CHILD LAW AND CHILD RIGHTS

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Preface

Child law and child rights are fundamental to ensuring the protection, well-being, and development of children within society. At the core of child law are legal frameworks and principles aimed at safeguarding the rights of children, which include provisions for their protection from harm, access to education, healthcare, and participation in decisions affecting their lives.

International treaties such as the United Nations Convention on the Rights of the Child (UNCRC) serve as foundational documents in shaping child law and rights globally. The UNCRC outlines a comprehensive set of rights for children, including the right to life, survival, and development; protection from violence, abuse, and exploitation; and participation in decisions affecting them.

Child law encompasses various areas, including child protection, family law, education, health, and juvenile justice. It provides legal protections and mechanisms to ensure that children's rights are upheld and respected in all aspects of their lives.

Child protection laws address issues such as child abuse, neglect, and exploitation, providing measures for prevention, intervention, and support for children who are at risk or have experienced harm. These laws aim to ensure that children are safe from harm and have access to appropriate services and support.

Education laws guarantee children's right to education and ensure access to quality, inclusive, and equitable education for all children, regardless of their background or circumstances. These laws promote the holistic development of children and empower them to reach their full potential.

Health laws protect children's right to health and ensure access to essential healthcare services, including preventive care, treatment, and rehabilitation. These laws aim to promote children's physical, mental, and emotional well-being and

address factors that may affect their health and development. Family law addresses issues such as child custody, adoption, and parental responsibilities, providing legal frameworks to ensure the best interests of the child are prioritized in family-related matters. These laws aim to promote stable and nurturing family environments that support children's growth and development.

Juvenile justice laws focus on children who come into conflict with the law, providing measures for diversion, rehabilitation, and reintegration into society. These laws recognize the unique needs and circumstances of children in conflict with the law and aim to promote their rehabilitation and social reintegration while ensuring accountability for their actions.

Overall, child law and child rights are essential for promoting the well-being, protection, and development of children and ensuring that their rights are respected, upheld, and fulfilled in all aspects of their lives.

–Author

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Child Protection Law

The term 'child protection' is used in different ways by different organizations in different situations. The term will mean protection from violence, abuse and exploitation. In its simplest form, child protection addresses every child's right not to be subjected to harm. It complements other rights that, inter alia, ensure that children receive that which they need in order to survive, develop and thrive.

Child protection covers a wide range of important, diverse and urgent issues. Many, such as child prostitution, are very closely linked to economic factors.

Others, such as violence in the home or in schools, may relate more closely to poverty, social values, norms and traditions. Often criminality is involved, for example, with regard to child trafficking. Even technological advance has its protection aspects, as has been seen with the growth in child pornography.

WHAT IS AT STAKE

Violations of the child's right to protection, in addition to being human rights violations, are also massive, under-recognized and underreported barriers to child survival and development.

Children subjected to violence, exploitation, abuse and neglect are at risk of:

- Shortened lives
- Poor physical and mental health
- Educational problems (including dropping out of school)
- Poor parenting skills later in life
- Homelessness, vagrancy and displacement

Conversely, successful protection actions increase a child's chances to grow up physically and mentally healthy, confident and self-respecting, and less likely to abuse or exploit others, including his or her own children.

Child protection is an issue for every child in every country of the world:

- At any given time, more than 300,000 child soldiers, some as young as eight, are exploited in armed conflicts in over 30 countries. More than 2 million children are estimated to have died as a direct result of armed conflict since 1990.
- More than 1 million children worldwide are living in detention as a result of being in conflict with the law. In Central and Eastern Europe alone, almost 1.5 million children live in public care. Over 13 million children are estimated to be orphaned as a result of AIDS alone.
- Approximately 250 million children are involved in child labour, with more than 180 million working in hazardous situations or conditions.
- An estimated 1.2 million children are trafficked every year.
- A1995 estimate of the number of children in the commercial sex trade indicated that 1 million children (mainly girls but also a significant number of boys) entered the multibillion-dollar industry every year. The figures may now be higher.
- Forty million children below the age of 15 suffer from abuse and neglect, and require health and social care.
- An estimated 100-130 million women and girls living in Africa today have undergone some form of genital mutilation.

Child protection is a special concern in situations of emergency and humanitarian crisis. Many of the defining features of emergencies–displacement, lack of humanitarian access, breakdown in family and social structures, erosion of traditional value systems, a culture of violence, weak governance, absence of accountability and lack of access to basic social services–create serious child protection problems. Emergencies may result in large numbers of children becoming orphaned, displaced or separated from their families.

Children may become refugees or be internally displaced; abducted or forced to work for armed groups; disabled as a result of combat, landmines and unexploded ordnance; sexually exploited during and after conflict; or trafficked for military purposes. They may become soldiers, or be witnesses to war crimes and come before justice mechanisms. Armed conflict and periods of repression increase the risk that children will be tortured.

For money or protection, children may turn to 'survival sex', which is usually unprotected and carries a high risk of transmission of disease, including HIV/AIDS. Failure to protect children undermines national development and has costs and negative effects that continue beyond childhood into the individual's adult life.

While children continue to suffer violence, abuse and exploitation, the world will fail in its obligations to children; it will also fail to meet its development aspirations as laid out in such documents as the Millennium Agenda with its Millennium Development Goals.

ENSURING CHILD PROTECTION

The fundamental objective of child protection is to ensure that all those with a duty to safeguard the protection of children recognize that duty, and are able to fulfil it. Given the ethical and legal imperatives, child protection is the business of everyone at every level of society in every function. It creates duties for presidents, prime ministers, judges, teachers, doctors, soldiers, parents and even children themselves. These duties may be reflected in the legal standards that a country puts in place. They may also be reflected in the choices a government makes, including its allocation of resources.

THE CHILD, THE FAMILY AND THE STATE

The most important actors in any child's life are often, and should most often be, his or her parents. As such, the family can be the single most important factor in determining whether or not a child is protected. Conversely, however, given the centrality of the family in the child's life, it can also be a frequent source of violence, abuse, discrimination and exploitation. The Convention places considerable emphasis on the role of the family in raising children and, like older human rights instruments, recognizes the right of the family to protection and support.

Article 5 makes clear the responsibility of the State in protecting and respecting the role of the family, stating that:

- States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

The Convention, the primary responsibility for raising children rests with parents. When parents are unable to do so, the State has a duty to assist them. At the same time, however, article 19 refers to the State's obligation to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." In the most extreme cases, this obligation on the State might even entail removal of the child from his or her home. However, this should always be a last resort.

This is made clear in article 9 of the Convention, which provides in part that:

- States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents….

DISCRIMINATION

Discrimination is a daily reality for millions of the world's children. It can result in or exacerbate violence, abuse or exploitation. For example, many of the children involved in the worst forms of child labour come from minority or excluded groups.

There are numerous forms of discrimination, but some of the most common are discrimination on the following grounds:

- *Gender:* Gender-based infanticide, abortion, malnutrition and neglect are believed to be behind the 60 million to 100 million women 'missing' from the world's population. Ninety per cent of domestic workers, the largest group of child workers in the world, are girls between 12 and 17 years old.
- *Disability*: Children with disabilities make up an estimated 20 per cent of all children in institutions in Central and Eastern Europe and the Commonwealth of Independent States.
- *Ethnicity and Race*: In one Eastern European country, a 1992 study found that only half of Roma children aged 7 to 10 attended school on a regular basis. One third had never attended or had dropped out. Roma children are routinely placed in special schools for children with mental disabilities, regardless of their actual abilities.
- *Caste and Class:* In one South Asian country, the majority of the 15 million bonded child workers are from the lowest castes.

Discrimination persists despite the recognition of the equality of men and women as one of the purposes of the United Nations more than a half century ago and the proliferation of other UN and regional instruments that prohibit it. The Committee on the Rights of the Child and other international human rights bodies continue to find examples of laws that discriminate against women or particular ethnic or social groups, or which discriminate in other ways.

Discrimination goes beyond laws into the traditions, customs, attitudes and behaviour of societies, communities, families and individuals. For example, societies with higher levels of rape, child marriage and abandonment of children conceived out of marriage tend to devalue women. Women who reject traditional roles often feel the force of traditional mechanisms for enforcement of these unwritten laws, ranging from humiliation to expulsion from the family and physical violence.

Being aware of gender as a form of discrimination goes beyond an exclusive focus on girls. While many violations of the rights of the child affect girls disproportionately, boys are the main victims of some types of violations. More boys than girls are victims of homicide, especially in late adolescence. Boys greatly outnumber girls in facilities for juvenile offenders around the world.

While most victims of sexual abuse are girls, in most societies the majority of child victims of physical abuse are boys. Gender awareness requires understanding the differential impact of various types of violence, abuse and exploitation in girls and boys. It also requires making an effort to understand the underlying mechanisms and to use this knowledge to develop more effective legal, social and economic policies.

BUILDING A PROTECTIVE ENVIRONMENT

The scale, extent, nature, urgency and complexity of child protection issues are daunting. Yet there are numerous examples among many countries of the varied ways in which governments, civil society actors, communities and children themselves can help prevent and respond to violence, abuse and exploitation.

It is clear that the response to child protection has to be holistic, recognize the duties of all people at all levels to respect children's protection rights and apply to all children in all circumstances without discrimination.

Achieving a world where children's protection rights are routinely respected requires ensuring that children grow up in an environment that is protective, where every element of that environment contributes to their protection and where every actor does his or her part. There is no legal or other agreed definition of what constitutes a protective environment.

However, it should address at least the following elements:

- *Governmental Commitment to Fulfilling Protection Rights*: Government interest in, recognition of and commitment to child protection is an essential element for a protective environment. This includes ensuring that adequate resources are made available for child protection, for example, for programmes to combat child labour. It also includes political leaders being proactive in raising protection on the agenda and acting as advocates for protection.
- *Attitudes, Traditions, Customs, Behaviour and Practices*: In societies where attitudes or traditions facilitate abuse–for example, regarding sex with minors, the appropriateness of severe corporal punishment, the application of harmful traditional practices or differences in the perceived status and value of boys and girls–the environment will not be protective. In societies where all forms of violence against children are taboo, and where the rights of children are broadly respected by custom and tradition, children are more likely to be protected.
- *Open Discussion of, and Engagement with, Child Protection Issues:* At the most basic level, children need to be free to speak up about child protection concerns affecting them or other children. At the national level, both media attention to and civil society engagement with child protection issues contribute to child protection. Partnerships among actors at all levels are essential for an effective and coordinated response.
- *Legislation and Enforcement:* An adequate legislative framework, its consistent implementation, account-ability and a lack of impunity are essential elements of a protective environment.
- *Capacity*: Parents, health workers, teachers, police, social workers and many others who care for and live, deal and work with children need to be equipped with the skills, knowledge, authority and motivation to identify and respond to child protection problems. There are other

broader types of capacity that relate to the protective environment, including the provision of education and safe areas for play.

- *Children's Life Skills, Knowledge and Participation*: If children are unaware of their right not to be abused, or are not warned of the dangers of, for example, trafficking, they are more vulnerable to abuse. Children need information and knowledge to be equipped to protect themselves. Children also need to be provided with safe and protective channels for participation and self-expression. Where children have no opportunities for participation, they are more likely to become involved in crime or other dangerous or harmful activities.
- *Monitoring and Reporting*: A protective environment for children requires an effective monitoring system that records the incidence and nature of child protection abuses and allows for informed and strategic responses. Such systems can be more effective where they are participatory and locally based. It is a responsibility of government to make sure that every country knows the situation of its children with regard to violence, abuse and exploitation.
- *Services for Recovery and Reintegration:* Child victims of any form of neglect, exploitation or abuse are entitled to care and non-discriminatory access to basic social services. These services must be provided in an environment that fosters the health, self-respect and dignity of the child.

Some elements of the protective environment will overlap. For example, governmental commitment may dictate whether services for victims of abuse are provided, or whether investment is made in monitoring mechanisms. Similarly, media attention can be a key factor in influencing attitudes. There are a number of ways to build a protective environment for children.

These include:

- Addressing and mitigating the impact of economic and social poverty.
- National advocacy and initiating dialogue at all levels, from government down to communities, families and children themselves.
- International advocacy, including using international human rights mechanisms. This might also include pushing the protection agenda at regional meetings.
- Seeking societal behaviour change, challenging attitudes and traditions that can underpin child protection abuses and supporting those that are protective. This might involve national campaigns or working closely with the media.
- Strengthening capacity to assess and analyse protection issues. Without knowing what is happening, governments and other actors will be disadvantaged in responding to protection problems.
- Putting mechanisms in place and providing resources so that those caring for and living and working with children have the skills and knowledge to do so in a way that ensures their protection through education and training.

- Recognizing that legal standards are particularly important to child protection, and that they need to be known, understood, accepted and enforced. This can involve legislative reviews, revision of laws or even the creation of new laws. It also involves scrutiny of the actual practices of those governed by the laws to ensure that they are respected.
- Developing and reviewing national monitoring systems to ensure that they properly cover child protection issues. In particular, this may involve disaggregation of national statistics to ensure that patterns of discrimination become apparent.
- Ensuring access to services for recovery and reintegration for children who have suffered abuses.
- Promoting child participation and strengthening children's own resilience.

At the same time, it is not effective to address protection as a separate and stand-alone issue. Given the relationships between child protection and other areas, it is valuable to consider the protection aspects of any issue being considered.

For example:

- When considering education policy, it is necessary to consider safety and security in schools and to discourage the use of corporal punishment. This might include initiatives to address violence among children in schools, such as bullying.
- When considering the care practices of family and early childhood, parents should be discouraged from using violent forms of discipline and encouraged to ensure that their child's birth is registered.
- Any consideration of HIV/AIDS is incomplete without considering the stigma often attached to children affected by HIV/AIDS, as well as the increased protection risks faced by vulnerable children who have been orphaned by AIDS.

Thus, an appropriate response to child protection involves understanding it both as an issue in its own right and as a consideration with regard to other issues. It also requires that every actor plays his or her part in ensuring a protective environment for children.

EXISTING CHILD PROTECTION MECHANISMS

The existing institutions and programmes for child protection in India primarily stem from the provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000 and National Plan of Action for Children 2005.

These comprise several programmes and schemes implemented by different ministries and departments among which are:

- A Programme for Juvenile Justice for children in need of care and protection and children in conflict with law. The Government of India provides financial assistance to the State Governments/UT Administrations for establishment and maintenance of various homes, salary of staff, food, clothing, *etc.* for children in need of care and protection and juveniles in conflict with law. Financial assistance is based on proposals submitted by States on a 50: 50 cost sharing basis.

- An Integrated Programme for Street Children without homes and family ties. Under the scheme NGOs are supported to run 24 hours shelters and provide food, clothing, shelter, nonformal education, recreation, counselling, guidance and referral services for children. The other components of the scheme include enrolment in schools, vocational training, occupational placement, mobilizing preventive health services and reducing the incidents of drug and substance abuse, HIV/AIDS, *etc.*
- CHILDLINE Service for children in distress, especially children in need of care and protection so as to rescue them from abuse, provide shelter to them, medical services, counselling, repatriation and rehabilitation.
- Scheme for Assistance to Homes for Children (Shishu Greha) to Promote In-Country Adoption for care and protection of orphans/ abandoned/destitute infants or children up to 6 years and promote their in-country adoption.
- Scheme for Working Children in Need of Care and Protection for children kept as domestic child labour, working at roadside dhabas, mechanic shops, *etc.* The scheme provides for bridge education and vocational training, medicine, food, recreation/sports equip-ments, *etc.*
- Rajiv Gandhi National Creche Scheme for the Children of Working Mothers in the age group of 0-6 years. The scheme provides for comprehensive day-care services including facilities like food, shelter, medical, recreation, *etc.*
- Pilot Project to Combat the Trafficking of women and Children for Commercial Sexual Exploitation in source and destination areas for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to hometown and legal services, *etc.*
- Central Adoption Resource Agency (CARA) is an Autonomous Body under the Ministry of Women and Child Development to promote in-country adoption and regulate inter-country adoption. CARA also helps both Indian and foreign agencies involved in adoption of Indian children to function within a regulated framework, so that such children are adopted legally through recognized agencies and no exploitation takes place.
- National Child Labour Project (NCLP) for rehabilitation of child labourers. Under the scheme, Project Societies at the district level are fully funded for opening up of Special Schools/Rehabilitation Centers for the rehabilitation of child labourers. These special schools/rehabilitation centers provide non-formal education, vocational training, supplementary nutrition, stipends, *etc.* to children withdrawn from employment.

State Governments Schemes: Various State Governments are also running different state-specific schemes for institutional (residential) and non-institutional (non-residential) care of children in difficult circumstances.

In early 2006 the Department of Women and Child Development became a full-fledged Ministry and all child protection matters including implementation of Juvenile Justice (Care and Protection of Children) Act 2000, and its Amendment Act, 2006 as well as implementation of various programmes including An Integrated Programme for Street Children, CHILDLINE Service, Scheme for Assistance to Homes for Children (Shishu Greha) to Promote In-Country Adoption, Scheme for Working Children in Need of Care and Protection and CARA, were transferred to this new Ministry. This is a significant step towards consolidation of the child protection portfolio under one Ministry. However, a range of child protection issues still remain under other government agencies. For instance, child labour issues continue to be dealt with by the Ministry of Labour and Employment. There are some schemes for the disabled persons under the Ministry of Social Justice and Empowerment.

Since they do not have a child focus or specific component for children, issues of disabled children get very little attention. Some of the schemes of the Ministry of Women and Child Development under the women's welfare section address issues concerning protection of the girl child. These include Kishori Shakti Yojana, Swadhar, Short Stay Home and Relief and Rehabilitation of Rape Victims among others.

In order for child protection to be dealt with more effectively there is a need for lateral linkages between the Ministry of Women and Child Development and other relevant sectors such as Railways, Industry, Trade and Commerce, Rural Development, Urban Affairs, Tourism, Banking, Legal Affairs, Home Affairs, Health and Family Welfare and Information and Broadcasting.

UNDERSTANDING THE INTEGRATED CHILD PROTECTION SCHEME (ICPS)

PURPOSE

The Integrated Child Protection Scheme is expected to significantly contribute to the realization of Government/State responsibility for creating a system that will efficiently and effectively protect children. It is based on cardinal principle s of "protection of child rights" and "best interest of the child". Hence, the ICPS objectives are: to contribute to the improvements in the well being of children in difficult circumstances, as well as to the reduction of vulnerabilities to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children.

These will be achieved by:

- Improved access to and quality of child protection services;
- Raised public awareness about the reality of child rights, situation and protection in India;
- Clearly articulated responsibilities and enforced accountability for child protection

- Established and functioning structures at all government levels for delivery of statutory and support services to children in difficult circumstances;
- Introduced and operational evidence based monitoring and evaluation.

SPECIFIC OBJECTIVES

To institutionalize essential services and strengthen structures:

- Establish and strengthen a continuum of services for emergency outreach, institutional care, family and community based care, counselling and support services;
- Put in place and strengthen necessary structures and mechanisms for effective implementation of the scheme at the national, regional, state and district levels;
- Define and set standards of all services including operational manuals for the functioning of statutory bodies.

To enhance capacities at all levels:

- Build capacities of all functionaries including, administrators and service providers, at all levels working under the ICPS;
- Sensitize and train members of allied systems including, local bodies, police, judiciary and other concerned departments of State Governments to undertake responsibilities under the ICPS.

To create database and knowledge base for child protection services:

- Create mechanisms for a child protection data management system including MIS and child tracking system in the country for effective implementation and monitoring of child protection services;
- Undertake research and documentation.

To strengthen child protection at family and community level:

- Build capacities of families and community to strengthen care, protection and response to children;
- Create and promote preventive measures to protect children from situations of vulnerability, risk and abuse.

To ensure appropriate inter-sectoral response at all levels:

- Coordinate and network with all allied systems *i.e.*, Government departments and Non-Government agencies providing services for children for effective implementation of the scheme.

To Raise Public Awareness

- Educate public on child rights and protection;
- Raise public awareness at all levels on situation and vulnerabilities of children and families
- Inform the public on available child protection services, schemes and structures at all levels

GUIDING PRINCIPLES

- *Child Protection, a Primary Responsibility of Family, Supported by Community, Government and Civil Society*: It is important that

respective roles are articulated clearly and understood by all parties in the effort to protect children. Government, both Central and State, has an obligation to ensure a range and a continuum of services at all levels.

- *Loving and Caring Family, the Best Place for the Child:* Children are best cared for in their own families and have a right to family care and parenting by both parents.
- *Privacy and Confidentiality*: Children's right to privacy and confidentiality should be protected through all the stages of service delivery.
- *Non-stigmatization and Non-discrimination:* Each child irrespective of circumstances, as well as socio-economic, cultural, religious and ethnic background should be treated equally and in a dignified manner.
- *Prevention and Reduction of Vulnerabilities, Central to Child Protection Outcomes*: A major thrust of the ICPS will be to strengthen the family capabilities to care for and protect the child.
- *Institutionalization of Children, the Last Resort*: There is a need to shift the focus of interventions from an over reliance on institutionalization of children and move towards more family and community–based alternatives for care. Institutionalization should be used as a measure of last resort after all other options have been explored.
- *Child Centered Planning and Implementation:* Planning and implementation of child protection policies and service delivery should be child centered at all levels, so as to ensure that the best interest of the child is protected.
- *Technical Excellence, Code of Conduct*: Services for children at all levels and by all providers should be provided by skilled and professional staff, including a cadre of social workers, psychologists, care givers, members of statutory bodies and lawyers, adhering to an ethical and professional code of conduct.
- *Flexible Programming, Responding to Local Individualised Needs*: Customised service delivery approach is required to respond to local needs.
- *Good Governance, Accountability and Responsibility:* An efficient and effective child protection system requires transparent management and decision making, accountable and responsible individuals and institutions, performance reports at all service levels and all service providers made public, including for children themselves, through child-friendly reports.

APPROACHES

- *Prevention*: Through an outreach programme, the scheme would identify and support vulnerable families. Trained district level functionaries through effective networking and linkages with the Village and Block Level Child Protection Committees, ICDS

functionaries, NGOs and local bodies would ensure convergence of services. Community capacities for protection and monitoring shall be strengthened and child protection concerns and safeguards shall be integrated in all sectors.

- *Promotion of Family-based Care*: The scheme would pursue a conscious shift to family-based care including sponsorship, kinship care, foster care and adoption. Periodic review of children in institutional care for restoration to families would also be undertaken.
- *Financing*: As a centrally sponsored scheme financial assistance from the Central Government will be disbursed to the State Government/UT Administration. The Central Government shall provide a predetermined percentage of the budgeted cost. The State/UT shall in turn provide grant-in-aid to voluntary organizations under the different components of the Scheme.
- *Integrated Service Provision-range of Services*: Through an interface with various sectors, including health, education, judiciary, police, and labour, among others, the scheme would strive to integrate service provisions into a range of services to cater to the multiple needs of children in difficult circumstances.
- *Continuum of Services- a Feasible Care Plan for Each Child*: The services under the scheme will be provided on the basis of an individual care plan, established through professional assessment. The care plan must be periodically reviewed and accordingly adjusted. Adequate services should be available as long as the child is in need of care, including follow up.
- *Community Based Service Delivery*: The scheme would endeavour to bring services closer to vulnerable children and families for increased access. Child care services should be available at community level integrated into a range of services with strong linkages to the PRIs and local government bodies.
- *Decentralization and Flexibility to Focus on Local Needs:* The scheme shall decentralize planning and implementation of child protection services at the State and District level based on specific needs. The allocation of human resource shall be based on protection service requirement for quality child protection services.
- *Partnership Building and Community Empowerment:* A key strategy for programme development and implementation would be developing close working relationships, information sharing and strategy building between government structures, civil society organizations including corporate and communities.
- *Quality Care, Standards for Care and Protection*: All protection services—be it public or privately provided—should adhere to prescribed standards pertaining to physical infrastructure and human resource requirements, as well as protocols, methodological instructions and guidelines for services and operational manuals for functioning of statutory bodies.

- *Building Capacities:* In order to ensure professional child protection services at all levels, the scheme would undertake regular training and capacity building of all service providers and functionaries to equip and enhance their skills, sensitivities, knowledge on child rights and standards of care and protection.
- *Monitoring and Evaluation:* The scheme would set up a child protection data management system to formulate and implement effective intervention strategies and monitor their outcomes. Regular evaluation of the programmes and structures would be conducted and course correction would be undertaken.

TARGET GROUPS

The ICPS will focus its activities on children in need of care and protection and children in conflict and contact with the law:

- Child in need of care and protection means a child who:
  - Is found without any home or settled place or abode and without any ostensible means of subsistence;
  - Resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
  - Is a mentally or physically challenged or ill child or a child suffering from terminal diseases or incurable diseases, and/or having no one to support or look after him/her;
  - Has a parent or guardian and such parent or guardian is unfit or incapacitated to care for or supervise the child;
  - Does not have a parent/parents and no one is willing to take care of him/her, or whose parents have abandoned him/her or who is a missing and/or runaway child and whose parents cannot be found after reasonable enquiry;
  - Is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;
  - Is found vulnerable and is likely to be inducted into drug abuse or trafficking;
  - Is being or is likely to be abused for unconscionable gains;
  - Is victim of any armed conflict, civil commotion or natural calamity.
- Child in conflict with law is one who is alleged to have committed an offence.
- Child in contact with law is one who has come in contact with the law either as victim or as a witness or due to any other circumstance.

The ICPS will also provide preventive, statutory and care and rehabilitation services to any other vulnerable child including, but not limited, to: children of potentially vulnerable families and families at risk, children of socially excluded

groups like migrant families, families living in extreme poverty, scheduled castes, scheduled tribes and other backward classes, families subjected to or affected by discrimination, minorities, children infected and/or affected by HIV/AIDS, orphans, child drug abusers, children of substance abusers, child beggars, trafficked or sexually exploited children, children of prisoners, and street and working children.

GOVERNMENT-CIVIL SOCIETY PARTNERSHIP

In order to reach out to all children, in particular to those in difficult circumstances, the Ministry of Women and Child Development proposes to combine its existing child protection schemes under one centrally sponsored scheme titled "Integrated Child Protection Scheme (ICPS)". The proposed ICPS brings together multiple vertical schemes under one comprehensive child protection programme and integrates interventions for protecting children and preventing harm. It does not see child protection as the exclusive responsibility of the MWCD but stresses that other sectors have vital roles to play. The Ministry looks at child protection holistically and seeks to rationalize programmes for creating a strong protective environment for children, diversify and institutionalize essential services for children, mobilize inter-sectoral response for strengthening child protection and set standards for care and services. ICPS will function as a Government–Civil Society Partnership scheme under the overarching direction and responsibility of the Central and State Governments.

The Government is aware that improving situation of millions of India's children in difficult circumstances requires an integrated effort and strong partnership of many stakeholders. Government cannot achieve this task alone. Therefore, the ICPS will work closely with all stakeholders including government departments, the voluntary sector, community groups, academia and, most importantly, families and children to create protective environment for children in the country. Its holistic approach to child protection services and mechanisms is reflected in strong lateral linkages and complementary systems for vigilance, detection and response.

The scheme visualizes a structure for providing services as well as monitoring and supervising the effective functioning of child protection system, involving:

- *Government*: Government of India (GOI) will have the primary responsibility for the development and funding of the scheme as well as ensuring flexibility by cutting down rigid structures and norms. The GOI will also create an integrated, live, web-based database on children including child tracking systems and a Management Information System. It will be the responsibility of the State Governments/UT Administrations to ensure effective implementation of the scheme by quick devolution and utilization of funds. State Governments/UT Administratration will attract the best professional talent and strengthen public-private partnership. The scheme proposes to hire the services of professionals on a contractual basis. The State Governments/UT Administrations will manage the database that includes child tracking system and MIS at the state and district levels.

