does "universalisation with quality" mean? It means that (1) every settlement should have a functional anganwadi, (2) ICDS should be extended to all children under the age of 6 (and all eligible women), and (3) the scope and quality of these services should be radically enhanced.

ICDS is the only major national programme that addresses the needs of children under 6. It seeks to provide young children with an integrated package of services relating to nutrition, health and pre-school education. Because the needs of a child cannot be addressed in isolation from those of his or her mother, the programme also extends to pregnant women, nursing mothers and adolescent girls.

Basic ICDS include supplementary nutrition, growth monitoring, nutrition counselling, health education, immunisation, healthcare, referral services, and pre-school education. These services are provided through a vast network of ICDS centres, better known as anganwadis. Each anganwadi is managed by an anganwadi worker, assisted by an anganwadi helper. An anganwadi is supposed to cover a population of about 1,000 people — roughly 200 families.

The coverage of ICDS has steadily expanded since its inception in 1975. Today, the programme is operational in almost every block, and the country has more than 700,000 anganwadis. However, the effective coverage of ICDS remains limited: barely one-fourth of all children under 6 are covered under the supplementary nutrition component.

The basic premise of the demand for universalisation of ICDS is that all children have a right to nutrition, health, pre-school education and related opportunities. The anganwadi is an institutional medium to protect these rights, or at least to bring them within the realm of possibility. There are at least four other arguments in favour of universalisation: a legal argument, a

political argument, an economic argument and an equity argument.

The legal argument is that, like midday meals in primary schools, the universalisation of ICDS is mandatory under Supreme Court orders. On November 28, 2001, the court directed the government to ensure that every settlement has a functional anganwadi, and that ICDS is extended to all children under 6, all pregnant or lactating women, and all adolescent girls. This order was reiterated and extended on April 29 and October 7, 2004, along with further directions on ICDS. The latest Supreme Court order on ICDS, dated December 13, 2006, goes even further. For instance, it states that an anganwadi should be created “on demand”, within three months, in settlements where there are at least 40 children under 6 years of age.

The political argument is that the universalisation of ICDS is one of the core commitments of the Common Minimum Programme (CMP) of the United Progressive Alliance (UPA) government. The CMP clearly states: “The UPA will also universalise the Integrated Child Development Services (ICDS) scheme to provide a functional anganwadi in every settlement and ensure full coverage for all children.” Thus, aside from being important in its own right, the universalisation of ICDS can be seen as an aspect of the need to hold the government accountable to its promises. It is in this spirit that the National Advisory Council formulated detailed recommendations on ICDS, in line with commitments in the CMP. These recommendations, unfortunately, have had little impact so far.

The economic argument is that providing health and nutrition services to children is a good ‘investment’, so to speak. Many recent studies indicate that the ‘returns’ on child nutrition programmes are quite high, or at least can be quite high. The methods underlying these estimates of economic returns have serious limitations, and the results are at best indicative. Further, one should guard against allowing economic criteria to become the arbiter of public policy in this field. Nevertheless, these studies strengthen the case for a major expansion of child development services in India.

Lastly, there is an equity argument for universalisation. Indeed, the universalisation of ICDS would curb the inter-generational perpetuation of social inequality, by creating more equal opportunities for growth and development in early childhood. It would also foster social equity by creating a space where children eat, play and learn together irrespective of class, caste and gender. This socialisation role of ICDS is very important in a country where social divisions are so resilient.

Taken together, these arguments add up to a fairly strong case for the universalisation of ICDS.

Two counter-arguments should be briefly addressed. One is that ICDS does not and cannot work. It is easy to provide superficial support for this claim by citing horror stories of idle anganwadis or food poisoning. These horror stories, however, are a poor reflection of the general condition of ICDS. Indeed, recent evidence suggests that ICDS is actually performing crucial functions in many states, and that there is much scope for consolidating these achievements.

The recent Focus On Children Under Six (FOCUS) survey sheds some useful light on these issues. The survey was conducted in May-June 2004 in six states: Chhattisgarh, Himachal Pradesh, Maharashtra, Rajasthan, Uttar Pradesh and Tamil Nadu. It involved unannounced visits to a random sample of about 200 anganwadis, and detailed interviews with about 500 mothers with at least one child under the age of 6, enrolled at the local anganwadi. It is encouraging to note that, according to a large majority of the sample mothers, anganwadis open regularly. This is, in fact, consistent with direct observation: nearly 80% of the sample anganwadis were open at the time of the investigators’ unannounced visit. Similarly, 94% of the sample mothers stated that supplementary nutrition was being provided at the anganwadi. Even pre-school education, the weakest component of ICDS, was happening in about half of the sample anganwadis.

This is not to deny that the quality of ICDS is low in many states, and needs urgent improvement. But there is no basis for the claim that ICDS is a non-functional programme. Aside from debunking this myth, the FOCUS survey draws attention to the enormous potential of ICDS. The sensible way to go is to make better use of this potential, given that the foundations of ICDS are already in place throughout the country. To put it another way, opposing the universalisation of ICDS on the grounds that there are serious quality issues in some states would be like saying that primary schools should be closed because schools are not working very well in Bihar, or Kalahandi.

Another counter-argument is that universalisation is unnecessary, even wasteful: instead, public provision of child development services should be “targeted” at disadvantaged children. This advice is based on the familiar case for targeting social services: targeted interventions are more “cost-effective” and also help to reduce inequality. Whatever its relevance in other contexts, this argument has little merit as far as ICDS is concerned. For one thing, there is no reliable way of “targeting” children who are vulnerable to malnutrition or ill health. Indeed, undernourished children are found in all socio-economic groups. Even among relatively privileged households, a substantial proportion of children are undernourished. To look at this from another angle, the causes of malnutrition and ill health are diverse and these deprivations have no obvious, measurable “correlates” that could be used for targeting purposes. Thus, any targeted system is bound to leave large numbers of children exposed to malnutrition and ill health. It would effectively convert ICDS into a “hit-and-miss” programme. This is incompatible with the notion that nutrition, health and pre-school education are the fundamental rights of all Indian children.

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# What does the budget have to do with children?

Everything. Analysing trends in the government's allocation and expenditure on child-specific programmes and schemes is one way of holding the government accountable to its commitment to children. Though the percentage share of children in the Union budget has gone up from 1.2% in the 1990s to 4.91% in 2006-07, there is still quite a gap between need and allocation, and allocation and actual spending

AJAY KUMAR  
SINHA

THE DISPARITIES IN INDIA ARE STARK. Thirty-five per cent of Indians are illiterate and yet India produces millions of highly-skilled global knowledge professionals. The government is celebrating India's "unprecedented high rate of economic growth", huge Foreign Direct Investments (FDIs) and Foreign Institutional Investments (FIIs), and yet thousands of our children are dying of hunger. India has an estimated 440 million children (0-18 years) constituting over 40% of the country's population. Yet their rights continue to be neglected.

Why is this happening? Theoretically, government expenditure and investment are dependent on economic prudence and a vision of the nation's development. But it would appear that it is interest groups and lobbies that have a direct bearing on the vote banks of political parties and the dynamics of the global economy that manage to get their interests addressed. Tribals, women, farmers, unorganised labour in agriculture and various industries don't. But these marginalised groups can at least voice their concerns by virtue of adult franchise and their ability to form groups and associations. Children do not even have a voice and the right to be heard. Their rights are considered either subservient to the rights of other groups or at best part and parcel of adult rights.

When economic reforms were introduced in 1991, the Indian finance minister made it immediately clear that the government "was committed to adjustment with a human face". (1) Despite this, there were apprehensions that the reforms would lead to a decline in social welfare in general and child welfare in particular. Very few comprehensive studies have been done to assess the impact of the reforms specifically on children, (2) and therefore the relationship between reforms and welfare of children is not easy to establish.

The impact of the reforms on children received considerable attention in the late-1980s and early-1990s, especially after the publication of Unicef's *Adjustment with a Human Face* (Cornia, Jolly and Stewart, 1987). Based on experiences in 10 countries, mainly in Latin America, Africa and East Asia, this study showed that adjustment often had very negative effects on the welfare of children. In many countries, there had been deterioration in most indicators of child development during the adjustment period. This was especially so because expenditure on health, nutrition and education had been reduced, and also because unemployment and loss of family income meant that families had less money to spend on their children.

Children have never received much explicit attention in India's

economic policies. (3) They are hardly mentioned in the annual budget speeches, (4) or in other crucial policy documents. This, of course, does not mean that the policies do not affect them. Directly and indirectly, the survival chances, welfare and future of children are affected by macro-economic and policy changes.

How children are affected is, however, not always easy to ascertain. This is so for several reasons. Often policies do not all work in the same direction. In fact, even a relatively coherent set of policies that can be grouped together as 'structural adjustment' can have contradictory effects on children. The effects of policies can also be mitigated or reinforced by other developments. Finally, children themselves do not form a homogeneous group but are differentiated along lines of gender, class, caste, religion, age, etc; different policies may have a different impact on different categories of children.

## Budgeting for child rights

Since India ratified the UNCRC it is obliged to submit periodic reports on its progress on realising the rights of all children to the Committee on the Rights of the Child. Based on its report that came up for review in January 2004, the Committee on the Rights of the Child, in its concluding observations, said:

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

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

*(Thirty-fifth session vide letter No CRC/C/15/Add 228, dated January 30, 2004)*

In India, one out of 16 children die before they attain 1 year of age, and one out of 11 die before they attain 5 years of age. Thirty-five per cent of the developing world's low-birth-weight babies are born in India, and 40% of child malnutrition in the developing world is in India. Out of every 100 children, 19 continue to be out of school. Of those who enrol, many drop out.

This is a gloomy scenario, and there are many children who are

not covered by the programmes/schemes of either the central government or the respective state governments. This sad state of affairs vis-a-vis children in India can be mainly attributed to a lack of State accountability. There are no functional mechanisms to monitor the formulation of programmes/schemes, their budgeting and implementation by the executive, though some avenues are provided for the people of India to monitor the functioning of the executive through elected representatives, that is, the legislature. The United Nations Convention on the Rights of the Child, 1989 (UNCRC, 1989), which India ratified in 1992, also provides avenues for NGOs to monitor State functioning to ensure the rights of children.

Realising the need for a mechanism to monitor the State and hold it accountable vis-a-vis its performance on the rights of children, HAQ: Centre for Child Rights developed a system of child budgeting in India and published its first research-based analysis, 'India's Children and the Union Budget', in 2001. This was an analysis of trends in allocation and expenditure on child-specific programmes/schemes of the Government of India in the post-reforms period spanning 1991-92 to 2000-01.

In an economy where government expenditure in a financial year is only around 12% of the total GDP for that given year, the budget is only a small player in the overall economy and economic policies. But the budget is not just an economic document; it's a reflection of the government's political will and direction. It is an indicator of the government's willingness to translate its commitments into reality. The manner in which the money allocated for programmes/schemes for children is spent also provides an indication of the government's commitment to child rights. In fact, it is a reflection of the whole governance system. Any political commitment, in the absence of adequate financial allocations, would be mere rhetoric rather than reality.

HAQ's 2001 study showed that the average expenditure on children in the '90s was a mere 1.2% of the total Union budget. And, as HAQ categorised expenditure on children into four sectors — child health, child development, child education and children in difficult circumstances — the sectoral spending projected an even grimmer picture. The share of expenditure on children in difficult circumstances was abysmally low, at 0.01% of the total Union budget expenditure (see Table 1). (Note: The children's budget is not a separate budget. It is basically an attempt to disaggregate from the nation's budget what goes into programmes and schemes for the benefit of children.)

Another startling revelation made in HAQ's 2001 study was about underspending in the various schemes for children.

In 1993-94, there was underspending in the elementary education and child development sectors, as well as in the sector relating to children in difficult circumstances (*inter alia* child protection).

#### Underspending in elementary education

There was under-utilisation in 12 out of the 17 elementary education schemes. Some of the important schemes, which show a high rate of underspending, are:

**Table 1: Sector-wise spending on children in the Union budget (6) (1990-1998)**

Year/ Sectors	In percentage				
	Health	Child development	Education	Children in difficult circumstances	Total
1990-91	0.1	0.3	0.2	0.01	0.6
1991-92	0.1	0.3	0.3	0.01	0.7
1992-93	0.1	0.3	0.3	0.01	0.7
1993-94	0.2	0.3	0.2	0.00	0.7
1994-95	0.3	0.4	0.4	0.01	1.0
1995-96	0.3	0.4	0.7	0.02	1.3
1996-97	0.3	0.4	0.8	0.02	1.6
1997-98	0.3	0.4	1.0	0.02	1.8
1998-99	0.2	0.4	1.0	0.01	1.6
Average	0.2	0.4	0.6	0.01	1.2

*Source: Demands for Grants (1990-91 to 2000-2001), Ministry of Human Resource Development, Ministry of Social Justice and Empowerment, Ministry of Labour, Ministry of Health and Family Welfare*

- District Primary Education Programme (DPEP) — 91.3% unspent
- Mahila Samakhya — 80.6% unspent
- Teachers training programme — 95.6% unspent
- Special schools for the disabled — 93.3% unspent

#### Underspending in child development

- Integrated Child Development Services (ICDS) — 11.6% unspent

#### Underspending in child protection

- National Child Labour Project (NCLP) — 99.0% unspent

*Source: HAQ: Centre for Child Rights, 'India's Children and the Union Budget, 2001'*

#### Child budgeting as government's mandate

The annual report of the Department of Women and Child Development (2002-2003) stated: "After gender, the next logical step for the Department of Women and Child Development as a nodal department for women and children is the analysis of public expenditure on children... A pioneering effort was made by HAQ: Centre for Child Rights, in their publication 'India's Children and the Union Budget'."

Since then, the Indian government has taken up child budgeting at the departmental level and, till date, has published three studies on child budgets in the annual reports of the Department of Women and Child Development (2002-03 and 2004-05) and in the annual reports of the Ministry of Women and Child Development (2005-06). (7)

Even as the government took up child budgeting as its mandate and started analysing the budget allocations and expenditure on children, the allocation for children has seen a steady rise over the years (see Tables 2 and 3). But there is still a huge gap between the money needed to fulfil the rights of

India's children and the money promised through budgets, and between allocation and actual expenditure, thanks to incapacities in programme delivery mechanisms.

### Translating outlays into outcomes

In its annual reports of 2002-03 and 2004-05, the ministry has undertaken a series of analyses on child budgeting. In 2004-05, the ministry's report noted that an analysis of expenditure by the Centre and states on children's issues showed an increased commitment although actual expenditure "may however fall short of budgets for reasons like lack of capacity to spend/absorb funds, procedural delays, slackness in implementation" amongst other factors (annual report [2005-06], Ministry of Women and Child Development, Pg 129).

Also, the increase in allocation for children is mainly on account of increased allocations on three programmes — Sarva Shiksha Abhiyan (SSA), the Midday Meal Scheme, and Integrated Child Development Services (ICDS).