- Civil society organizations and individuals:
  - *Voluntary Sector:* To lobby for the protection of children of India and act as a watch-dog on the situation of children and implementation of public policies and programmes aimed at children; to provide vibrant, responsive and child friendly services for detection, counseling, care and rehabilitation for all children in need. Provide technical support for awareness raising, capacity development, innovations and monitoring. These may be financially supported by the State.
  - *Research and Training Institutions:* To carry out research on the situation of children in India and capacity building of existing human resource as well as support creation of a cadre of professionals.
  - *Media and Advocacy Groups:* To promote rights of the child and child protection issues with sensitivity and sustain a media discourse on protection issues.
  - *Corporate Sector:* To partner with government and civil society initiatives under the scheme; financially support child protection initiatives; and contribute to Government efforts to improve the situation of children of India by adhering to the laws pertaining to child protection.
- *Community Groups and Local Leaders, Volunteers, Youth Groups, Families and Children*: To provide protective and conducive environment for children, to act as watchdog and monitor child protection services by inter-alia participating in the village and block level child protection committees.

ICPS PROGRAMMES AND ACTIVITIES

Through ICPS, the Ministry of Women and Child Development envisages to carve out a broad and comprehensive framework for child protection in the Eleventh Plan and to set the foundation for creating a strong protective environment for children.

Every child of India has the right to be cared for by a loving and nurturing family, to live with dignity, and to be protected from separation from her family, violence, abuse, neglect and exploitation.

The Integrated Child Protection Scheme will focus on:

- Mapping needs and services for children and families at risk;
- Preparing child protection plans at district and state levels; the plan would be gradually extended to block and community levels;
- Strengthening service delivery mechanisms and programmes including preventive, statutory, care and rehabilitation services;
- Improving access to and quality of services provided;
- Promoting and strengthening non-institutional family based care options for children deprived of parental care, including sponsorship to vulnerable families, kinship-care, in-country adoption, foster care and inter-country adoption, in order of preference;
- Developing capacity of service providers;

- Strengthening knowledge base, awareness and advocacy;
- Establishing an integrated, live, web based data base (on children in difficult circumstance, children in care, service providers and services provided), for evidence based monitoring and evaluation and service planning decision making;
- Monitoring and evaluation;
- Building partnerships and alliances for child protection at all levels, particularly at the grassroot community and district levels.
- Strengthening linkages with other bodies and institutions such as the National/State Human Rights Commissions and National/State Commissions for Protection of Rights of the Child, *etc.*

ICPS brings several existing child protection programmes under one umbrella and initiates new interventions.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000

- The Juvenile Justice [Care and Protection of Children] Act 2000 was enacted to consolidate and amend the law relating to juveniles in conflict with 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 their ultimate rehabilitation through various institutions established under this enactment.
- This Act has been enacted to bring the juvenile justice system in conformity with the Convention on the Rights of the Child. This Act repeals the Juvenile Justice Act 1986, but any action taken under the former Act prior to its repeal stands and will be deemed to have been taken under corresponding provisions of this Act.
- "Juvenile" or "child" means a person who has not completed eighteenth year of age. "Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence. "Child in need of care and protection" means a child:
  - Who is found without any home or settled place of abode and without any ostensible means of subsistence,
  - Who resides with a person [whether a guardian of the child or not] and such person:
    a. Has threatened to kill or injure the child and there is reasonable likelihood of the threat being carried out, or
    b. Has killed, abused or neglected some other child or children and there is reasonable likelihood of the child in question being killed, abused or neglected by that person,
  - Who is mentally or physically challenged, or ill children, or children suffering from terminal diseases or incurable diseases having no one to support or look after,

- Who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- Who does not have parents and no one is willing to take care of or whose parents have abandoned him or who is missing and runaway child and whose parents cannot be found after reasonable inquiry,
- Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- Who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- Who is being or is likely to be abused for unconscionable gains,
- Who is victim of any armed conflict, civil commotion or natural calamity.
    a. "Fit institution" means a governmental or a registered nongovernmental organisation prepared to take responsibility of a child, and found fit by the Competent Authority to take responsibility of the child.
    b. "Fit person" means a person, being a social worker or any other person, who is prepared to take responsibility of a child, and found fit by the Competent Authority to take responsibility of the child. "Place of safety" means any place or institution, not being a police station or jail, which in the opinion of the Competent Authority is a place of safety for the child

- Under this Act, Juvenile Justice Boards are to be constituted to deal with matters relating to juveniles in conflict with law. The JJB is to consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, and two social workers, of whom at least one is to be a woman. Pending an inquiry before JJB, the juvenile in conflict with law is to be kept in an Observation Home; Observation Homes are to be established and maintained by the government or by voluntary organisations. On completion of inquiry, the juvenile in conflict with law may be kept in a Special Home; Special Homes are to be established and maintained by the government or by voluntary organisations.
- Child Welfare Committees are to be constituted to deal with matters relating to a child in need of care and protection. The CWC is to consist of a Chairperson and four other members, of whom at least one is to be a woman and another, an expert on matters concerning children. Any child in need of care and protection may be produced before CWC by police/Special Juvenile Police Unit, any public servant, CHILDLINE or any other voluntary organisation, any social worker or public spirited citizen so authorised by the State Government, or by the child himself/herself. Pending an inquiry before CWC, the child in need of care and protection is to be kept in a Children's Home; Children's Homes are to be established and maintained by the government or by voluntary organisations. On completion of inquiry, the child in need of care and

protection is to be kept in a Children's Home, if the child has no family or ostensible support. The government is required to assist reputable organisations to establish Shelter Homes, *i.e.*, drop-in centres for children in need of urgent support.

- CHILDLINE has been authorised under this Act to produce a child before CWC. Other voluntary organisations may acquire recognition from respective State Governments to produce a child before CWC.
- Observation Homes, Special Homes and Children's Homes are to provide facilities of care, treatment, education, training, development and rehabilitation. These Homes are to be established and managed by State Governments or by recognised voluntary organisations. The main functions of these Homes is to protect the child and ultimately restore him/her to a family environment. "Restoration of a child" means restoration to a parent, or restoration to family environment through adoption or foster-care.
- This Act envisages "Sponsorship Programmes" for providing support to families to meet medical, nutritional, educational and other needs of children with a view to improving their quality of life.
- The State Government is to establish or recognise After-care organisations to care for children on discharge from Special Homes or Children's Home, and assist with their reintegration into society.
- Inquiries by JJB and CWC are to be completed within 4 months. A juvenile in conflict with law is never to be incarcerated in a police station/jail, or charged with/tried for an offence together with a person who is not a juvenile. A juvenile in conflict with law, pending inquiry must be released on bail irrespective of whether the offence is bailable or non-bailable.
- There are certain special offences in respect of children which are cognizable, and punishable with imprisonment/fine/both. These offences include assaulting/causing unnecessary mental or physical suffering to a child, employment of children for begging, exploitation of child employee.
- A Special Juvenile Police Unit is to be established in each district to deal with matters under this Act. Every police station to have at least one officer designated as "juvenile or child welfare officer" and receive appropriate child-related training and orientation.
- Inspection and Social Audits of Children's Homes are provided for by this Act. The State Government is required to appoint Inspection Committees consisting of representatives from State Government, local authority, CWC, voluntary organisations, medical experts and social workers. Persons and institutions are to be appointed as "Social Auditors" to monitor and evaluate the functioning of Children's Homes.
- Central and State Governments are to constitute Central and State Advisory Boards to advise governments on matters relating to establishment of

homes, providing of facilities for education, training and rehabilitation of children and juveniles. The Advisory Boards are to include eminent social workers, representatives of voluntary organisations, professionals, *etc.*

- The State Government has the powers to make Rules, more particularly with regards to the functioning of JJB, minimum standards to be maintained by Homes, various services to be provided by Homes, *etc.*

KRIST PEREIRA VS. THE STATE OF MAHARASHTRA & ORS. (CASE STUDY): (CRIMINAL WRIT PETITION NO. 1107 OF 1996 - BOMBAY HIGH COURT)

This petition was heard by the Bombay High Court under its criminal writ jurisdiction. The death of a three year old boy child in Bhiwandi Remand Home gave rise to the filing of this petition. The Court constituted an Experts Committee to examine the conditions in different Juvenile Homes, Remand Homes, Children Homes, Special Homes in the State of Maharashtra. The Experts Committee visited 21 Homes and submitted their reports to the Court. The reports contained details with regards to the administration and management of the Remand Homes, Juvenile Homes and other Homes and facilities provided to the inmates of these Homes, and the working of the Juvenile Welfare Boards, Juvenile Courts, the role of the police. The reports 'submitted by the Experts Committee are extremely distressing and they reveal pathetic conditions prevailing in the various Homes in the State.' The Court has observed and directed the following in its judgment, After going through the reports, we are satisfied that the working of the Homes in the State is totally unsatisfactory. We are constrained to observe that the juveniles are housed in the Homes without any sense of improving their lot. The prevailing conditions disclose that the Home only provide some shelter and nothing else. There is hardly any attempt to educate and rehabilitate juveniles by providing them proper schooling or modern vocational training. We feel that urgent steps are required to be taken to improve the conditions of the various Homes in the State. In the past also this Court noted with anguish pathetic conditions in the Homes and has issued directions from time to time. The experience has shown that those directions are not properly heeded to and have remained on paper only. Having noted the above conditions, we feel that it is absolutely necessary to find out a solution on a long term basis and with that object in view, we hereby constitute a State Committee consisting of a retired Judge of this Court, two Secretaries, including the Secretary of the Women and Child Welfare Department and another Secretary to be nominated by the Government and three experts/social workers in the field, out of whom two shall be the female members. We may hasten to add that we are appointing this Committee with full concurrence of the state government with an express understanding that this Committee shall function on permanent basis… ….....… … … … … … 'The State Committee is to ensure appropriate appointments, on the Juvenile Welfare Boards, Visitors Board and Advisory Boards, and of social workers and duty counsellors; such appointments are to

be made with prior consultation of the State Committee to ensure proper functioning of the juvenile justice system without any political interference.

The Court further directed that:

- The State Government establish Juvenile Homes in all the districts of the State;
- The State Government establish additional Special Homes in the State;
- After-care organisations be established in different areas;
- District level Rehabilitation Committees to be established in every district for assistance in providing jobs to juveniles; this Committee to consist of the Collector of the district, Managing Director of MIDC, representative from district Industries Officer, Zilla Mahila Bal Kalyan Officer and Superintendent of After-care organisation, if any;
- The State Government to fill up all vacancies in the Juvenile Welfare Boards and the Advisory Boards within three months;
- The State Government to appoint at least one social worker for each Juvenile Court within three months;
- The State Government to appoint Duty Counsellors within three months to make regular visits to institutions established under the Juvenile Justice Act as provided under the Maharashtra State (Visits to Jails and Homes for Children) Project Rules 1993;
- The State Government to appoint Visitors to visit the institution at least once every three months and submit a report to the State Committee;
- The State Government to regularly pay honorarium to the members of the Juvenile Welfare Board and the other Boards, Duty Counsellors and social workers;
- The State Government to provide the Juvenile Welfare Boards with facilities such as staff, telephone, typewriter, stationery, *etc.*;
- Posts of seweepers, watchmen, caretakers and clerks to be sanctioned wherever necessary; in case of any problem with regard to creation of permanent staff, staff on casual basis to be made available for these posts and deserted women in the locality to be given the jobs of cooks and sweepers on temporary basis;
- Power to be given to the Superintendent of the institutions to immediately suspend an erring staff member guilty of misbehaviour or misconduct;
- To immediately initiate a departmental inquiry in case of a staff member found to have committed a serious misconduct, like misbehaviour in drunken condition or causing physical harm to the inmates of the Homes;
- The Competent Authority to be given the power to transfer existing staff to other Homes;
- The State Government to ensure that all the Homes are provided with clean and proper toilets and bathrooms, repairs of toilets and bathrooms to be carried out on priority basis;

- The kitchens in all the Homes to be provided with cooking gas facility, and adequate and nutritious food to be served to the children;
- If an institution is unable to provide education and vocational facilities within the institution, the institution to utilise such facilities available outside the institution in that particular region, and the cost of transportation to be included in the budget;
- The Rotary Clubs to be involved for the purpose of providing teachers to impart educational and modern vocational training, and recreation facilities for the inmates of the Homes. In this behalf the Superintendent of every Home to contact Mr. S.G. Kapadia, 135 Great Western Building, 2nd floor, 23 Medows Street, Fort, Mumbai-400 023 who has agreed to coordinate with the local Rotary Clubs and has also assured to procure basic requirements like toothbrushes, undergarments, shoes, umbrellas, *etc.* for the inmates of the Homes;
- Each inmate of the Home to be provided with at least two pairs of uniforms/dresses every year;
- Children in all the Children's Homes to be taken for outings at least once in a month and for that purpose, if necessary, the concerned Rotary Club to be contacted;
- Annual Cultural meet and Sports meet to be held for institutionalised children;
- The income generated by the inmate of the Homes through work for gain to be apportioned in accordance with Rule 23 of the Juvenile Justice Rules;
- The State Government to organise training programmes for the staff members of the various Homes, at least once a year, and the staff members to be permitted to attend such training programmes organised by TISS, Rotary Club, UNICEF;
- A staff member not to be assigned two posts, *e.g.*, that of Superintendent as well as Probation Officer;
- The State Government to increase the amount of honorarium paid to the doctors who visit the Homes, and ensure that such services are made available at least thrice a week;
- Initial medical examination of the children to be conducted immediately or at least within 48 hours of admission to ensure segregation of juveniles suffering from any communicable diseases and immediate medical treatment be provided to sick juveniles;
- Facilities be provided for segregation within the institution of children suffering from communicable diseases; in appropriate cases such children to be transferred to Government hospitals;
- The Superintendent or person in-charge of the Home to strictly follow Rule 26 (3) (g), (h) and (i) of the Juvenile Justice Rules in case of death of an inmate, Rule 26 (3) (a) to (f) in case of unnatural death (the State Committee to be given intimation of natural and unnatural

deaths within 48 hours) and Rule 26 (2) in case of escape; in case of non-adherence of any of these rules, disciplinary action to be taken against the concerned erring officers;

- The Superintendent to inform the State Committee of admission of mentally or physically handicapped children; these children to be admitted in special institutions established for such handicap;
- The institution to provide for children with special needs;
- The State Committee to make appropriate recommendations to the State Government and the concerned Homes with regards to children who are admitted to these Homes merely on account of poverty or failure in examination or child being uncontrollable, *etc.*, and for those who have been residing in the Homes for a long time;
- The Superintendents to ensure that the grant of Rs. 500/- per month per inmate of the Home is utilised only on food, clothing and other requirements of the inmates and not on administrative expenses;
- The State Committee to look into the problems faced by the Homes in providing escort to the inmates who are required to be repatriated and make appropriate recommendations to the State Government in this behalf;
- The notifications regarding appointments of the Presiding Officers of Juvenile Courts to be made by designation and not by name;
- The State Government to establish Juvenile Courts in Bhusawal and Chalisgaon; the State Committee to make appropriate recommendations for establishment of additional Juvenile Courts;
- The State Government to establish separate agency under the control of Juvenile Welfare Boards and Juvenile Courts for service of summons, warrants, notices;
- The State Government to take a decision within three months regarding abolition of court-fees on applications made before Juvenile Welfare Boards and Juvenile Courts;
- The Director General of Police to issue directions to all police stations not to appear before Juvenile Courts in uniform and not to tie juveniles with rope while bringing them to Court;
- The State Government to establish separate juvenile cells in each district to deal with cases involving juveniles;
- The Registrar of this Court to write to District Judges to submit to this Court within six weeks information relating to the cases pending before Juvenile Courts and the manner in which such cases can be expedited and the pendency cleared;
- All District Judges to issue appropriate directions to the concerned Juvenile Courts to take effective steps for disposal of pending cases;
- The District Judges every three months to check disposal of matters before Juvenile Courts and look into reasons for prolonged pendency;
- Juvenile Courts to hold their sittings in the Observation Home and not in Courts;

- The High Court to incorporate the subject of juvenile law in workshops held for judicial officers;
- TISS to prepare a programme for training of Magistrates in respect of juveniles, and such programme to be incorporated in the Judge's Training Institute at Nagpur, called JOTI, and the Director of JOTI to extend co-operation in this behalf.

THE WOMEN'S AND CHILDREN'S (LICENSING) ACT 1956

- The Women's and Children's (Licensing) Act was enacted to provide for the licensing of institutions for women and children and for matters incidental thereto. The main object of this Act is to protect women and children from exploitation and inhuman conditions prevailing in institutions.
- Under this Act "child" means a boy or a girl who has not completed the age of 18 years. An "institution" means an institution established and maintained for the reception, care, protection, and welfare of women or children.
- No institution can be established or maintained without the prior permission of the licensing authority, *viz.* the State Government. The license contains the conditions to be complied with by the institution. The license is to be periodically renewed.
- The license may be revoked on the institution not complying with the provisions of the Act or the license conditions. On revocation of a license, the children are restored to the custody of the parent/guardian, or are transferred to another institution. The person responsible for contravening the provisions of this Act or the licence conditions, is punishable with imprisonment or fine or both.
- On revocation of licence, the option of changing the management of the institution and closely monitoring its functioning should be explored.

THE CHILD LABOUR (PROHIBITION ANDREGULATION) ACT 1986

- The Child Labour [Prohibition and Regulation] Act 1986 was enacted to prohibit the engagement of children in certain employments, and to regulate their conditions of work in certain other employments.
- This Act is based on Article 24 of the Constitution under which no child below the age of 14 years is to be employed in any factory or mine or engaged in any other hazardous employment.
- Under this Act, a child means a person who has not completed 14 years of age.
- This Act contains a Schedule with two parts, *i.e.*, Part A and Part B. Part A contains a list of occupations such as transport of passengers or goods or mail by railway, cinder picking, *etc.* Part B contains a list of

processes such as bidi-making, carpet-weaving, manufacture of matches, explosives and fireworks, *etc.* No child is to be employed in any of the occupations and processes listed in the Schedule.

- The Central Government has the powers to add any occupation or process to the Schedule in consultation with the Child Labour Technical Advisory Committee.
- The government is to employ Inspectors to ensure compliance with this Act.
- This Act contains provisions to regulate the conditions of work in those occupations or processes in which child labour can be employed, *e.g.*, a child should not be made to work between 7.00 p.m. and 8.00 a.m., nor should a child be made to work overtime, nor should a child be made to work for a period exceeding six hours a day.
- Any person who employs a child in any occupation or process mentioned in the Schedule or who does not comply with the provisions of this Act, is to be punished with imprisonment or fine or both.
- Any person, police officer or Inspector may file a complaint in respect of non-compliance of the provisions of this Act before the Metropolitan Magistrate or a Magistrate of the First Class.

THE BONDED LABOUR SYSTEM (ABOLITION) ACT 1976

- The Bonded Labour System (Abolition) Act 1976 was enacted to provide for the abolition of the bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people.
- This Act is based on Article 23 of the Constitution under which begar and other forms of forced labour is prohibited.
- The 'bonded labour system' means the system of forced or partly forced labour under which a debtor has entered into an agreement with the creditor in consideration of an advance or other economic consideration obtained by the debtor or his lineal descendants or ascendants, to render labour or service through himself or any member of his family for a specified period or unspecified period with nominal wages or without wages.
- It is an offence to advance a bonded debt or compel a person to render any bonded labour under this Act. This offence is a cognizable and bailable offence. This Act abolishes the bonded labour system; any bonded debt which remains to be satisfied at the commencement of this Act is deemed to be extinguished.
- The State Government is to appoint a District Magistrate to ensure that the provisions of this Act are complied with. The District Magistrate may appoint a subordinate officer to exercise such powers and duties. If any person is found to be enforcing the bonded labour system or any other system of forced labour, the District Magistrate or subordinate officer is to take action to eradicate the enforcement of such forced labour.

- The State Government is required to establish Vigilance Committees in each district and its sub-divisions. The Vigilance Committee is to ensure that the provisions of this Act are complied with, to provide for economic and social rehabilitation of freed bonded labourers, to conduct a survey as to whether there is any offence of which cognizance ought to be taken, *etc.* The District Magistrate or any person nominated by him will be the Chairman of the Vigilance Committee.

CRIMINAL PROCEDUR

BAILABLE OFFENCE is an offence where bail can be availed of as of right. The police are empowered to release on bail a person arrested for a bailable offence. NON-BAILABLE OFFENCE is an offence where bail may be granted by the Court; the granting of bail is discretionary and the Court must record the reasons for granting or refusing bail. An alleged juvenile offender produced before JJB is to be released on bail irrespective of whether the juvenile is accused of a bailable or non bailable offence.

A juvenile offender may not be released on bail if release will bring him into association with a known criminal or expose the juvenile to physical/ psychological danger. COGNIZABLE OFFENCE is an offence for which a police officer may arrest the offender without a warrant, *i.e.*, without obtaining an order from the Magistrate. Offences committed against children under the Juvenile Justice [Care and Protection of Children] Act are cognizable offences. Examples of such offences are, cruelty to child by a person in charge or control of a juvenile, employment of a child for begging, exploitation of child employee. NON-COGNIZABLE OFFENCE is an offence for which a police officer has no authority to arrest without a warrant. In such cases a NC complaint is recorded at the police station. If an accused has committed two or more offences of which at least one is cognizable, the case will be treated as a cognizable case.

- A person under 16 years of age or a woman is generally to be released on bail even in case of a non-bailable offence.
- A police officer during investigation is to examine a woman or boy child under 15 years of age at her/his place of residence, and such persons should not be made to attend the police station.
- A child can give evidence as a witness if the child is capable of understanding the question, and of answering the same.

FIRST INFORMATION REPORT

First Information Report [FIR] is the first statement recorded in a police station that a cognizable offence has been committed. On lodging of FIR, the investigative machinery is set into motion.

- A FIR may be lodged by the victim, or parent/guardian of the victim, or any other person who knows that a particular offence has been committed. A representative of a non-governmental organisation may also lodge a FIR.

- It is preferable to lodge a FIR at the police station within whose jurisdiction the offence has been committed.
- Oral information related to a police officer is to be recorded in writing by the police officer, read over to the informant, and signed by the informant. A copy of FIR must be given free of cost to the informant.
- Information in writing and signed by the informant may be submitted to the police station. Acknowledgement of receipt by police station must be taken on a copy of the writing.
- If the police officer refuses to record the information, the information must be sent in writing to the Superintendent of Police or Assistant Commissioner of Police. This writing should categorically state that the concerned police station refused to record the information. A copy of the writing must also be sent to the Commissioner of Police, Deputy Commissioner of Police and Senior Police inspector.

INDIAN PENAL CODE 1860

- *Section 83:* Nothing is an offence which is done by a child under 7 years of age. Any act done by a child above 7 years of age and under 12 years is not an offence if the child is not of sufficient maturity and understanding to judge the nature and consequences of the act.
- *Section 292 & 293:* These sections deal with the selling, distribution, publishing or circulating of obscene material such as books, magazines, drawings, paintings, *etc.* The commission of such acts amount to an offence punishable with imprisonment which may extend to 3 years and fine; any subsequent convictions for the same offence is punishable with imprisonment for a term which may extend to 7 years and fine. The Indian law does not have any distinct provisions with regards to child pornography.
- *Section 300:* Murder is an act which causes death, and is done with the intention to cause death. Murder is punishable with death, or imprisonment for life and fine.
- *Section 304A:* This section punishes with imprisonment for a term which may extend to 2 years or with fine or with both, the causing of death of a person by doing any rash or negligent act. The rash or negligent act must be the direct cause of death. There is no intention to cause death. For example, driving a car on the wrong side of the road and killing children playing on the pavement will be an offence punishable under this provision of law.
- *Section 305:* Abetment of commission of suicide of a person under 18 years of age is punishable with death or imprisonment for life or imprisonment for a term not exceeding 10 years and fine. Abetment is the instigating of a person to commit an offence or intentionally aiding a person to commit an offence.
- *Section 317:* Exposure and abandonment of a child under 12 years by parent, *i.e.*, father or mother is punishable with imprisonment which

may extend to 7 years or with fine or with both. The object of this provision is to prevent the abandonment or desertion by parents of children who are unable to care for themselves.

- *Section 339 & 341:* Wrongful restraint is the preventing of a person from proceeding in any direction in which that person is entitled to proceed. Wrongfully restraining a person is punishable with imprisonment which may extend to 1 month or with fine or with both.
- *Section 340 & 342:* Wrongful confinement is the preventing of a person from proceeding beyond certain limits. Wrongful confinement is punishable with imprisonment which may extend to 1 year or with fine or with both.
- *Section 354:* Assaulting or using criminal force upon a woman with the intention of outraging her modesty is punishable with imprisonment which may extend to 2 years or with fine or with both. In case of fondling of a girl child, this provision of law is applied. The offence is bailable and the punishment negligible. It is necessary to distinguish between Section 354 and attempt to rape. When the accused removes his and the girl child's under-pants, and makes the girl child sit in his lap it amounts to attempt to rape and not mere outraging of modesty.
- *Section 359:* Kidnapping is of two kinds, (i) kidnapping from India, and (ii) kidnapping from lawful guardianship.
- *Section 361:* Kidnapping from lawful guardianship is the enticing of a male under 16 years of age, or a female under 18 years of age, or a person of unsound mind from custody of a lawful guardian without consent of guardian. This offence is punishable with imprisonment which may extend to 7 years and fine. The object of this provision is twofold, (i) to protect children from being abducted or seduced for improper purpose, and (ii) to protect the rights of parents and guardians having care and custody of children.
- *Section 362:* Abduction is the compelling or inducing of a person by force or deceit to go from any place. Abduction is in relation to any person, and not only a child or minor. Force and deceit are essential to constitute an offence under this provision of law.
- *Section 363A:* Kidnapping or maiming a minor for purpose of begging is an offence. Kidnapping a minor for purpose of begging is punishable with imprisonment which may extend to 10 years and to fine. Maiming a minor for purpose of begging is punishable with imprisonment for life and fine. A person not being the lawful guardian of a minor who uses a minor for purpose of begging is presumed to have kidnapped the minor for purpose of begging. "Minor" means a male under 16 years of age, and a female under 18 years of age. "Begging" means, (a) asking for or receiving alms in a public place either directly or by singing, dancing, *etc.*, (b) entering private premises to ask for or receive alms, (c) exposing any wound, deformity, disease, *etc.*, with the object of receiving alms, or (d) using a minor as an exhibit for purpose of asking for or receiving alms.

- *Section 366A:* Inducing of a minor girl under 18 years of age to do any act that may force or seduce her to illicit intercourse with another person is punishable with imprisonment which may extend to 10 years and fine.
- *Section 366B:* Importing a girl under 21 years of age into India from a country outside India or from Jammu and Kashmir with the intent that she may be forced or seduced to illicit intercourse with another person is punishable with imprisonment which may extend to 10 years and fine.
- *Section 369:* Kidnapping or abducting a child under 10 years with intention to steal from the child is an offence punishable with imprisonment which may extend to 10 years and fine.
- *Section 372:* Selling or hiring a person under 18 years of age for purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose is punishable with imprisonment which may extend to 10 years and fine.
- *Section 373:* Buying or hiring a person under 18 years of age for purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose is punishable with imprisonment which may extend to 10 years and fine.
- *Section 374:* Unlawfully compelling a person to labour against his/her will is punishable with imprisonment which may extend to 1 year or fine or both.
- *Section 375:* "Rape" is committed when a man has sexual intercourse with a woman (i) against her will, (ii) without her consent, (iii) with her consent, when consent has been obtained by putting her or any person in whom she is interested in fear of death or hurt, (iv) with her consent when she believes that he is her husband, (v) with her consent, when consent was given due to unsoundness of mind or intoxication or administration of stupefying/unwholesome substance because of which she is unable to understand the nature and circumstances of her act, (vi) with or without her consent when she is under 16 years of age. To constitute sexual intercourse, vaginal penetration is essential. Sexual intercourse by a man with his own wife under 15 years of age amounts to rape. Rape is an offence committed by a man upon a woman. Rape is a non-bailabale offence and is punishable with imprisonment [which in certain cases may extend to life imprisonment] and fine.
- *Section 376:* Punishment is more stringent if (i) rape is committed by management or staff of Remand Home or other place of custody established under law or children's institution, (ii) rape is committed upon a woman under 12 years of age, (iii) gang rape is committed.
- *Section 376C:* Sexual intercourse not amounting to rape committed by Superintendent or manager of a Remand Home or other place of custody established under law or children's institution is punishable

with imprisonment which may extend to 10 years and fine. This provision of law is attracted when the Superintendent or manager induces or seduces a woman into sexual intercourse by taking advantage of his official position.

- *Section 377:* Voluntarily having sexual intercourse against the order of nature with any man or woman or animal is punishable with imprisonment for life, or imprisonment which may extend to 10 years and fine.

2

Laws on Child Marriage Across Different Regions

CHILD RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

There are certain other provisions contained in part IV, dealing with the Directive Principles of State Policy, which although do not lay emphasis on the child welfare directly, yet the children are bound to be the beneficiaries if these provisions are implemented. The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self-imposing direction towards securing the health and strength of workers, particularly to see that the same in the children of tender age is not abused, nor they are forced by economic necessity t enter into avocations unsuited to their or strength.

The underlying Principles of the Directive Principles of State Policy are-to fix certain social and economic goals for immediate attainment by bringing about a non-violence social revolution-. Through such a social revolution the constitution also seeks to achieve the objectives of the child welfare. To achieve the goals of child welfare, the constitution has some provisions in part IV. The Directive Principles of State Policy have been designed with an earnest zeal to strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economical and political shall inform all the institution of national life.

Article 39(e) says that: the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39(f) says that: children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Clause (f) was modified by the constitution (42nd amendment)Act 1976 with a view to emphasize the constructive role of the state with regard to children.

In M. C. Mehta v. State of Tamil Nadu it was held that in view of Art 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it us hazardous. Children can, however be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accidents.

Article 42 says that: The State shall make provision for securing just and humane condition of work and for maternity relief-. The measures for maternity relief are meant for expectant mothers and mothers during the period of pregnancy and after the birth of the child. These measures meant for providing prober health care and other facilities to the mothers before and after the child birth are expected to promote the health of children and to provide healthy environments for their bringing up.

Article 45: says that-The State shall endeavour to provide early childhood care and education for all the children until they complete the age of fourteen years-. This Directive signifies that it is not only confined to primary education, but extends to free education whatever it may be upon the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education.

Virtually Article 45 recognizes the importance of dignity and personality of the child and directs the state to provide free and compulsory education for the children upto the age of 14 years. Hon'ble court in Mohini Jain case has observed that the significance of child education and other related provisions of the constitution, along with the preamble promises to secure to all citizens of the country-Justice Social, Economic and Political-, liberty of thoughts, expression, belief, faith and worship. It further provides-equality of status and of opportunity-and assures the dignity of the individual. It is suggested that Article 24 and 45 should be amended so as to raise the age limit from 14 to 16 years. By doing so the children's education at least upto matriculation, would be ensured or the proper growth and development of their personality. There are various state Acts, which stipulate the upper age limit of 16 years.

Article 47 says that: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health-. Thus, it is the responsibility of the state to provide nutritious food to children as the word-people-includes not only adults but also children. This provision becomes more relevant in case of children as the malnutrition can cause irreparable danger to the personality of the children through mental retardation and blindness.

Though these directives are not enforceable by the court, yet these have been declared to be fundamental in the governance of the country. It is the obligation of the state to apply these principles in making laws. If the government ignores them it will certainly have to answer foe them before the electorate at the time of election. Thus it will not be correct to say that there is no sanction of enforceability behind these directives. Since these directives relating to the welfare of children have also been embodied in the constitution, the governments are apt to implement them. Though they do not have legal force behind them but they have the highest tribunal, *i.e.*, public opinion behind them.

The foregoing study reveals that the preamble of Indian Constitution stands as a testimony to witness the presence of philosophy of socioeconomic and political justice under our National charter. In order to achieve the goals of social, economical and political justice, the constitution of India guarantees special protection to the children against exploitation. To import justice to them, the state has been empowered to make special provisions to their welfare so as to bring them at par with other sections of the society. There are various provisions in the constitution which put the state under duty to ensure that the tender age of children is not abused and they are not exposed to economic necessity to enter avocation unsuited to their age and strength.

Thus, analysis of various provisions contained in our National Charter makes it abundantly crystal clear that it is the duty of the state to promote the welfare of children and help them grow into good citizens of the country. Indeed, our constitution-makers are wise enough as they were sure that the dream of India's of their vision development would not come true if children of the country are not nurtured and educated.

Thus, we find that constitution of India, both in the Directive Principles of State policy and as a part of the Fundamental Rights has laid down that state shall direct its policy towards recurring good health and strength of workers and that the tender age of children, are not abused or exploited. A child must be given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and no citizen will be forced by economic necessity to enter avocations unsuited to their age and strength. Although, our constitutional framework and national policy for child welfare take into account very well all phases of child development. But a large number

of legally uncovered gaps due to administrative hindrances frustrate the objective of child welfare. In spite of all the constitutional and conventional protection accorded to the child workers in our country; the fact remains that children of tender age are forced to take up economic pursuits to augment the income of their family in most of the cases in the lower income bracket. At the time of making of the constitution, it was envisaged that within 10 years, all the states will make primary education compulsory. But unfortunately till 1983, the following states had no act or rule in favour of compulsory primary education-Bihar, Manipur, Meghalaya, Nagaland, Orissa, Sikkim, Tripura, Arunachal Pradesh and Mizoram.

The guardians of the law are very superficial regarding the rights of children. It seems that only the vocal groups get advantage and the children will have to be vocal.

ASIA

INDIA

According to UNICEF's "State of the World's Children-2009" report, 47% of India's women aged 20–24 were married before the legal age of 18, with 56% marrying before age 18 in rural areas. The report also showed that 40% of the world's child marriages occur in India. As with Africa, this UNICEF report is based on data that is derived from a small sample survey in 1999. The latest available UNICEF report for India uses 2004-2005 household survey data, on a small sample, and other scholars report lower incidence rates for India. According to Raj et al., the 2005 small sample household survey data suggests 22% of girls ever married aged 16-18, 20% of girls in India were married between 13-16, and 2·6% were married before age 13. According to 2011 nationwide census of India, the average age of marriage for women in India is 21. In the age group 15-19, 69.6% of all women surveyed in India had never been married.

The *Child Marriage Restraint Act, 1929* was passed during the tenure of British rule on pre-partition India. It forbade the marriage of a male younger than 21 or a female younger than 18 for Hindus, Buddhists, Christians and most people of India. However, this law did not and currently does not apply to India's 165 million Muslim population, and only applies to India's Hindu, Christian, Jain, Sikh and other religious minorities. This link of law and religion was formalized by the British colonial rule with the Muslim personal laws codified in the Indian Muslim Personal Law (Shariat) Application Act of 1937. The age at which India's Muslim girls can legally marry, according to this Muslim Personal Law, is 9, and can be lower if her guardian (*wali*) decides she is sexually mature. Over the last 25 years, All India Muslim Personal Law Board and other Muslim civil organizations have actively opposed India-wide laws and enforcement action against child marriages; they have argued that Indian Muslim families have a religious right to marry a girl aged 15 or even 12. Several states of India

claim specially high child marriage rates in their Muslim and tribal communities. India, with a population of over 1.2 billion, has the world's highest total number of child marriages. It is a significant social issue.

According to "National Plan of Action for Children 2005", published by Indian government's Department of Women and Child Development, set a goal to eliminate child marriage completely by 2010. This plan has been unsuccessful.

PAKISTAN

According to two 2013 reports, over 50% of all marriages in Pakistan involve girls less than 18 years old. Another UNICEF report claims 70 per cent of girls in Pakistan are married before the age of 16. As with India and Africa, the UNICEF data for Pakistan is from a small sample survey in 1990s.

The exact number of child marriages in Pakistan below the age of 13 is unknown, but rising according to the United Nations. Andrew Bushell claims rate of marriage of 8 to 13 year old girls exceeding 50% in northwest regions of Pakistan.

Another custom in Pakistan, called *swara* or *vani*, involves village elders solving family disputes or settling unpaid debts by marrying off girls. The average marriage age of *swara* girls is between 5 and 9. Similarly, the custom of watta satta has been cited as a cause of child marriages in Pakistan.

According to Population Council, 35% of all females in Pakistan become mother before they reach the age of 18, and 67% have experienced pregnancy — 69% of these successfully — before they reach the age of 19. Less than 4% of married girls below the age of 19 had some say in choosing her spouse; over 80% were married to a near or distant relative. Child marriage and early motherhood is common in Pakistan.

BANGLADESH

Child marriage rates in Bangladesh are amongst the highest in the world. Every 2 out of 3 marriages involve child marriages. According to statistics from 2005 45% of women then between 25 and 29 were married by the age of 15 in Bangladesh.

According to the "State of the World's Children-2009" report, 63% of all women aged 20–24 were married before they were 18. The Ministry of Women and Children Affairs is making progress in increasing women's education and employment opportunities. This, combined with specific education about child marriage and cooperation with religious leaders, is hoped to decrease child marriage.

NEPAL

A UNICEF discussion paper determined that 79.6 percent of Muslim girls in Nepal, 69.7 percent of girls living in hilly regions irrespective of religion, and 55.7 percent of girls living in other rural areas, are all married before the age of 15. Girls who were born into the highest wealth quintile marry about two years later than those from the other quintiles.

MIDDLE EAST

A 2013 report claims 53% of all married women in Afghanistan were married before age 18, and 21% of all were married before age 15. Afghanistan's official minimum age of marriage for girls is 15 with her father's permission. In all 34 provinces of Afghanistan, the customary practice of *ba'ad* is another reason for child marriages; this custom involves village elders, *jirga*, settling disputes between families or unpaid debts or ruling punishment for a crime by forcing the so-called guilty family to give their 5 to 12 year old girls as a wife. Sometimes a girl is forced into child marriage for a crime her uncle or distant relative is alleged to have committed.

In Iran, girls may marry at 13 and boys at 15, and children under 10 may marry if their guardian approves it. According to a 2013 report, about one million children, including those under age 10, are married every year. About 85% of these married children are girls. As in Pakistan and Afghanistan, in some cases, girls are married to settle disputes between families.

Over half of Yemeni girls are married before 18, some by the age eight. Yemen government's Sharia Legislative Committee has blocked attempts to raise marriage age to either 15 or 18, on grounds that any law setting minimum age for girls is un-Islamic. Yemeni Muslim activists argue that some girls are ready for marriage at age 9. According to HRW, in 1999 the minimum marriage age 15 for women was abolished; the onset of puberty, interpreted by conservatives to be at age nine, was set as a requirement for consummation of marriage. In practice "Yemeni law allows girls of any age to wed, but it forbids sex with them until the indefinite time they're 'suitable for sexual intercourse" As with Africa, the marriage incidence data for Yemen in HRW report is from surveys between 1990 and 2000. Current data is difficult to obtain, given regional violence.

In April 2008 Nujood Ali, a 10-year-old girl, successfully obtained a divorce after being raped under these conditions. Her case prompted calls to raise the legal age for marriage to 18. Later in 2008, the Supreme Council for Motherhood and Childhood proposed to define the minimum age for marriage at 18 years. The law was passed in April 2009, with the age voted for as 17. But the law was dropped the following day following maneuvers by opposing parliamentarians. Negotiations to pass the legislation continue. Meanwhile, Yemenis inspired by Nujood's efforts continue to push for change, with Nujood involved in at least one rally.

The widespread prevalence of child marriage in the Kingdom of Saudi Arabia has been documented by human rights groups. Saudi clerics have justified the marriage of girls as young as 9, with sanction from the judiciary. There are no laws in place defining a minimum age of consent in Saudi Arabia, though drafts for possible laws have been created since 2011. Research by the United Nations Population Fund indicates that 28.2% of marriages in Turkey — almost one in three — involve girls under 18.

SOUTHEAST ASIA

HILL TRIBES

Hill tribes girls are often married young.

OCEANIA

About 22% of Indonesian girls experience child marriage every year, and 12% get married before age 15, according to 2012 United Nations Population Fund report.

There are many reports of Muslim clerics taking multiple underage wives, some less than 12 years old. Indonesian prosecutors have attempted to stop this practice by demanding prison terms for such clerics, however local courts have issued soft sentences.

In Indonesia the 1947 Law on Marriage stipulates that a woman must be at least 16 years old and a man must be at least 19 years old to marry. With the popular rise of social networking sites like Facebook underage marriage appears to be increasing in areas like Gunung Kidul, Yogyakarta.

Couples have reported becoming acquainted through Facebook and continuing their relationships until girls became pregnant. Among theAtjeh of Sumatra girls formerly married before puberty. The husbands, though usually older, were still unfit for sexual union. Among the islanders of Fiji, also, marriage took place before puberty.

The Marquesas Islands have been noted for their sexual culture. Many sexual activities seen as taboo in Western cultures are viewed appropriate by the native culture. One of these differences is that children are introduced and educated to sex at a very young age. Contact with Western societies has changed many of these customs, so research into their pre-Western social history has to be done by reading antique writings. Children slept in the same room as their parents and were able to witness their parents while they had sex. Intercourse simulation became real penetration as soon as boys were physically able.

Adults found simulation of sex by children to be funny. As children approached 11 attitudes shifted towards girls. When a child reaches adulthood, they are educated on sexual techniques by a much older adult.

Yuri Lisyansky in his memoirs reports that:

The next day, as soon as it was light, we were surrounded by a still greater multitude of these people. There were now a hundred females at least; and they practised all the arts of lewd expression and gesture, to gain admission on board. It was with difficulty I could get my crew to obey the orders I had given on this subject. Amongst these females were some not more than ten years of age. But youth, it seems, is here no test of innocence; these infants, as I may call them, rivalled their mothers in the wantonness of their motions and the arts of allurement.

Adam Johann von Krusenstern in his book about the same expedition as Yuri's, reports that a father brought a 10-to 12-year-old girl on his ship, and

she had sex with the crew. According to the book of Charles Pierre Claret de Fleurieu and Étienne Marchand, 8-year-old girls had sex and other unnatural acts in public.

LATIN AMERICA

Child marriage is common in Latin America and the Caribbean island nations. About 29% of girls are married before age 18. The child marriage incidence rates varies between the countries, with Dominican Republic, Honduras, Brazil, Guatemala, Nicaragua, Haiti and Ecuador reporting some of the highest rates in the Americas. Bolivia and Guyana have shown the sharpest decline in child marriage rates as of 2012. Poverty and lack of laws mandating minimum age for marriage have been cited as reasons of child marriage in Latin America.

NORTH AMERICA

CANADA

In some provinces of Canada, people under 16 can get married if they are pregnant and have the court's approval.

UNITED STATES

Child marriage, as defined by UNICEF, is observed in the United States. The UNICEF definition of child marriage includes couples who are formally married, or who live together as a sexually active couple in an informal union, with at least one member — usually the girl — being less than 18 years old. The latter practice is more common in the United States, and it is officially called cohabitation. According to a 2010 report by National Center for Health Statistics, an agency of the government of United States, 2.1% of all girls in the 15-17 age group were in a child marriage. In the age group of 15-19, 7.6% of all girls in the United States were formally married or in an informal union. The child marriage rates were higher for certain ethnic groups and states. In Hispanic groups, for example, 6.6% of all girls in the 15-17 age group were formally married or in an informal union, and 13% of the 15-19 age group were.

Over 350,000 babies are born to teenage mothers every year in the United States, and over 50,000 of these are second babies to teen mothers. In 1991, underage teen pregnancies were significantly higher.

Laws regarding child marriage vary in the different states of the United States. Generally, children 16 and over may marry with parental consent, with the age of 18 being the minimum in all but two states to marry without parental consent. Those under 16 generally require a court order in addition to parental consent.

Until 2008 the Fundamentalist Church of Jesus Christ of Latter Day Saints practiced child marriage through the concept of "spiritual marriage" as soon

as girls were ready to bear children, as part of its polygamy practice, but laws have raised the age of legal marriage in response to criticism of the practice. In 2008 the Church changed its policy in the United States to no longer marry individuals younger than the local legal age.

In 2007 church leader Warren Jeffs was convicted of being an accomplice to statutory rape of a minor due to arranging a marriage between a 14-year-old girl and a 19-year-old man.

In March 2008 officials of the state of Texas believed that children at the Yearning For Zion Ranch were being married to adults and were being abused. The state of Texas removed all 468 children from the ranch and placed them into temporary state custody.

After the Austin's 3rd Court of Appeals and the Supreme Court of Texas ruled that Texas acted improperly in removing them from the YFZ Ranch, the children were returned to their parents or relatives.

EUROPE

DENMARK

In Denmark people at 15 can get married if they have the municipality's approval. The municipality's approval requires that they have their own homes.

UNITED KINGDOM

The marriageable age in Scotland is 16, and no parental consent is required.

As with United States, cohabitation is observed in the United Kingdom. According to a 2005 study, 4.1% of all girls in the 15-19 age group in the UK were cohabiting (living in an informal union), while 8.9% of all girls in that age group admitted to have been in a cohabitation relation (child marriage per UNICEF definition), before the age of 18. Over 4% of all underage girls in the UK were teenage mothers.

AFRICA

According to UNICEF, Africa has the highest incidence rates of child marriage, with over 70% of girls marrying under the age of 18, in three nations. This UNICEF report is based on data that is derived from a small sample survey between 1995 and 2004, and the current rate is unknown given lack of infrastructure and in some cases, regional violence.

African countries have enacted marriageable age laws to limit marriage to a minimum age of 16 to 18, depending on jurisdiction. In Ethiopia, Chad and Niger, the legal marriage age is 15, but local customs and religious courts have the power to allow marriages below 12 years of age. Child marriages of girls in West Africa and Northeast Africa are widespread. Additionally, poverty, religion, tradition, and conflict make the rate of child marriage in Sub-Saharan Africa very high in some regions.

In many tribal systems a man pays a bride price to the girl's family in order to marry her (comparable to the customs of dowry and dower). In many parts of Africa, this payment, in cash, cattle, or other valuables, decreases as a girl gets older. Even before a girl reaches puberty, it is common for a married girl to leave her parents to be with her husband. Many marriages are related to poverty, with parents needing the bride price of a daughter to feed, clothe, educate, and house the rest of the family. In Mali, the female: Male ratio of marriage before age 18 is 72:1; in Kenya, 21:1.

The various reports indicate that in many Sub-Saharan countries, there is a high incidence of marriage among girls younger than 15. Many governments have tended to overlook the particular problems resulting from child marriage, including obstetric fistulae, premature births, stillbirth, sexually transmitted diseases (including cervical cancer), and malaria.

In parts of Ethiopia and Nigeria many girls are married before the age of 15, some as young as 7. In parts of Mali 39% of girls are married before the age of 15. In Niger and Chad, over 70% of girls are married before the age of 18.

In 2013, Nigeria attempted to change Section 29, subsection 4 of its laws and thereby prohibit child marriages. This was opposed by Islamic states of Nigeria, who called any attempts to prohibit child marriages as un-Islamic. Christianity and Islam are practiced by roughly 50%-50% of its population respectively, and the country continues with personal laws from its British colonial era laws, where child marriages are forbidden for its Christians and allowed for its Muslims. Child marriage is a divisive topic in Nigeria and widely practiced. In northern states, predominantly Muslim, over 50% of the girls marry before the age of 15.

In Morocco, child marriage is a common practice. Over 41,000 marriages every year involve child brides. Before 2003, child marriages did not require a court or state's approval. In 2003, Morocco passed the family law (*Moudawana*) that raised minimum age of marriage for girls from 14 to 18, with the exception that underage girls may marry with the permission of the government recognized official/court and girl's guardian.

Over the 10 years preceding 2008, requests for child marriages have been predominantly approved by Morocco's Ministry for Social Development, and have increased (~ 29% of all marriages). Some child marriages in Morocco are a result of Article 475 of the Moroccan penal code, a law that allows rapists to avoid punishment if they marry their underage victims. In South Africa the law provides for respecting the marriage practices of traditional marriages, whereby a person might be married as young as 12 for females and 14 for males.

Early marriage is cited as "a barrier to continuing education for girls (and boys)". This includes *absuma* (arranged marriagesset up between cousins at birth in local Islamic ethnic group), bride kidnapping and elopement decided on by the children.

MAIN FEATURES OF THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

The new Prohibition of Child Marriage Act, 2006 brings about far reaching changes in the law as under:

- Section 3 of this Act states that "child marriages shall be voidable at the option of the contracting party who was a child at the time of the marriage." It allows for a petition to be filed to declare the marriage void within 2 years of the child attaining majority. However, since a girl is supposed to attain majority at the age of 18 and a boy at the age of 21, the girl can file a petition till she becomes 20 years of age and a boy till he becomes 23 years of age.
- The Act also allows for maintenance and residence for the girl till her remarriage from the male contracting party or his parents.
- It further allows for appropriate orders for custody for any child born from the marriage.
- All the punishments for contracting a child marriage have been enhanced. The punishment for a male over 18 years of age has been enhanced to rigorous imprisonment of up to 2 years or with a fine upto 1 lakh rupees or both.
- A similar punishment is prescribed for anyone who performs, conducts, directs or abets any child marriage.
- The same punishment is also prescribed for anyone who solemnizes a child marriage including by promoting such a marriage, permitting it to be solemnized or negligently failing to prevent the marriage. No woman can however be punished with imprisonment. The Act also makes all offences cognizable and non-bailable.
- The Act further allows for injunctions to prohibit child marriages including ex parte interim injunctions. It states that any child marriage solemnized in contravention of an injunction order will be void.

The Act lays emphasis on the prohibition of child marriages by providing for the appointment of Child Marriage Prohibition Officers by the State Governments and gives powers to these Officers to prevent and prosecute solemnization of child marriages and to create awareness on the issue.

However without the required financial allocations these Officers will probably not get appointed. The Act gives the District Magistrate powers to stop and prevent solemnization of mass child marriages by employing appropriate measures and minimum police force apart from giving him all the powers of the Child Marriage Prohibition Officer.

In view of the provisions of PCMA we have to examine whether any further amendments to the law of child marriage are necessary. The present law while making child marriage voidable under a gender neutral provision has also given a male child the right to get out of a forced marriage. The law, however, does not make a marriage invalid whether it is performed when the child is an infant or later at puberty or adolescence.

Under the criminal law, however, Section 375 IPC makes it a crime to have a sexual relationship with a child under 15 years of age. A contradiction therefore remains between the PCMA and Section 375 IPC.

It is relevant to mention that prior to the new Act a Parliamentary Standing Committee had examined the government Bill on the Prevention of Child Marriage and suggested that child marriages solemnized after the introduction of the new Act should be made void ab initio. The Standing Committee had pointed out that research had shown that a girl child "has to suffer irreparable losses due to biological factors and inability to sustain pressure of marriage at an early age." In the next stage, we therefore examine the scope, causes and consequences of child marriages.

SCOPE, CAUSES AND CONSEQUENCES OF CHILD MARRIAGES

Child marriages continue to be a fairly widespread social evil in India. In a study carried out between the years 1998 to 1999 on women aged 15-19 it was found that 33.8% were currently married or in a union. In 2000 the UN Population Division recorded that 9.5% of boys and 35.7% of girls aged between 15-19 were married. This showed that child marriage was far more prevalent amongst girls and this highlighted the gender dimension of the problem.

The National Family Health Survey of 2005- 2006 carried out in twenty-nine states confirmed that 45% of women currently aged 20-24 years were married before the age of eighteen years. The percentage was much higher in rural areas than in urban areas and exceeded 50% in eight states. The percentage of women aged 20-24, married by the time they are 18, stood at 61.2% in Jharkhand followed by 60.3% in Bihar, 57.1% in Rajasthan, 54.7% in AP, and 53% in MP, UP and West Bengal. The NFHS-3 findings further revealed that 16% of women aged 15-19 were already mothers or pregnant at the time of the survey. It was also found that more than half of Indian women were married before the legal minimum age of 18 compared to 16% of men aged 20-49 who were married by age 18.

Though NFHS-3 did not compile data on girls who were married below the age of 15, the 2001 Census of India had revealed that 300,000 girls under 15 had given birth to at least one child. Further in a survey conducted by the Government of Rajasthan in 1993 it was found that 56% girls had been forced into marriage before the age of 15 and of these 7% were married before they were 10. A second survey conducted in 1998 in the State of MP found that 14% girls were married between the ages of 10 and 14.

In states like Rajasthan, mass marriages of very young children take place on occasions like the Akha Teej. The NFHS-3 findings show a slight rise in the median age of marriage for women aged 20-49 from 16.7 in NFHS-2 to 17.2. However this data does not reveal how many marriages are taking place even below the age of 15.

Furthermore, with about 315 million people in India being in the age group of 10–24 years, and 44.5% of women aged 20-24 still getting married by the time they are 18, and 29.3% of men aged 25-29 getting married by the time they are 21, the improvement seems trivial. In 2006 the Hindustan Times reported that 57% of girls in India are married off before they are 18 as per the International Centre for Research on Women. The phenomenon of child marriage can be attributed to a variety of reasons.

The chief amongst these reasons is poverty and culture, tradition and values based on patriarchal norms. These norms do not take into account that "in actuality, child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty. Young married girls are a unique, though often invisible, group.

Required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children while still children themselves, married girls and child mothers face constrained decision making and reduced life choices. Boys are also affected by child marriage but the issue impacts girls in far larger numbers and with more intensity… Where a girl lives with a man and takes on the role of caregiver for him, the assumption is often that she has become an adult woman, even if she has not yet reached the age of 18." The marriage of a minor girl often takes place because of the poverty and indebtedness of her family.

Dowry becomes an additional reason, which weighs even more heavily on poorer families. The general demand for younger brides also creates an incentive for these families to marry the girl child as early as possible to avoid high dowry payments for older girls. The girl in our patriarchal set up is believed to be parki thepan and a burden. These beliefs lead parents to marry the girl child. In doing so, they are of course relieving themselves of the 'burden' of looking after the child. The girls are considered to be a liability as they are not seen as individuals who can contribute productively to the family. Unfortunately, the patriarchal mindset is so strong that the girl has no say in decision making.

Texts like Manu Smirti which state that the father or the brother, who has not married his daughter or the sister who has attained puberty will go to hell are sometimes quoted to justify child marriage. Child marriages are also an easy way out for parents who want their daughters to obey and accept their choice of a husband for them. There is also a belief that child marriage is a protection for the girls against unwanted masculine attention or promiscuity.

In a society which puts a high premium on the patriarchal values of virginity and chastity of girls, girls are married off as soon as possible. Furthermore securing the girl economically and socially for the future has been put forth as a reason for early marriage. The institution of marriage in communities or societies can be used to serve or strengthen economic and social ties between

different families and even communities. Also a young girl may be offered to a family in order to improve the financial and social standing of the girl's family.

Other reasons that have been listed for the high prevalence of child marriages in India are lack of education and knowledge, shortcomings in the law, and the lack of will and action on part of the administration. Child marriage is a grave violation of the rights of the child depriving her of opportunities and facilities to develop in a healthy manner to obtain education and to lead a life of freedom and dignity. It deprives the young girl of capabilities, opportunities and decision-making powers and stands in the way of her social and personal development. Young brides face the risk of sexual and reproductive ill health because of their exposure to early sexual activity and pregnancy. The NFHS-2 had recorded that only 4% of married girls practiced gauna. It had further been recorded that the period between marriage and gauna had been reduced to about one year in most cases. The NFHS-3 figures show that the practice has been further restricted to 0.7% married girls. Complications and mortality are common during childbirth for young pregnant girls.