Within the total allocation for children, the percentage share for education has gone up at the cost of allocations for child

**Table 2: Percentage share of children in the Union budget (BE)**

Year	Total Union budget (BE) (Rs crore)	Total child budget (BE) (Rs crore)	% share of child budget in Union budget
2003-04	438795.07	10264.23	2.33
2004-05	477829.04	11695.72	2.45
2005-06	514343.80	19841.01	3.86
2006-07	563991.13	27674.58	4.91

Source: GOI expenditure budget 2004-05, 2005-06, 2006-07 (Vols 1 and 2)

**Table 3: Percentage share of sectoral allocation on children in Union budget**

Year	% share of child development in Union budget	% share of child health in Union budget	% share of child education in Union budget	% share of child protection in Union budget	% share of total child budget in Union budget
2003-04	0.490	0.340	1.470	0.030	2.330
2004-05	0.422	0.423	1.567	0.033	2.445
2005-06	0.658	0.527	2.638	0.034	3.857
2006-07	0.830	0.556	3.487	0.034	4.907

Source: GOI expenditure budget 2004-05, 2005-06, 2006-07 (Vols 1 and 2)



Table 4: Percentage share of sectoral allocation in child budget

Year	% share of child development in Union budget	% share of child health in Union budget	% share of child education in Union budget	% share of child protection in Union budget
2003-04	21.30	14.60	62.70	1.30
2004-05	17.25	17.28	64.02	1.36
2005-06	17.40	13.66	68.40	0.89
2006-07	16.92	11.32	71.06	0.70

Source: GOI expenditure budget 2004-05, 2005-06, 2006-07 (Vols 1 and 2)

development, child health and child protection.

The reasons for this can be traced to politics and the politics of economics. Take the allocations for child education. With the inclusion of Article 21A in the Constitution of India in 2002, after the 93rd amendment, the Government of India was under pressure to increase allocations for elementary education. The government did increase the allocation, but compared to the actual requirement there was still a huge shortfall.

The allocation for elementary education in 2001-02 was Rs 3,801.00 crore. It increased to Rs 4,484.40 crore in 2003-04, and Rs 5,766.83 crore in 2004-05. When it increased substantially to Rs 11,219.75 crore it was mainly on account of collection from an education cess of 2% on all central taxes levied through the Finance (No 2) Act, 2004. To increase expenditure on elementary education the Government of India adopted the simplistic method of imposing an additional tax burden on the people instead of looking at other more viable options like collection of tax arrears. Income tax arrears to the tune of nearly Rs 99,000 crore and customs and excise arrears of another Rs 16,000 crore have piled up till 2005-06. On the one hand the finance minister has imposed an education cess to finance elementary education, and on the other hand he gifted corporates with a tax slash from 33% to 30% in the year 2005-06.

While the allocation on education increased, riding on resources generated from the education cess, child protection issues remained neglected as was evident from the fact that the allocation on child protection has stayed stagnant at 0.03% of the total Union budget allocations.

The Juvenile Justice Act covers children in need of care and protection and children in conflict with the law. The first category includes streetchildren, child labourers, orphans and children of beggars and sex workers. The latter category consists of criminal offenders or children framed for criminal offences. The Act was altered in 2000. The upper age of 'children' covered has been increased from 16 to 18 years, the role of the police has been enhanced and the destination of preference is segregated institutions. The government's programme for such children is a 'Programme for Juvenile Justice'. The money needed to run homes for children comes from this programme and allocation for this programme in the year 2006-07 is just Rs 23.00 crore, when there is a requirement for 280 children's homes, 308 observation homes, 258 special homes, 101 after-care homes, 410 child welfare committees, 596 shelter homes, 315 juvenile justice boards and 704 special juvenile police units, according to the Working Group for Children Living in Difficult

Circumstances, set up under the Tenth Five-Year Plan. (8) The State, already under pressure to reduce and offload social sector spending, is withdrawing from the provision of social security and is eager to have its institutions privately run.

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#### End notes

- 1 Budget speech of Finance Minister Manmohan Singh, 1991-92, Point 8. See also Point 45 of this budget speech
- 2 An early study is Saleth (1993). This paper develops a model of linkages and mechanisms through which structural adjustment and child welfare are related, in order to say something about likely strategies of the government and of pro-child professionals
- 3 It is perhaps even possible to make a wider claim, namely that the Indian State has been quite negligent towards child welfare more generally. See, for instance, Weiner (1991)
- 4 For GOI budget speeches, see <http://indiabudget.nic.in>
- 5 HAQ: Centre for Child Rights, 'India's Children and the Union Budget', 2001
- 6 HAQ: Centre for Child Rights, 'India's Children and the Union Budget', 2001
- 7 The Department of Women and Child Development under the Ministry of Human Resource Development got elevated to the status of an independent ministry in 2006
- 8 Under Sections 8, 9, 34, 37 and 44 of the Juvenile Justice Act, the State is obliged to establish and maintain either by itself or in association with a voluntary organisation, observation homes, special homes, children's homes, shelter homes-cum-drop-in centres and after-care homes in every district or group of districts in the country

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# The battle for survival

The declining sex ratio was pointed out as far back as 1974. But it was only taken seriously after the shocking revelations of Census 2001. How can the female foetus and the girl-child be protected? Preventing sex-selective abortion by law is one way. But it cannot be the only way

KIRAN MOGHE

JUNE IS THE MONTH OF SCHOOL ADMISSIONS, a trying and testing time for most parents and teachers. However, apart from the usual hassles that characterise this period, a new problem has apparently emerged in places such as Sangli district in Maharashtra. Schools, or divisions run exclusively for girls, are now apparently facing a shortage of admissions. Considering that the *kanyashalas* (girls' schools) were inspired by the social reform movement led by Mahatma Jyotiba and Savitribai Phule, Maharshi Karve, Gopal Ganesh Agharkar and others who pioneered women's education in Maharashtra, this is a sorry state of affairs. While the evidence may still be anecdotal, it reinforces the gravity of the situation in no uncertain terms — the number of girls/women in the state is declining steadily, and that too in a state where the question of gender equality was firmly and squarely a part of social reform.

The continuous decline in the proportion of women in the country has been a matter of concern for the women's movement for a very long time. As far back as 1974, 'Towards Equality', the report of the Committee on the Status of Women in India, noted that the "decline in the sex ratio ever since 1901 is a disturbing phenomenon," and pointed out that the lowest ratio had been recorded in Punjab, and in the metropolitan cities of the country. But it was only the publication of the 2001 Census report that forced the Government of India to acknowledge that the phenomenon was reaching alarming proportions.

The census report indicated that there had been the sharpest-ever decline in the child sex ratio (0-6 age-group) between 1991 and 2001. The decline was greatest in the relatively prosperous states of Punjab, Haryana, Gujarat and Maharashtra, and in urban areas. Significantly, Delhi, India's capital, recorded a decline from 915 in 1991 to 865!

It was clear that apart from the traditional means of neglect of the girl-child, which include undernourishment, lack of medical attention, lack of education, early marriage, etc, purposive sex selection using modern methods such as ultrasonography was contributing heavily to the decline. It also meant that the Pre-Natal Diagnostic Techniques (PNDT) Act that had been legislated in 1994 following the efforts of women's organisations and health groups to prohibit sex selection and the consequent abortion of female foetuses, had been pretty much useless.

The report prompted a sharp response from women's organisations that demanded urgent strategies to protect the girl-child. The Supreme Court also issued interim orders in a Public

Interest Litigation (PIL) that had been filed earlier by Dr Sabu George, CEHAT and MASUM to seek directions for the implementation of the Act and explicitly include pre-conception tests within its ambit. In February 2003, the Act was amended and is now called the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) (Prohibition of Sex Selection) Act. Meanwhile there has been some effort by government agencies to put in place the administrative structures necessary to implement the Act, and some sort of media campaign to highlight the issue.

But mid-term data for a state like Maharashtra indicates that the decline, far from being arrested, continues unabated (the child sex ratio further declined from 922 in 2001 to 898 in 2005) and calls for far more serious measures in the future.

## The law is not enough

While it is absolutely necessary to have laws that support the struggle for women's equal status in society, it is equally true that the existence of a law by itself does not prevent anti-women practices, whether it is sex selection, dowry or bigamy. There have to be simultaneous social campaigns to create awareness amongst women and the public at large in order to bring about a change in attitude. This, in turn, requires a proper analysis and understanding of the various factors that contribute to such anti-women practices being upheld by people.

Son-preference in India is rooted deep in religious and cultural practices, as is evident from the various rituals in different communities. Despite women's contribution to the economy and family, there has always been a traditional patriarchal perception that women are a burden, and therefore a liability. They are considered temporary residents of the natal family, bidding their time before they enter into matrimony. On the other hand, sons are seen as bringing pride and honour to their families. They are also the source of inheritance of property, and therefore security in old age.

The challenge before the women's movement is the continuation of these perceptions even in the current context, when women have obviously made their mark in all fields in modern Indian society. In the case of sex selection, traditional son-preference has become intertwined with a slew of other reasons that effectively combine to devalue women and the girl-child. This calls for a multi-faceted strategy by the women's movement to deal with what is really a basic struggle for existence.

### Impact of market-driven globalisation

The current policies of market-driven globalisation are responsible for a further devaluation of women's labour. With shrinking employment opportunities, more and more women are forced to take up poorly paid work in the unorganised sector, much of which is invisible. The economic insecurity of women also increases the vulnerability of women to various

Important human development indicators for the girl-child			
Indicator	Males	Females	Persons
Population (0-6)	81,911,041	75,952,104	157,863,145
Sex ratio (0-6)	-	-	927/1,000
IMR (April 2006)	-	-	58
MMR	-	407	-
Child mortality rate (0-4) (2000)	18.6%	20.6%	19.5%
Anaemia (15-19)	-	56%	-
Literacy rate	75.26	53.67	64.84
Gross dropout rate			
Class I-V	35.85	33.72	34.89
Class 1-VIII	52.28	53.45	52.79
Class I-X	60.72	64.97	62.58

Source: 'Girl-child in the 11th Five-Year Plan', Ministry of Women and Child Development, India

Problems faced by the girl-child in India	
Years	Problems faced
Before birth to 1 year	<ul style="list-style-type: none"> <li>• Foeticide and infanticide</li> <li>• Infant mortality</li> <li>• Discrimination in breastfeeding and infant food</li> <li>• Neglect of health (immunisation)</li> </ul>
1 to 11 years (this includes specific problems faced by age-groups 1-5 years and 6-11 years)	<ul style="list-style-type: none"> <li>• Discrimination in access to food and healthcare</li> <li>• Malnutrition and anaemia</li> <li>• Health problems like polio and diarrhoea</li> <li>• Iodine, Vitamin A and micronutrient deficiency</li> <li>• Low school enrolment and school dropouts</li> <li>• Vulnerable to trafficking, child labour, child marriage</li> <li>• Abuse, exploitation and violence</li> <li>• Domestic chores</li> <li>• Looking after siblings</li> <li>• Restrictions on mobility and play</li> <li>• Discrimination in overall treatment and parental care</li> </ul>
11 to 18 years (adolescents)	<ul style="list-style-type: none"> <li>• Poor health</li> <li>• Low literacy level</li> <li>• Restrictions on mobility and play</li> <li>• Frequent illness due to malnutrition, anaemia and micronutrient deficiency</li> <li>• Child marriage</li> <li>• Early childbearing morbidity and mortality</li> <li>• Poor access/denial to information and services</li> <li>• Early and frequent pregnancy, coupled with abortions</li> <li>• Marital and domestic violence</li> <li>• Dowry harassment, desertion, polygamy, divorce</li> <li>• Child labour, trafficking</li> <li>• STDs and HIV/AIDS</li> <li>• Heavy domestic work, including commuting long distances to collect firewood/drinking water</li> <li>• Unpaid and unrecognised work and drudgery</li> <li>• No voice either in the home or in society</li> </ul>

Source: 'Girl-child in the 11th Five-Year Plan', Ministry of Women and Child Development, India

forms of social and domestic violence. The presence of young girls in the family becomes a source of parental worry. In stark contrast to the fact that women are actually taking on greater and greater economic burdens in increasingly adverse circumstances, the cultural perception that they are a burden is being reinforced.

Globalisation is not just about economic issues but also the values it promotes in the process. Market-driven consumerism has resulted in the practice of dowry, once confined to upper-caste and prosperous families, extending across all classes, castes and communities. The exchange of gifts is no longer restricted to the time of marriage; the girl's parents are expected to provide a steady stream of cash and/or other items to her matrimonial family. Bollywood cinema and television companies that need constant fodder for their 24x7 channels systematically fuel ostentatious marriages. Corrupt politicians provide the social sanction for such vulgar display of wealth. Hapless parents are forced to borrow at exorbitant rates of interest. This in turn leads to the specious argument that it is better to spend money to illegally abort a female foetus than be burdened for life with a girl.

The same market values have taken over the medical profession; some doctors have no qualms about informing parents of the sex of the child, and, in turn, justify it as a matter of 'choice'. Others argue that they are doing society, and particularly women, a service by helping get rid of unwanted girls. It is the same set of values that makes people believe that if the number of women in society goes down, their 'price' will increase, as if women are sacks of potatoes or onions!

### The need for a social campaign

Therefore, as noted by the Seventh National Conference of the All-India Democratic Women's Association (AIDWA), held in Bhubaneswar in 2004: "The fight to save the female foetus and the girl-child from elimination is a political struggle linked to the discriminatory policies and cultures that strengthen patriarchy." AIDWA's struggle against sex determination is not confined to implementation of the PNDT Act but has been expressed in multiple forms.

For this national mass organisation of women, the problem of declining numbers of women in the country has been an issue of concern for a long time. For example, in Tamil Nadu, the AIDWA state unit was at the forefront in exposing the prevalence of female infanticide in the districts of Salem and Madurai. Eventually, the state government adopted what is now known as the Cradle Baby Scheme, which is basically an incentive scheme to protect the girl-child. As far back as 1993, the Haryana unit of the organisation held a demonstration against a clinic in Sirsa that was displaying female fetuses preserved in jars in its window with a view to attracting potential clients, and was successful in having it closed down. In Maharashtra, AIDWA was part of the sustained campaign that led to the passage of the Maharashtra Regulation of Pre-Natal Diagnostic Techniques Act, in 1988. Calling for a ban on sex selection, AIDWA also presented a detailed memorandum to the parliamentary committee that examined the draft legislation



proposed by the government.