Girls who come from poor backgrounds and who are often married at an early age have little or no access to health care services. Risks associated with young pregnancy and childbearing include "an increased risk of premature labour, complications during delivery, low birth-weight, and a higher chance that the newborn will not survive." Young mothers under age 15 are five times more likely to die than women in their twenties due to complications including haemorrhage, sepsis, preeclampsia/eclampsia and obstructed labour.

Maternal mortality amongst adolescent girls is estimated to be two to five times higher than adult women. Maternal mortality amongst girls aged 15-19 years is about three times higher. Young women also suffer from a high risk of maternal morbidity. It has been found that for "every woman who dies in childbirth, thirty more suffer injuries, infections and disabilities, which usually go untreated and some of which are lifelong".

Research further indicates that the babies of mothers below the age of 18 tend to have higher rates of child morbidity and mortality. "Infants of mothers aged younger than 18 years have a 60 per cent greater chance of dying in the first year of life than those of mothers aged 19 years or older." Babies are born premature or underweight or young mothers simply lack parenting skills and decision-making powers. Secondly, young girls face the risk of infection with sexually transmitted diseases including HIV.

Young brides who run away from early marriages may end up as sex workers or eventually resort to use sex work as a way of earning additional income. Young brides also run the risk of catching diseases from their respective spouses, as older husbands often engage in sexual relations with other women outside the marriage. Young married girls do not have bargaining power in the marriage and therefore cannot negotiate safe sex and are deemed vulnerable. It has also been found that young girls are physiologically more prone to

contracting HIV/AIDS, as her vagina is not well lined with protective cells and her cervix may be more easily eroded. An analysis of the HIV epidemic shows that "the prevalence of HIV infection is highest in women aged 15–24 and peaks in men between five to ten years later." Women experience domestic violence from their spouses and their relatives for a variety of reasons.

These reasons include dowry and the wife not behaving according to norms set by the husband and his family which are often patriarchal in nature. A study has shown that India has the highest rate of "domestic violence among women married by 18 with a rate of 67 per cent, compared to 45 per cent of women who had not experienced violence." Since an age gap between men and their wives generally exists and quite often men are much older, the power dynamics between them can be extremely unequal. The girl becomes socially isolated and does not have any decision-making powers and consistently faces harassment from her husband and in-laws.

NFHS-3 indicates that decision-making power is extremely limited for married women in general as only 52.5% of currently married women participate in household decisions. Furthermore because young brides enter the marriage at an early age, they do not develop personal and social skills that will enable them to fend for themselves. They become totally dependent on their spouses and are not likely to leave a violent marriage. Women also undergo sexual violence in marriage and young girls are particularly vulnerable. In a study carried out in Calcutta in 1997 where half the women interviewed were married at or below the age of 15, with the youngest being married at 7 years old, findings revealed that this age group had "one of the highest rates of vulnerability to sexual violence in marriage, second only to those whose dowry had not been paid."

The women interviewed said they had sexual intercourse before menstruation had started, that sex was early and very painful, and "many still continued to be forced into sexual activity by their husbands." Additionally the young girls "had made their husbands aware of their unwillingness to have sex or of pain during sex, but in 80 per cent of these cases the rapes continued." As husbands are often much older than their brides, girl brides are likely to be widowed at an early age. A child bride who is widowed can suffer discrimination including loss of status and they are often denied property rights, and other rights.

Child widows have little or no education or other skills to be able to take care of themselves. At a 1994 Conference in Bangalore, India, participants told of being married at five and six years old, widowed a few years later, and rejected by their in-laws and their own families. These widows are, quite simply, left with no resources and nowhere to go. Young girls who are married early usually stop going to school. Giving an education to a girl is perceived by both the girl's and boy's families unnecessary for becoming a good wife or a mother, if not a deterrent. Those who have a choice are eventually forced

to drop out of school because they are forced to assume the responsibility of doing domestic chores and starting a family, *etc.* Early marriage is often linked to low levels of schooling for girls. NFHS-3 figures show that 71.6% of Indian women currently aged 20-24 years, who had been married before the age of eighteen years, did not have any education at all. Furthermore, by not going to school, young brides are denied the opportunity to make friendships with peers or acquire critical life skills. It has been said that "educated women are more likely to have a say in decision-making regarding the size of their families and the spacing of their children. They are also likely to be more informed and knowledgeable about contraception and the health care needs of their children." Since married girls leave their homes and often villages, towns, cities, *etc.* they "tend to lose the close friendships they had formed in their parental homes, and often become quiet and subdued.

This means that even where girls have developed social networks they are unable to access them." The loss of adolescence, the forced sexual relations, and the denial of freedom and personal development attendant on early marriage have profound psychosocial and emotional consequences. Researchers on child marriage in Rajasthan and Madhya Pradesh state that young married girls suffered more than boys due to the abovementioned consequences of child marriage.

FACTORS THAT PROMOTE AND REINFORCE CHILD MARRIAGE

Throughout the world, child marriage is held as a deeply entrenched social and economic institution, which is enshrined in religion or tradition and continues to flourish for many different reasons. The practice is similar in many ways to the social dynamics related to female genital mutilation (FGM) which is also reinforced by social norms.

In several societies in Africa, child marriage is also intimately connected with FGM, because the practice forms part of the requirements of a girl for her distant or imminent marriage. As demonstrated earlier, there are a number of reinforcing factors that continue to perpetuate both practices. These pose numerous challenges for policy makers.

FAMILY TIES

The marriage or betrothal of children in parts of Africa and Asia is valued as a means of consolidating powerful relations between families, for sealing deals over land or other property, or even for settling disputes.

Marriage may also be a way of maintaining ethnic or community relations. Children's rights as individuals in such situations are often disregarded; they may instead be seen purely as commodities at the family's disposal. Betrothals are traditionally not supposed to involve sexual relations until the girl reaches adolescence, but in reality husbands are rarely restrained. Young girls may be forced or coerced to initiate sex even before it is traditionally permitted.

In parts of South Asia, the practice of families using young girls to settle family feuds is a form of child marriage, which is driven by tradition and family ties. In Pakistan, the practice of 'vani' requires giving away girls in marriage to relatives of murder victims, as compensation for crimes committed, or to settle feuds between families or clans.

> *Trokosi is a form of ritual slavery practised in parts of Ghana, Togo and Benin. Girls begin their life of slavery within the shrine in pre-adolescence – some as young as four. Under this custom, a family must offer a virgin daughter to the gods to atone for the 'sins and crimes' of a relative who, in most cases, may be long dead. These crimes may range in severity from murder to petty thefts. Trokosi are always girls – literally 'wives of the gods' – forced to perform sexual services for the idol priests. Their children also become slaves of the priest, working in his fields. These girls are denied access to education and health care, and are required to spend the rest of their lives as 'wives of the gods', through the gods' medium, the fetish priest. Girls live constantly at the mercy of these fetish priests, who justify their rape and other violations with the claim that Trokosi slaves are like priestesses who copulate with the gods through their earthly servants. If a girl dies or the priest tires of her, she has to be replaced. The majority of parents are fearful of the consequences of not complying with the terms of these shrines. Anti-Slavery International, 2005*

GENDER INEQUALITY

Gender inequality persists in most societies despite global statements of commitment to empower women and improve gender equality. In many societies worldwide power structures are still overwhelmingly male-dominated or patriarchal. Under such conditions, the marriage of girls is perceived as a necessary way of reinforcing existing norms. It ensures that girls and women accept their domestic roles and have a limited role within the wider society. This clearly results in women's total dependency on men. Therefore, any government making genuine efforts to eradicate gender inequality will find its path blocked unless it explicitly tackles entrenched social norms, attitudes and practices in relation to marriage, as an integral component of its gender equality strategy.

POVERTY AND ECONOMIC SURVIVAL STRATEGIES

In traditional societies – where infant mortality was very high and survival depended on a family's ability to produce its own food or goods for sale – child marriage helped to maximize the number of pregnancies and ensure enough surviving children to meet household labour needs. Although the costs of raising children (*e.g.*, funding education) may be increasingly putting pressure on families to reduce the number of births, parents in rural communities least impacted by outside influences are still motivated by traditional desires for large families. Having a large number of children, depending on the social norm, also provides

a source of social security for parents in their old age. Child marriage is valued as an economic coping strategy which reduces the costs of raising daughters. In this sense, poverty becomes a primary reason for child marriage because of perceived benefits to the family and the daughter. Marriage arrangements and requirements, such as dowry payments in parts of South Asia where parents of the young woman are obliged to give gifts to the spouse and his family, perpetuate child marriages. This is because the dowry requirement often increases with the age and the education level of the girl. Additionally, poor families tend to marry off girls at the same time to help reduce the burden of high marriage ceremony expenses. Families in parts of sub-Saharan Africa affected by poverty and other disasters often resort to marrying off their daughters early so as to benefit from bride price or acquire additional help in the family. In some communities, men who cannot afford to pay the bride price for a woman resort to violent abduction and rape of young girls. The challenge for policy makers in such contexts is how to promote the development of alternative survival options for communities, so that child marriage and high birth rates are no longer seen as central to a family's survival.

Economic growth in many middle-level countries in North Africa and East and South East Asia has expanded opportunities for female employment within low-paid industries. This has also resulted in the erosion of many prejudices against female education and undermined the desire for child marriages. Girls instead become valued for their ability to earn income for their parents. A study in Bangladesh found that 'positive deviant' families – poor families who delayed their daughter's marriage or first birth – made their decisions primarily based on aspirations for female employment. Others felt it was justified for mature girls to stay unmarried so long as they were in school, indicating the need for more schemes to support girls' secondary education.

Control over sexuality and protecting family honour Child marriage is traditionally recognized as necessary for controlling girls' sexuality and reproduction. Cultural and religious notions of a girl's virginity and chastity in many societies are directly linked to the honour and status of a family or clan. This means that there is tremendous pressure on parents to marry off girls early to preserve family honour and minimize the risk of improper sexual activity or conduct. Indeed, girls are perceived as incapable of protecting themselves through their own agency. Girls in rural communities may be withdrawn from school at first menstruation to restrict their movements in order to protect their sexuality. This is also linked to the belief that girls' education will, in the long term, adversely influence their future roles as wives and mothers, leading families to continue justifying child marriages.

TRADITION AND CULTURE

In communities where child marriage is prevalent there is strong social pressure on families to conform. Failure to conform can often result in ridicule, disapproval or family shame. Local myths encourage earlier marriage of girls – such as in the

Amhara Region of Ethiopia where people perceive menstruation to be induced by intercourse – and such myths encourage earlier marriage of girls. Invariably, local perceptions on the ideal age for marriage, the desire for submissive wives, extended family patterns and other customary requirements (*e.g.*, dowries or bride price), are all enshrined in local customs or religious norms. In many contexts child marriage is legitimized by patriarchy, and related family structures, which ensure that marriage transfers a father's role over his girl child to her future spouse.

This is often encouraged "to take place before a girl reaches the age when she might question it." The reality for many women and girls in rural areas is that their daily lives are more often dictated by customary laws than by national laws. Clearly, many of the social and cultural issues that reinforce child marriage indicate challenges that need to be addressed, but they also provide opportunities for advancing many development and human rights goals. The use of religion and tradition to justify child marriages shows an urgent need for developing effective strategies for collaboration with religious and traditional leaders.

INSECURITY

Situations of insecurity and acute poverty, particularly during disasters such as war, famine or the HIV and AIDS epidemic, can prompt parents or carers to resort to child marriage as a protective mechanism or survival strategy. In some parts of sub-Saharan Africa the HIV and AIDS epidemic has led to an increase in child marriages. This could be due to families' desires to secure the future of their daughters. Among some populations which have been disrupted by war (*e.g.*, in Burundi, Somalia, Northern Uganda and Afghanistan), marrying a young daughter to a warlord or someone who can look after her may be a strategy for physical security or family support. In the worst cases girls are abducted or kidnapped by armed militia or rebels and forced into temporary marriages which amount to "a combination of child prostitution and pure slavery." Displaced populations living in refugee camps may feel unable to protect their daughters from rape, and so marriage to a warlord or other authority figure may provide improved protection.

HUMAN RIGHTS AND THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

Child marriage is thus child abuse and a violation of the human rights of the child. It has an extremely deleterious effect on the health and well being of the child. It is a denial of childhood and adolescence; it is a curtailment of personal freedom and opportunity to develop to a full sense of selfhood as well as a denial of psycho-social and emotional well being and it is a denial of reproductive health and educational opportunities.

The girl child is the most affected and suffers irreparable damage to her physical, mental, psychological and emotional development. It is important therefore, to examine whether the new law on child marriage takes into

account and seeks to redress the disastrous effects of child marriage in a holistic manner. By making a provision for child marriage protection officers and giving powers to Magistrates to stop mass child marriages and by making child marriages both cognizable and non-bailable the new law certainly seeks to prevent child marriages from taking place and sets a machinery in place to do so.

Further, by providing that ex-parte interim injunction orders can be given by a Magistrate to stop child marriages the new law is a definite improvement over the old law which stipulated that no interim injunction orders could be passed without notice. The enhancement of punishment in Sections 9, 10 and 11 for the guardian and others who promote or permit or fail to stop a child marriage, for a groom above 18 and for those who perform, conduct or direct any child marriage, up to two years from the earlier three months and the increase in fine up to rupees one hundred thousand are also welcome changes. However, three important criticisms of the new Act have been made by Women's and Human Rights Groups and other concerned individuals. One of the main criticisms of the new Act has been that it does not invalidate a marriage even below a certain age. Thus a child of 10,11,12 or 13 years of age can be married and subjected to sexual and other forms of abuse which normally have lasting and irreversible mental and physical consequences.

Merely giving a girl child an option to end the marriage after the age of 15 years may not be sufficient. Also, though under the criminal law sexual intercourse with a wife under 15 years is punishable, the marriage is still held to be valid under the new Act. It has been proposed by some that the age of consent under the rape laws should be the same as the minimum age of marriage and all marriages below this age should be held void. Some others have proposed that in special circumstances a marriage may be allowed between over 16 years and the age for consent to sexual intercourse and the relaxed age of marriage should be the same and marriages below the age of 16 should be void.

The new Act like the old CMRA continues to stipulate different minimum ages for a girl and a boy to get married. This provision has been criticized by some as being discriminatory, biased and based on patriarchal notions of marriage. Another criticism that has been raised vis-à-vis the new Act is the fact that though a boy can opt out of the marriage till the age of 23 years, a girl can only do so till the age of 20 years. If we examine the laws in different countries, we see that most countries ban child marriages and punish rape within and outside marriage.

However, child marriage continues to be prevalent in most of the developing world. In some countries, though the legal age for marriage is 18 years a person may be allowed to marry before that age in exceptional circumstances. Otherwise the marriage is void. For instance, in Australia a person can apply to a judge or magistrate for an order allowing him/her to marry if he/she has reached the age of 16 years. However, by 1991 every state in Australia had abolished the

marital rape exception. In New Zealand, a person under 20 years of age but over 16 years old can only marry with parental consent. The age of sexual consent for women is also 16 years. There is no exception for marital rape in the Crimes Act, 1961 of New Zealand. The marital rape exemption was abolished in 1985. In the UK, a marriage below the age of 16 years is void.

The Marital rape exemption was abolished in its entirety in 1991. In Egypt, the age of majority for all legal purposes except marriage is 21 years. The marriageable age is 18 for males and 16 for females. But again the age of consent is different from marriageable age. The age for giving consent is 18 years and the penal code says that intercourse with a girl below 18 years is rape. In the U.S., different States have different laws. The legal age for marriage under most of these laws is however 18 for both males and females. However, in States like California a person can marry below that age with the permission of parents.

The marital rape exception has been abolished in 50 States of the US. In Pakistan under the Muslim Family Law Ordinance, the girl must have attained the age of 16 years and the boy must have attained the age of 18 years and both need to consent before the marriage can take place. In Indonesia the age of majority as well as marriageable age is 16 for girls and 19 for boys. The age for giving a valid consent to a sexual act is also set at 16 years for a girl. Any marriage below the legal age is void.

The Domestic Violence law in Indonesia also punishes a person in the household who forces sex on another person in the same household with a maximum sentence of 15 years. The detailing of laws from different countries therefore shows that barring a few countries, most countries have 18 as a minimum age of marriage for both boys and girls. Some countries allow marriage below the age of 18 but above the age of 16. The age of consent to sexual intercourse is the same as the minimum or relaxed age of marriage. International Conventions also support the proposition that child marriage should be eradicated. Various international bodies such as the UNICEF and the United National Population Fund have suggested that 18 should be considered the minimum age of marriage. The Convention on the Elimination of All Forms of Discrimination Against Women which India has ratified, specifically addresses age of marriage. Article 16(2) provides that "the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory".

The Committee that oversees the Women's Convention, has, however, issued its interpretation of article 16(2) in the form of General Recommendation No. 21. entitled "Equality in marriage and family relations." This recommendation has also suggested that the age of marriage for both men and women should be 18. The recommendation quotes with approval the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993, that States are urged to repeal existing laws and regulations

and to remove customs and practices which discriminate against and cause harm to the girl child. It further states, "when men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded.

As a result their economic autonomy is restricted. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities." Further the Committee on the Status of Women under CEDAW has criticized the fact that certain countries have different ages of marriage for boys and girls as follows: "Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished.

In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right freely to choose her partner." Various International Conventions have emphasized the important principle that marriage should be on the basis of equality and with the full and free consent of the parties. The Universal Declaration of Human Rights,1948; provides that men and women are entitled to equal rights in marriage and marriage breakdown, and that both potential spouses should freely and fully consent to the marriage vide Article 16(2). Accordingly, the 1956 Supplementary Convention on the Abolition of Slavery and Practices Similar to Slavery considers forced marriage akin to slavery.

The 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages stipulates that a marriage requires the consent of both parties; calls upon parties to eliminate the marriage of girls under the age of puberty and requires that states stipulate a minimum age of marriage. The ICCPR and the ICESCR again reiterate that marriage shall be entered into with the free and full consent of both parties. The 1989 Convention on the Rights of the Child to which India is a signatory, makes it obligatory for states to protect the child from all forms of mental or physical violence, injury or abuse, neglect, maltreatment and exploitation, including sexual exploitation. This inevitably happens in the case of a girl child when she is married while still a child.

3

Child Labour Regulation and the Right to Education

CHILD LABOUR WELFARE

The judiciary has almost brought a revolution in the life of child workers in India. It has always remembered to expand and develop the law so as to respond to the hope and aspirations of people who are looking to the judiciary to give life and content to law.

The judicial institutions in India have played a significant role not only for resolving inter-disputes but also act as a balancing mechanism between the conflicting pulls and pressure in the society. It has virtually played a vital role in the task of providing political, social and economic justice to the poor child workers in this country. The judiciary has taken a stand when there is no proper enactment for the welfare of the Child Labour and goes extent to look out the problems of them and some of these case are there in which judiciary considers as poverty is the reason for the exploitation of children and other economic factor and in this situation we can left the child in the condition of lurch and they have judgement which gives us good lesson to the society for the welfare of the children. Some of the cases are like Labourers working on *Salal Hydro-Project* v *State of Jammu and Kashmir* (AIR 1984 SC 177),

In *Labourers Working on Salal Hydro –project* v *state of Jammu and Kashmir and others,* Justice Bhagwati observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction works by reason of the

prohibition, enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government. In this case honourable Supreme Court also agreed that child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed to augment their meager earnings. And child labour is an economic problem, which can not be solved by mere legislation. Because of poverty and destitution in this country it will be difficult to eradicate child labour, so attempts should be made to reduce if not to eliminate child labour because it is essential that a child should have be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development in the country. They must concede that having regard to the prevailing socio-economic conditions it is not possible to prohibit the child labour altogether and infact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments clearly construction work is a hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this Constitutional prohibition must be enforced by the Central.

The Supreme Court also suggested that whenever the Central Government undertakes a construction project which is likely to last for sometime, the Central Government should provide that children of construction, workers which are living it or near the project site should be give facilities for schooling because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. We must concede that having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact; any such move may not be socially or economically acceptable to large masses of people.

So we can say that literacy (absence of) is a main cause of child labour.

In *Lakshmi Kant Pandey* v *Union of India,* it is obvious that in a civilized society, the importance of child welfare cannot be over emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said "Child show the man as morning the day" and the Study Team on Social Welfare said much to the same effect when it observed that the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow in their maturity, into fullness of physical and vital energy and the utmost breadth, depth and height of its emotional intellectual and spirituality being; otherwise there cannot be a healthy growth of a nation. Now obviously children need special protection because of their

tender age and physique, mental immaturity and incapacity to look after the usefulness. That is why there is growing realization in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that hey must be able to attain full emotional intellectual, and spiritual stability and maturity and acquire self-confidence and self –respect and a balanced view of the role which they to play in the nation-building process without which the nation or cannot develop and real prosperity because a large segment of the society would be then be left out of the developmental process,. In India this consciousness is reflected in the provisions enacted in the Constitution. clause(3) of Article 15 is enable the state to make special provisions inter alia for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clause (e) and (f) of Article 39 provide that the state shall direct its policy towards –securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter, avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the Constitution-makers to protect and safeguard the interests and welfare of children in the country. The government of India has also in pursuance of there constitution provision evolved in National Policy for the welfare of children. This policy with a goal oriented perambulatory introduction:

'The Nation's children are a supremely important asset. Their nature and solicitude are our responsibility. Children's welfare programme should find a prominent part in our national plan for the development of human resources, so that our children grows up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would seem our larger purpose off reducing in equality and ensuring social justice.

CHILD WELFARE

Position Prior to 1950-51; There were no specific programmes for children at the Central level except those undertaken by a few Ministries which organised certain welfare services for the children of their employees. For example, the Ministry of Railways provided scholarships to children of its employees for the prosecution of technical education and vocational training and offered facilities for recreation and amusement in accordance with the objectives laid down under the Staff Benefit Fund. The Mica Mines Labour Welfare Fund, constituted under the Mica Mines Welfare Act, 1946 (administered through the Ministry of Labour and Employment), gave stipends to miner's children for technical education and also offered recreational facilities. The Coal Mines and Labour Welfare

Fund Act of 1917 and the Factories Act of 1948 provided for the setting up of creches for children whose mothers worked in the mines and factories. The latter Act also defined the minimum age of employment of children as 14.

The Department of NEFA, under the Ministry of External Affairs, set up two primary schools for the education of children of the Agency area.

An important service which made considerable headway in various States was the organisation of creches, day nurseries and other types of pre-primary schools. In 1960, Bombay had 177 creches with about 3,000 children, Madras 93 with about 2,334 children, Bihar 26 with 796 children, Madhya Pradesh 16 with 360 children and Uttar Pradesh seven with 126 children. Another important activity undertaken during this period was the running of child welfare and milk centres. The Government of Madras organised 13 such centres, the Governments of Travancore-Cochin, Madhya Pradesh and Hyderabad set up two centres each and the then States of Mysore, Saurashtra, Punjab, Bombay and Jammu and Kashmir established one centre each. In 1949-50, a few States started distributing UNICEF milk through schools and maternity and child welfare centres.

Prior to the First Plan, there were about 558 voluntary organisations rendering welfare services for children. Out of these, 152 organisations provided education for the normal children, 93 offered nutrition services for normal children, 95 rendered welfare services for socially handicapped children, 89 provided recreational and cultural programmes, 76 promoted medical and health facilities for normal children, 23 organised maternity and child welfare services, 20 undertook research work and another 10 provided facilities for psychological service.

Among the most important organisations for child welfare, mention may be made of Balkan-Ji-Bari, founded in 1926 for the promotion of the education of children and of their physical, mental and moral welfare.

It ran children's clubs, playgrounds, children's libraries, child art and craft centres, nursery schools, *etc.* Kishore Dal, Bihar, founded in 1942, Nanhi Duniya, Uttar Pradesh, founded in 1946, and Bachchon-Ki-Biradri, started in 1949 in Delhi, organised Shishu Bhawans, Kishore Dal Clubs, child art exhibitions, play centres, milk distribution, *etc.*

Organising play centres and setting up children's libraries and art and craft centres were among the activities of the Indian Council for Child Welfare. Established in 1948, the Council is the sole Indian affiliate of the International Union for Child Welfare representing more than 60 voluntary national and international organisations working for the welfare of children in nearly 40 countries.

A planned approach to child welfare was made in the First Five Year Plan, when the Planning Commission decided to give priority to the needs of the child. Out of the Central Social Welfare Board's provision of Rs. 4 crores for grants-in-aid to voluntary organisations, the largest part was given for child welfare services. As many as 992 grants, amounting to Rs. 29.90 lakhs, were

sanctioned under the First Plan to about 592 organisations. During the Second Plan period, up to October 1960, the Central Social Welfare Board had made 3,561 grants amounting to Rs. 108.06 lakhs. The total number of grants sanctioned by the Board from August 1953 to February 1961 was 6,853. They amounted in all to Rs. 157.67 lakhs and were disbursed among 4,707 institutions. These organisations utilised the funds for founding homes, orphanages, creches for the children of working mothers, short-stay homes for children of needy families, Balwadis, infant health centres, cultural and recreational activities, children's libraries, hobby clubs, holiday homes, *etc.*

NUTRITION SERVICES FOR CHILDREN

Developments During 1951-56: The Ministry of Health laid special emphasis in the First Plan on nutrition services for children, nutrition being reckoned the most important 'single factor in the maintenance of child health. In this connection the Planning Commission also recommended that "it is the responsibility of the public health departments to supervise, through their maternity and child welfare services, the feeding of mothers and infants. The development on a wide scale of school feeding schemes is strongly recommended. In all institutions where large-scale catering is done, the appointment of dieticians would be an important step. The education of specialised nutrition workers, workers in food trades and of the general public is very important." During the First Plan a provision of about Rs. 12 lakhs was included in the States' Plans for providing nutrition services. This provision, together with assistance received from International agencies, was utilised for the distribution of milk and vitamin tablets.

The then Community Projects Administration started distributing milk in schools located in block areas.

During the period, the Government of Kerala initiated a school feeding programme through 940 units functioning in schools, midwifery and M.C.H. centres, sub-centres of Public Health units and private institutions. About 10 lakh pounds of milk powder donated by the UNICEF was distributed every year. In addition to programmes already in operation, four milk centres were started in Andhra Pradesh, two in Madhya Pradesh and one each in Punjab, the then State of Travancore-Cochin and Rajasthan. One of the most important organisations providing nutritional services in the country was the Indian Red Cross Society. It distributed vitamin tablets, milk powder and butter oil through its branches in Andhra Pradesh, Bombay, Delhi, Jammu and Kashmir, Travancore-Cochin, Madhya Pradesh, Madras, Rajasthan, Uttar Pradesh and West Bengal. The All-India Women's Conference started milk centres through its branches in the States of Andhra Pradesh, Bombay, Delhi, Himachal Pradesh and Uttar Pradesh. The Meals for Millions Association of India, New Delhi, formed in 1955, devoted itself to the relief and prevention of malnutrition. Its aim was to supplement diets deficient in proteins and vitamins. It prepared a low-cost food of high nutritive value—the Indian Multi-purpose Food. It is

prepared from specially processed defeated groundnut-flour (75 parts) and roasted Bengal gram flour (25 parts) and fortified with essential minerals and vitamins. It distributed this food free of charge long deserving children's institutions, orphanages, social welfare centres, Balwadis, *etc.*, for the benefit of mal-nourished children. The Guild of Service, Madras, also distributed milk, cheese and other nutritious articles of food among deserving children. The Indian Council for Child Welfare included health and nutrition services in its programmes.

Developments During 1956-61: In the Second Five Year Plan, special emphasis was laid on nutrition services for vulnerable groups of the population, namely, expectant and nursing mothers, infants, toddlers, pre-school children and children of School going age, for any damage to proper growth and development that under-nutrition or malnutrition might cause among these age-groups cannot be entirely made good even by providing adequate nutrition at a later stage. In order to combat malnutrition, various ameliorative measures have been undertaken by the Central Government. Important among these are school feeding schemes, distribution of protective foods such as multi-vitamin tablets, milk and cod-liver oil.

The Nutrition Advisory Committee of the Indian Council of Medical Research instituted research in two subjects, namely, (i) growth and physical development of children, and (ii) evaluation of midday meals in schools.

The Government of India set up a School Health Committee in 1960 to assess the existing standards of health and nutrition among school-going children and to suggest ways and means of raising them. This Committee is of the opinion that the midday meal should supply about one-third of the total requirements of calories, proteins and vitamins and make good the calcium deficiency in the home diet. It recommended a thorough medical examination of all children when they enter primary school and again for years later. The school health service should be a part of the general health services provided through primary health centres.

During the period, the Government of Orissa started distributing milk powder to non-school-going children in the age-group 6-12 years. This scheme was implemented with assistance from UNICEF. In addition, it initiated a programme of Expanded Nutrition in 32 Blocks in 13 districts with the assistance of UNICEF, F.A.O. and W.H.O. Under this programme; the Development Departments help villagers in producing protective foods for the pregnant and nursing mothers and children suffering from mal-nutrition and deficiency diseases. The school teachers and children are also trained to build up orchards, the produce of which is utilised in the midday meal programme for school children. Training of Gram Sevika, Mukhya Sevikas, health visitors, school teachers and other staff immediately connected with the programmes is also undertaken. The State Government of U.P. has also initiated this programme in few blocks. Andhra Pradesh undertook this scheme this scheme in 1960, starting with 40 villages. In Andhra Pradesh, Women's Welfare Branches provided nutrition services for

children. A comprehensive scheme of middy meals in school was put into operation by the Government of Madras. The administrations of Himachal Pradesh and Pondicherry propose to take up a milk-distribution scheme among needy children during the Third Plan period.

Among voluntary organisations the All-India Women's Conference, the Guild of Service and the Indian Red Cross Society strengthened their existing programmes. The Meals for Millions Association conducted a feeding programme at Corporation Schools in Madras, incorporating Multi-purpose Food in the midday meals served to children. It was noticed, that Multi-purpose Food promoted better growth among children. Another nutrition experiment was carried out at Akola. So far the Association has distributed about 72,000 lbs. of Multi-purpose Food among various children's institutions, orphanages, *etc.*

During the Third Plan, the programme, Expanded Nutrition will be taken up in 150 to 200 Blocks around Extension Training Centres and a few agricultural and veterinary schools and colleges throughout the country. The emphasis will be on training in Applied Nutrition. UNICEF will be providing about $ 25,000 worth of equipments including teaching materials and books, *etc.*, and the State Governments will be providing Rs. 3.21 lakhs per block in the Third Plan for poultry, pisciculture, horticulture and transport through re-allocation of funds.

EDUCATIONAL FACILITIES

Developments During 1951-56: Educational facilities mentioned in this section related to those not covered by the general education schemes for children.

Balwadis formed an important feature in the scheme of Welfare Extension Projects. These provide children with educational care, together with incidental activities like bathing, changing of clothes, provision of indigenous toys and, wherever possible, extra meals. The Central Social Welfare Board also gave grants-in-aid to institutions to help them run Balwadis. Besides, the Ministry of Education offered financial assistance to various State Governments for starting pre-primary schools. About 630 pre-primary schools, serving about 76,000 children, had been started by the end of 1955-56.

Under various legal enactments, the Labour Departments in the States of Andhra, Bombay, Mysore, Orissa, Punjab, and Uttar Pradesh and in Pondicherry provided nursery schools for the children of working mothers. In the voluntary sector the All-India Women's Conference started Kindergarten schools through its branches in Andhra Pradesh, West Bengal, Bihar, Bombay, Kerala, Delhi, Madhya Bharat, Rajasthan, Madras, Mysore, Punjab and Uttar Pradesh. The Indian Council for Child Welfare and Balkan-Ji-Bari, Bombay, also organised educational activities for children through their State branches. The Guild of Service started organising nursery schools through its branches at Mangalore, Coimbatore, Tiruchirapalli and in North Arcot district. The Guild also conducted nurseries in the Kasturba Hospital at Triplicane, the Stanley Hospital of Royapuram, the General Hospital and the Tuberculosis Sanatorium at Tambaram with trained nursery school teachers.

Developments During 1956-61: Pre-primary education received considerable attention during this period. Steps taken at the Central level could be seen from the fact that the Steel Projects of Durgapur, Bhilai and Rourkela started Kindergarten and primary schools for children of their employees in the project areas. The Welfare Extension Projects sponsored by the Central Social Welfare Board in urban areas organised pre-primary schools. The Ministry of Education also further extended its programme. There are at present about 10,000 Balwadis; of these, about 2,500 are assisted by the Central and State Social Welfare Boards.

In Andhra Pradesh pre-Basic classes were organised for children between the ages of 3 and 7 years by the Women's Welfare branches, Five Balwadis were established, one each at Raipur, Bilaspur, Mandla, Burhanpur and Balaghat, in Madhya Pradesh.

Voluntary organisations like the All-India Women's Conference, Balkan-Ji-Bari and the Guild of Service continued organising pre-primary classes through their State branches. The Indian Council for Child Welfare organised nursery schools through the State Councils in Bihar, Pondicherry, Punjab and Rajasthan. These nursery schools and Balwadis have benefited about 1,000 children. In 1957, the Council started a welfare project for Tribal children at Chhindwara, Madhya Pradesh. For the benefit of children who have completed the Balwadi training, special arrangements have been made in co-operation with the Department of Tribal Welfare, Madhya Pradesh, and the Block Development Administration to impart improved training in Basic schools. Annual training camps are also held for Balwadi teachers.

During the Third Plan, the existing Balwadis will be improved and provided with trained child welfare workers (Bal Sevikas). The Third Plan provides for the setting up of six training centres for Bal Sevikas. Under "Education" Sector Rs. 3 crores have been allotted for child welfare and allied schemes at the Centre and about Rs. 1 crore in the States, in addition to resources available under the Community Development and social welfare programmes. Schemes for child welfare now being formulated by the Ministry of Education include improvement of existing Balwadis, opening of new Balwadis, expansion of the training programme for Bal Sevikas and a number of pilot projects for child welfare in which education, health and welfare services will be integrated. The setting up of Balwadis will continue to be an important part of the programmes undertaken for women and children in Community Development blocks and in Welfare Extension Projects.

CRECHES

The organisation of creches is an important service that has made considerable headway in the country. In large factories in major cities, efficiently run creches have been organised for children of working mothers. The Factories Act of 1948 made the provision of creches obligatory on factories employing 250 or more women. A number of creches have been set up in various industrial concerns under this Act. besides these, the Central Social Welfare Board have started its

own creches in rural areas. Some of the voluntary organisations like the Bhagini Samaj, Bombay, the Guild of Service and the All-India Women's Conference, *etc.*, have set up creches where children are also provided with recreational and nutritional services.

Between 1956 and 1961, the Indian Council for Child Welfare started nine creches in Punjab and one in Uttar Pradesh through its State Councils. These creches benefit about 500 children. The All-India Women's Conference, through its branches, started creches in Central Calcutta, Cochin and Gwalior and other places. The National Council of Women in India has set up a Day Care Centre in Bombay.

RECREATIONAL ACTIVITIES

Development During 1951-56: Recreational activities mentioned in this section relate to other services than those which are ordinarily provided under normal educational and municipal schemes for children. From 1952 onwards the then Community Projects Administration started conducting recreational and cultural activities for children in the Community Development blocks.

The Central Social Welfare Board started organising recreational and cultural activities for children in rural areas through the Welfare Extension Projects. In addition, it made grants-in-aid to voluntary organisations for promoting these activities in both rural and urban areas.

During the period, the Government of Assam provided grants for the promotion of games, cultural activities, excursions, *etc.*, the voluntary organisations. The Education Department of Punjab also organised recreational and cultural programmes for children. The government of Bombay started a Bal Bhavan in Bombay, which provided a children's club, a children's library, film shows and a theatre for children, child art and craft centres and playgrounds. The Government of West Bengal started a Children's Home which provided recreational services for children. The Government of Madhya Pradesh started two Child Welfare Centres in Hoshangabad district which provided a playground for children. The Jammu and Kashmir Government started a recreational centre in Poonch district.

In 1954, the Indian Council for Child Welfare established a Children's Bureau in Delhi to deal with the technical aspects of child welfare. The Bureau started publishing a monthly newsletter also. A research library and information exchange service was attached to the Bureau. It started celebrating Children's Day (on November 14 every year) and World's Children's Day.

Developments During 1956-61: During the Second Plan period, the Central Social Welfare Board sponsored the scheme of Holiday Homes for children. These homes are intended for children in the age-group of 8 to 10 years belonging to families with an annual income of less than Rs. 2,400. These provide children with opportunities of enjoying healthy surroundings, nutritious food and recreation for a part of the year and also enable them to acquire experience in group living. In urban areas, children utilising these facilities generally come

from orphanages and other children's homes as well as from families who cannot afford to send their children out during vacations. In rural areas, children are selected by social education organisers and Mukhya Sevika from areas covered by Community Projects and Welfare Extension Projects of the Central Social Welfare Board.

Up to February 1961, The Central Social Welfare Board had sanctioned a sum of Rs. 2,16,400 to 42 institutions which organised 80 batches consisting of 3,862 children. On an average, each Home provides accommodation for two or three batches of children, each batch consisting of about 50 children and one or two teacher-leaders. The duration of stay at each place is limited to one month.

In addition, the Board made provision for children's play centres, recreational and cultural activities under Welfare Extension Projects, both urban and rural. The Ministry of Community Development conducted similar programmes in C.D. blocks. Voluntary organisations providing recreational services for children have been given financial assistance by the Board.

The Ministry of Railways, too, has started Children's Holiday camps at various places for the benefit of the children of railway employees. Expenditure at these camps is kept down to the minimum, and a part of it is collected from the children, the balance being met out of the Staff Benefit Fund.

Recreational and cultural facilities are also provided for children of employees in the steel projects of Durgapur, Bhilai and Rourkela. The Company-managed Government undertakings like. The Hindustan Machine Tools (P) Ltd. and the Tea Board under the Ministry of Commerce and Industries provide similar recreational facilities.

The Ministry of Information and Broadcasting has helped in the production of a large number of children's films. The Ministry of Education started a Bal Bhavan in Delhi in June 1956. It is an institution in which opportunities are provided for the educational, through recreational and physical activities, of children in the age-group 5-16. So far it has set up a creche, a health clinic, 8 hobby rooms, a library and an open air stage. In November 1958, a Children's Railway was started with a total seating capacity of 50.

At the State level the Government of Punjab has set up two Holiday Homes at Tara Devi and Kandaghat for poor children in the age-group of 11-16, to develop among them self-reliance, initiative, spirit of adventure and sense of dignity of labour. Boys and girls from all over the State participate in these Holiday Homes. The Government of Assam continued to offer grants-in-aid to voluntary agencies engaged in the promotion of games, cultural activities, excursions, *etc.* The Government of Bombay organised music, drama and other cultural festivals for children. In addition, it made grants to institutions for the promotion of art and culture among children. The Government of Kerala have set up children's clubs and parks.

During 1961-66 the Governments of Gujarat, Maharashtra and Punjab and the Himachal Pradesh Administration propose to start holiday homes for the children. The Punjab Government have also a proposal to start children's clubs

during this period. The Government of Andhra Pradesh propose to start 28 Balvihars for promoting recreational and cultural activities. The Indian Council for Child Welfare started Republic Day Awards for children for outstanding services. It produced three films on child welfare. The number of play parks, centres and grounds which are being run by the State Councils in Ajmer, Andhra Pradesh, Bihar, Delhi, Punjab, Rajasthan, Uttar Pradesh and Pondicherry is 364 (excluding Bombay) benefiting about 84,000 children. In addition, there are 41 children's clubs, 105 children's libraries, one children's theatre (in Bihar) one Bal Bhavan (Saurashtra) and Hobby Classes in Punjab. The Rajasthan State Council for Child Welfare organised summer games, sports and training camps which benefited 125 children.

The Holiday Homes programme sponsored by the Central Social Welfare Board has been implemented by the Indian Council for Child Welfare and its affiliated State Councils since 1959. The Central Board gave an initial grant of Rs. 58,840 to cover expenditure in connection with these Homes.

The Bombay State Council of Women has started children's play centres at nine different places in Bombay City. The Councils at Allahabad, Orissa and Bombay are running children's libraries. The Bombay State Council also runs a mobile library and holiday reading room and library for children. The Children's Film Society and Children's Little Theatre have played an important role in providing children's films and plays.

DEMONSTRATION PROJECTS FOR CHILD WELFARE

With a view to providing every child up to the age of 16 with the opportunity to grow into a healthy and useful citizen through a well-planned and integrated programme for its development, it has been decided to start Demonstration Projects for Child Welfare in all States and Union Territories during the Third Five Year Plan. These projects will aim to co-ordinating and consolidating the existing child welfare services in a selected area, preferably a Community Development Block, and also by supplementing such of those additional services as may be required, from out of the project funds. Expenditure on these projects will be met out of the provision of Rs. 3 crores with the Ministry of Education. Preliminary work for starting these projects in Andhra Pradesh and Delhi has already been completed.

Out of this 3 crores provision, a provision of Rs. 1.25 crores has been earmarked for pre-primary education programme including the Bal Sevika training programme which has been assigned to Central Social Welfare Board.

Mention may also be made of 'RESEARCH STUDY ON CHILD GROWTH' that has been entrusted to the National Institute of Education. The institute propose to carry out special studies in child growth, evolving the techniques of child education and the training of personnel.

The Central Social Welfare Board appointed a Committee on Child Care to study the welfare needs of children up to the age of six and to formulate a programme which could form the nucleus of comprehensive child welfare

services for children in this age-group. The report of this Committee which has been submitted recently includes important recommendations like the need for giving priority to the development of services for normal children; need for the adoption of uniform child welfare legislation, supported by an effective machinery for its implementation; development of adoption and foster-care services as an alternative to large-scale institutionalisation of the foundings, the orphans and the destitutes; possibilities of developing a programme of assistance to enable families on the verge of breakdown to tide over their difficulties and continue as a unit; establishment of a special pre-school health service; provision of free milk and supplementary foods for pre-school children; measures necessary for large-scale production of inexpensive educational and recreational equipment; need for the establishment of a national printing press for the production of children's literature at low cost; need for setting up a National Institute for the training of higher personnel for child welfare services, *etc.*

CHILD LABOUR (PROHIBITION ANDREGULATION) ACT, 1986

The Child Labour (Prohibition and Regulation) Act, 1986 has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. It repealed the Employment of Children Act, 1938 (26 of 1938). As per the Act children are prohibited from being employed or permitted to work in any of the occupations set forth in Part A of the Schedule of the Act or in any workshop wherein any of the processes set forth in Part B of the Schedule of the Act is carried on.

Child has been defined under the Act as a person who has not completed his fourteen years of age. Regarding regulating conditions of work of children it is mandated that no child shall be required or permitted to work in any establishment in excess of fixed number of hours.

Establishment is defined as including shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment. Again the period of work on each day has to be fixed in such a way that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

Any child is also barred from working overtime. Every child employed in an establishment is allowed in each week, a holiday of one whole day, which day has to be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified cannot be altered by the occupier more than once in three months.

But anyone employing child or permitting any child to work in contravention of the provisions of this act can be punished with imprisonment for a term can extend to one year or with fine which may extend to twenty thousand rupees or with both. Second offenders can be punished with aggravated sentences and fines

CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986: [ACT NO. 61 OF YEAR 1986]

Part I: Preliminary

1. Short title, extent and commencement
   (1) This Act may be called the Child Labour (Prohi-bition and Regulation) Act, 1986.
   (2) It extends to the whole of India.
   (3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishment.
2. *Definitions:* In this Act, unless the context otherwise requires:
   (i) "Appropriate government" means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;
   (ii) "Child' means a person who has not completed his fourteenth year of age;
   (iii) "Day" means period of twenty four hours beginning at mid-night;
   (iv) "Establishment" includes a ship, commercial establishment, work-shop, farms, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;
   (v) "Family", in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
   (vi) "Occupier", in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;
   (vii) "Port authority" means any authority administering a port;
   (viii) "Prescribed" means prescribed by rules made under section 18;
   (ix) "Week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;
   (x) "Workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of section 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

Part II: Prohibition of Employment of Children in Certain Occupations and Processes

3. *Prohibition of Employment of Children in Certain Occupations and Processes:* No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:
   PROVIDED that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, government.
4. *Power to Amend the Schedule*: The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.
5. *Child Labour Technical Advisory Committee:*
   (1) The Central Government may, by notification in the Official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereafter in this section referred to as the committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.
   (2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.
   (3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.
   (4) The committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the committee.
   (5) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the chairman and other members of the committee, and the conditions and restriction subject to which the committee may appoint any person who is not a member of the committee as a member of any of its sub-committees shall be such as may be prescribed.

Part III: Regulation of Conditions of Work of Children

6. *Application of Part:* The provisions of this part shall apply to an establishment or a class of establishment in which none of the occupations or processes referred to in section 3 is carried on.

7. *Hours and Period of Work:*
   (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.
   (2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
   (3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
   (4) No child shall be permitted or required to work between 7 p.m. and 8 p.m.
   (5) No child shall be required or permitted to work overtime.
   (6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.
8. *Weekly Holidays:* Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
9. *Notice to Inspector:*
   (1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:
      (a) The name and situation of the establishment;
      (b) The name of the person in actual management of the establishment;
      (c) The address to which communications relating to the establishment should be sent; and
      (d) The nature of the occupation or process carried on in the establishment.
   (2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned in sub-section (1).

Explanation: For the purposes of sub-sections (1) and (2), "date of commencement of this Act, in relation to an establishment" means the date of bringing into force of this act in relation to such establishment.

(3) Nothing in sections7, 8 and 9 shall apply to any establishment where in any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, government.

10. *Disputes as to Age:* If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of the certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.
11. *Maintenance of Register:* These shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing: -
    (a) The name and date of birth of every child so employed or permitted to work;
    (b) Hours and periods of work of any such child and the intervals of rest to which he is entitled;
    (c) The nature of work of any such child; and
    (d) Such other particulars as may be prescribed.
12. *Health and Safety:*
    (1) The appropriate government may, by notification in the Official Gazette, make rules for the health and safety of the Children employed or permitted to work in any establish-ment or class of establishments.
    (2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:
        (a) Cleanliness in the place of work and its freedom from nuisance;
        (b) Disposal of wastes and effluents;
        (c) Ventilation and temperature;
        (d) Dust and fume;
        (e) Artificial humidification;
        (f) Lighting;
        (g) Drinking water;
        (h) Latrine and urinals;
        (i) Spittoons;
        (j) Fencing of machinery;

(k) Work at or near machinery in motion;
(l) Employment of children on dangerous machines;
(m) Instructions, training and supervision in relation to employment of children on dangerous machines;
(n) Device for cutting off power;
(o) Self–acting machines;
(p) Easing of new machinery;
(q) Floor, stairs and means of access;
(r) Pits, sumps, openings in floors, *etc.*
(s) Excessive weights;
(t) Protection of eyes;
(u) Explosive or inflammable dust, gas etc;
(v) Precautions in case of fire;
(w) Maintenance of buildings, and
(x) Safety of buildings and machinery.

Part IV: Miscellaneous

14. Penalties
(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.
(2) Whoever, having been convicted of an offence under section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.
(3) Whoever-
(a) Fails to give notice as required by section 9; or
(b) Fails to maintain a register as required by section 11 or makes any false entry in any such register; or
(c) Fails to display a notice containing an abstract of section 3 and this section as required by section 12; or
(d) Fails to comply with or contravenes any other provisions of this Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one months or with fine which may extend to ten thousand rupees or with both.
15. Modified application of certain laws in relation to penalties
(1) Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section (2), he shall be liable to penalties provided in sub-sections (1) and (2) of section 14 of this Act and not under the Acts in which those provisions are contained.

(2) The provisions referred to in sub-section (1) are the provisions mentioned below: -
   (a) Section 67 of the Factories Act, 1948 (63 of 1948)
   (b) Section 40 of Mines Act, 1952 (35 of 1952);
   (c) Section 109 of Merchant Shipping Act, 1958 (44 of 1958); and
   (d) Section 21 of the Motor Transport Workers Act, 1961 (27 of 1961).

16. Procedure relating to offences
   (1) Any person, police officer or Inspector may file a compliant of the commission of an offence under this Act in any court of competent jurisdiction.
   (2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
   (3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

17. *Appointment of Inspectors:* The appropriate government may appoint Inspectors for the purposes of securing compliance with the provisions of this Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

18. Power to make rules
   (1) The appropriate government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.
   (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
      (a) The term of office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Child Labour Technical Advisory Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of section 5;
      (b) Number of hours for which a child may be required or permitted to work under sub-section (1) of section 7;
      (c) Grant of certificates of age in respect of young persons in employment or seeking employ-ment, the medical authorities which may issue such certificate, the form of such certificate, the charges which may be made thereunder and the manner in which such certificate may be issued.
      Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned,
      (d) The other particulars which a register maintained under section 11 should contain.

19. Rules and notifications to be laid before Parliament or State Legislature
    (1) Every rule made under this Act by the Central Government and every notification issued under section 4, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or to be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.
    (2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the Legislature of that State.
20. *Certain other Provisions of Law not Barred:* Subject to the provisions contained in section 15, the provisions of this Act and the rules made thereunder shall be in addition to, and not in derogation of, the provisions of the Factories Act, 1948, the Plantation Labour Act, 1951 and the Mines Act, 1952.
21. Power to remove difficulties
    (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:
    Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.
    (2) Every order made under this section shall, as soon as may be after it is made, be laid before the Houses of Parliament.
22. Repeal and saving
    (1) The Employment of CHILDREN Act, 1938 (26 of 1938) is hereby repealed.
    (2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

23. *Amendment of Act 11 of 1948:* In section 2 of the Minimum Wages Act, 1948, -
    (i) For clause (a), the following clauses shall be substituted, namely: -
        (a) "Adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year;
        (aa) "Adult" means a person who has completed his eighteenth year of age;
    (ii) After clause (b), the following clause shall be inserted, namely: -
        (bb) "child" means a person who has not completed his fourteenth year of age;
24. *Amendment of Act 69 of 1951:* In the Plantations Labour Act, 1951,
    (a) In section 2, in clauses (a) and (c), for the word "fifteenth", the word "fourteenth" shall be substituted;
    (b) Section 24 shall be omitted;
    (c) In section 26, in the opening portion, the words "who has completed his twelfth year" shall be omitted.
25. *Amendment of Act 44 of 1958:* In the Merchant Shipping Act, 1958, in section 109, for the word "fifteen" the word "fourteen" shall be substituted.
26. *Amendment of Act 27 of 1961*: In the Motor Transport Workers Act, 1961, in section 2, in clauses (A) and (c), for the word "fifteenth", the word "fourteenth" shall be substituted.

Schedule

[Section 3]

Part A: Occupations

Any occupation connected with:

(1) Transport of passengers, goods or mails by railway, -
(2) Cinder picking, clearing of an ash pit or building operation in the railway premises;
(3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
(4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
(5) A port authority within the limits of any port;
(6) [Work relating to selling of crackers and fire works in shops with temporary licences.]

Part B: Processes

(1) Bidi-making.
(2) Carpet weaving.

(3) Cement manufacture, including bagging of cement.
(4) Cloth printing, dying and weaving.
(5) Manufacture of matches, explosives and fire works.
(6) Mica cutting and splitting.
(7) Shellac manufacture.
(8) Soap manufacture.
(9) Tanning.
(10) Wool cleaning.
(11) Building and construction industry.
(12) Manufacture of sate pencils (including packing).
(13) Manufacture of products from agate.
(14) [Manufacturing processes using toxic metals and substances such a lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.]
(15) [Hazardous processes' as defined in section 2(cb) and "dangerous operations" as notified in rules made under section 87 of the Factories Act, 1948 (63 of 1948)
(16) Printing as defined in section 2(k)(iv) of the Factories Act, 1948 (63 of 1948).
(17) Cashew and cashewnut descaling and processing.
(18) Soldering processes in electronic industries.]

CHILD LABOUR WELFARE AND RIGHT TO EDUCATION

The abolition of the child labour is preceded by the introduction of compulsory education; compulsory education and child labour are interlinked. Article 24 of the constitution bars employments of child below the age of 14 years. Article 45 which is incorporated by the 86th amendment in 2002 which gives the direction to the state to provide education to the child below the age of six years. And the judiciary plays an important role in the making as education as a fundamental right and the Judiciary gives a good judgement in the cases like *M.C Mehta* v. *State of* Tamil *Nadu* and others (AIR 1991 SC417), Mohini Jain v. *State of Karnataka* AIR 1992 SC 767, Unni Krishnan v. State of Andhra Pradesh (1993) 1 SCC645.

In *M.C. Mehta* v. *State of Tamil Nadu and others* in this case the honourable Supreme Court observed that working conditions in the match factories are such that they involve health hazards in normal course and apart from the special risk involved in the process of manufacturing, the adverse effect is a serious problem. Exposure of tender age to these hazards requires special attention. We are of the view that employment of children with match factories directly connected with the manufacturing process uplift of final production of match sticks or fireworks should not at all be permitted as Article 39(f) prohibits it.

The Court further observed that the spirit of the constitution perhaps is that children should not be employed in factories as childhood is the formative period

and in terms of Article 45 they are meant to be subjected to free and compulsory education, until they complete the age of 14 years. Children can, therefore, be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident.

Honourable Court further observed that the state (in this case Tamil Nadu) is directed to enforce provisions relating to facilities for recreation and medical and attention may be given to ensure provision of a basic diet during the working period to workers including children and medical care with a view to sound physical growth.

The Court also opined that compulsory insurance scheme should be provided for both adult and children employees for a sum of Rs 50000 by taking into consideration the hazardous nature of this employment.

In Mohini *Jain* v. *State of Karnataka* in this case Kuldip Singh J. had held that the right to education was part of the fundamental right to life and personal liberty guaranteed by Article 21. This sudden elevation of the right to education to the high constitutional pedestal created a controversy aggrieved by this judgement some private educational institutions, which run medical and engineering college challenged the correctness of that proposition and the matter came before a larger bench consisting of Jeevan Reddy, Pandian, Mohan, Sharma and Barucha JJ in *Unni Krishnan* v. *State of Andhra Pradesh* in this case three questions were raised for the court's determination namely (i) whether the Constitution of India guaranteed a fundamental right to education to its citizen?; (ii) whether a citizen of India had the fundamental right to establish and run an educational institution under article 19(1)(g) of the Constitution??; (iii) whether the grant of permission to establish and the grant of affiliation by a university imposed an obligation upon an educational institution to act fairly in the matter of admission of students?

The court's judgment delievered by Jeevan Reddy J, on behalf of Pandhan J. and himself. Two concurring judgment were written by Sharma J. and Mohan J.

Is right to education a fundamental right?

Jeevan Reddi J, speaking on behalf of Pandian J. and himself, agreed with the dicta of Mohini Jain that the right to education flowed directly from the right to life guaranteed by article 21 of the Constitution. The judge, however, differed with the view adopted by Kuldip Singh J, in that case on the content and sweep of that right. Mohini Jain seemed to suggest that the citizens could demand that the state must provide adequate number of medical college, engineering colleges and other educational institutions to satisfy all their educational needs. Differing with this formulation, the judge observed:

The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principle in Part IV of the Constitution…. The three articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of right to education have to be determined. Right to education, understood in the context of article 45 and 41 means (a)

every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

The court, therefore, declared that "a child (citizen) has a fundamental right to free education up to the age of 14 years." Beyond 14 years, the right to education was subject to the limits of the economic capacity of the state. The judge concede that "the limits of economic satisfaction of the State." He hastened to add that just because they relied upon some of the directive principle to locate the parameters of the right to education implied in article21, it did not follow that "each and every obligation referred to in Part IV gets automatically included within the purview of Article 21." Sharma, J. (for Barucha and himself) concurring, observed that whether the right to primary education provided in article 45 could an enforceable right needed 'a thorough consideration "if necessary by a larger Bench in a case where the question would squarely rise.