Starting with a countrywide survey of the practice of dowry conducted by its own activists, national and state-level conventions have been conducted to bring out the pernicious nature of dowry and its consequences. At all these conventions, the organisation has also stressed the importance of AIDWA members taking a firm stand on the practice in their own families. In Haryana, the state unit has highlighted the plight of 'bought wives', a phenomenon that is the direct result of the shortage of girls in many villages, and which belies the perception that the value of women will improve if their numbers decline! In Maharashtra, the organisation has conducted an awareness campaign in the four districts that have shown the sharpest decline in sex ratios, particularly Pune, Satara, Sangli and Kolhapur. Linking the campaign to the rich tradition of social reform in the state, the campaign has highlighted the changing values in a state that espoused the cause of women's equality as a central theme of its renaissance. Inspired by the campaign, activists in Pune city went on to use a decoy to nab a doctor carrying out sex selection using sonography. The case provided an opportunity to examine the various aspects of implementation of the PNDT Act. It brought to light the fact that the state government had not notified the appropriate authorities that are legally responsible for implementing the Act, showing up the nexus between the private medical sector and the public establishment.

Simultaneously, AIDWA has been reiterating the issues of economic vulnerability of women and growing devaluation of

their labour, demanding the implementation of the National Rural Employment Guarantee Act and comprehensive protective legislation for the unorganised sector, including agricultural workers, of whom women make up substantial numbers.

The campaign has thrown up many challenges. It is our experience that while there is a willingness to recognise the value of women, especially their economic contribution and supportive role within the family, there is resistance towards taking concrete steps to end dowry, or son-preference rituals. The wider struggle for the economic rights of women, including equal property rights, has to be linked with the struggle against sex selection. The depiction of women in the media, and the role models that are played out have a deep influence on the youth of the country, and there have to be effective strategies to counter it. There is a need to initiate debate amongst doctors, who prefer to ignore the fact that illegal practices are rampant within their community. This is, in turn, linked to regulation of the private health sector. Implementation of the PCPNDT Act is vested with the Health Ministry, and there is a reluctance to expose members of their own fraternity. Most importantly, there is a need to bring the question of declining sex ratio on the agenda of the ruling parties. Unless there is the political will, strategies to combat sex selection will remain only on paper. To build that political will is the major challenge facing us.

*Kiran Moghe is President, All-India Democratic Women's Association (AIDWA), Maharashtra State Committee*

## Street dreams

Vicky Roy, an insider who has lived on the streets, been a dhaba-boy and a coolie, captures, in his photographs, the daily battle for survival of Delhi's streetkids. This is his story, a story of how the right intervention can transform lives

NEETA LAL



Vicky Roy

KITTED OUT IN DENIM JEANS and a T-shirt, a Nikon camera slung across his five-foot-six-inch frame, Vicky Roy, 20, hardly cuts the figure of a prototypical Indian streetchild. But scratch the surface and he recounts an engrossing tale of a penurious past and a marginalised existence as a streetkid in Delhi.

But before he does that, Roy proudly points to a swathe of some 25-odd photographs shot by him that were

part of his well-received exhibition titled 'Street Dreams' at the Experimental Art Gallery at the India Habitat Centre in Delhi recently. The exhibition, presented by the Salaam Balak Trust (SBT), was co-sponsored by the British High Commission and the UK's Department For International Development (DFID).

A riveting collage of black-and-white images, Roy's photographs focus on the issue of child rights, offering an engaging retrospective on the life of Delhi's streetchildren. The kids' daily battle for survival, their trials and tribulations, moments of joy, their pain and pathos, camaraderie... all are captured with the depth and dexterity of an insider.

"I've lived this existence, so I knew about the nuances of such a life," elaborates Roy, occasionally breaking into chaste Bengali to speak into his frequently-beeping mobile phone. "I chose the theme because I've lived it. But I also wanted the world to know about streetchildren and how they can be helped. There's a message in it for streetchildren too — that education and the will to excel can transform their lives forever, just like it has mine."

That it has. Born to abysmally poor parents in Purulia (West Bengal) — a tailor father and a housekeeping mother — Roy was disenchanted with his humdrum existence. "All the family talk revolved around the next square meal for me and my six siblings," he says. "There was no freedom, no creativity in my existence then." So, all of 11 years, Roy stole money from his father and caught the next train to Delhi.

He arrived at the New Delhi railway station penniless and friendless, but full of dreams to "make something out of my life". He was soon taken under the wing of the station *dadas* (henchmen) who helped Roy eke out a living, playing coolie by day and dhaba 'mundu' at night.

After a while, Roy was spotted by volunteers of the Salaam Balak Trust (SBT), a pan-India NGO that works for the welfare of streetchildren, and taken to a shelter in Delhi. "The Trust gave me clothes, food, and enrolled me in school (Nutan Marathi Mandir). There were many other boys of my age there, each with a dream of his own," he says.

Roy's own 'dream' was realised only in 2004 when he was chosen by SBT to assist a British photographer documenting the lives of Delhi's streetchildren. While helping the photographer for three months — fixing the tripod for him, loading camera rolls, marshalling unruly streetkids together for a good 'photo op', travelling through the streets of old Delhi — Roy picked up the nuances of the profession. And that triggered an interest in photography.

In the meantime, Roy cleared his Class X board exams and, aided by SBT, began looking around for employment as the shelter caters only to children below 18 years. Fortunately, with his experience, Roy was chosen by Delhi-based fashion photographer Anay Mann to help him in his studio.

For the past two years, Roy has been working as a studio assistant for Rs 4,000 a month even as he pursues his studies by correspondence for the Class XII boards. He has moved out of the SBT shelter and rents a flat along with three other youths. He enjoys living the life of a 'jetsetter' — travelling by air on assignments to Chennai, Mumbai, Bangalore, Hyderabad, even Kashmir and Nagaland. "Once I used to dream of seeing the interiors of a plane," smiles Roy, "now I've managed to collect over a hundred boarding passes!"

The budding photographer has also bought himself a digital camera from the seven photos he sold at his exhibition, each for Rs 10,000. This was after he donated 20% to SBT. "I'm now looking for sponsors for my next exhibition, 'The Widows of India', for which I've just begun work," says Roy. The ambitious lensman's future plans include "setting up a state-of-the-art photo studio, and becoming one of India's top 10 photographers".

It's been over an hour now... and Roy is keen to excuse himself. He has a flight to catch in the evening, another scribe waiting for him, and a beeping mobile phone to attend to. He says "Bye" and is off in a trice, his slender frame melting in with a hundred others on Delhi's crowded streets that Roy once called home.

Neeta Lal is an independent journalist based in Delhi



*Vicky gets ready for a bath at the railway station*

*Nandu enjoys the newspaper before he sells it*



*Children at a shelter run by the Salaam Balak Trust*





*Deepak rests after sustaining an injury to his right cheek*

*Ankashi, Rahul and Lala decorate their deities before they start their begging routine*

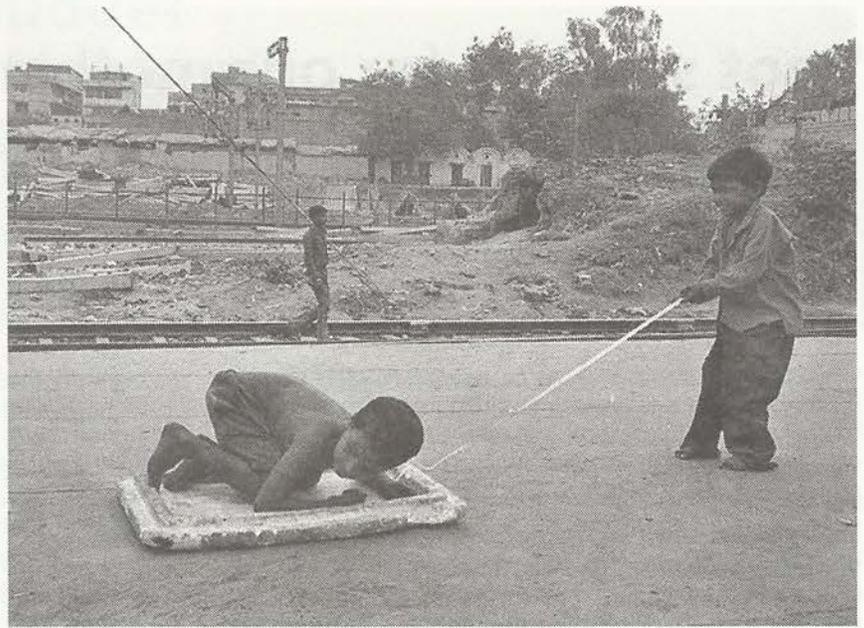


*Sunita reads a book at the New Delhi railway station*





*A girl carrying her sibling*



*Enjoying a 'ride' at the Sadar Bazaar railway station*

*Lachhi sells balloons at Delhi's Connaught Place*



## 'Foot soldiers for our mothers...'

Children in Kolkata's Sonagachi red-light district have formed Amra Padatik, a collective to work for the dignity of their mothers and to claim their rights as children. In this interview, AP's President Gobinda Saha and Secretary Chaitali Pal talk about the discrimination that dogs their lives and their work as young activists

DEBOLINA DUTTA  
OISHIK SIRCAR

WHAT'S SEX WORK GOT TO DO WITH CHILD RIGHTS? One of the major concerns of course is ensuring that children are not trafficked into the profession. The other concern is for children who are vulnerable to sex work because their mothers are in the profession.

Children of sex workers are at the receiving end of multiple disadvantages: society forces them to inherit the stigma that is attached to the work their mothers do. These children are like all others — they play, have fun, want to study, and have their own aspirations. But they are generally looked at only as hapless victims. Most civil society interventions work towards rescuing them from their plight. We seem to take for granted the fact that these children live in 'hell holes', and the only way to protect them from all 'evil' is to take them out of it. No civil society interventions work to create enabling conditions for these children to enjoy all the guarantees of child rights, as well as respect their mothers' livelihood choices.

Why should a child be discriminated against just because her mother is a sex worker? Why should she hide from other friends where she stays? Why should she not be able to bring friends from school home? Why should she not be able to respect her mother's profession when it's her money that runs the house and takes care of her education? These and other such troubling questions haunt children of sex workers.

In 2005, when children from Kolkata's Sonagachi red-light district got together to form their own collective, building on the kind of work that their mothers have been doing through the Durbar Mahila Samanyay Committee (DMSC), they confronted these questions unflinchingly in an attempt to work for dignity for their mothers and claim their own rights as children.

They named the collective Amra Padatik (AP), which, in Bengali, means 'We are Foot Soldiers', and their mission statement declares: "Our goal is to establish the rights and dignity of all marginalised people and their children through social and political change. With our involvement in this global movement, we are determined to improve the quality of life and social status of sex workers and their children." What stands out in this declaration is the clarity with which these children have been able to respond to their lived realities, and that is what allows them to think of building bridges of solidarity with other marginalised groups.

Since its establishment, AP has attracted close to 1,000

members all of whom are children of sex workers in Kolkata and its suburbs. Recently, it partnered with DMSC to organise and co-host the All-India Entertainment Workers Conference in Kolkata. AP believes that a primary means to secure and guarantee the rights of sex workers' children is for them to also join their mothers' struggle.

Here we listen to AP's 18-year-old President Gobinda Saha, and Secretary, 20-year-old Chaitali Pal's stories as children of sex workers, founders of AP, and their present work as young activists.

### Gobinda:

*My mother is a sex worker from Sonagachi. She used to pay someone to take care of me, in a 'family house', from the time I was 6 months old. That's where I grew up. When I was 2 years old I would visit my mother and stay with her sometimes. I remember, when clients visited her she would ask me to sit outside. Later, at the age of 5 my mother took me to Ranaghat, where I was admitted to a home for sex workers' children. That's where I started studying and completed Standard 4. From there I moved to another school to study further. That same year, during Durga Puja, my mother had to take me out of school because my classmates had found out that I lived in a home for sex workers' children and they made fun of me because of that. I started staying with my mother and took admission in another school by hiding my identity. Even there my friends found out that I stayed in Sonagachi and started misbehaving with me. I had to leave that school as well, and went to stay at my maternal uncle's house. Once again I took admission in school by hiding my identity. At that point, my mother's earnings were very low. She couldn't pay my uncle for my expenses. It was here that I studied till Standard 10...*

*I was once interviewed on a Bengali TV channel as a sex worker's child who had passed the Standard 10 board exams. This led to further harassment and I wasn't given admission forms in many schools. Finally, I got admitted in Standard 11, in yet another school closer to Sonagachi. Alas, there too friends found out that I was a sex worker's child. One day in class, when the teacher was telling us about HIV/AIDS, he mentioned that it spreads through sex workers. I couldn't help but interrupt him and tell him that it wasn't true — in fact, sex workers were doing a lot of work at Sonagachi to control the spread of the disease. This, of course, didn't go down very well with him and I was reprimanded...*

"One day in class, when the teacher was telling us about HIV/AIDS, he mentioned that it spreads through sex workers. I couldn't help but interrupt him and tell him that it wasn't true — in fact, sex workers were doing a lot of work at Sonagachi to control the spread of the disease. This, of course, didn't go down very well with him and I was reprimanded" — Gobinda

*Sometimes I used to feel, why does Ma need to do this work when it brings so much misery and pain to my life?... I wanted to open a factory where only sex workers would work, including my mother...*

*But later when I met other sex workers' children through DMSC and discussed this, we all realised that society was to be blamed for the way we were being treated, and not our mothers. They were only trying to earn a living to support their families and children — and there was no reason why people should think of them as 'fallen' women.*

*Through Amra Padatik we are trying to reach out to as many children of sex workers as possible — talk to them about our experiences and unite them to fight against the stigma and disrespect that is meted out to us and our mothers, because they are sex workers. We have already got some financial support and are working hard to develop a plan of action for the next few years.*

*We believe that, as children, it is our responsibility to be part of our mothers' struggle. We are our mothers' foot soldiers who will lead their struggle from the front...*

**Chaitali:**

*As a child I used to stay with my mother — but my house felt like a jail. My mother kept me in a separate room and told me*

*that she used to do 'bad' work. I would go to school and come back home. I didn't go out with friends because my mother always wanted me to get back home fast so that I was safe. I used to see men come and go but never understood what they came for. My mother also worked in a hotel and I hardly spent time with her. The landlord and his wife were good people and loved me a lot. I spent a lot of time with them. Once when I was around 10 years old there was some property dispute in the family, and I heard my grandmother mention that I was 'jarok santan' (bastard child) and so I had nothing to do with the family property. I also heard her say bad things about my mother. That's when I started wondering, what is it that my mother does? And I started to hate it... but now that I understand everything I don't hate it anymore...*

*At the age of 13 I was married off to a sex worker's son. They lived in a 'family house' outside Sonagachi. This is where I came to know about sex work, drinking and all such things. It's funny that I had no idea about all this when I used to stay with my mother. I had a very unhappy marriage and was made to do all the housework. They would always speak badly about my mother. I gave birth to a child soon after marriage and had to take care of him too. People keep talking about child trafficking into sex work, but I can tell from my personal experience that child marriage is a form of child trafficking. If only my mother's work was not stigmatised, she wouldn't have to worry so much about my safety and think of marriage at such an early age as the only means to my security. When the marriage became unbearable I left my in-laws and came back to stay with my mother.*

*I tried taking up some job. But at every place people made sexual advances. I couldn't continue anywhere. It was then that I got involved with DMSC...*

*It all began when Gobinda, Mithu and I — all children of sex workers — were discussing how our mothers say that the work they do is not bad and that they should have their rights. We wondered what we thought as their children. That is when we realised that we should have more discussions like this... so we started talking to more children like us and felt that we had some specific problems and needed to come together and form a collective to be able to address them...*

*In 2005 we formed Amra Padatik... Whenever sex workers' children are in some trouble we go and help them. When Gobinda was refused an admission form after his board exam because of a TV interview where he had mentioned that he was a sex worker's child, we supported him and made sure that he got the form... Another child was harassed by the landlord after his mother died; we went and made sure that he wasn't evicted...*

*Over the next few years we are planning to start tutorials and install computers at all DMSC health clinics where children from those areas can come and meet each other... and build support groups for each other so that they don't have to face the hardships that I, Gobinda and a lot of us have faced...*

*Debolina Dutta and Oishik Sircar are human rights lawyers*

## Protection without rights?

Child sexual abuse cuts across class, caste, cultural and economic backgrounds. But there is no specific law to make it an offence. The recent disclosure of the Nithari killings may prompt the government to pass the much-awaited and long-needed Offences against Children Bill, 2005. But more laws may not ensure more rights for children

DEBOLINA DUTTA  
OISHIK SIRCAR

WHEN PINKI VIRANI wrote *Bitter Chocolate* in 2000, the book sent shockwaves through the 'Happy Indian Family'. For the first time, popular consciousness started questioning what was understood to be the most secure space for children. We were aware of children's vulnerability to sexual abuse — but were convinced that it happened to 'bad' children, from 'bad' families, in 'bad' places. In case a 'good' child, from a 'good' family was abused, the abuser would invariably be a 'bad' stranger. *Bitter Chocolate* shattered this myth and laid bare the fact that sexual abuse of children cuts across class, caste, cultural and economic backgrounds; and that there was no specific law to make Child Sexual Abuse (CSA) an offence.

In 2007, while we are trying hard to recover from the horrors of the Nithari case — in which many of the 38 children who have been reported missing in the small urban village on the outskirts of Delhi were allegedly brutally abused and murdered — we still don't have a specific law on CSA. Perhaps Nithari will be the impetus for the much-awaited and long-needed Offences against Children Bill, 2005 to become an Act.

In this article we will briefly look at the inadequacies of existing criminal laws in India that address CSA, trace the progress (or lack of it) of the law through some debates that have emerged out of the demand for a law on CSA, and, finally, look closely at the provisions of the Offences against Children Bill, 2005 to gauge its transformative potential and point out that the offence of CSA cannot be prevented only through legal means.

### Criminal law and CSA

The Indian Penal Code (IPC) does not recognise CSA as an offence. It is through the application of certain other provisions in the IPC that a child sexual offender is criminalised — these are, *inter alia*, the offences of rape (Section 375), outraging the modesty of a woman (Section 354), and 'unnatural offences' (Section 377). None of the above sections define in legal terms what constitutes CSA.

Section 375 defines the offence of rape as sexual intercourse committed by a man on a woman against her will or without her consent. The section goes on to provide certain other circumstances where the standard of will or consent does not apply. Among these, intercourse with a girl under 16 years of age, even with her consent, is rape. The section provides an explanation that "penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape". Thus, only CSA of girl-children where peno-vaginal penetration has taken

place falls within the ambit of this section. Most often CSA does not take this form, but ranges from exhibitionism, touching, to all forms of penetration (including penile-anal, penile-oral, object-vaginal, and finger-vaginal). (1) Penetration of the vagina with any other object, even if life-threatening, does not amount to rape.

In cases of CSA concerning girl-children, where penetration of the vagina has not taken place, Section 354 comes into operation. This section punishes the offence of assault or use of criminal force to outrage the modesty of a woman. And 'modesty' of a woman remains ambiguously defined through judicial interpretation. Especially in the case of CSA, it becomes even more confusing because the 'victim' is a child and whether as a child she can be said to possess modesty is a point of argument in court. In the 1967 Supreme Court (SC) judgment of *State of Punjab v Major Singh*, the judges deliberated on whether a female child of 7½ years could be said to be possessed of 'modesty', which can be 'outraged'. Another major inadequacy of this provision is its quantum of punishment. For CSA amounting to the gravest forms of molestation just falling short of penetration, it stipulates a maximum of two years imprisonment, as against a minimum of seven years imprisonment for 'rape'.

The most controversial provision of the IPC, Section 377, is purportedly meant to be applied in cases of CSA where penetration is not peno-vaginal in nature — defined as 'unnatural offences' by the law. This section is gender-neutral. While it addresses the sexual abuse of boys, when the abuse does not include penetration it escapes the ambit of the section. This means that there is no provision in the IPC to criminalise molestation of boys. Section 377 is also inadequate because it is not a law designed to criminalise CSA, and thus fails to cover the majority of forms that the abuse might take.

### Demands for a law on CSA

Child rights activists demanding a specific law on CSA have been facing many hurdles in the course of their engagements with the judiciary and State. On most occasions, the responses have either addressed procedural aspects of the law or have been ridden with conservative sexual morality.

The 1999 Supreme Court case of *Sakshi v Union of India and Others* was the first attempt to challenge inadequacies of the provisions in the IPC to make CSA an offence. Sakshi, a women's resource centre working with victims of sexual abuse,

filed the PIL in 1997 after the Delhi High Court declared that the case of an 8-year-old child, penetrated in three orifices by her father, could not be considered either rape or an 'unnatural offence'. The PIL questioned the legal procedures during trial and urged the apex court to alter the definition of sexual intercourse, with reference to Section 375 of the IPC, to mean all kinds of sexual penetration on any type of orifice of the body, not just intercourse understood in the traditional sense. So that sexual abuse other than what is defined as rape could also be included. (2)

The 2004 judgment in this case, instead of broadening the definition of 'rape' (as was sought by the PIL) only focused on reducing the trauma of the victim by directing that she cannot be forced to answer insensitive and crude questions during court trials, and that a screen may be used so that the victim did not have to undergo the trauma of seeing the perpetrator.

Interestingly, in this judgment the court admitted the wide prevalence of CSA, yet it failed to clearly define sexual abuse and stated: "An exercise to alter the definition of rape... by a process of judicial interpretation is bound to result in a good deal of chaos and confusion and will not be in the interest of society at large..." (3)

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Naina Kapur, Director of Sakshi, responding to the judgment pointed out: "What is the point of (introducing) procedural changes if the abuse doesn't fall within the definition of rape or outrage of modesty or 'unnatural acts' as laid down by our law? I think this was a chance to really get justice for victims of sexual abuse by widening the definition of sexual abuse. But the judge (G P Mathur) has missed the opportunity and, by letting the law remain as it is, has rendered the whole exercise purposeless." (4)

Pursuant to the order passed by the Supreme Court in the Sakshi case, the Law Commission of India (LCI) has reviewed the laws with regard to CSA and recommended amendments in consultation with Sakshi and other organisations. (5) The major amendments recommended in the 172nd Report of the LCI were that the offence of 'rape' be substituted by 'sexual assault', which would make it gender-neutral and bring into its fold a range of sexual offences and not merely forced peno-vaginal penetration. The report also recommended the deletion of Section 377.

The issue of CSA was again raised in the legal arena when, in 2001, Naz Foundation, a Delhi-based organisation working on issues of HIV/AIDS, filed a petition in the Delhi High Court asking for the 'reading down' of Section 377. The petition demanded that adult, consensual and private sex be taken out of the purview of this section. A demand for reading down was made instead of a complete repeal of the section by the petitioners, keeping in mind the lacunae in the IPC regarding CSA. However, in response to the petition, the government sought the dismissal of the petition on exactly the same grounds, stating that it complements the lacunae in rape laws for prosecuting child sexual offenders. Thus we found the government hiding behind the fig leaf of Section 377 to absolve itself of the responsibility of passing a separate law on CSA, and perpetuating homophobia in the process.

As has been noted in a report titled 'Rights For All' (6) (RFA) by the coalition Voices Against 377: "...we have here not a mere oversight on the part of the government but a deliberate attempt to confuse issues... to pit child rights against gay and lesbian rights. There is little evidence... that the government is in fact concerned about the child's search for justice. The government has itself acknowledged the need for a separate law to deal with CSA in its First Periodic Report to the UN Committee on the Rights of the Child. The government's actions however fail to match the stated intention..." RFA further notes that despite demands by groups from all over the country working on child rights, women's rights and sexual rights, and even the National Commission for Women, the government has sought to ignore the demand for a law on CSA, and instead of proactively legislating on the issue has been creating hurdles in the way of these civil society pursuits.

#### **Offences Against Children Bill, 2005**

In 2005, the Ministry of Women and Child Development (MWCD) of the government, in consultation with NGOs, legal experts and social workers, drafted the Offences Against Children Bill, 2005. According to the MWCD website: "After

## 53% of Indian children face sexual abuse

*A disturbing new study on child abuse, carried out by the government and civil society organisations, reveals that 70% of abused children never report the matter to anyone*

A landmark study by the Indian government along with two civil society organisations — Prayas and Save the Children — and backed by the United Nations Children's Fund admitted on April 9, 2007, that two-thirds of children in India are physically abused while more than half have faced some form of sexual abuse.

The first ever national-level study by the Ministry of Women and Child Development covered 13 of India's 29 states with a sample size of 12,447 children in the 5-12 age-group, and 2,324 young adults. The survey didn't have a margin of error.

The survey divided abuse into three categories: physical, sexual and emotional abuse. Some disturbing data from the survey:

- Over 50% of children have experienced physical abuse, which includes slapping and corporal punishment. 88.6% of these children face physical abuse from their parents; 45.68% of them are boys.
- Nearly 65% of schoolchildren reported being beaten by their teachers, mostly in government schools.
- A shocking 53.22% of children have faced sexual abuse. The report says that most children do not report the matter to anyone. Half of the cases of sexual abuse (50%) were committed by people known to the child or in a position of trust and responsibility.
- Every second child reported emotional abuse, in an equal number of girls and boys.
- While 41.17% of children in the 5-12 age-group complained of being forcibly kissed, the figure came down to 25.73% in the 13-14 age-group. Similarly, around 25.86% of teenagers reported being forced to exhibit their private parts; the relevant figure for those below 12 was 35.86%.
- Around 37.25% of children in the younger age-group, and 27.61% of teenagers, were sexually abused during travel. As many as 41.33% of children in the 5-12 age-group and 25.29% in the 13-14 age-group reported abuse during marriages and other family ceremonies.
- What's worse, the report says, "around 70% of abused children have never reported the matter to anyone".
- While Assam (86.26%) topped the list of states where children faced sexual abuse, Andhra Pradesh and Delhi followed closely at 72.83% and 72.26% respectively. Rajasthan reported the lowest complaints — 29.36%.
- Likewise, the percentage of sexually abused young adults (13-14 age-group) is high in Assam, at 77.5%, followed by Delhi at 69.11%. Goa reported the least complaints — 23.01%. Kerala had the lowest incidence of child abuse.

Child rights activists have welcomed the study, saying it was positive that the government was waking up to the reality. "Homes, schools and neighbourhoods are not safe for our children as most people don't even believe that hitting or sexually abusing a child is a serious crime," says Kailash Sathyarathi of Bachpan Bachao Andolan (Save Childhood Movement). Activists say the existing laws must be strengthened and mindsets changed.

wide consultations a draft Bill for Offences Against Children was prepared and circulated to the State Governments for their comments and views. After obtaining the comments of concerned Ministries and Departments a draft Cabinet Note has been referred to Law Ministry for their vetting. The proposal will be placed before the Cabinet shortly." The passing of this Bill would further India's obligation to meet the standards in the UN Convention on the Rights of the Child, which it ratified in 1992.

In a post-Nithari situation, this Bill might actually get passed. However, the government's response to CSA through the Bill is again laden with interpretive discrepancies and 'protectionist' approaches that do not necessarily enhance or create enabling conditions for the realisation of child rights.

This Bill defines CSA and makes 'consent' of the child the qualifying ground for ascertaining abuse when the child is between 16-18 years of age (Section 2 [c]). The law deems children below 16 years of age incapable of giving consent to

any of the sexual acts mentioned in the Bill. The problem with such a provision is that it could actually lead to criminalising consensual sexual acts between young people. Under this law, if a child of 14 years has consensual sex with another child of 17 years, the 17-year-old, who is capable of consent, would have committed a crime against the other child, as he is deemed incapable of giving consent. Interestingly, in a situation where both are under 16, they are both guilty of committing sexual assault since their consent is invalid according to the law!

"The Offences Against Children Bill will create yet another provision which can be used to harass and penalise teenagers for victimless crimes, only to serve public morality," observes lawyer Tarunab Khaitan. (7) "The importance of protecting children from sexual abuse by adults cannot be over-emphasised. However, to criminalise children under a legislation ostensibly meant to protect them, solely on the basis of a prudish denial of child sexuality is simply moral policing," he adds.

The IPC stipulates the age of criminal responsibility at 7 years. It's paradoxical that by virtue of this law the age at which a child can be held responsible for a sexual offence is 16 years and above — in effect meaning that children are capable of scheming and executing murder and rape at 7 years, but not capable of consenting to sex with someone of the same age till they are 16!

As pointed out earlier, the IPC stipulates the age of criminal responsibility at 7 years. It's paradoxical that by virtue of this law the age at which a child can be held responsible for a sexual offence is 16 years and above — in effect meaning that children are capable of scheming and executing murder and rape at 7 years, but not capable of consenting to sex with someone of the same age till they are 16!

The punitive measures provided in the Bill also do not seem to adhere to standards of parity between offence and punishment. Section 10 states that any person who prepares, produces, facilitates, distributes or knowingly abets in the creation of child pornography will be liable to rigorous imprisonment of not less than seven years, but which may extend to 10 years, and a fine. While for distribution of child pornography the Bill stipulates a minimum punishment of seven years, according to Section 6, if a person is guilty of sexual abuse of a child between 16-18 years, the minimum punishment is imprisonment of not less than six months. This disparity allows a child sexual offender to get away with only six months' imprisonment, whereas a distributor of child pornography — who has not physically abused a child — can be booked for seven years.

Though the framers of the Bill have given considerable attention to punitive measures, a glaring omission in the Bill is the absence of any provision for children with disabilities whose vulnerability to sexual abuse may be higher compared to other children.