Mohan J. concurring concluded on the basis of his empirical finding that "the right to free education up to 14 years is a fundamental right". It is respectfully submitted that the majority was virtually rewriting the Constitution by converting adjective principle into a fundamental right. The proposition that every case one should get free and compulsory primary education is undisputed. But making it a justiciable right would create a number of problems.

Firstly, the constitutional text does not support such a proposition. The fact that the Constitution-makers put it in a part IV meant that it was not intended to be a justiciable right. The government was required to endeavour to provide free and compulsory education within ten years from the commencement of the Constitution This clearly meant that it as not to be a fundamental right at least till the lapse of ten years from the commencement of the constitution.

Since when does it become a fundamental right? Obviously from the date of this decision. Will the state be held liable to pay compensation for its failure to provide free and compulsory education if such a failure has resulted in a manifest injury or loss to any person?

If right to be educated becomes a fundamental right, is there not a right not to be located? It is one thing to say that the state must achieve the goal of universal education so that everybody will get an access to education which is what is intended by articles 45. The right is not to education but to access to education. Is poverty not offending to the right to live with dignity which the Supreme Court has held to be included with in article 21? Does one have a fundamental right to be not poor? To incorporate the directive principles within the fundamental rights is doubtless very exciting and romantic but it can be articulated through judicial process? Do we not trivalise the right under 21 by overstretching it? This writer has also argued that the right to primary education ought to be considered as a fundamental right; but making it a fundamental right would require tremendous change in the political level. A mere judicial declaration of its fundamentalness without the necessary changes in the social

and economic policies would merely tokenize that right. Further, to say that the right to education beyond primary was subject to the economic capacity of the state was to make it almost redundant. If a right to education is part of the right to live, how can it be made dependent on the economic capacity of the state? If it is a fundamental right, it has got to be enforced irrespective of the economic capacity of the state. It is submitted that the economic incapacity ought not to be defence against violation or disregard of a fundamental right. If once economic capacity becomes a defence against violation or disregard of a fundamental right.

If once economic capacity becomes a defence for formulating the scope of a fundamental right so many other aspects of article 21 would be in jeopardy. Treatment of prisoners in jails or protective homes will depend upon the economic capacity of the states. Juveniles Justice would also depend upon the economic capacity of the states. It is respectfully submitted that what is a fundamental right is not the right to education but access to education and equal access is the fundamental right. The human rights incorporated in the directive principles have to be achieved through suitable legislative and administrative policies. Compulsion of democratic politics is bound to force the governments to go towards such egalitarianism. The judicial process ought to refrain from its benevolent activism because such activism is likely to benumb the public effort towards the articulation of these human rights.

Do citizens have the right to establish educational institutions under Article 19(1) (g)?

This was the thin end of the wedge. If private institutions have the right to establish educational institutions as part of the fundamental rights to carry out on any trade or business guaranteed by article 19(1) (g), they will naturally have the right to make profit and in order to be able to make profit, they must have the freedom to charge such fees or even capitation fees as the commodity called "education" can fetch. Jeevan Reddy J. observed that "commercialization of education cannot and should not be permitted.

He emphatically stated that "imparting education cannot be trade, business or profession". The said activity could also not be called a profession within the meaning of article 19(1) (g). Establishment educational institutions could be no stretch of imagination be treated as "practicing any profession". The judge, however, conceded that "a person or body of persons have a right to establish an educational institution in this country".

But such a right, said the judge, could not be an absolute right. It was subject to such a law as might be made by the state in the interests of the general public. There was in fact no need to say all this because the Constitution itself makes it very clear that the rights guaranteed by any of the six sub-clauses of clause (1) of article 19 are not absolute and are subject to reasonable restrictions in the interests mentioned in those sub-clauses.

If every citizen has a fundamental right to establish an educational institution, wherefrom does such a right emanate? Does it emanate from the right to carry

on trade or business or profession or trade guaranteed top article 19(1) (g)? Does one establish an educational institution for profit by considering it as a gainful activity? Since the judge observed that education not be considered as trade or business or even profession, the answer to the question whether one has a fundamental right to establish an educational institution by virtue of the right guaranteed by article 19(1)9g) ought to have been in the negative. If the constitution –makers wanted to include the right to establish an educational institution within the right to carry on any occupation, trade or business, would they have provided specifically for the right of the minorities to establish educational institutions of their choice in article 30(1).

The court having conceded for the time being, without deciding conclusively that the right to establish an educational institution was located in article 19(1) (g), however, cautioned that such a right would not carry with it right to recognition or the right to affiliation. The bodies which gave the recognition and or affiliation, were the authorities of the state. Such an authority could, therefore, insist upon the fulfillment of such conditions as were appropriate to ensure not only education of the requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing/affiliating authority was the state, it was under an obligation to impose such conditions as were part of its duty enjoined by article 14 of the Constitution. The court, therefore, evolved a scheme which every authority granting recognition/ affiliation shall impose upon the institution seeking such recognition/affiliation. Jeevan Reddi J observed:

The idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission. It is the discretion in the matter of admission that is the root of the several ills complained of it. It is the discretion that has mainly led to commercialization of education. Capitation 'fee' means charging or collecting amount beyond what is permitted by all; all the Acts have defined this expression in this sense. We must strive to bring about a situation where there is no room or occasion for the management or anyone on its behalf to demand or collect any amount beyond what is permitted.

The salient features of the scheme laid down by the court are as follows (i) At least 50 percent of the seats in every professional college shall be filled by the nominees of the government or the university, as the case may be. These seats would be called 'free seats'. The students for such fee seats shall be selected on merit determined on the basis of a common entrance test where such a test is held, or in the absence of such a test, by criteria as might be determined by the competent authority or appropriate authority, as the case may be.

The remaining 50 percent seats called the 'payment seats' shall be filled by those candidates who would be prepared to pay the fees prescribed therefore. The allotment of students against payment seats shall also be done on the basis of inter se merit determined on the same basis as in the case of free seats. There shall be no quota reserved for the management or for any family, caste or community which might have established such a college. It shall be competent

for the state to provide reservation of seats for constitutionally permissible categories (SC/STs and BCs) with the approval of the affiliating university. (ii) the number of sets available in the professional college shall be fixed by the appropriate authority. No professional college shall be permitted to increase its strength.

In *M.C Mehta* v. State of Tamil Nadu, in our country, Sivakasi was one taken as the worst offender in the matter of violating prohibiting of employing child labour. But child labour by now is all India, evil, though its acuteness differs from area to area. So, without a concerted effort, both the Central Government and various state Governments, this ignominy would not be wiped out. Therefore, it is considered fit to travel by and the confines of Sivakasi to which place the present petition initially related to. It would be more appropriate to deal with the issue in wider spectrum and broader perspective taking it be a national problem and not appertaining to any one region of the country. So the question is as to how the court can, and is required to, tackle the problem of child labour.

While Article 24 of the Constitution has been a fundamental right since inception, Article 45 too has been raised to a high pedestal by Unni Krishnan. Though other articles are part of directive principles, they are fundamental in the governance of our country, and it is the duty of all organs of the State (Article 37) to apply these principles. Judiciary, being one of the three principal organs of the state, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of public concern ad significance.

Besides the Constitution mandates, there are International commitments (under the Convention of the Rights of the Child which was concluded by the U.N General Assembly on 20.11.1989) and the statutory provisions. But all the same child labour has continued despite the aforesaid statutory enactments. The poverty is basic reason which compels the parents of a child, despite their unwillingness, to get the child employed. It may be that the problem would be taken care of to some extent by insisting on compulsory education. But even if it were to be so, the child of a poor parent would not receive education, it per force it has to earn to make the family meet both the ends.

Therefore, till an alternative income is assured to the family, the question of abolition of child labour would really remain a well-'o' wisp. Since employment of children below the age of 14 years is a constitutional indication in so far as work in any factory or mine or engagement in other hazardous work and since it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and since the wish embodied in Article 39 (f) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation committed to their age, and since children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualized by Article39(f), it is necessary to see the fulfilment of the Child Labour (Prohibition and Regulation) Act, 1986.

Accordingly the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs20000 and the Inspectors, whose appointment is visualized by Section 17, to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed under Section 17 would see that for each child employed in violation of the provisions of the Act, the employer concerned pays Rs 20000 which sum could be deposited in a fund to be known a Child Labour Rehabilitation-Cum-welfare fund.

The liability of the employer would not cease even if he could desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or areas wise. The fund so generated shall from corpus whose income be used only for the child concerned. The quantum could be the income earned on the corpus deposited in high yielding scheme of nationalized bank or other public body.

As the aforesaid income could not be enough to dissuade the parent/guardian to seek employment of the child, the state owes a duty to come forward to discharge its obligation in this regard, since the aforementioned constitutional provisions have to be implemented by the appropriate government, as defined in Section 2(1) of the Child Labour (Prohibition and Regulation) Act, 1986, strictly speaking a strong case exists to invoke the aid of Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of standard of living of the population and Article 39(e) and(f) as to non-abuse of tender age of children and giving opportunities and facilities to them to develop in a healthy manner, for asking the State to see that an adult members of the family, whose child in employment in a factory or mine in other hazardous work, get a job anywhere, in lieu of the child. This would also see the fulfilment of the wish contained in Article 41 after about half a century of its being in the paramount parchment like primary education desired by Article 45, having been giving to the status of fundamental rights to the decision in Unni Krishnan. However, it is not necessary to direct the state at this stage to ensure alternative employment in every case covered by Article 24, as Article 41 speaks about right to work " with in the limits of the economic capacity and development of the state".

Instead, the matter is left to be sorted out by the appropriate Government. In those, cases, where it would not be possible to provide job as above-mentioned, the appropriate Government would, as it contribution/grant, deposit in the aforesaid fund of Rs 50000 for each child employed in a factory or mine or in any other hazardous employment in case of getting employment by an adult, the parent/guardian shall have to withdrew his child from the Job. Even if no employment would be provided, the parent/guardian shall have to see that his child is spared from the requirement to do the job, as an alternative source of income would have become available to him. The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education.

The apex court has given direction to the State government to follow them:

(1) A survey would be made of the aforesaid type of child labour which would be completed with in six month from today.
(2) To start with work, could be taken up regarding those employments which have been mentioned in Article 24 which may be regarded as core section, to determine which hazardous aspect of the employment would be taken as criterion.
(3) The employment to begin as per our direction could be done entailed to other assured employment.
(4) The employment so given could be as well be the industry where the child is employed, a public under taking and would be manual in nature in as much as the child in question must be engaged in doing manual work.
(5) In those cases where alternative employments would not be made available as foresaid, the parent/guardian of the child concerned would be paid the income which could be earned of the corpus which would be sum of Rs 25000 per child, every month.
(6) On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make him better citizen.

It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out.

In *Bandhu Mukti Morcha* v. *Union of India* in this case a writ petition Under Article 32 has been filed by way of Public Interest Litigation seeking issue of a writ of mandamus directing the government to take a steps to stop employment of children in carpet industry in the State of Uttar Pradesh; to appoint a Committee to investigate into their conditions of employment, and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years and directing the respondent to give them facilities like education, health, sanitation, nutritious food, *etc.*

The main contention by the petitioner group is that employment of the children in any industry or in hazardous industry, is violative of Article 24 of the Constitution and derogatory to the mandates contained in Article 39(e) and (f) and 45 of the Constitution read with preamble. Pursuant to the filing of the writ petition the apex court appointed a commissioner to visit factories, manufacturing carpets and submit their findings as to whether any numbers of children below the age of 14 years are working in the carpet industry. The commissioner submitted that their report on 1 august 1991 that violation of Article 24 along with Article 39(e) an (f).

The Apex court observed that child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every, nation, developed and developing link; its future with the states of the Child.

Childhood holds the potential of the society. Children are the greater gift to the humanity. Mankind has been hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide and better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood –socially, economically, physical and mentally-the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.

The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development. Dr. Bhim Rao Ambedkar was forehead of his time in his wisdom projected these rights in the Directive Principle including the children as beneficiaries. Their deprivation has deleterious effect the efficacy of the democracy and the rule of law.

Article 39 (e) of the Constitution enjoins that the state shall direct, its policy towards securing the health and strength of workers, men and women; and the children of tender age will not be abused; the citizens should not be enforced by economic necessity to enter avocation unsuited to their age or strength. Article 39(f) enjoins the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 mandates that the State shall endeavour to promote free and compulsory education for all children until they the complete the age of 14 years. Article 24 of the Constitution prohibits employment of the children in factories, so that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in other hazardous employment. Article 21 mandates that no person shall be deprived of his life or personal liberty except according to the "procedural establishing by law" which this court has interpreted to mean "due process of law".

The bane of poverty is the root of the child labour and they are being subjected to deprivation of their meaningful right to life, food, shelter and medical aid and education. Every child shall have, without any discrimination on the ground of caste, birth, colour, sex, any wage, religion, social origin, property or birth alone in the matter of right to health, wellbeing education and social protection. Article 51-A enjoins that it shall be the duty of every citizen to develop scientific temper, humanism and the spirit of inquiry and to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher level of endeavour and achievement. Unless facilities and opportunities are provided to the children, in particular handicapped by social, economical, physical and mental disabilities the nation stand to lose the human resources and good citizens. Education eradicates illiteracy means to economic

empowerment and opportunity to life to culture. Article 26(1) of the Universal Declaration of Human Rights assures that everyone has the right to education which shall be free, at least at the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall equally be accessible to all on the basis of merit. Education enables development for human personality and strengthens the respect for human rights and fundamental freedoms. It promotes understanding, tolerance and friendship among people. It is therefore, the duty of the state to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.

Due to poverty, citizen and youth are subjected to many visible and invisible sufferings and disabilities, health, intellectual and social degradation and disposition.

The Convention of the Right 1989 recognizes the right of the child for full and harmonious development of his or her personality. Child should grow up in a family environment, in an atmosphere of happiness, love and under standing. The child should be fully prepared to live an individual life in the society. Article 27(1) provides that the State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 28 provides for thus:

State Parties shall promote and encourage international cooperation in a matter, relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy through out the world and facilitating access to scientific and technical knowledge and modern teaching method in this regard.

State Parties shall take all appropriate measure to ensure that school discipline in administered in a manner. Consistent with the child's human dignity and in conformity with the Present Convention.

Article 32(1) says that state parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to be interfering with the child's education, or to be harmful to the child's health or physical, mental or spiritual, moral or social development.

State Parties shall take legislative, administration social and educational measures to ensure the implementation of the present Article.

The Apex Court give direction to the Union of India and State Government, their departments and Authorities keeping in view of the abolition of child labour and looking out the ratio given in *M.C Mehta* v. *State of Tamil Nadu* and follow that step which are laid down in this case that (1) compulsory education to all children either by the industries itself or in coordination with it by the Government to the children employed in the factories, mine or any other industry, organized or unorganized labour with such timings and convenient to impart compulsory education. Apart from education, periodical health check up (3) nutritious food (4) entrust the responsibilities for implementation of the principle.

In *People's Union for Civil Liberties* v *Union of India and Others*, in this case some children procure for labour subsequently killed or caused to be missing by the Procurer. On a filing Public Interest Litigation by a Non –Governmental Organization the Supreme Court observed that after accepting enforcement of Mr. Rajinder Sachar, a learned counsel appearing for the petitioner that the parents of the children are entitled to compensation and the counsel in support of his contention relied on Verma J's observation in *Nilabati Behara* v. *State of Orissa* that a claim in public law for compensation for contravention of Human Rights and fundamental freedoms, the protection of which is guaranteed in the Indian Constitution is an acknowledged remedy for the enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of Fundamental Rights is distinct from and in addition to the remedy in private law for tort resulting from contravention of Fundamental Right. The defence of sovereign immunity being in-applicable and alien to the concept of guarantee of Fundamental rights, there can be no question of such a defence being available in the Constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of Fundamental Rights guaranteed under the Constitution, when that is the only practicable mode of redress to the contravention made by the state or its servants in the purported exercise of their powers and enforcement of the Fundamental Right is claimed by resort to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution.

In *Brown* v. *Board of Education* today education is perhaps the most important function of the state and local governments. It is required in the performance of our most basic responsibilities, ever service in the armed forces. It is the very foundation of food citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

In *Raj Kumar Tiwari v*. *State*, in this case the petitioner-employer was imposed Rs 20000 as penalty for employing a child alleged to be below the 14 years of age. He challenged this order contending that before imposing penalty no enquiry was held. The High Court, although found that an inquiry was indeed held, set aside this impugned order on the ground that for the applicability of section 14 of the Act it is sine qua non that the person/child employed must be one. According to the court the impugned order itself in dictated that the child was set side.

It is submitted that there is a lot of difference between the expression" a person who ha not completed 14 years of age "and "a person who is 14 years old". While the former would mean a person who has completed 14 years of age and is in his 15th year, the latter phrase would mean a person who has completed 13 years of age and is in his 14th year. In the absence of exact date of

birth to calculate whether the person has completed 14 years of his age, the court could have upheld the order of the lower court being the fact finding court. It is may seldom that an employer is punished by the Court for employing a child. And this is a major contributing factor for the continued employment of children by unscrupulous employers.

In *Hemendera Bhai* v *State of Chattisgarh* in this case the petitioner facing a criminal proceeding under Section 482 of the Criminal Procedure Code and Section 14 of the Child Labour (Prohibition and Regulation) Act 1986. The learned counsel of the petitioner submitted that the learned magistrate with out taking cognizance of the offence alleged against him criminal proceeding which did not have any reasonable cause and therefore he pray that the criminal proceeding should be quashed. For supporting his argument the learned counsel of the petitioner relied on the two decision of the apex court in which cognizance taken by magistrate has been analyzed.

D.Lakshminarayan's v. Narayana in this case the apex court held that the expression "taking cognizance "is by the magistrate has not been defined in the code. The ways in which such cognizance can be taken are set out in clause (a), (b) and (c) of the Section 190(1). Whether the magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which case is sought to be instituted, and the nature of the preliminary action, if any taken by the magistrate. Broadly speaking, when on receiving a complaint, the magistrate applies his mind for the purpose of proceeding under Section 200 the succeeding Sections in Chapter XV of the Code of Criminal Procedure, 1973, he is said to have taken cognizance of the offence with in the meaning of Section 190(1) (a). If instead of proceeding under chapter IX he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the Police under Section 256 (3), he cannot said to have taken cognizance of any offence.

In *Pepsi food Ltd and another* v. *Special Judicial Magistrate and others.,* the apex court held that, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into notion as a matter of course is not the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set in to motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law appropriate thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support there of and would not that be sufficient for the complainant to succeed I bringing charge have to the accused.

It is not that the magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the evidence before summoning of the accused. The magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witness to elicit answers to find out the truthfulness of the allegations or to otherwise

and then examine if any offence is prima-facie committed by all or any of the accused. In the present case, it is clear from the order sheet maintained by the learned magistrate that he ha not applied his mind to the facts of the case and the law appropriate to the present case. He has not even stated that he had perused, or read the charge sheets, which, which has to be treated as a complaint filed by the Inspector under Section 16 of the Act. The apex court had held that in the aforesaid two judgments that the magistrate has to apply his mind to the facts of the case and the law applicable to the case, which the learned magistrate has failed to do so in this case. Thus, he has not taken cognizance against the petitioners and therefore, the criminal proceedings initiated against the petitioner are liable to be quashed. The next contention raised by the learned counsel of the petitioner is that Section 3 of the Act is not applicable to the facts and circumstances of the present case and no case under Section 3 of the Act is made out against the petitioner.

Section 3 of the Act says that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the schedule or in any workshop wherein any processes set forth in part b of the Schedule is carried on.

From the facts of the case and document produced before this court it is submitted that workers who are supplied raw materials for making Bidis taking the raw materials from the firm after giving undertaking that they themselves would make Bidis and if they roll Bidis in their respective houses taking the assistance of their children, the firm cannot be held responsible since the firm has no control or supervision over the work of those workers who take raw material to their houses for making Bidis. It is further stated that in the reply that the raw material was supplied only to those workers whose names are entered in the Register maintained by the firm. The remuneration is also given only to them. It is not possible for the firm to have any control or supervision over the Bidi making job being done at the house of workers according to their convenience. The firm has no knowledge or information as to whether the workers who make the Bidis at their house take the help of any of their family members or children in the said job. If they take any such help, the firm cannot be held responsible for the same. Thus, it cannot be said that the firm is the employer of the child labourer ands Section 3 of the Act has not been contravened by the firm.

The High Court has given their judgment that petitioner impugned in this petition. Criminal Proceeding against him pending before the trial magistrate and initiated under Section 482 of the Code of Criminal Procedure. The High Court allowed the petition quashing the said proceedings for several reasons. The first was that the trial magistrate has not applied his mind to the facts and the law applicable to the present case.

Second was that the firm had not employed the child as labourer in any workshop where its Bidi making was carried on. The workers were supplied raw materials and they rolled Bidis in their respective houses taking assistance

of their children. The firm had no control or supervision over the work of those workers. There is no document or material to show that the child labour in question was below 14 years of age [FN].

In *Narender Malav* v. *State of Gujarat*, in this case a Public Interest Litigation was filed to the apex court related to the issues of child labour in the salt mines of Gujarat. The court requested the amicus curiae and a non-governmental organisation, SEWA, to enquire and investigate the issue of child labour, the welfare and well being of salt mine workers and their families in the Saurashtra and Kutch areas of the State of Gujarat, particularly with reference to education facilities for their children and availability of a adequate/proper housing and medical facilities and to report to the court with in three months.

The court requested the amicus curiae and the representative of the Non – Governmental Organisation to interact with the empowered committee for the purpose of ascertain the measures taken by various agencies for the welfare of salt workers and their families and to suggest ways and means to improve these conditions. The court directed the state government through the Assistant Labour Commissioner to provide all the assistance for this purpose.

In *Anant Construction Co* v. *Govt Labour Officer and Inspector* in this case question is whether the Inspector appointed as per Section 17 of the Child Labour (Prohibition and Regulation) Act 1986 have the power to pass an order holding that the labour employed by the appellant were below the age –limit prescribed under the Act and to also direct the appellant to pay compensation.

The appellant was carrying a construction business in 1997. The Inspector being Respondent (1) here in, visited the construction site of the appellant and issued a notice to the appellant as king for explanation with in seven days with regard, to the employment of child labour(three persons to be exact) on the construction site. The appellant relied upon two certificates certifying that child labourers were in fact about the age of 14 years when the labour was employed. The inspector demanded the appellant to have a deposit of Rs 20000 per child as compensation and if he failed then action will be taken against him.

Aggrieving with this order, the appellant filed before the High Court as writ petition under Article 226 of the Constitution. In his writ petition the appellant had submitted that the inspector did not have jurisdiction to decide the dispute related to the age factor of the child but was bound to refer the dispute for decision to the prescribed medical authority as per Section 10 of the Act. The High Court did not agree with the contention raised by the appellant and dismissed the petition and upheld the quantum of penalty.

Finally the appellant appeal to this court and the apex court has observed Section 16(2) of the Act which prescribes the procedures related to the offence.

"16 Procedure related to Offence-(1) any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction. (2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No court to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offences under this Act. Therefore under this section jurisdiction of the Inspector to file a complaint with regard to any offence under the Act does not extend to the trying of the complaint which as sub-section (3) of the Section 16 specifically provides only court not inferior to the Metropolitan Magistrate or a Magistrate of the first class.

Besides, Section 16(2) does not make the production of certificate mandatory. Infact it is open to persons proceeded against under the Act to raise a dispute as to the age of the person employ.

"10 Dispute as to age –If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall in the absence of a certificate as to the age of such a child granted by the prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority.

Rule 17 of the Child Labour (Prohibition and Regulation) Rules, 1988 relied on by the respondents not doubt provides that:

17" Certificate of age-(1) all young persons in employments in any of the occupations set forth in Part A of the Schedule or in any workshop where in any of the processes set forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an inspector.

Rule 17(1) deal with the obligation on the part of young persons to produce the certificate of age from the appropriate medical authority and does not pertain to the obligation of the employer.

If the employer may, on reasonable material, raise a dispute before the Inspector regarding a child's age, the Inspector can only refer the dispute to the prescribed medical authority under Section 10 of the Act. Therefore, the impugned order of the Inspector being with out jurisdiction, his order and the order of the High Court are set aside and the appeal is allowed. The appellant set free at liberty without any cost.

In *R.D Upadhay* v. *State of Andhra Pradesh and Others*, in this case, Chief Justice of India Y.K Sabharwal, observed that Article 45 of our Constitution stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. In this case the Apex Court also laid down a guidelines for the education and recreation for children of female prisoners like (a) the child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mother are at work in crèches, under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff. (b) There shall be a crèche and a nursery attached to the prison for women where the children of woman prisoners will be looked after. Children below the age of three years shall be allowed in crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery the prison premises.

SUM UP

The foregoing chapter reveals that the role of judiciary in India has been quite significant in promoting child labour welfare. The study discloses that judiciary has always given a lead to save the child workers from exploitation and improve their conditions. Judicial have shown a generosity towards poor child workers by relaxing the rules of locus standi. It has always been made efforts to benefit the poor child workers by entertaining their problems and giving them relief to them despite the limitations of locus standi. The observations made by the judiciary in various decided cases show that it is always committed to the cause of the child-workers. Whenever a legal wrong or legal injury is caused to the child workers by their employers, the judiciary has come forward to help them despite the locus Standi issue. Frankly speaking, the courts have always liberalized the concept of locus to meet the challenges of time and provide justice to the child workers.

The efforts made in this direction are quite evident from the decisions discussed in the this chapter. Some of the cases are like People Union For Democratic Rights (1982), Bandhu Mukti Morcha (1984), Neeraja Chaudhary (1984) in which the apex court liberalized the rule of Locus Standi and given their judgment that public interest litigation can be file by any one not the aggrieved persons and the judiciary has shown encourage to uphold the interest of the working children and spared nothing to improve the conditions of the child workers. Not only in the concept of locus standi but also the judiciary also look out the situation of child workers where there is not proper enactment on child labour legislation then also they had given their judgement in Labourers Working on Salal Hydro project(1984) in which the apex court points out that poverty and economic factors are there for improve the problems of child labour so they pointed out that whenever the Central Government take any construction project then they have look out the children who are living or working them then provide education to them so that their conditions will be improved. Finally the apex court has taken some cases in where they held that right to education is a fundamental right and no child can left without providing education to them like Mohini Jain, and Unnikrishan case. Similarly also the judiciary also taken some of the cases in where Convention of the Rights of the Child 1989 which is considered to be a role model for the welfare of the children Rights and this was discussed in Bandhu Mukti Morcha (1997) and other cases also where the judiciary have taken stand in where violations of the Sections of the Child Labour (Prohibition and Regulation) Act, 1986 in Raj Kumari Tiwari (2003II LLJ) in which the high Court held that there is no violation of section 14 of the Act set aside the order of the lower court. In another case *i.e.*, Hemendra Bhai 2003II LLJ) in where the question was arose whether magistrate had a cognizance of the offence since the alleged charge had not framed out.

The Court analysed the other decision which are related to this case which was pointed out by the leaned counsel of the petitioners the high court had given their judgement the magistrate did not have apply their minds for framing

out charges and the petitioner is not liable for employing child labourer as his organization have taken out the raw material from the persons who were making bidi since they are doing independently so the firm of the petitioners is liable and set aside the order of the court. The judiciary has always made concetre efforts to safeguard them against the exploitative tendencies of their employers by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consonance of the mandate of Our National Charter.

4

Adoption within Child Law and Rights Frameworks

ADOPTION AND CHILD LAW

In India, there is no uniform law of adoption. Adoption is governed by personal law. Presently only Hindus can take a child in adoption under the Hindu Adoption and Maintenance Act 1956. Muslims, Indian Christians, Parsis and Jews cannot take a child in adoption.

Those professing these religions and desiring to take a child in adoption, can only take a child in guardianship under the Guardians and Wards Act 1860. The Ministry of Welfare, Government of India deals with matters relating to adoption.

- Article 44 of the Constitution of India states that, "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Attempts to pass a uniform Adoption of Children Bill have failed.
- The Guardian and Wards Act 1890 empowers the Court to appoint a guardian for the person and/or property of a minor when it is satisfied that the appointment of guardian is for the welfare of the child.
  - This law applies to all Indians irrespective of the religion they profess.
  - Under this Act, a "minor" means a person who under the provisions of the Indian Majority Act 1875 is deemed not to have attained majority. "Ward" means a minor for whose `person and/or property a guardian is to be appointed. "Guardian" means a person having the care of the person of a minor and/or property of a minor.

  - A guardianship application may be made by a person desirous of being appointed as guardian, any relative or friend of a minor, or the Collector of the District or other local area within which the minor resides or has property.
  - The guardianship application is to be made before the Family Court or the District Court or the High Court having jurisdiction in the place where the minor resides or has property.
  - A guardian of the person of a minor is in charge of the custody of the minor and is to care for the minor's health, education, *etc.* A guardian of the property of a minor is to deal with the property of the minor as if it were his own.
  - The welfare of the minor is of paramount importance. If the minor is old enough to form an intelligent preference, the Court may consider such preference.
  - A guardianship petition is filed when the parents of a minor have died and the legal dues of an employed parent or a fixed deposit receipt devolves upon the minor. The amount so due is deposited with the Court and invested in a Nationalised Bank. The interest accruing on the deposit is paid to the guardian for maintenance of the minor. The amount so deposited may be withdrawn by the minor on attaining 21 years of age.
- A Hindu may apply for guardianship of a minor under the Hindu Minority and Guardianship Act 1956. Under this Act, "minor" means a person who has not completed the age of 18 years. "Guardian" means a person having the care of the person of a minor and/or property of the minor and includes a natural guardian, a guardian appointed by the father's or mother's Will and a guardian appointed by the Court. The natural guardian in case of a boy or an unmarried girl is the father, and after him the mother. The mother and after her the father is the natural guardian of an illegitimate boy or unmarried girl. The husband is the natural guardian of a married girl. A guardian is required to perform all acts which are necessary for the benefit of the minor and/or for protection of minor's property. A natural guardian can alienate the share of a minor only in case of necessity or benefit to the minor, and only after obtaining permission from the Court. If the natural guardian is found unfit to be a guardian of a minor, the Court may appoint some other person as the guardian of the minor.
- The Hindu Adoption and Maintenance Act 1956 deals with adoption amongst Hindus. This Act applies to Hindus, Buddhists, Jains and Sikhs.
  - Under this Act, a "minor" means a person who has not completed 18 years of age.
  - Only the parent or a guardian of a child can give the child in adoption.

- A male Hindu who is married, can adopt with the consent of his wife. The married woman is merely a consenting party and cannot take a child in adoption.
- An unmarried Hindu woman or man can take a child in adoption.
- The adoptive parents at the time of adoption should not have children, grand-children, or great grand-children of the same sex as that of the adopted child.
- The adoptive mother and father should be at least 21 years older than the adopted child.
- An adopted child has the same rights as that of a natural born child.

DECLARATION OF "RIGHTS OF THE CHILD"

Right to Survival

- Every child has the inherent right to life.
- Timely registration of births and deaths is your duty.
- A child has his/her own identity—recognise it.
- Register my births and give me a name.
- Registration of birth and deaths are crucial for programme planning.
- Let the child enjoy the highest attainable standard of health.
- Caring for children is the prime responsibility of the parents.
- Effective and caring and child rearing gives way to preparation of responsible future parents.
- Ensure sustainability of child survival by empowering parents.
- Programming in child survival and development needs an integrated approach.

Right to Health and Nutrition

- Becoming pregnant before the age of 18, or after the age of 35, increases the health risks for both mother and child.
- The risk of death for young children is increased by about 50 per cent if the space between births is less than two years.
- Family planning gives couples the choice of when to begin having children, how many to have, how far apart to have them, and when to stop.
- The risks of child birth can be drastically reduced by going to the nearest health worker for regular check-ups during pregnancy.
- Children between the age of six months and three years should be weighed every month. If there is no weight gain for two months something is wrong.
- Breastmilk alone is the best possible food for the first four-to-six months of a child's life.
- By the age of four-to-six months, the child needs other foods in addition, to breastmilk.

- A child under three years of age needs food five or six times a day.
- A child under three years of age needs a small amount of extra fat or oil added to the family's ordinary food.
- All children need foods rich in Vitamin A.
- Intake of Vitamin A prevents blindness.
- Eat dark green leafy vegetables.
- Overcome iodine deficiency—use iodised salt.
- After an illness, a child needs extra meals to catch up on the growth lost during the illness.
- Fight poverty to eradicate malnutrition.
- Elimination of child malnutrition is an investment in human capital.
- Reduce malnutrition through appropriate interventions.
- Immunisation protects against several dangerous diseases. A child who is not immunised is more likely to become under-nourished, to become disabled and to die.
- Immunisation is urgent. All immunisations should be completed in the first year of the child's life.
- It is safe to immunise a sick child.
- Eradicate polio by 2000 AD.
- Eliminate neonatal tetanus by 2000 AD.
- Get your child vaccinated against measles.
- Every woman between the ages of 15 to 44 should be fully immunised against tetanus.
- Diarrhoea can kill children by draining too much liquid from the body. So it is essential to give a child with diarrhoea plenty of liquids to drink.
- When a breast-fed child has diarrhoea, it is important to continue breast feeding.
- A child with diarrhoea needs food.
- Trained help is needed if diarrhoea is more serious than usual.
- Diarrhoea can be prevented by breast feeding by immunising all children against measles, by using latrines, by keeping food and water clean, and by washing hands before touching food.
- Families can help prevent pneumonia by making sure that babies are breastfed for at least the first six months of life and that all children are well-nourished and fully immunised.
- A child with cough or cold should be helped to eat and drink plenty of liquids.
- A child with a cough or cold should be kept warm but not hot and should breathe clean non-smoky air.
- Access to safe drinking water and sanitation facilities are the basic necessities.
- You are responsible for your clean environment.
- Illnesses can be prevented by washing hands with soap and water after contact with faces and before handling food.

- Illnesses can be prevented by using latrines.
- Illnesses can be prevented by using clean water.
- Illnesses can be prevented by boiling drinking water if it is not from a safe piped supply.
- Illnesses can be prevented by keeping food clean.
- Illnesses can be prevented by burning or burying household refuse.
- Let the child have access to health care services.
- Health for all by 2000 AD.
- Promote use of low cost technology in health interventions.
- Ensure safe motherhood for child survival.

Right to Protection

- All children are born equal, treat them as equals.
- Each child is an individual, respect him/her.
- Right to equality is a child's birth right.
- Avoid discrimination among children.
- Discrimination among children depletes, human resources.
- Discrimination among children is prohibited.
- Reduce gender disparities among children.
- Give the girl child her rightful share of love, care and protection.
- Girls who are healthy and well-fed during their own childhood and teenage years have fewer problems in pregnancy and childbirth.
- Foeticide and infanticide are evil practice.
- Let the girl child live and prosper.
- Give the girl child equal opportunities for survival and development.
- Communal harmony promotes national integration.
- Child abuse is a sin.
- Child abuse and neglect is a crime.
- Prevent trafficking in children.
- Do not exploit children.
- Immoral traffic among children Is illegal.
- Protect child from all forms of sexual exploitation.
- All parents should tell their children how to avoid getting AIDS.
- Degrading treatment or punishment is inhuman—let the child not suffer.
- Talking, playing and showing love are essential for a child's physical, mental and emotional growth.
- Exemplary punishment to be given to those who involve children in criminal and perverse activities.
- The world must be made safe for democracy.
- Adhere to peace, compassion and cooperation to contain violence.
- So many Gods, so many creeds, so many paths that wind and wind (By Wilock, Eilee Wheeler).

Right to Development

- Children have the right to develop to their full potential.
- Enhance child development by taking care of immediate needs of children.
- Advocate child development programmes.
- Let the best interest of the child be the primary consideration.
- Realize the changing needs, of children.
- Family plays a pivotal role in preserving and transmitting cultural values.
- Strengthen families for well being of the child, individual and society.
- Empower families for the holistic development of the child.
- Reinforce the family's inherent strengths to enable the child to realize its full potential.
- Communication is for development.
- Let the child grow in a healthy family environment.
- Make childhood a happy experience.
- Day care services for children is the need of the hour.
- Separation from parents gives insecurity to children—avoid it.
- Reach the unreached for 'Education for All'.
- Knowledge is power—educate all.
- Each one, teach one.
- Schooling for all is a necessity.
- Primary education is free and compulsory for all children.
- Children have the right to non-discriminatory education.
- Basic education is a developmental necessity.
- Basic education—a right and a necessity.
- Teach child to value and respect his parents.
- Maximise the reach of education.
- Maintain school discipline.
- Handle children with love and care, punishment hampers their development.

Right to Participation:

- Respect the views of the child.
- Freedom of expression and thoughts helps in realisation of full potential in a child.
- A child is entitled to privacy.
- Let the child have access to information.
- Books are children's best friend.
- Produce low cost need based communication material.
- Guarantee the child protection against unlawful attack on his honour and reputation.
- Community participation is essential for community education.
- Media advocacy is essential for advancing social development initatives.

- Strengthen child survival and development through selective communication channels and media.
- Social marketing brings attitudinal and behavioural changes.
- Publicise child's rights.

Rights Concerning Effective Implementation of UN Conventions on the Rights of the Child:

- Give children's needs a high priority in the allocation of resources.
- Restructure the national budget in favour of human priorities at the government, household and community levels.
- Mobilise human, economic and organizational resources at all levels for the cause of children.
- Mobilise non-traditional resources for actualisation of National Plan of Action.
- Build up stock of human and organizational resources to provide children their basic rights.
- Children first a development priority.
- Prevent human depletion—give children their basic rights.
- National Plan of Action for Children is based on needs, rights and aspirations of children.
- Support implementation of National Plan of Action.
- Implement National Plan of Action to give children their rights.
- Monitor Rights of the Child through social indicators.
- Progress in social indicators is the progress in according the children their rights.

Provisions of Children in Difficult Circumstances in the Convention

- Protect children in difficult circumstances.
- Prevent child labour.
- Let the child develop—do not send him to work.
- Children do not need employment.
- Street childien need care and protection.
- Do not ignore street children.
- Some children cry and die on the streets—save them.
- Ensure survival of abandoned children.
- Abandonment leads to a total deprivation of child's survival, protection and development.
- Help me—find me a family.
- Have one and adopt one.
- Lend your hand in bringing up a child.
- Sponsor a child.
- Promote in-country adoption.
- A disabled child needs special care.
- Provide an environment for survival, protection and development of a disabled child.
- Children who commit crime needs special care.

RIGHTS OF THE CHILD: A CRITIQUE OF INTERVENTION AND INTENTION

It is nearly two years since the Government of India ratified the UN Convention on the Rights of the Child (CRC). In a couple of months it has to present a report to the UN on the follow-up action. On the occasion of the Universal Children's Day on November 14, the Department of Women and Child Development released a brochure containing the action taken in respect of the various provisions of the CRC. A rosy picture has been presented in it of the manner in which the Government is fulfilling its commitment to secure the child rights. The official Report to the UN can be expected to be on the same lines.

Yet, before finalising the report, grassroot level workers and experts in child related issues were consulted so their views can be taken into account. The National Consultation, organized by the Indian Council for Child Welfare (ICCW), in collaboration with the UNICEF, brought out sharply the inadequacies in the enforcement of the provisions of the CRC, contrary to the official claims. The CRC, containing 54 Articles, deals with a range of issues concerning child survival and development. At the National Consultation, these were examined under six broad groups: civil rights and freedoms; family environment and alternate care; basic health and welfare; education, leisure and cultural activities; child labour and child abuse; and the role of media. As the main background paper brought out, there is no dearth of legislative and constitutional provisions to facilitate the child's right to fulfilment of its basic needs. But, the enforcement of these has been far from satisfactory.

The very definition of child has become an issue. Different laws have different age limits to define a child, ranging from 12 to 18. The CRC defines a child as under the age of 18. Acceptance of this age limit has implications for the various programmes and budgetary provisions made for child-related schemes which are based on the existing definition.

However, the Government is reviewing the various legislative measures and is considering the adoption of the definition in the CRC. If the CRC definition is accepted, the child population will be much higher than the current figure of 300 million which itself represents over one-third of the total population. This is a significant proportion and cannot be ignored. It was against this background that the participants deliberated on how to remove the existing lacunae and ensure the child its rights.

Access to education is one of the basic rights of the child, which the Government is committed to provide. The commitment precedes the CRC. But very little has been achieved towards fulfilling this. In recent years, there have been fresh initiatives in this direction. But the group of educationists and grassroot-level workers, who participated in the National Consultation, felt that these initiatives implied dilution, rather than fulfilment of the constitutional obligations.

The Government has, contrary to the constitutional obligation of providing free and compulsory education to all children upto 14 years of age, shifted its focus to universalisation of primary education (UPE) covering children in the age group of 6-11 only. The children in the age group 11-14 have been left in the lurch. Of course, there is a programme for universalisation of elementary education (UEE) to cover the age group 11-14 but the priority is for the UPE. The launching of the non-formal education and the national literacy mission programmes is also viewed as a shift away from the constitutional obligation of providing integrated education from the early childhood to 14 years of age, and away from the commitment under the CRC to provide education up to 18 years. Even the target dates for achieving the UPE and UEE goals have been put off by five years. The UPE target is now set at 1995 and the UEE target at 2000. Child labour is another issue on which the Government approach has been found wanting. A point was made that the Government policies were based on flawed assumptions and faulty appreciation of the field situation. Hence, it was felt that no significant change could be made in the child labour situation unless the basic premises were abandoned and a different view was adopted. The two premises to be questioned are:

(a) That child labour is a harsh reality attributable to poverty of the parents; and
(b) That there is a distinction between exploitative child labour and child labour under family environment.

On the basis of this, the extent of child labour has been measured and the number of working children estimated at 18.17 million in 1990 and 20.15 million in the year 2000. Non-official estimates put the figure at as high a level as 144 million. According to the expert group at the National Consultation, all children who do not go to school should be considered as working children. On this basis the figure would be 90 million.

Viewed in this light, the inadequacy of Government proposal to cover two million working children over a period of six years under its programme of elimination of child labour by 2000 AD is, blatant. Even if the official estimate of 20 million is accepted, the coverage is just 10 per cent and, if the estimate of 90 million is taken, it works out to a mere two per cent. What dent can this be expected to make on the problem? Moreover, the very content of Government policy is such as to encourage child labour rather than discourage it. For instance, the nonformal education scheme in essence provides for coexistence of child labour and child education. To that extent, the child labour is allowed to continue without hindrance. The experts lament that, despite criticism of its politics, the Government has not chosen to make amends and, instead, has announced a further plan of action to eliminate child labour on the same lines. The alternative suggested is that the Government should, in accordance with Article 32 of the CRC, regard all non-school-going children as working children, instead of only those in hazardous occupations, raise allocations for education to six per cent of GNP, rely on formal education rather

than on non-formal education, improve the formal education to make it more attractive and make it compulsory on the part of the parents to send their children to school and not to work.

In regard to the child's right to basic health services, too, the official claims have been received with a discount. True,' the Infant Mortality Rate (IMR) has been reduced over the years. But, this is at the level of national average. There are still pockets with high IMR. While in Kerala it is as low as 17 per thousand live births, in Orissa it is as high as 114 as compared to the national average of 74. Statistically the infrastructure for primary health care delivery has expanded vastly but the ground reality is that there are no doctors or medicines in many PHCs. The official claims of achievement in the provision of basic health services have been dismissed as a "mere number game."

TOWARDS UNDERSTANDING RIGHTS OF THE CHILD

TOWARDS A SOCIETY FOR ALL

The global crusade against the vicious triad of malnutrition, morbidity and mortality has often underplayed a related dimension—the disability dimension. The world's threshold of tolerance towards disability remains much too high. The time has come for a global offensive on the disability front— every bit as powerful as the one being waged against mortality. Despite the global commitment to human rights and equal opportunities, preventable barriers to the achievement of both individual development potential and societal human resource development persist. These barriers include micronutrient deficiencies and vaccine preventable diseases, among a spectum of other factors which can be prevented and controlled on a large scale, using available low cost technologies.

Action for prevention and rehabilitation of disability is not only a necessary investment in national human resource development, productivity and economic development—but the right of each individual. In recent years the World Development Report 1993 signified the attempt to highlight the disability dimension, by evolving a unit of measurement called "Disability Adjusted Life Years", while examining human resource development.

Globally efforts for disability prevention and rehabilitation were intensified with the formulation of World Programme of Action concerning Disabled Persons, adopted by the United Nations General Assembly in 1982. The period 1983-1992 was proclaimed as the United Nations Decade of Disabled Persons. This decade witnessed the progression from awareness raising to action oriented measures, aimed at the continued improvement of the situation of persons with disabilities, and the equalisation of opportunities for them. In 1990 the clear focus on action crystallised, with the aim of achieving a Society for All by the year 2010.

Despite the appreciable increase in activities designed to enhance public awareness of the needs and circumstances of people with disabilities and related issues, the need for sustained efforts to overcome physical and social barriers to the full equality and participation of disabled persons continued. Aware of the need for more vigorous and broader action and measures at all levels to fulfil the objectives of the Decade and the World Programme of Action, on October 14, 1992, the UN General Assembly called for the observance of December 3 as the International Day of Disabled Persons.

The observance of the International Day of Disabled Persons is a unique opportunity to focus attention on the World Programme of Action, for promoting effective measures for the prevention of disability, for rehabilitation and the realisation of the goals of full participation of disabled persons in social life and development and equality of opportunity.

The significance of this day is marked by its contribution in awakening consciousness regarding the gains to individuals and society from the integration of persons with disabilities in every area of social, economic and political life.

Perhaps on the International Day of Disabled Persons—3 December, 1994 as we move towards a Society for All by 2010, we can make a new beginning:

FOR DISABLED—THE DIFFERENTLY ABLED

- Inadequate care and micronutrient deficiencies during pregnancy, birth asphyxia caused by unsafe delivery practices, and vaccine preventable diseases such as polio, tuberculosis and measles present a major risk of disability.

  Birth asphyxia results in infant deaths as well as cerebral palsy, and related disorders in surviving infants. Polio is an infectious crippling disease. Tuberculosis is a chronic debilitating disease, affecting different parts of the body. Measles can also result in secondary infections. This includes middle ear infection—which can cause hearing impairment.
- Vitamin A is essential to growth and to the development of immunity to diseases, especially among young children. An estimated 5-7 per cent children in India suffer from eye damage caused by vitamin A deficiency. While the short term intervention is focused on administration of mega doses of vitamin A on periodic basis, dietary improvements is the long-term ultimate solution to the problem of vitamin A deficiency.
- Deficiency of iodine is the world's single most significant cause of preventable brain damage and mental retardation. Iodine deficiency results in lowering the average intelligence of the entire school age population by as much as 10 to 15 IQ points per child. Daily consumption of iodised salt prevents these disorders caused due to iodine deficiency. *Consume only iodised salt.*
- The first level or primary prevention of childhood disability addresses causes of disabling conditions. The second or next level is prevention of disabilities resulting from these conditions or diseases, when they occur.

Almost three quarters of common impairments can be prevented from deteriorating into disability—through care, early detection of developmental delays, stimulation and intervention. Early action is important.

- The third level is tertiary prevention or alienation of the effects of disruption of the normal processes of child development, when disability has occurred. This prevents disability from becoming a handicap.
  The child has the right to opportunities to achieve full development potential. The disabled child has the right to care, protection, integration and participation in the development process. The learning needs of persons, (especially children) with disabilities—demand special attention, to achieve both individual development potential—and the national commitment to "Education for All".
- Prevention of and protection from childhood disability is the right of the child and our responsibility. We all have a role in promoting child development the foundation of human resource development.
  Let us work together—people's representatives, policy planners, opinion leaders, decision makers, programme managers, frontline workers, representatives of voluntary agencies, social activists, community leaders, communities and families to prevent disability arising from causes we know how to prevent.

GOVERNMENT INITIATIVE GOVERNMENT OF INDIA NATIONAL PLAN OF ACTION A COMMITMENT TO THE CHILD

It is estimated that one in every ten children in the world is born with or acquires a physical, sensory or mental disability caused by disease, malnutrition, environmental factors or accidents. Approximately three quarters of disabilities result from causes we know how to prevent. Many of the direct and underlying causes of childhood disability are those addressed in the World Declaration on the Survival Protection and Development of Children 1990 with clearly defined goals for the year 2000 A.D. In India the national commitment to the achievement of these goals for children is reiterated in the National Plan of Action for Children 1992. These goals for the year 2000 A.D. are:

Survival

- Reduction of IMR to less than 60 per 1,000 live births,
- Reduction of U5MR to less than 70 by 2000 A.D.,
- Reduction of matenial mortality rate by half.

Health

- Eradication of poliomyelitis by the year 2000.
- Elimination of neonatal tetanus by 1995.

- Reduction by 95 per cent in measles deaths and reduction by 90 per cent of measles cases compared to pre-immunisation levels by 1995.
- Achievement and maintenance of high level of immunisation coverage at a level of 100 per cent of infants.
- Reduction by 50 per cent in deaths due to diarrhoea in children under the age of 5 years.
- Reduce mortality rates due to ARI among children under 5 by 40 per cent by 2000 A.D. from the present level.

Nutrition

- Reduction in severe and moderate malnutrition among under-5 children by half between 1990 and the 2000.

Education

- Universal access to primary education with special emphasis for girls and accelerated literacy programme for women.

Water and Sanitation

- Universal access to safe drinking water and improved access to sanitory means of excreta disposal

Children in Especially Difficult Circumstances

- Improved protection of children in especially difficult circumstances.

The Girl Child

- To remove the gender bias and to improve the status of the girl child in society as to provide her with equal opportunities for her survival and development to her full potential.

CHILDREN AND THE ENVIRONMENT

- To conserve and protect environment so that it is conducive to the health and well being of children.

Advocacy and People's Participation

- Advocacy for the child as everyone's concern.

Achievement of major goals for promoting child health, nutrition, education and access to water and sanitation will contribute substantively to primary prevention of childhood disability by addressing causes of disabling conditions, diseases and impairments. A spectrum of national programmes are being implemented for primary health care, child survival and safe motherhood, universal immunisation, Integrated Child (Development Services, prevention and control of micronutrient deficiency, safe drinking water and environmental sanitation and education to achieve these goals for children.

The Right of the child to survival, development, protection and participation is embodied in the UN Convention on The Rights of The Child, and ratified by the Government of India. The convention also enshrines the right of the children with disabilities to be protected against the effects of disruption of the normal processes of child development. The Ministry of Welfare in partnership with different allies and partners is actively promoting the prevention, early detection, intervention and community based rehabilitation of childhood disability.

REACHING THE DIFFERENTLY ABLE

Attitudes

- There is an history of negative messages about people with disabilities that can be identified and changed.
- Children and adults with disabilities, or their families are our best spokespersons and advisors.
- The attitude portrayed in our prevention messages can either be de-humanising or humanising.
- There are guidelines which can be followed when selecting messages and designing product; which will help to promote positive and sensitive attitudes about disability.

Early Detection

- Many disabilities can be detected at birth or within the first year of a child's life.
- The earlier a disability is detected in any child, the more effective is the intervention and often, the less severe is the disability.
- Early detection has been and can become part of all existing Primary Health Care and Early Childhood Development Activities.
- People need not be experts or highly trained to detect disabilities in young children.
- Material that can be found in every village or city can be used to detect a disability.

Interventions

- Intervention with a child with disabilities should begin as early as possible.
- Intervention can and should take place, whenever possible, within the family and community systems.
- Rehabilitation interventions need not be sophisticated, expensive or carried out solely by specialists.
- Children with disabilities should interact with non-disabled children in as many aspects of their lives as possible.
- The Skills children learn during the ages of 0-6 years prepare them for living independently.

Community—Based Rehabilitation (CBR) a Step towards Independence

- The rehabilitation interventions made with a child who is disabled should be those that make sense to and empower the child and her/ his family.
- Children (and adults) with disabilities are doing and can do things that many people thought impossible.

Family and Community Involvement in CBR

- To the extent possible, children who are disabled and their families should be involved in all decisions regarding their rehabilitation.
- Low-cost, already available materials and existing person-power within communities are often all that is necessary for effective CBR.
- Most of the activities that are beneficial to children who are disabled are equally beneficial to non-disabled children.
- Families are often fearful of rehabilitation interventions and some tend to over protect their child who is disabled.
- Families need time to be convinced of the need for CBR and the fact that they are the best "rehab workers."
- A CBR worker needs to slowly demonstrate activities to family members and then guide them through the same hands-on activities.
- Basic stimulation of a child's senses is the basis of many rehabilitation activities.

Child to Child

- Young children can and do have an impact on their communities.
- Young children can have an impact on the lives of children with disabilities.
- Activities that are beneficial to children with disabilities can also improve the skills of the non-disabled children who are conducting the activities.
- When demonstrating a need for some change to benefit a person who is disabled, try to show how *many non-disabled people* will also benefit from the change.

PROGRAMMES/SCHEMES OF THE MINISTRY OF WELFARE (HW DIVISION) MINISTRY OF WELFARE, GOVERNMENT OF INDIA

Estimates of the number of disabled vary, depending on the definitions, the methodology and the extent of use of scientific instruments in identifying and measuring the degree of disability. The National Sample Survey Organization (NSSO) conducted in 1981 a countrywide survey covering 3 types of disabilities, *i.e.*, visual, communication and locomotor disabilities. It identified 12 million

persons having atleast one or the other disability-constituting about 1.8 per cent of the estimated total population. In the year 1991, NSSO again conducted a (countrywide survey covering disabilities:

(i) Visual disability,
(ii) Hearing disability,
(iii) Speech disability and
(iv) Locomotor disability.

About 16.15 million people are estimated to have one or the other of the 4 types of disabilities mentioned above. This constitutes 1.9 per cent of the total estimated population of the country. It has been observed that for the country as a whole the prevalence of physical disability was 20 per thousand persons in rural sector and 16 in urban sector. Between the two sexes, the prevalence is marginally more among males than among females. A sample survey conducted by NSSO in 1991 for persons with delayed development between 0-14 age estimates that about 3 per cent of the estimated child population are having delayed development. However, on the basis of some random sample surveys, it has been estimated that about 2 to 2.5 per cent of the population of the country is mentally retarded. According to National Programme for Control of Blindness (WHO Report 1989) about 28.56 million persons are with low vision. A study conducted by Indian Council for Medical Research estimated that 6.8 per cent people in urban areas and 10.8 per cent people in rural areas has significant hearing losses.

The number of leprosy affected persons is estimated to be about 4 million, of whom l/5th are children. About 15 to 20 per cent cases are with deformities. In 196 districts in the country, the prevalence rate is more man 5 per thousand. About 430 million persons live in these high endemic districts.