#### Looking ahead...

The Offences Against Children Bill is indeed a useful piece of legislation on CSA (in the absence of any) and other forms of

child abuse. But there is a need to be careful about an over-reliance on the law, believing that it will fulfil the promise of phenomenal transformation. Law reform demands by the women's movement and the queer movement in India have not always reaped the desired results. Gaining from this experience, we need to remember that more laws may not ensure more rights for children. State accountability should also extend to creating enabling conditions where existing rights can be realised and enjoyed. The same responsibility lies with parents and teachers who are an integral part of the world around them. One of the major reasons for CSA continuing unabated is the culture of silence and shame that prevails in India — an environment where stringent legal measures (as and when they come) become less useful.

A law like this will be relevant when it is able to move beyond merely criminalising acts that it identifies as CSA, but stipulates mechanisms that are in real terms accessible to children. A model can be found in the anti-sexual harassment cells set up at workplaces on the directives of the Vishakha guidelines. Similar cells in schools could address CSA — the provision of 'mandatory reporting' under Section 32 in the Bill is a move in that direction as it makes persons in positions of trust or authority responsible for reporting abuse. The recent committee set up by the National Human Rights Commission (NHRC) to suggest guidelines to stop violations of child rights (8) — a response to the Nithari case — will hopefully assist the State in its endeavour to guarantee child rights.

Given that the Commissions for Protection of the Child Rights Act 2005 (9) has been passed, and we have in hand the draft Bill, we have an opportunity to capitalise on these documents by involving more child rights groups to fine-tune and build on the provisions of the Bill. More importantly, any move towards making laws on child rights must involve the voices of children themselves, as stakeholders and active participants instead of mute and passive beneficiaries.

#### End notes

1 'Doesn't Every Child Count?: A Study on the Prevalence and Dynamics of Child Sexual Abuse in Chennai', conducted by Tulir — Centre for the Prevention and Healing of Child Sexual Abuse, Chennai, and Save the Children, Sweden, available at <http://www.tulirphcsa.org>

2 Recently, the UN Committee on the Elimination of Discriminations Against Women concluded its meetings with the Ministry of Women and Child Development and urged the government to widen the definition of rape. See 'UN seeks file on riot victims', *The Times of India*, Kolkata, February 16, 2007

3 Quoted in Swapna Majumdar, 'Redefining Abuse', *Women's Feature Service*, June 2004.

4 *Ibid*

5 The other organisations were IFSHA (Interventions For Support Healing and Awareness), AIDWA (All-India Democratic Women's Association) and NCW (National Commission for Women)

6 Voices Against 377, 'Rights for All: Ending Discrimination against Queer Desire under Section 377', 2004

7 Tarunab Khaitan, 'Still a Matter of Shame', *The Telegraph*, April 24, 2006

8 'NHRC sets up panel on children's rights', *The Times of India*, Kolkata, February 16, 2007

9 Available at <http://wcd.nic.in/>

# Missing

According to statistics compiled by the Institute of Social Sciences, a staggering 45,000 children go missing in India every year. Of these, 11,000 are never found

RASHME SEHGAL

THE MACABRE KILLINGS of young children in Noida's Nithari village have brought the plight of India's missing children into focus. According to statistics compiled by the Institute of Social Sciences (ISS), a staggering 45,000 children go missing in India every year. Of these, 11,000 are never found.

The most shocking revelation of this two-year study, titled 'Trafficking of Women and Children in India', compiled by Shankar Sen and P M Nair, with a team of ISS researchers, is that the graph of missing children continues to rise. In Delhi, in 2004, 6,227 children were reported missing, according to police reports; in 2006 the number of missing kids had climbed to 6,683.

Providing a break-up of the missing children, the ISS report highlights how in Maharashtra the number of missing kids in 2001 was 13,881, in Madhya Pradesh 4,915, in Karnataka 3,600, in Andhra Pradesh 2,007, and in Gujarat 1,624.

In the Andaman and Nicobar Islands, the number of missing kids has gone up by 1,000% within a five-year period, in Arunachal Pradesh it has risen by 883%, in Andhra Pradesh by 78%, in Assam by 151%, in Chhattisgarh by 83%, in Gujarat by 80%, in Haryana by 142%, in Tamil Nadu by 194%, and in Tripura by 300%.

Statistics provided by state police agencies show that in Rajasthan the number of children reported missing in 1996 was 154; in 2001 the number had shot up to 278. In Orissa, for the same period, the number of missing children was 419; by 2001 it had risen to 541. In Haryana, the figures are equally alarming. In 1996, the number of missing children was 64, but by 2001

the figure had gone up to 155.

CSOs working in the field estimate that this is only the tip of the iceberg, as only 10% of all cases are registered with the police. They say the numbers are much higher. Kiran Bedi, Director General, Bureau of Police, Research and Development, conceded that "the numbers of missing children who were being reported on child helplines were much more than the figures in police records".

The report also highlights how the percentage of untraced persons continues to increase every year. In other words, the chances of locating missing people are steadily diminishing.

The metros continue to report the largest number of missing children. Delhi heads the list with the highest number of untraced kids, followed by Mumbai, Hyderabad, Kolkata and Bangalore. But while Kolkata and Hyderabad are not meeting with much success in tracing missing children, one exception has been Chennai, in terms of both numbers of missing kids and also ability to trace them. In a serious indictment of the state governments of West Bengal and Delhi, the report questions why 75% of missing children in Kolkata and 65% in Delhi "continue to remain untraced".

The report adds that trafficking of women and children is also increasing in the states of Jharkhand and Chhattisgarh. Trafficking is a profitable business, with traffickers targeting low-income families. Kailash Sathyarthi of the NGO Bachpan Bachao Andolan points out: "The maximum number of children being trafficked today belong to dalit, tribal and poor Muslim families that do not have the economic strength to put pressure on the police or political leaders."

The survey involved interviews with 510 trafficked children who had been rescued by the police and NGOs and were living in homes. Forty per cent of the children said they had been trafficked when they were less than 10 years old; the rest were trafficked between the ages of 11 and 14. Half of these children had never been to school.

The children had been trafficked by family members or people who knew the family. Only 7% said they had been trafficked by total strangers. The children admitted that they had seen their parents or relatives accept money for them. In most cases, the traffickers had paid Rs 5,000 or less to acquire their human cargo.

Rashme Sehgal is a Delhi-based journalist



Vicky Roy

# Trafficked

A recent study of 412 brothel owners from 12 states revealed that there were six girl-children on average per brothel. One-hundred-and-sixty traffickers interviewed admitted that young girls were their main target. In 35% of cases, it is families that sell their women into the flesh trade for as little as Rs 1,000-Rs 5,000

RASHME SEHGAL

THOUSANDS OF WOMEN AND CHILDREN are being trafficked every year. Trafficking of women and children has emerged as the third largest industry, after the arms and drugs trade. Researchers estimate that Kamathipura in Mumbai alone generates over \$ 400 million annually, with 100,000 prostitutes servicing six customers a day, at Rs 100 a customer. Transactions in prostitution are reported to gross Rs 40,000 crore per annum, with revenues being shared between procurers, pimps, brothel keepers and the police.

A two-year study by the Institute of Social Sciences (ISS) and the National Human Rights Commission (NHRC), published in 2005, tracked down the "merchants of the flesh trade", including brothel owners and traffickers.

Assured of anonymity, 160 traffickers spoke at length about their modus operandi. A fifth of them were from Andhra Pradesh while the rest came from Bihar, Karnataka, Tamil Nadu, Rajasthan, West Bengal and Uttar Pradesh. Most of those interviewed were in their mid-20s and early-30s, though researchers came across two traffickers from Maharashtra and Goa who were just 18 years old.

At the top of the hierarchy are the 'master' traffickers whose identity remains largely unknown. They are assisted by field-level purchasers, transporters, master operators, pimps and procurers and the crime syndicate that involves brothel owners and brothel managers where most of the trafficked women and children end up being forced to live.

Young girls continue to be the main target of the traffickers, especially since clients are eager to have sex with virgins. The majority admitted to trafficking children in order to sexually exploit them.

Sixteen-year-old Chaya, rescued recently from a G B Road brothel in New Delhi, was picked up by a trafficker from her village when she was very young. She was forced to entertain customers for over 12 hours a day; the first customer came in at 10 am and the last customer would come into her cabin after midnight. "By the time I finished with my last customer I did not have the strength even to breathe. But the 'madam' would keep pushing in more and more customers so that she could make more profit out of me," said Chaya. She was rescued by the police and has been living in a rescue home in Nirmal Chhaya for the last four years.

Ten-year-old Priti from Anori village in Karnataka was sold by her father and stepmother for Rs 12,000. A trafficker took her

by train to Mumbai where she was forced into the sex trade. "I had not even begun menstruating when I was compelled to entertain around 60 customers every day," she says. "Each customer paid Rs 400 to the brothel owner." Priti revealed this to the police when she was rescued seven years after being inducted into the sex trade.

In a majority of cases, the traffickers admit they first develop a relationship with members of the family. The study highlighted how, in 35% of the cases, it was the family members and relatives, including parents and husbands, who helped facilitate the deal for a financial consideration.

Trafficking, they admitted, was a low-investment, high-profit business. Girls were being bought for as little as Rs 1,000 per girl, though the majority said they spent around Rs 5,000 to purchase a girl. Only in exceptional circumstances did they fork out as much as Rs 10,000-Rs 20,000 for a girl, with payments being made on a commission basis.

The study cited the example of 'AM', a well-known trafficker from Muzaffarpur, who is presently supplying women in Siliguri, Darjeeling, Kishanganj, Katihar, Purnea and Ataria. On average, 'AM' trafficks 40 women and children every month, earning around Rs 10 lakh just from the sale of these women. During the festival season, the number of women can go up to 60. 'AM' is reported to own several houses in Siliguri and other cities.

On average, each trafficker interviewed had bought/sold over 42 women and children. They also said they had sexually assaulted their victims. Forty-two per cent of them admitted to having abused between three to 10 of their victims, while 37% said they had abused more than 10 victims. Only then did they hand the women over to a brothel for them to start soliciting clients.

The study also interviewed 412 brothel owners from 12 states. Each of them had at least seven to 10 girls/women working for them.

Despite the government's assurances about ensuring that children are not part of the sex trade, the brothel owners candidly admitted that they had over 245 girls below the age of 16, and another 615 girls between 16-18 years of age. "This works out to a minimum of six children per brothel. Bihar had the largest number of girls, followed by Maharashtra and Uttar Pradesh," says Dr George Mathew, Director of ISS.

## The missing face of AIDS

Yesu Babu of Vambay Colony in Vijayawada is 12. He has lost both his parents to AIDS. His younger brother is HIV-positive. There are almost 2 million AIDS orphans like him in our country. But the national and global response to the HIV/AIDS crisis in India has virtually ignored children

SHELLEY SEALE

*IMAGINE YOU ARE A 12-YEAR-OLD BOY. You live in India, on the outskirts of a town called Vijayawada. Your name is Yesu Babu.*

*Your home is a tiny two-room concrete block, approximately 200 square feet, in a slum known as Vambay Colony. Imagine that you share this small home with your grandmother, Durgamma, and your 9-year-old brother. You live with your grandmother because your parents died of AIDS — first your father, who brought the infection home, in 2001; then your mother in 2004. There was no one left to take care of you and your brother except your elderly grandmother, who never expected to be raising two more children at this age.*

*Soon you learn that although you are HIV-negative, your young brother is HIV-positive. He begins to grow ill. He battles many infections. He cries in the night when he's sick, and calls for his mother. There is no one else to provide an income for this new family that has formed. So you let your brother go to school, although for what future is painfully unclear, while you go to work.*

*You are 12 years old. You know you should be in school. You should have a childhood, but it has been traded in far too soon for adult work and worries, for hardships that no 12-year-old should ever have to face. But what can you do? There is no one else. There is no other way. From a normal life with a mother and father, school, a childhood, possibilities — to this previously unimagined reality.*

*This is your new normal. Imagine.*

The children are everywhere in India. They fill the streets, the railway stations, the villages. Many of them are homeless, overflowing the orphanages and other institutional homes to live on the streets. Amidst the growing prosperity of India, there is an entire generation of parentless children growing up — 25 million in all, with nearly 4 million more being added each year. Many are trafficked into prostitution or child labour in conditions amounting to slavery. They are the invisible children, shunned by society and often their own families. Left to fend for themselves, they are virtually unnoticed by the world.

Nowhere is this more true than among the nearly 2 million children who have lost their parents to AIDS — the most AIDS orphans of any country, and expected to double within five years. India is now home to the largest HIV-positive population in the world with 5.7 million infected, accounting for 15% of all

cases globally. In May 2006, the Joint United Nations Programme on HIV/AIDS (UNAIDS) reported that India had overtaken South Africa to become the first non-African country to report such alarming numbers. The disease is silently spreading and reaching critical proportions. Almost 1% of people in India's six most populous states are HIV-positive, and 20 out of 37 states show high-prevalence areas.

The sheer size of India's population — more than 1 billion — makes a widespread AIDS pandemic almost unimaginable. The one percentage figure is deeply disturbing to health officials because it is regarded as the tipping point, at which a smouldering health crisis can explode into an epidemic of vast magnitude.

Sitting in her small house, Grandmother Durgamma spoke to me about her life. “It is very hard taking care of my two grandchildren. I have leg pains, I cannot run with them. I want to take care of them but it is hard. I am only one. I am always thinking about their future. If something happens to me, when I die, what will happen to them? I don't need anything for myself. I am living only for my grandsons.”

Hers is a familiar story in Andhra Pradesh, the epicentre of the crisis with the highest infection rates in the country. The pandemic has created a secondary human rights crisis — the orphaning of children on a massive scale. UNAIDS reports: “Orphaning remains the most visible, extensive, and measurable impact of AIDS on children.”

The trend of grandparents raising grandchildren has become so prevalent — as many as 40% of these orphans live with their grandparents — that VMM (Vasavya Mahila Mandali) and similar organisations have started what they call 'Granny Clubs'. These are social and educational networks of women (and some men) like Durgamma who are caring for orphaned grandchildren. The granny clubs generally have between 10-15 members who meet once a month, with social time and education about various topics. At one meeting, they might learn about HIV medications and treatment; at another, the subject might be nutrition. The time is also used to make friendships, share problems, and offer solutions.

“Sometimes we play games or sing,” Durgamma told me. “We have become friends, like sisters, and we support each other. We are older people who have watched our children die. We share our joys and our sorrows.”

Ramulamma is another active granny club member in Vambay Colony. She lives with her granddaughter and great-grandson Krishna, who is HIV-positive. Krishna was so tiny I would have guessed him to be a boy of 4 or 5 years old; when I enquired I was told that he is 9. Krishna's mother, the breadwinner of the family, was at her job as a hotel maid in Vijayawada the day I visited. She earns Rs 40 a day, although it costs her Rs 10 to travel into town and back. They are a family with three generations affected by HIV: Krishna's father died two years ago, and his grandfather died just the month before my visit, both from AIDS. Krishna and his grandmother gazed at me listlessly as we spoke, both of them with the same vacant, hopeless eyes. In Vambay, it seemed death was not a feared stranger but a constant, familiar companion.

VMM provides doctor care and medicine every month for Krishna, as well as a local physician who is available for immediate needs. But he is not on ART (antiretroviral therapy) currently because he is not deemed sick enough. In India, CD4 blood count levels must be 200 or below to qualify for ART drugs — the level at which HIV is medically considered to have

become full-blown AIDS. Only 7% of HIV-positive people were receiving any antiretroviral treatment in 2005. In the United States, ART is started well before this time to *prevent* AIDS, generally at CD4 levels of 300 to 350. Krishna continues to have regular blood tests so that ART drugs can be started as soon as his condition qualifies.

In spite of their plight, Krishna and Yesu are among the lucky children because they have families to live with. For every child fortunate enough to live in a family home there are a thousand more who have nowhere to turn. Those without any kinship ties — or whose families refuse to take them in because of the stigma of AIDS — often end up in institutional homes, forming child-headed households, or simply on the streets. They are the missing face of AIDS, these children left behind.

India's crisis is acute in part because the country has done little to protect children affected by HIV/AIDS, and has no provisions at all for those orphaned. At the VMM office before my visit to Vambay Colony, Keerthi Bollineni said that the national and global response to the HIV/AIDS crisis in India has virtually ignored children. It is a sentiment I heard over and over, from

Shelley Seale



**Durgamma:** "If something happens to me, when I die, what will happen to them? I don't need anything myself. I am living only for my grandsons."

every organisation and social worker I talked to. Resources for orphans and other children made vulnerable by HIV/AIDS have increased in recent years, but funding for these programmes is, nevertheless, small. An enormous gap exists between what is needed and what is actually being done to address the needs of children affected by AIDS.

The response to AIDS in India has focused primarily on high-risk target groups: the sex trade, truckers who spread the infection from town to town, and drug-users. Eighty per cent of AIDS funding goes towards prevention among high-risk populations, and only 20% towards caring for children and families living with HIV. Kanika Singh, Executive Director of Heroes Project India, confirmed this. “Young people and women are the two vulnerable groups today. One out of every three people infected with HIV is a woman, and 80% of these women are housewives. That has a direct link to children. They unknowingly pass on the infection to their child.” Mother-to-child transmission is the most common source of infection in children, at a rate of 30,000 per year, but children are also acquiring HIV through blood transfusions, syringe injections, and consensual or non-consensual sexual contact. Still, said Kanika, “nobody talks about HIV-positive children”.

Stigmatised through no fault of theirs, these children are far more vulnerable to abuse and exploitation. A Human Rights Watch investigation uncovered discrimination on a constant basis: segregation and expulsion from schools, refusal of treatment by doctors, rejection from orphanages and even their own family homes. “Children are being turned away from schools, clinics and orphanages because they or their family members are HIV-positive,” reported Zama Coursen-Neff, a senior researcher with Human Rights Watch. “If the Indian government is serious about fighting the country's AIDS epidemic, it should stop ignoring children affected by AIDS and start protecting them from abuse.”

Becoming orphaned is not the only way children are affected by the AIDS epidemic. There is also the devastating impact on their emotional and psychological wellbeing. “They are missing their entire childhoods,” said Dr Deeksha Pillarisetty, Medical Director of VMM. “They go immediately into adulthood at a very young age.” VMM estimates that 25% of children affected by AIDS live in child-headed households, a trend of particular concern. Dr Pillarisetty described the trauma these children face with no adult support. They are the most common care-givers for sick parents and eventually watch those parents die — after which they all too often must step into adult roles themselves, becoming the guardians of younger siblings or working to support the rest of the family. They may be denied their property and inheritance rights, often face discrimination from their neighbours, and must deal with fears for their own health.

Alarming new evidence by UNAIDS found that orphans and vulnerable children have a higher risk of exposure to HIV than non-affected children. Girls are especially vulnerable. They are more likely to be removed from school to care for sick parents or other family members, and are often the last in the family to receive medical care. Loss of family income can push them into

the sex trade, and inability to control safe sex, even within marriage, puts them at a disadvantage. Less access to education, sexual abuse and child marriage all place girls at higher risk of becoming infected. Many families marry daughters off at increasingly young ages so the girls will have someone to care for them after their parents die. Parents are also afraid of HIV rendering them unmarriageable, a finding that the Human Rights Watch investigation corroborated. This has the added effect of creating a lot of very young widows. Dr Pillarisetty sees many girls widowed by the age of 18. One of them was married at the age of 13, widowed at 14, and is now 15 years old and living with HIV. Often these widows are blamed for the husband's death and cast out by his family.

The potential impact these children will have on the epidemic as they grow up is also an area of concern. As they become sexually active, the lack of education about transmission and prevention and poor role models are likely to contribute to the spread of the infection. Missing family ties, they often form unhealthy attachments in which they are vulnerable to abuse. “They just want a relationship — it doesn't matter what kind it is,” Dr Pillarisetty said. “There is nobody for them, nobody wants them. They are very traumatised.”

There are more children living in India today with HIV-positive parents than children already orphaned. If those parents are not treated and continue to die, the worst impact on children is still to come, and scarcely comprehensible.

The face of India's future, if it fails in the battle against HIV, lies in a small village called Cherlopalem in rural Andhra Pradesh. Cherlopalem is home to 30 dalit families, a farming community surrounded by lush green fields that now stand empty. Three-fourths of the residents have been affected by AIDS. Seven people have died within the past eight months and dozens more are in the last stages, leaving many children behind without any sort of supervision. On April 8, 2007, the *Eenadu* newspaper reported: “The village, known for its hardworking lifestyle, is now ravaged by a cureless malady.” The article accused officials of doing nothing. The remaining residents confessed that they knew nothing about the “dreaded disease”. They do not know how it transmits or what precautions will protect them.

Cherlopalem is a microcosm of the ability of AIDS to unravel the social fabric of entire communities. It is clear that a failure to address the looming crisis in India will have dire consequences for the country, its children and the world, for generations to come. A childhood cannot wait for the AIDS epidemic to subside, for poverty to be eradicated, for adults and governments to act, for the world to notice them.

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*Shelley Seale is a freelance writer based in Austin, Texas. She is researching a book titled The Weight of Silence: Invisible Children of India on India's 25 million orphans*

# 'Enrolment is cause for celebration, quality is cause for concern'

According to the 2006 ASER survey, 93.2% of India's children in the 6-14 age-group are now in school. Farida Lambay of Pratham believes that the challenge now is keeping children in school and finding out why even after four years of schooling children cannot read

**FRENY  
MANECKSHA**

*THERE ARE AN ESTIMATED 140 MILLION CHILDREN in the 6-14 age-group in primary schools. Of these, 30 million cannot read, 40 million can recognise only a few alphabets, 40 million can read some words, and 30 million can read paragraphs. Over 55 million of these children will not complete four years of schooling, eventually adding to India's vast illiterate population.*

*Pratham, which began in the slums of Mumbai in 1994 as an endeavour by a few committed individuals to tackle the problems of education, has grown into an organisation whose activities reach across 18 states.*

*Pratham's mission has been 'Every child in school and reading well'. In pursuit of this it has launched the Read India campaign aimed at achieving reading and arithmetic proficiency among all children in India, within and outside school.*

*The campaign, phased over two years, has a March 31, 2009, deadline for achieving its goal. The phasing will be both geographical (about 300 districts in the first year, the rest in the second year) and sequential within each district (there will be a summer campaign followed by a low-intensity school campaign during the academic year).*

*Pratham has also facilitated the Annual Status of Education Report (Rural) (ASER) 2005 and 2006 which examines the status of primary and secondary education for India's children, and has extensively recorded data on enrolment, dropout rates, quality of education and other criteria like mothers' literacy, etc.*

*Farida Lambay, Vice Principal of Nirmala Niketan and Founder Trustee of Pratham, spoke about the findings of ASER, various government policies, and why gauging children's reading abilities and quality education are so important.*

## **What has Pratham's most successful programme in India been? What makes it stand apart from the others?**

It's the Read India programme, and the community-led Annual Status of Education Report (Rural) (ASER).

The ASER report has been quoted and used as a document for planning, not only by the Planning Commission but by various states. The report has been translated in all languages by the states. That's what has made it much more effective.

## **The first ASER came out in 2005 and now there is ASER 2006. What are the significant changes?**

ASER 2006 has the added criterion of mothers' education. We

have found that the literacy of the mother has a direct relationship with her child's education. Secondly, we have looked at the aspect of reading and comprehension. We have put a lot of emphasis on quality. This time the survey covered almost all of India.

ASER 2006 reveals that school enrolments have remained almost steady at the national level — nearly 93.2% of children in the 6-14 age-group in rural India attend school, compared to 93.5% reported in ASER 2005. That means only 6.8% of 6-14-year-olds are not in school, a figure that compares favourably even with developed countries.

However, this figure conceals several important facts like regional variations and age-inappropriate enrolments. Many children who are in school do not actually belong there — far too many are younger than they should be, and far too many have not completed school at the right time.

At the other end of the scale, as many as 21.3% of children are no longer in school by the age of 15-16. The figures for children out of school from the age of 11 onwards reveal that more than half the children who enrol in Standard I drop out before completing Standard VIII. Despite the efforts made in recent years, the process of retaining children once they are in school has not improved significantly.

ASER 2006 shows that the process of entry into school actually begins before the official school-going age of 6 years (nearly 84% of 5-year-olds are enrolled in balwadis, anganwadis, government or private schools), so obviously public interest in sending children to school has been stimulated adequately. The reasons why children do not stay in school are what should be engaging our attention now. What are the factors that are pushing children out? Inadequate infrastructure, inattentive teachers, and irrelevant, monotonous curricula.

We also know that educated mothers are more likely to send their children to school and also to have healthier and better educated children. ASER 2006 finds that children of mothers who have not been to school are five times as likely to be out of school. The 6-8-year-olds of mothers who have not been to school are three times as likely not to be able to read the alphabet as children of mothers who have completed at least Class V. These are powerful arguments in favour of increasing the coverage and quality of adult literacy programmes, and aiming them at women, since an educated mother serves as a 'multiplier' when it comes to educating her children.

**So the major finding of ASER 2006 which calls for celebration is the rise in enrolment?**

A cause for celebration is enrolment; a cause for concern is, of course, quality. Specifically, I would say this with regard to reading. In spite of going to school for four years, children are not reading. That is great cause for concern. Personally I am not so worried about out-of-school children — they'll come back. The challenge is whether children in school are actually learning.

**What are Pratham's plans to meet the Millennium Development Goals with regard to child rights?**

We started with a perspective of child rights in terms of basic education — that every child should learn, and every child should think. That is the basic right of every child. But now we are talking not only about enrolment but also quality. By quality we mean every child should be able to comprehend and compete with other schoolchildren.

We are also looking at the rights of children not just from stable families but vulnerable groups — ie the basic rights of children who cannot make it to school, child labourers and workers. This is in keeping with the Millennium Development Goals.

We had also said that, by 2005, in Mumbai, we would make sure that every child got an education. We have partly done that. As far as child labour is concerned, we are looking at having no child working. We have done that, to a great extent. We are now looking at this for all of India.

Pratham has always said that whatever we do we will work with the government, and whatever we do will be replicated. We are goal-oriented and community-based. People — whether it is the community or those providing support — must all be brought together.

**Is 2015 a reasonable deadline for the Millennium Development Goals? How much do you plan to achieve by then?**

For Pratham the goal is 2009 because we are going by the goals of the Sarva Shiksha Abhiyan (SSA), which has fixed 2009 as the deadline. I think we can make it. Every child must get to read. That is our mandate right now with the launch of the Read India campaign. Because of the ASER report, Pratham has been able to work in all states and with their respective governments. That should make achieving the goals possible.

**What are the education policies that have worked?**

I think the midday meals scheme has worked in some places. The programme is doing very well in the south. Also, free girls' education and incentives for girls like transport and conveyance have helped.

The Sarva Shiksha Abhiyan has given a strong focus to primary education, especially in terms of creating a movement. Yet we can do a lot more.

**What are the main gaps with regard to education?**

The major gap right now is vulnerable children, in terms of visibility. We do not have proper data on this issue. Also, vulnerable in terms of them being streetchildren, working

children, child labourers...

Another gap is in higher education, from Standard VII onwards. The gap here relates to both general dropout cases and girls' education. Then there are patches or areas in states like the northeast, Orissa, parts of Maharashtra, Uttar Pradesh and Bihar. What's interesting in Bihar is that children's learning abilities are good; those children who do go to school and stay in school do well.

Then there is the Muslim minority. Higher education and girls' education are still problems here. Also, in terms of early childhood care, there is no Integrated Child Development Services (ICDS) or anganwadis in Muslim localities.

**What role does Pratham play in supporting the Integrated Child Development Services (ICDS) scheme? What ails the ICDS?**

I personally think that as a scheme the ICDS is very good. Maharashtra, according to our report, is doing quite well with a coverage of 80%, which is not bad at all. The problem is in the implementation stage... the anganwadi worker is one among many in that remote village. If she doesn't get recognition from her superiors there are bound to be problems. I also feel that if other schemes like, say, the Public Distribution System (PDS), don't do well it has a direct impact on the anganwadi and children. There are problems of convergence. There should be more convergence between, say, the anganwadi and healthcare services.

**How does Pratham incorporate a rights-based approach in India? How does Pratham conceptualise the meaning of child rights?**

The mission 'Every child in school and reading well' is itself rights-based. We are saying 'No' to child labour. We are saying every community has the right to participate. When we work with the government we focus on the issue of rights. We have been able to advocate policies both on child labour and education, at the national level.

**What are Pratham's fundamental strategies for guaranteeing full access to primary education?**

Pratham's strategy is that we work with the government. We work with the entire hierarchy — with schools, with parents. I think we have had much more success working with the community. We create an enabling environment within the community; and we are working with parents. We hope, ultimately, that schools feel the pressure.

Pratham's strategy is to make the government more accountable. Everything we do is to make it more effective.

*Freny Manecksha is a Mumbai-based journalist*

# The aspiration for education

There is unimaginable poverty and hunger in the picturesque Doars region of West Bengal. Still, the people here feel that education is more important for their children than nutrition. How is this aspiration for education being met in these remote villages?

KUMAR RANA

THE CHILDREN WERE SHIVERING. They had nothing but cheap woollen rags to protect themselves from the January cold. Still, they arrived early in the morning to attend the ICDS (Integrated Child Development Services) centre in Ranagapani Nepaliline village of Madarihat block, Jalpaiguri district, West Bengal. Visibly malnourished, they came to eat the food served at the centre, whose quality — boiled rice and pulses, or khichdi — was more abominable than palatable. It consisted mainly of stale leftovers of rice and dal.

Life in the Doars region of this part of West Bengal is bleak. The lush green tea gardens and dense woods are picturesque, but only from a distance. Amidst the greenery are unimaginable poverty and a terrifying hunger that forces people to accept whatever they are offered: "*Jo mileyo*," as a mother, Nimi Thapa, told us.

Yet the people here are uncomplaining; it would seem they have accepted the hardships of their life as their fate. There is, however, an undercurrent of dissatisfaction with the State's basic service delivery system. To our surprise Nimi, barely able to manage two square meals a day, says the ICDS centre should give priority to education. "Feeding is important, but more important is education," she says. "If the children can acquire a basic education then they will be able to understand society and the system and be able to change them." Clearly, she understands the importance of education and wants her child to start learning even before going to primary school (pre-schooling, besides child nutrition, is actually an important component of the ICDS programme that has been designed to focus on children under 6).

Nimi's views are echoed by thousands of parents, especially mothers, of children attending ICDS centres and primary schools throughout West Bengal. This aspiration for education was fuelled by the launch of the midday meal scheme in primary schools, which has pushed up enrolments and attendance. While the rate of never-enrolled children has radically declined to near-zero, the rate of attendance for primary school children, according to several studies, has shot up between 5-40%.

As part of a research team constituted by the Pratichi Trust, an organisation set up by Professor Amartya Sen from his Nobel Prize money, I visited more than 300 villages to study the delivery of primary education, basic health, and child nutrition. Although our geographical focus has largely been West Bengal, we have expanded our studies to include parts of neighbouring Jharkhand.

This overwhelming aspiration among people to give their children an education is not restricted to West Bengal and Jharkhand. Wider studies, such as PROBE (Public Report On Basic Education) suggest that it is a pan-Indian phenomenon.

Still, the state of education in many parts of the country remains bleak, with the delivery of education uneven in different states and areas. West Bengal is marked by some unfortunate contradictions. The state has achieved remarkable progress in terms of radical pro-people agendas like land reform and decentralisation of power through local governments (panchayats). It has unquestionable political stability: the ruling coalition that assumed power in 1977 is still in office. West Bengal has a long history of leading political and social reform. It has made several advances in higher education. And yet, almost every third person in Bengal is denied the right to literacy.

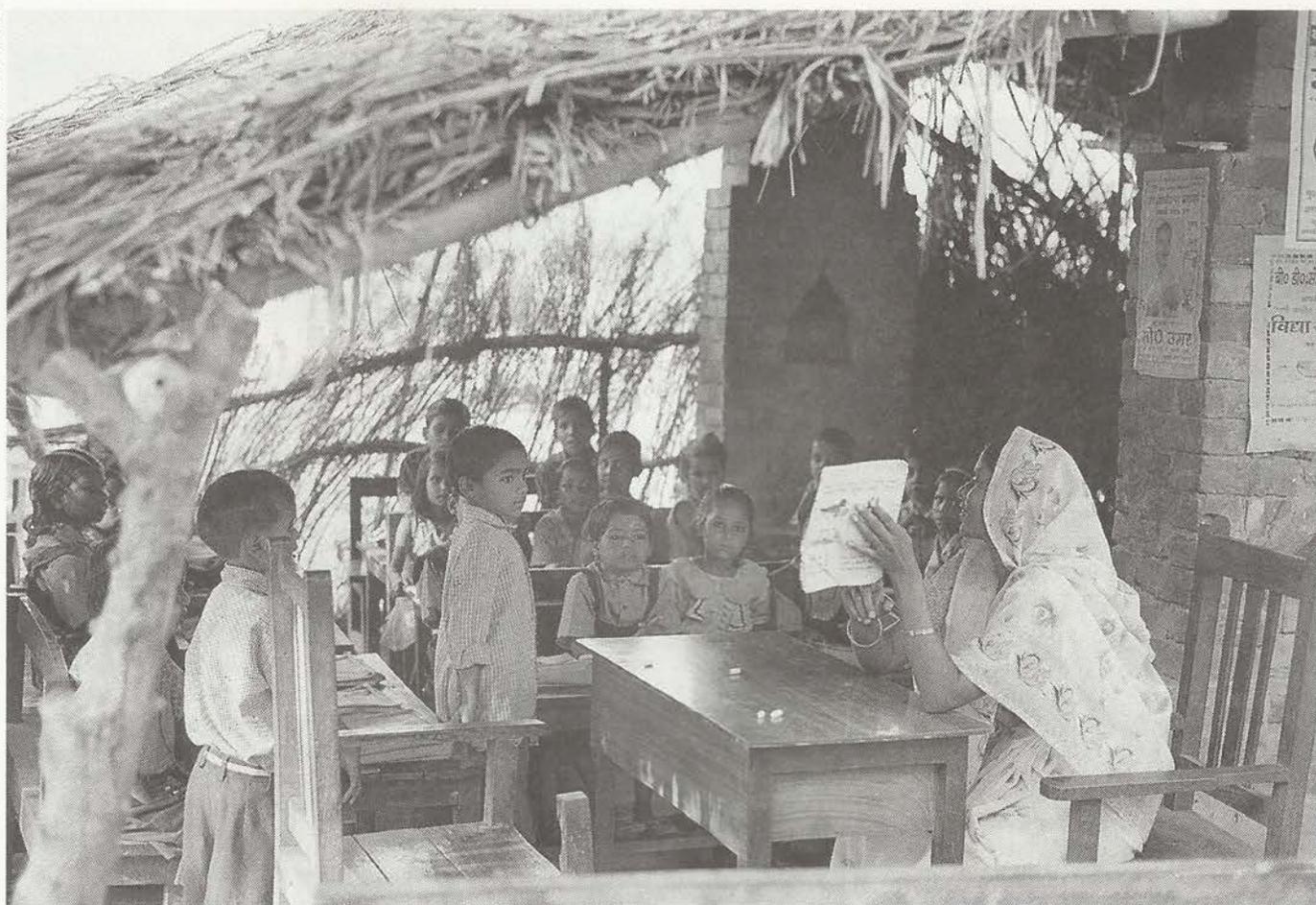
The illiterate are mainly from the socio-economically backward communities — Scheduled Castes (SCs), Scheduled Tribes (STs) and Muslims. While the average level of illiteracy in the state, according to Census 2001, is around 31%, the figures for SCs (41%), STs (57%) and Muslims (43%) are substantially higher than the state average. The level of illiteracy among women is extremely low in general; among the socio-economically weaker communities in particular it is appalling.

## Policy failures

West Bengal's problems with education begin with its outright neglect of primary education. In spite of several declarations on universalising primary education, the funds allocated to primary education have been consistently low. (1) There has been greater emphasis on the superstructure than on the base, and this has exacted its penalty: the primary education sector suffers severe deficiencies in infrastructure facilities and the availability of teachers, though, of late, these problems have begun to be addressed.

A single example would make the point. In 2002 there was an average of one teacher for 54 primary school children in West Bengal, placing it as the third worst state in an all-India pupil-to-teacher ratio ranking. The school inspection system, till date, is not properly functional; measures to free policy formulation and major implementation procedures from bureaucratic centralisation are inadequate; the formulation of syllabi, testing methods, modes of governance in schools, etc, remain centralised.

Desmond Roberts



### Organisational problems

If bad policies are harmful, weakness in implementation is sometimes worse. The shortage of teachers is well known; what is less known is the miserable organisational failure in allocating available teachers. Marginal areas are marred by unjust distribution of teachers. In a semi-urban area of South 24 Parganas district, that has comparatively better accessibility and connectivity, the local primary school had six teachers, including four females, to look after around 100 children. On the other hand, a primary school in a geographically remote village had only one teacher for 232 children. Single-teacher schools formed about 6% of the total in West Medinipur district (same as the state average). But Belpahari, a marginal block in the district, had 23% (21 out of 91) single-teacher schools when we visited the area in November 2005. In Gopiballavpur East and West Circles of the same district the single-teacher primary schools formed 21% and 16% respectively. When such discrepancies are the norm rather than the exception, there is reason to be concerned about the state of affairs of primary education in the state. West Bengal has a general deficit of female teachers (female teachers constitute only 25%; figures for Kerala and Tamil Nadu are 70% and 66% respectively).

Often geographical patterns have a strong correlation with demographic patterns: geographically backward areas are

generally inhabited by socio-economically backward populations — adivasis, scheduled castes and Muslims. A list of backward villages prepared by the Panchayat and Rural Development Department of the West Bengal government amply proves this connection: areas with high concentrations of SC, ST and Muslim populations share the majority of backward villages. How does this connection affect primary education? With the general paucities — shortage of teachers, lack of infrastructure, etc — schools face various irregularities, including teacher absenteeism, poor learning achievement, etc. Parents from underprivileged backgrounds can neither raise their voice against the poor functioning of the school, nor can they provide extra inputs for their children's education.

One of Pratichi Trust's most disturbing findings is the embedding of private tuition with primary education: most children have to take paid assistance outside the school (private tuition at the primary school level is unheard of everywhere except in the Indian sub-continent). It is, according to Amartya Sen "an evil" and a "regrettable necessity" that causes multiple damage: poor children who cannot afford private tuition learn very little, and the relatively richer parents find it safer to resort to private tuition rather than raise their voices against the frailties of school functioning. (2)

While government channels for inspection of primary schools

are limited, the scope for initiating a process of social auditing through the parents' participation is also limited. In spite of their keenness to take part in the governance of schools, the government system does not allow much space for this extremely important input into primary education. An innovative programme by the West Bengal government called Sishu Siksha Karmasuchi shows how effectively schools can be run when local communities are involved in school governance. These schools, which are under community management (called Sishu Siksha Kendra) have shown greater operational regularity. It is another matter, however, that this programme too suffers from gross neglect, particularly in terms of teacher salaries and infrastructure.

But in the case of government primary schools, the opportunity for community participation has seemingly been unutilised. There are of course committees to involve local people, but these so-called 'participatory committees' are not school-specific; rather a village education committee is based at the gram sansad level (the lowest level of the panchayat system), despite the fact that a gram sansad may have more than one school or no school at all. And the deep-rooted divisiveness prevalent in society keeps all but the most influential parents out of such committees.

### Voice, participation and action

Yet, it's not an entirely one-sided story. True we do not often hear the voices of the poor, but, at certain times, the collective grumblings of the underprivileged and their democratic allies do make a real difference.

West Bengal has seen one such struggle between the rich and the poor. This was best manifested during the launch of the midday meal programme which the West Bengal government was initially reluctant to implement. The media, bureaucracy, rural and urban, affluent and poor — everyone opposed the programme. In spite of this opposition, however, the government had to launch the programme following a Supreme Court order. The midday meal programme gained strong support from the underprivileged. (3) And now we can see the results: the bottom 30%, who could never attend school, now have the opportunity to step into the school arena.

At the same time there has been rapid expansion in building and repairing school infrastructure (classrooms, toilet facilities, water, etc) and the recruitment of teachers. This would not have been possible without the raising of voices.

Without the voice of the people being heard there cannot be any constructive participation. The experiences of Pratiche Trust, which has not only been carrying out research but is also engaged in building public debate and advocacy, show that public participation can remedy many operational problems. The Trust's collaborative work with the Birbhum District Primary School Council, for instance, has resulted in a number of positive changes. This joint intervention that incorporates parents, villagers, teachers and local and state government offices has, to a large extent, improved the quality of schooling (regular attendance by children and teachers, punctuality, improvements in teaching and learning). Again, teachers'

unions have started showing better motivation in streamlining the education system. The All-Bengal Primary Teachers' Association (ABPTA), in association with Unicef and Pratiche Trust, has taken up 150 primary schools in Kolkata city where the basic agenda is to ensure enrolment, attendance, teaching and learning and greater public participation. The organisation plans to extend the scheme to other areas.

These positive interventions, nevertheless, have their limitations. While they have the potential to remedy some of the organisational problems, it would be naive to expect local initiatives to change things by themselves, particularly when a lot of constraints originate at the policy level. The required policy changes include both budgetary allocation for primary education, greater attention to teachers' recruitment, and overhauling the system through a democratic process (initiating school-specific parent-teacher committees with legal power to govern schools, involving teachers in the process of making the curriculum, formulating teaching and evaluation methods, making the Sarva Shiksha Abhiyan, midday meal and other programmes more transparent, etc).

As Nimi says: "*Sarkarko bhanne ke hamihuruko naniko parhaiko lagi ali bandovast garne.*" ("Please tell the government to do something in order to provide education to our children.") Although clearly dissatisfied, she has not given up hope in the government's capacity to provide that education.

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### End notes

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3 I have discussed the relevance and urgency of the programme in my paper 'The Possibilities of Mid-day Meal Programme in West Bengal', presented at the workshop 'West Bengal: Challenges and Choices', organised by the Centre for Social Sciences, Kolkata, on July 27-28, 2004; also available on [www.righttofoodindia.com](http://www.righttofoodindia.com). Also see Rana Kumar, et al, 'The Mid-day Meal Programme in West Bengal: A Study in Birbhum District', Pratiche Trust, Shantiniketan, 2005; [www.righttofoodindia.org](http://www.righttofoodindia.org)

## Getting children into school: Flexibility is the key

All government interventions in education are based on the assumption that child labour cannot be abolished and that the poor do not wish to send their children to school. In fact, the poor make enormous sacrifices to do just that. It is time the administration responded with strategies that help children enrol and stay in school

SHANTHA SINHA

TODAY, MILLIONS OF INDIAN CHILDREN are joining the labour market where they are subject to exploitation and drudgery with little hope of ever realising their dreams and aspirations. They are engaged mostly in unpaid domestic work and in the unorganised sector. Girls succumb to the pressures of early marriage, which harms their overall growth and development. Being out of school, they lose their childhood early, are denied basic rights and live in a world of fear and anxiety.

Even children who are physically and mentally challenged are badly neglected and face enormous difficulties in getting any kind of schooling.

At the same time there is a growing demand for education, and the past decade has witnessed many poor parents making huge sacrifices to send their children to school.

This important fact goes largely unnoticed by the authorities whose planning is based on the understanding that the poor cannot and will not send their children to school, and that it is impossible to abolish child labour. This attitude fuels the government's indifference in providing the necessary infrastructure to enable every child to go to school and to continue to do so without disruption. And so, in spite of six decades of independence, an estimated 100-120 million children between the ages of 5-15 have either never been to school or have dropped out.

Although the Indian education system is one of the largest in the world, it is wasteful and inefficient. Almost 54.6% of children (56.9% are girls) drop out before they finish Class VIII, and 66% (68.6% are girls) drop out before reaching Class X (GoI, MHRD website, provisional data for academic year 2001-02). (1) The percentages in tribal areas, backward districts and among scheduled castes and scheduled tribes are appalling. What's worse is that even after five years of being in school, only 60% of children are able to read, write and do basic calculations.

The system is structured on the premise that almost one-third of children entering primary school will drop out before they reach the upper primary level, and another one-third before they reach high school. Indeed, given the situation on the ground, a child entering Class I in a rural government school or urban municipal school reaches Class X more by accident than by design. Even a marginal increase in the number of students passing Class VI or VII and Class X would expose the incapacity to absorb them at the next level.

The government must make a concerted attempt to ensure that every child enjoys the right to education. This would mean:

- Making institutional arrangements to cater to 100 million more children in the school system, preparing not just the education system but the welfare, labour, police, development and revenue bureaucracy to ensure that they coordinate to make it possible for every child to be taken out of work and allowed to join school.
- Making arrangements for older children to join school and get into age-appropriate classes.
- Ensuring that first-generation learners and poor children are treated with respect and supported to overcome barriers in accessing and staying in school.
- Preparing all sections and classes of society to join the campaign for universalisation of school education, and ensuring that their areas are free of child labour. Simultaneously, the government must recognise such achievements and provide all the necessary infrastructural support.
- Investing in building a social norm that children must not work and should instead be in school, in places where social mobilisation is weak and where there is no clear support for a child's right to education. The role of gram panchayats and local bodies must be seen as indispensable to all government efforts.

There are many barriers in a child's access to and continuance in school until Class X. Although the solutions lie at the macro level, in terms of policies and investments, there is also a need to address day-to-day issues that the child confronts at the micro level.

### Getting children back to school

Based on M V Foundation's experiences, over the past decade, of taking around 400,000 children out of work and getting them into schools in Andhra Pradesh, the following points were highlighted.

It is important to understand that the main responsibility of ensuring that children learn and are put into classes appropriate for their age is that of the school. No other institution can take the place of the school. It is the school that has qualified teachers, infrastructure, an atmosphere for disciplined learning and a system of evaluation to help children improve and grow. Therefore, schools must be prepared to accept children from

Residential Bridge Courses (RBC) without insisting on standards of performance. Once children are mainstreamed into regular schools, it should be the responsibility of the school to prepare them for an age-appropriate class.

#### **Identification of children for eligibility to Residential Bridge Courses (RBC)**

Only those children who have been identified under a survey conducted by the education department are deemed eligible for RBCs. Further orders have been issued to the effect that "only those children listed as 'out-of-school' may be admitted". Any other admissions of "out-of-school children may be done under proper certification by the concerned headmaster and Mandal Education Officer".

Most attendance records kept by the school authorities are linked to issues like the provision of midday meal schemes, teacher recruitment, maintenance of teacher-to-pupil ratios (TPR) and other structural necessities of the school system. Under these circumstances, it is cumbersome and impractical to get an 'out-of-school' certificate.

School surveys show that many children recorded as enrolled have never been to school or have dropped out of school and been absent for two-three years. Some of these children's

names appear in the attendance registers because of enrolment drives. Some, whose names are in the register, attend private schools; some are married; some may even have left their village.

There are also anomalies in the out-of-school list, especially with regard to girls. Several names are missing and do not appear either in the school-going or non-school-going lists.

Typically, children are identified as a consequence of social mobilisation and intense campaigning. Several conflicts, either of bonded labour or child marriage, have been resolved before the child decides to join school. It is unfair to deny such children admission to RBCs on grounds that their names are already on the school list. Instead, we should try to send such children to school because they are already on the list of enrolled children.

Besides, our schools are ill equipped to deal with children who are 9+ and have never been to school. The child is therefore at risk of dropping out. Also, many children who are 12+ and willing to join RBCs are discouraged from doing so. They are told they are too old to be in school.

#### **Admission to regular schools is non-negotiable**

All RBCs are closed by June 30. Children are to be admitted to schools and residential programmes based on eligibility tests

Sudharak Olwe



conducted by schools. But what happens to a child who does not pass the test? Where do these children go? And what are the arrangements for the continuance of the bridge programme?

Several children are denied the right to take the Class V and VI examinations because they are 'over-age', that is, above the age of 13. We need a grievance cell to take up such specific issues and provide practical solutions in favour of the child.

#### **First-generation learners: Need for appreciation of language, social and cultural barriers**

Children speak different dialects and need time to adjust to a standardised language. They are not 'dull' because they do not speak the language of the texts in the classroom. They cannot be insulted or excluded because their cultural expressions do not match those of the school system. Given time, and a little patience, they will be able to master the language and culture of power and authority. These issues must not act as barriers when children are being mainstreamed or subjected to scrutiny through eligibility tests and subsequent unit tests and examinations.

#### **Flexibility in admissions**

Children must be allowed to enter school at any time during the academic year; they cannot be denied admission on any grounds. This must be true for all classes, not just for primary school. There must be provision for a Class VI, VII, VIII or IX dropout to rejoin school.

#### **Need to orient upper primary schools and high schools**

There is a lack of sensitivity among upper primary and high school teachers regarding older children who seek admission to schools from Class VI onwards. Under tremendous pressure to show a good pass percentage and good examination results, even under normal circumstances teachers are compelled to exclude many children from the school system. Further, lack of infrastructure, number of teachers and adequate classrooms add to the teachers' unwillingness to admit children aspiring to enter the school system.

It is necessary to integrate schools into the entire planning process. In the transitional phase, a good school must be gauged by the number of children it has been able to *retain*, not by the number of children who have passed out of it.

There must also be a re-look at the internal evaluation system so that children who have been mainstreamed are given enough time to adjust to the academic sessions before they are subjected to the rigours of assessment.

#### **Payment of school fees, examination fees and other school-related expenditure**

The government must issue strict instructions to the school authorities against charging school fees and other maintenance charges. If a school has insufficient facilities, it must be encouraged to bring this to the notice of the government and quickly resolve the problem. Putting the pressure on poor students contributes towards pushing them out of school. Also,

children who enter schools through the process of social mobilisation and RBCs, tuitions and coaching classes must be exempt from payment of examination fees as private candidates. They simply cannot afford it.

#### **Conclusion**

- Provision must be made to ensure that children are integrated into the school system and not excluded.
- If children are not up to the required standard, it is the responsibility of the school to ensure that they are.
- Adequate flexibility must be allowed to help children overcome all barriers in order to participate in school as students.
- Children must be enrolled as students at regular schools even as they study in RBCs on a full-time basis. The RBC programme must not be seen as a substitute or even an alternative to school. The bridge is meant to enable an 'out-of-school' child to become a student. It is also meant to enable schools to set up facilities for all such children, and get prepared for the backlog of children who are waiting to be mainstreamed.
- Schoolteachers in middle and high schools must be oriented to accept children and establish systems at each level of governance within the education department to make it easy to include every child in school.
- Officials at the state and district level must listen to the children's voices on the ground and respond to them by creating flexibility in governance at schools.

We have failed to universalise education because of a lack of political will. Consequently, in planning for education there is no sense of urgency that children must not work, and that every child should be in school and remain there until Class X. It is almost as if the system were designed to cater to a small percentage of children who come in at Class I and get to Class X. This half-hearted approach determines all our policies and programmes, as a result of which millions of children who aspire to join schools are neglected. Those who have gained the most from the system are often blind to the conditions of a vast majority of children in our country and to the aspirations of their parents. It is by building a social norm in favour of the child's right to education, and providing every support to the poor in their fight to get into school, that education can become a reality for every Indian child.

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*Shantha Sinha is Founder and Secretary Trustee of M V Foundation, Hyderabad. She was recently appointed Chairperson of the National Commission for Protection of Child Rights*

#### **End note**

1 Dropout rate, primary (Standard I-V): Boys: 38.4%; girls: 39.9%; total: 39%. Dropout rate, upper primary (Standard I-VIII): Boys: 52.9%; girls: 56.9%; total: 54.6%. Dropout rate from Standard I-X: Boys: 64.2%; girls: 68.6%; total: 66% (Source: DOEEL, MHRD, Gol website, provisional data for academic year 2001-02)

# Mainstreaming disability in the child rights agenda

One in every 10 children is born with or acquires a disability. While the pulse polio drive and immunisation against diphtheria, pertusis and tetanus have been quite successful, the State's efforts to prevent conditions such as blindness, deafness and neurological disabilities have been dismal

RENU ADDLAKHA

ONE IN EVERY 10 CHILDREN is born with or acquires a physical, mental or sensory disability (Government of India estimates). So India is probably home to millions of disabled children. More than 75% of disabilities are preventable. Although there has been some improvement in the status of children in the areas of health, nutrition and education in general, the situation of children with disabilities remains deplorable, particularly in rural areas and among the lower socio-economic strata. Also, gender-discriminatory feeding and healthcare practices within the home render the girl-child more vulnerable to ill health and acquired disabilities compared to her male counterparts.

The first six years in a child's life are crucial. It is in these years that the physical, cognitive, language and social development

of the child is at its peak. Investment in early childhood health and education is therefore essential.

Although various horizontal and vertical health programmes of the State, such as the National Health Policy, Integrated Child Development Services (ICDS) scheme and National Iodine Deficiency Control and Vitamin-A Supplementation Programmes do focus on prevention of childhood disability, their impact on overall decline in the incidence of disability remains minimal. For instance, more than 210,000 children are born cretins, or turn blind every year. High levels of childhood malnutrition and little over 50% immunisation coverage further increase the vulnerability of millions of children to death, disease and disability.

Disability continues to fall in the area of 'social welfare'. While efforts are on to bring it into the 'rights' arena, there is still a long way to go. Various groups of children, including those physically and mentally challenged, juvenile offenders, destitute children and minor drug addicts, etc, are particularly disadvantaged because of their social, economic, physical or mental condition.

Such children are placed under the category of 'children under special or difficult circumstances' by the Indian State. Government policies, legislative action, schemes and provisions for the disabled give the impression of a State that is committed to human rights and equal opportunities. But the ground realities are quite different. While the pulse polio drive and immunisation against diphtheria, pertusis and tetanus have been quite successful, efforts aimed at the prevention of other conditions such as blindness, deafness and neurological disabilities have been dismal. The incidence of developmental disability such as mental retardation and autism has increased to an alarming level.

Children with disabilities must cope with all the physical changes, emotional anxieties and social conflicts of their non-disabled counterparts, in addition to those produced by their disability. Along with the physical and communication-related limitations that their disability places on their daily activities, they constantly face discrimination — economic, educational, architectural, legal, health.

When poverty, physical neglect and social marginalisation intersect, the impact on the disabled girl-child can be devastating. Since women embody family honour, disabled girls are kept hidden away at home by families and denied the basic

Desmond Roberts



rights of mobility, education and employment. They are viewed as asexual and dependent.

The plight of a disabled girl is aptly summed up by Neera, a 19-year-old orthopaedically challenged girl living in a resettlement colony in Delhi with her family, who dropped out of school in the 10th standard. She said: “All disabled people face problems. When a disabled child is born into a family, the parents' outlook changes. They blame themselves for this occurrence and want to know what they had done to deserve such a fate. As I grew older, so did my problems. Even before I was admitted to school, I was thrown out. I visited many organisations. These people promised things that they never delivered, which increased my frustration. Our neighbours' behaviour became strange. I stopped going out of the house except to the hospital in the company of my father. I have never been out of the house alone. After being associated with ActionAid in our area, I realised that I was also entitled to a life of my own.”

There is an over-representation of disabled boys in education, both in special and mainstream schools. Due to differential gender-based role expectations, education is not considered a priority for disabled girls. Dropout rates for disabled girls are higher than for disabled boys. Parents become more protective and restrictive, especially after a disabled girl reaches puberty. Travelling to school is a huge problem, since, besides transport difficulties, the danger of sexual abuse and violation looms large. There is also the reasoning that there's little point investing in a disabled girl's education as she will anyhow never be able to earn. She will be a lifelong burden on the natal family because marriage is not a realistic option. So, it is economically unsound to invest in her education or vocational training.

Vinita, a visually challenged college-going student, highlighted the disadvantages faced by visually challenged girls due to the overprotective attitude of their families and school. She said: “Girls with disabilities definitely face more problems than men. Visually challenged girls like me are overprotected both at home and in school. Boys are allowed to move freely out of the school premises, but not girls. When I came to Delhi I could not travel by bus on my own. I also did not know how to ask people for information. Initially, I was very scared because we had never been allowed to leave the blind school alone, and at home someone would always accompany me whenever I went out.”

Sexual identity is a critical component of overall personality development and self-esteem, which crystallises during adolescence. Children with disabilities are at a particular disadvantage in this regard as well. There is a strong attitude of overprotection towards the disabled child. Parents infantilise disabled children and imply that sex is only for the able-bodied and of no relevance to the disabled. These parental attitudes are transmitted to the child in subtle ways making him/her feel that s/he is inferior and unworthy of love. Parents of children with

disabilities encourage dependence and share in a general societal perception of disabled persons as essentially child-like, innocent and by extension asexual. To make matters worse, these attitudes also colour the perceptions of teachers.

Preeti, a hearing challenged girl, described her marginalisation in discussions around marriage, which she attributed to her disability. She said: “I work as a computer teacher in a vocational centre for deaf women. At home there is talk about my marriage but I cannot follow the conversation and no one really bothers to explain to me what is being talked about. I do not know what is happening at home because I cannot participate in the conversations. I only get to know when things have already happened. At family functions, no one wants to speak to me in spite of the fact that I can lip-read. At least my family should know sign language. Marriage is not important and I would rather help others.”

Key terms in disability discourse are dignity and respect, inclusion, participation, equalisation of opportunities and empowerment. However, if the underlying negative attitudes and cultural representations of disability in society are not challenged through vigorous awareness-generation and attitudinal change strategies, such words will remain empty slogans. Throughout the ages the disabled have been looked upon with disdain, almost as if they were sub-human. Even in literature, negative characters were attributed some form of deformity, be it Manthara the hunchback, in the *Ramayana*, or Shakuni the lame, in the *Mahabharata*. Whether in folk tales or contemporary comic strips, the heroine is invariably fair, slim and beautiful, and the hero, tall, smart and handsome. Rarely is a person with an impairment conferred a positive or heroic role. Most people continue to believe that disability is either an irremediable medical condition or an act of fate. In both cases the onus of care devolves upon the family of the disabled and not on the community.

Disability and the disabled have to be integrated into everyday life. Segregation in special schools and institutions must be minimised; the issue of disability must consciously move beyond issues of special education and medical rehabilitation and be mainstreamed into other discourses such as the economy, polity, entertainment, sports, fashion and lifestyle. The language of special needs and vulnerable groups has to be replaced with less stigmatising and more empowering terms like human rights and specific needs. Families have to be helped to overcome feelings of shame at having a disabled child. And, most important of all, children with disabilities have to be helped to acquire a positive sense of self, self-confidence and self-respect. Only when these are achieved will there be total inclusion and empowerment, and having a disability will mean as much or as little as having black hair or brown eyes.

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This dossier is supported in part by a grant from the Government of India pursuant to an MoU between ICICI Bank and the United States Agency for International Development's TDC programme. The views and information contained herein are those of the authors and not necessarily those of the Government of India, ICICI Bank, USAID, or any other grant-making organisation, which assume no liability for the contents of this publication by virtue of the support given

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