Since the advent of independence, the Government of India have taken a number of initiatives in the field of special education, vocational training, rehabilitation, manpower development and technology upgradation. Important Schemes of the Ministry are as follows:

Assistance to Voluntary Organizations for the Disabled

The Ministry of Welfare, Government of India gives upto 90 per cent assistance to voluntary organizations for the education, training and rehabilitation of the disabled. For rural areas, assistance is given upto 95 per cent. In 1993-94 about 315 voluntary organizations were provided with assistance to the tune of Rs. 10.40 crores. A component to rehabilitate mentally ill persons has been added in the scheme.

Assistance for Aids and Appliances

The Government of India under this scheme provides free aids and appliances to those persons with disability whose monthly income does not exceed Rs. 1200 while 50 per cent subsidy is provided to those whose income is between Rs, 1201-2500 per month. This scheme is being implemented through both governmental and non-governmental agencies.

Rehabilitation of Leprosy-Cured Persons

This scheme envisages providing financial assistance to voluntary organizations working for leprosy-cured persons. Assistance is given upto 90 per cent to such voluntary organizations who develop programmes for awareness generation, early intervention, educational and vocational training, economic rehabilitation and social integration of the leprosy-cured persons.

Persons with Cerebral Palsy and Mental Retardation

The scheme aims at developing organizational and infrastructural facilities for manpower training and professionals, hostels and other assistance required for imparting training of various categories of workers/trainers such as vocational teachers, rehabilitation workers, wardens, *etc.*, in the field of Cerebral Palsy and Mental Retardation. Assistance is given upto 100 per cent of expenditure for recurring and non-recurring items.

Establishment of Special Schools

Under this scheme, grant is given to voluntary organizations upto the extent of 90 per cent for the establishment of Special Schools. Preference is given for opening schools in new districts and upgradation of existing schools. The scheme was started in 1993-94. The ultimate objective of the scheme is to establish at least one special school in each district of the country with the help of the voluntary sector.

Persons with Mental Retardation and Cerebral Palsy

A National Trust for the Welfare of Persons with Mental Retardation and Cerebral Palsy is proposed to be set-up. An amount of Rs. 1.25 crores has been ear-marked for this purpose.

The objectives of the proposed National Trust would be as follows:

(i) To arrange to provide care and rehabilitation to the mentally retarded and the cerebral palsied as a step towards social security who are under the guardianship of the Trust.

(ii) To lay down guidelines for the improvement of the existing organizations which are engaged in taking care of mentally retarded and cerebral palsed depending upon the availability of finances.

(iii) To set up homes and service institutions for providing residential care to persons with mental retardation and cerebral palsy.

(iv) To provide financial and technical assistance to the organization providing care and rehabilitation services to persons with mental retardation and cerebral palsy.

(v) To provide guardianship and foster care and to take over the guardianship rights of the persons with mental retardation and cerebral palsy after the death of the parents, if so, desired by the family or in absence of family support.

(vi) To extend and support the welfare programmes of families/foster families/parent associations and voluntary organizations.
(vii) To provide legal aid to the mentally retarded persons and their families.
(viii) To receive, own and manage properties bequeathed by the parents to maintain their child with Mental Retardation or Cerebral Palsy after their death.

NATIONAL PROGRAMME FOR REHABILITATION OF THE DISABLED

The Scheme aims at providing a more comprehensive package of rehabilitation services to the rural areas. The Scheme will take into account the following areas:

(i) It will offer rehabilitation services, viz., restorative therapy, early detection and timely intervention, parent counselling and provision of aids and appliance at the village, PHC, CHC and district levels to disabled Persons;
(ii) Provide assessment, guidance and referral facilities, for educational, vocational and placement services;
(iii) Undertake the work of awareness creation and information dissemination to tackle various aspects of disability including prevention and rehabilitation;
(iv) Rehabilitate every disabled person as far as possible in his own environment;
(v) Mobilise community support and coordinate all existing services and schemes for prevention of disability and rehabilitation of disabled persons.

The scheme is being finalised as a Central Scheme wherein, assistance would be given directly to the NGOs by the Ministry of Welfare.

NATIONAL AWARDS IN CONFORMITY WITH THE UNRESOLUTION THE GOVERNMENT OF INDIA

Each year on the Occassion of the World Disabled Day, National Awards are given by the President of India to the followings:

(i) Best Employer of handicapped;
(ii) Best handicapped employee and self-employed;
(iii) Best individual working for the welfare of the handicapped;
(iv) Best institution working for the welfare of the handicapped;
(v) Placement Officers; and
(vi) National Technology Awards for Welfare of the Handicapped.

NATIONAL INSTITUTES

Four national institutes namely National Institute for Orthopaedically Handicapped, National Institute for Mentally Handicapped, National Institute for Visually Handicapped and Ali Yavar Jung National Institute for Hearing Handicapped were set up as premier institutes in their respective areas of disability to cater to the needs of the disabled in the field of education, development of manpower, training, vocational guidance, counselling, research, development of suitable service models and lowcost aids and appliances. Besides, there are

two other institutes Institute for the Physically Handicapped, New Delhi and National Institute of Rehabilitation Training and Research (NIRTAR), Cuttack, Orissa which are major for the locomotor handicapped.

ARTIFICIAL LIMBS MANUFACTURING CORPORATION (ALIMCO)

Established in 1972 under the Companies Act with sole objective of promoting, developing, manufacturing and marketing of artificial limbs and aids and appliances, ALIMCO is the only public sector company of its type in the country. It manufactures crutches, wheelchairs, tricycles and other aids and appliances which are of international standards. There are 163 implementing agencies which provide the aids and appliances manufactured by ALIMCO.

SCIENCE AND TECHNOLOGY PROJECT IN MISSION MODE

The project was launched in 1988 with the objective to coordinate, fund and direct application of technology in the development and utilisation of suitable and cost-effective aids and appliances, methods of education and skills development leading to enhancement of opportunities for easier living, mobility, communication, recreation, employment and integration in the society 42 projects have been field tested and some like the photovolataic battery charger, interpointing braille writing frame, closed circuit TV for low-vision people and speech synthesiser have been cleared for mass production.

MEDIA AND AWARENESS CREATION

For any people-oriented programme to succeed, the attitude of the masses towards the programme itself and towards the target-group for whom it is meant is of primary importance. In India, information about disability and the people with disability is still mostly erroneous and based on myths rather than facts. Hence the need for generating awareness amongst the masses is of paramount importance. Here we cannot overlook the pivotal role that mass media has to play. Without the help of the media-TV, radio, print, and traditional—we cannot make much headway in generating awareness.

Towards achieving this objective a National Information Centre on Disability and Rehabilitation at the Centre and Four Regional Task Forces in Calcutta, Madras, Bombay and Delhi have been constituted for providing guidance and formulating time-bound programmes for creating awareness amongst the masses and for sensitising media about the portrayal of disability in a positive and humane way. The emphasis is on correct and effective messages being reflected in the media.

EMPLOYMENT

23 special employment exchanges and *55* special cells in regular employment exchanges are providing placement to people with disabilities, 17 Vocational

Rehabilitation Centres are also providing vocational training facilities. Special employment exchanges are financed on 80-20 per cent basis and Cells are financed on 100 per cent basis by the Central Government. Central Government and Central Government Public Sector Undertakings have reserved 3 per cent posts, one each for orthopaedically handicapped, speech and hearing handicapped, and visual handicapped. The Ministry of Welfare as the nodal agency organized special drives through the Staff Selection Commission to clear backlog for employment of disabled persons.

REHABILITATION COUNCIL OF INDIA

The Government has set up the Rehabilitation Council of India to enforce uniform standards in training of professionals in the field of rehabilitation for the disabled, Maintenance of Central Rehabilitation Registrar and other connected matters. The Rehabilitation Council of India Act has been enacted and has come inforce with effect from 31st July, 1993.

RELIEF ASSISTANCE UNDER BILATERAL AGREEMENT

Ministry of Welfare continues to operate Bilateral Agreement on gift India with the Governments of Federal Republic of Germany, Sweden, Switzerland, United Kingdom and United States of America and other U.N. organizations especially UNICEF.

BARRIER-FREE ENVIRONMENT

The physical environment including buildings, transport system, access to gardens, playgrounds, places of entertainments, *etc.*, are designed for able bodied persons. Very little attention has so far gone into architectural design of public places and transport keeping in view the requirements of persons with disabilities. The Ministry of Welfare is in constant touch with the Ministries of Urban Development, Railways, Surface Transport, Civil Aviation and other such bodies for ensuring a time bound action programme so that a barrier-free environment with easy accessibility for persons with disabilities is promoted. For this purpose a high-level committee has been constituted by the Ministry of Welfare.

PERSPECTIVE

Comprehensive prevention and rehabilitation efforts for persons with disabilities can only succeed, with the active involvement of the Union Government, State Governments, Voluntary Organizations and society at large in cohesion. Without their concerned efforts, no prevention or rehabilitation programme can succeed.

The Ministry of Welfare has also constituted an intersectoral task force on disability prevention to network different partners in this endeavour. Besides, the attitude of society towards people with disability has to change from patronising benevolence to that of trusting their abilities.

The need of the hour is to initiate rehabilitation programmes that sustain; provide care and concern that is asting: ensure an environment that is accessible, and create awareness in the society that leads to an attitude wherein able bodied perceive what people with disabilities 'can do' and no what they 'cannot do'.

It is the duty of the nation to provide people with disabilities same rights and opportunities that are taken for granted by others. People with disabilities have the right to work, the right to enjoy a full and rewarding life and the right to be integrated into society as 'one of us'. In this noble task everyone must lend his/her supporting hand.

5

Fundamental Right to Education

RIGHT TO EDUCATION

- Article 45 of the Constitution of India provides for free and compulsory education for children until they complete 14 years of age.
- Article 41 of the Constitution of India provides for the government to take effective steps for securing the right to education.
- Article 39 of the Constitution of India states that the government must direct its policy towards giving children opportunities and facilities to develop in a healthy manner.
- Article 38 of the Constitution of India states that the government must attempt to eliminate inequalities in facilities and opportunities.

This judgment emphasises the importance of education, and included the right to education as a fundamental right under Article 21 of the Constitution, *i.e.*, right to life. The Supreme Court observed that 'education is a preparation for a living and for life'. This judgment concluded that, the right to free education upto the age of 14 years is a fundamental right. 'We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.'

THE DEMAND FOR FREE AND COMPULSORY EDUCATION IN THE PRE-CONSTITUTION ERA

There is disagreement amongst scholars regarding the origin and nature of the education system in ancient India. Some of them hold the view that it is

difficult to speak of ancient Indian education with certainty, as our information is based on the documents of 'unequal value and unequal date.' Nevertheless, it may be stated that education in India has been notorious for not being socially inclusive. Till the 19th century, it was largely considered a privilege restricted to persons at the higher end of the caste or class system. History is replete with examples of caste, class and gender-based discrimination in imparting education. Education was the sole privilege of the priestly castes primarily because of the religious basis for the content of education, coupled with the elitist medium of instruction that was chose to impart the knowledge. Admission to Gurukulas or Ashramas was not open to all. People from lower castes, and so-called 'shudras', in particular, were barred from receiving education. Buddhism and Jainism overthrew the dominance of classical Vedic education by the end of the eighth century A.D, forcing education beyond the confines of hermitages. Thereafter, several learned Brahmins started Pathasalas in important towns where they received patronage.

The Muslim rulers of the Indian sub-continent also did not consider education as a function of the State. It was perceived as a branch of religion and therefore entrusted to learned theologians called 'Ulemas'. Therefore, in ancient and medieval India, education was intertwined with religion. From the location of Gurukulas to excluding sections of the society from accessing education, the system of education was clearly not accessible to all persons. The discovery of the sea route to India, in 1498, influenced the course of development of education in the Indian sub-continent. Although many scholars have commended the British policy of introducing modern education, it was not a spontaneous benevolent act.

The progress in education was facilitated with a view to serving their vested interests, *i.e.,* to train Indians as clerks, managers and other subordinate workers to staff their vast politicoadministrative machinery. However, education of the 'Indian masses' was largely neglected, and by the beginning of nineteenth century, it was in shambles. For instance, while reporting about the situation of education in Bellary (presently in the State of Karnataka) in the early nineteenth century, Campbell, the then District Collector observed that 'it cannot have escaped the government that of nearly a million of souls in this district, not 7000 are now at school … In many villages where formerly there were schools, there are now none.'

In support of this, a missionary notice of 1856 stated that in all other parts of the country 'a school, either government or missionary is as rare as a lighthouse on our coast…. three or four schools existing among three or four million of people.' The neglect of education by the British was also acknowledged by the Wood's Despatch. In this context, the demand for FCE in India can be traced back to the early stages of the freedom struggle in British India. It subsequently became an integral part of the freedom struggle. The Indian National Congress fought valiantly for the expansion of elementary education and literacy, in general, and in rural India, in particular. In the evidence placed before the

Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule from Bombay demanded State-sponsored free education for at least four years. This demand was indirectly acknowledged in the Commission's recommendations on primary education. The Commission also recommended that schools should be open to all castes and classes.

The first law on compulsory education was introduced by the State of Baroda in 1906. This law provided for compulsory education for boys and girls in the age groups of 7–12 years and 7–10 years respectively. The first documented use of the word right in the context of elementary education appears in a letter written by Rabindranath Tagore to the International League for the Rational Education of Children in 1908. In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Council, albeit unsuccessfully.

The Legislative Council of Bombay was the first amongst the Provinces to adopt a law on compulsory education. Gradually, other Provinces followed suit as control over elementary education was transferred to Indian Ministers under the Government of India Act, 1919. However, even though Provincial Legislatures had greater control and autonomy in enacting laws, progress in universalising education was poor due to lack of control over resources. In 1937, at the All India National Conference on Education held at Wardha, Gandhi mooted the idea of self-supporting 'basic education' for a period of seven years through vocational and manual training. This concept of self-support was floated in order to counter the Government's constant excuse of lack of resources. The plan was to not only educate children through vocational training/manual training by choosing a particular handicraft, but also to simultaneously use the income generated from the sale of such handicrafts to partly finance basic education. Furthermore, education was supposed to be in the mother tongue of the pupils with Hindustani as a compulsory subject.

Two other interesting features of the Wardha Scheme are as follows: First, within the 'basic education course', there were two divisions, the 'lower basic' or 'primary' corresponded to classes I–V. The 'upper basic' or 'post-primary' corresponded to classes VI–VII. The division between primary and postprimary was created with a view to giving pupils the option of shifting to another form of education if they so desired after the first five years of 'basic education'.

Second, a minimum wage for teachers was stipulated under the Wardha Scheme. Based on these ideas, the Wardha Scheme of Education was formulated for rural areas. The next landmark development in the history of FCE in India was the Post War Plan of Education Development of 1944, also called the Sargent Plan, which recommended FCE for eight years (6–14 years' age group).

Despite the consistent demand for FCE during the freedom struggle, at the time of drafting the Constitution, there was no unanimous view that the citizens of India should have a right to education, let alone a fundamental right. The Constitution Assembly Debates reveal that an amendment was moved to alter the draft Article relating to FCE, by removing the term entitled to ensure that it was merely a non-justiciable policy directive in the Constitution.

DEMAND FOR A FUNDAMENTAL RIGHT TO EDUCATION

The period spanning between 1950 to the judgement in Unnikrishnan's Case in 1993 saw several legal developments. The Indian Education Commission (Kothari Commission) 1964–1968, reviewed the status of education in India and made recommendations. Most important amongst these is its recommendation of a common school system with a view to eliminating inequality in access to education. Immediately thereafter, the National Policy on Education, 1968 was formed. The 1968 Policy was the first official document evidencing the Indian Government's commitment towards elementary education.

The Policy dealt with issues of equalisation of educational opportunity and required the common school system to be adopted in order to promote social cohesion. However, it was not supported by legal tools that could enforce such policy mandates. Interestingly, it even required that special schools should provide a proportion of free-studentships to prevent social segregation in schools. A second round of studies was conducted by the Ministry of Education in conjunction with the National Institute of Educational Planning and Administration, and this process contributed to the formation of the National Policy on Education, 1986. This policy, while re-affirming the goal of universalisation of elementary education, did not recognise the 'right to education'. The 1986 Policy is also severely criticised for having introduced non-formal education in India.

The 1986 Policy was reviewed by the Acharya Ramamurti Committee in 1990, and this review process contributed to the revised National Policy on Education of 1992. The Acharya Ramamurti Committee recommended that the right to education should be included as a fundamental right in Part III of the Constitution. However, this recommendation was not implemented immediately.

A great legal breakthrough was achieved in 1992 when the Supreme Court of India held in Mohini Jain v State of Karnataka, "that the 'right to education' is concomitant to fundamental rights enshrined under Part III of the Constitution" and that 'every citizen has a right to education under the Constitution'. The Supreme Court subsequently reconsidered the judgement in the case of Unnikrishnan, J P v State of Andhra Pradesh. The Court (majority judgement) held that 'though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21… (and) must be construed in the light of the Directive Principles of the Constitution.

Thus, 'right to education, understood in the context of Article 45 and 41 means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development'. In the meanwhile, major policy level changes were made under the dictates of the IMF-World Bank Structural Adjustment Programme and the World Bank-funded District Primary Education Programme (DPEP) was introduced in 1994. Under DPEP, the national

commitment towards FCE up to 14 years was reduced and primary education for the first five years was introduced. Further, the concept of multi-grade teaching and para-teachers was also introduced. While policy level changes had diluted the quality of FCE, the Unnikrishnan Judgement empowered people with a legal claim to FCE. Several public interest litigation petitions were filed in different High Courts to enforce the Unnikrishnan Judgement and acquire admission into schools. This created tremendous pressure on the Parliament and thereafter a proposal for a Constitutional amendment to include the right to education as a fundamental right was made in 1996.

The Constitution (Eighty-Third) Amendment Bill was introduced in the Rajya Sabha in July 1997. The 83rd Amendment proposed that Article 21-A be introduced (fundamental right to education for 6–14 years), former Article 45 be deleted (the then existing directive principle on FCE) and Article 51-A(k) (fundamental duty on parents) be introduced. Between 1997 and 2001, due to change in Governments, the political will that was required to bring about the amendment was absent. In November 2001 however, the Bill was re-numbered as the 93rd Bill and the 83rd Bill was withdrawn.

The 93rd Bill proposed that former Article 45 be amended to provide for early childhood care and education instead of being deleted altogether. This Bill was passed in 2002 as the 86th Constitutional Amendment Act. Currently, under Article 21-A of the Constitution, every child between the ages of 6–14 has a fundamental right to education, which the State shall provide 'in such manner as the State may, by law, determine'. Early childhood care and education (for children in the age group of 0–6 years) is provided for as a directive principle of State Policy under Article 45 of the Constitution.

DETERMINING THE CONTENT OF LAW

COERCIVE AND NON-COERCIVE RULES WITHIN A RIGHTS FRAMEWORK

It is evident that there is a fundamental right to FCE in India. However, apart from a mere mention of the age group for which such a right is guaranteed, Article 21-A does not throw any light on its content. The content of the right is left to be regulated by law. In order to implement the fundamental right to education through a rights-based model of legislation, one needs to determine the features of such a model. However, before examining the elements of a rights-based model of legislation, it may be apt to briefly discuss Amartya Sen's caveat with respect to legislating for the implementation of a human right.

He points out that legislations, which go a long way towards ensuring enforceability of specific minimum entitlements, may also have the negative effect of giving restrictive or limited interpretations of the content of the concerned human right. Legislations may also give rise to policy inaction on the ground that specific legal rules have been complied with. For example, if a law lays down that the duty of the State is to ensure x, y, z, then the State will

restrict its activities to ensuring x, y, z without looking beyond that framework. Therefore, while legislation is certainly a welcome development, it should not be treated as the only vehicle of implementing human rights. The legislation should also be supplemented by other noncoercive rules for effective implementation of the human right.

This caveat needs to be taken into account during legislative processes and adequate safeguards need to be built into the law. While there cannot be a fool-proof mechanism of countering negative outcomes of law, the identifiable negative outcomes may be mitigated. For instance, governmental inaction could be countered through institutionalised periodic review of policy as well as law to ensure that progressive changes are made to both from time to time. In addition to such periodic review of policies, there should also be an institutionalised periodic review of the implementation of not only the policy but also the law. Furthermore, the quality of elementary education also depends on the quality of teaching staff, non-teaching staff, sensitivity and awareness of administrative staff in the various government departments Therefore, training and developing the capacities of such personnel is a critical component of elementary education.

In particular, this caveat assumes great importance in the context of education in India because the fundamental right to education as enshrined in the Constitution is limited to the age group of 6–14 years. This not only excludes early childhood care and education but also excludes higher education. Internationally, the human right to education includes the right to education at all stages that are fundamental and basic, including the right to early childhood care and education. The right to education has been recognised in several international instruments, of which the three key international instruments are the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) and the Convention on the Rights of the Child (CRC). While some instruments uphold the right to 'elementary education', others use the phrase 'primary education'. Article 26 of UDHR lays down that free education should be provided at least in the 'element ary and fundamental stages' and is compulsory.

Article 13 of ICESCR and Article 28 of CRC provide inter alia that 'primary education' shall be free and compulsory. In its General Comment No. 13, the Committee on Economic, Social and Cultural Rights (the Committee) has tried to clarify and expand on the meaning of the phrase 'primary education'. The Committee has stated that primary education is that which caters to the 'basic learning needs of the children'.

Ideally, any law implementing the fundamental right to education should off-set this exclusion. However, in the event that the law does not provide for a right to early childhood care and education, then the State should draw up concrete schemes (non-coercive rules) to ensure that early childhood care and education is provided. Currently, in India, the Integrated Child Development Scheme provides for early childhood care and education. However, the nature of pre-school education, the quality of the services, as well as its linkage with formal school education need to be examined in great detail.

CONCEPTUALISING A RIGHTS-BASED MODEL

Having discussed the importance of the supplementary role of non-coercive rules, this part will now examine the building blocks of a rights-based model. Broadly, it may be stated that such an approach includes four essential elements.

- It should evaluate claims of rights–holders and corresponding obligations of duty bearers. In the context of education, there exists a relationship between the (State – child), (child – parent), (State – parent) and (State – community – child/parent). The law should be very clear on how each of these relationships will be regulated. The nature of the legally enforceable claim that a child would have against the State (officials, teachers, managerial staff and so on) should be outlined unambiguously, *i.e.,* the minimum entitlements should clearly be specified in law. Minimum entitlements may be broadly categorised into quantitative and qualitative entitlements. There is no fixed and clear demarcation between quantitative and qualitative entitlements and the two categories may be said to be over-lapping. Entitlements such as period of compulsory education, meaning of free education and whether it entails freedom from payment of money, number of schools, distance from residence, quantification of education facilities, number of teachers, infrastructure requirements for school, minimum content of education, curriculum, pedagogy, guarantee against violence and exploitation in schools, and guarantee of safe school environment should be legally guaranteed as enforceable minimum norms.
- A rights-based model should develop capacity-building strategies for not only rightsholders' to claim their rights but also for duty bearers to fulfill their obligations. Capacity building of rights-holders involves two fundamental elements
  - Being aware of the right
  - Creating an enabling environment to access such a right Therefore, awareness and dissemination of information to the public regarding their rights is an inherent part of a rights-model of elementary education. Capacity of duty bearers through human rights education and requisite professional training (for teaching staff, non-teaching staff, district education officials, officers in the ministry of education and so on) is also part of such a model.
- There should be room for monitoring and evaluating outcomes and processes using human rights principles and standards. For example, in the context of elementary education, the three non-negotiable principles that need to be adhered to are the principles of nondiscrimination, equality and child participation. These principles should also be used in evaluating the performance of the State in implementing the right to FCE. Further, the law should clearly lay down methods of locating accountability for failures in the system which can be used as a method of grievance redressal in case of rights violations. In locating accountability, the duty-

bearers should be clearly identified. A special grievance redressal mechanism should be in place to expedite disposal of grievances and ensure that children are admitted into schools in the shortest possible time. For example, the Karnataka Grama Panchayat's (School Development and Monitoring Committees [SDMC] Model) Bye-Laws, 2006 has a separate time-bound grievance redressal mechanism for a range of complaints such as employing children as child labour, physical and sexual abuse, sexual harassment, other forms of indignity, negligence, dereliction of duties, misdemeanor and misconduct, mismanagement, misappropriation of funds and so on by teaching, non-teaching staff as well as SDMC members.

- A rights-based model should incorporate the recommendations of international human rights bodies to inform each step of the process. For example, under international law, the right to basic education also includes the right to early childhood care and education. Another useful aide in developing a rights-based model of legislation is Asbjoern Eide's three-level typology of States' duties, which was developed in the context of right to food. This typology is now widely accepted and used as a framework for examining States' human rights obligations generally. Eide, human rights impose a three-fold duty on the State.
- The duty to respect implies the duty to refrain from interference and the duty to ensure that measures that prevent access are not introduced by the State. This would necessitate the creation of an enabling framework of law that removes barriers (atleast those that can be identified) to education. For example, in the context of school education, demand of documentary proof of residence, birth certificate and so on, which operate as huge barriers against admission into schools should be eliminated/mitigated.
- The duty to protect requires the State to ensure that the State/enterprises/individuals do not deprive children of their right. For example, the dereservation of plots reserved for government schools would be an act of depriving right to education. Similarly, engaging children as labour would deprive them of their right to remain in full-time regular schools.
- The duty of the State to facilitate and fulfill human rights implies that the State should pro-actively engage to facilitate and provide for the implementation of FCE. It is the duty of the State to strengthen people's access to and utilisation of resources. Further, whenever an individual or group is unable to enjoy the right to FCE, for reasons beyond their control, States have the obligation to fulfill (provide) that right directly. This third element is extremely crucial as it creates a positive duty on the State as opposed to a negative duty. It also distinguishes the traditional truancy model of legislation from a rights-based model. Compulsory education laws have traditionally revolved around monitoring of

attendance and penalty for truants/parents. Historically, police officers worked part-time as truant officers. Therefore, truant officers' primary function was akin to that of the police; and many of the attendance order boxes were also placed in police stations. The policing model of education and crime is theoretically opposed to a right sapproach because it is not enabling. It is premised on a fundamentally flawed assumption about human behaviour that poor parents are unwilling or reluctant to send their children to school. Based on this assumption, the law draws up an elaborate framework of monitoring and penalising defaulting parents and children instead of strengthening access and resource-utilisation of poor parents and their children. For example, consider a situation where a poor parent is unable to send her child to school because of the need for an additional source of income or additional help for household chores. Under the truancy model, a parent who does not send her child to school is automatically denounced as an unwilling parent who does not appreciate the benefits of formal school education. This unwilling parent is penalised under the truancy model. This policing model does very little to change the underlying causes of truancy. In complete contrast to this, in a rights-based model, the State should take measures to strengthen the access right of the child by creating an environment which is conducive to formal schooling. In this context, it is pertinent to mention MV Foundation's experiments with re-allocating time and household chores of mothers to ensure that girl children are allowed to go to school, *i.e.,* a simple time-management technique solved truancy as opposed to imposition of penalty. Alternatively, it has been shown that where crèches are provided at the worksite, the attendance of girl children dramatically improved. Such examples prove that policing attendance is a completely futile method of enforcing attendance. A rights-based model does not have any room for punishing poor parents and their children for absenteeism. It is the duty of the State to create an enabling framework of law as part of its duty to fulfill the right.

EQUALITY AND NON-DISCRIMINATION IN SCHOOL EDUCATION

In addition to being enabling, the law should also guarantee equality and non-discrimination in education. The first component of equality is equality of resources and the problem of economically generated inequalities in education. In education, economic inequality leads to inequality in access, participation and outcomes in education. Scholars have identified processes within education systems that contribute to such inequality. For example, studies have repeatedly shown that selection or admission procedures, grouping procedures used to locate students in different streams in higher education, systems of curriculum, syllabus design and assessment contribute to inequality in the education system. Most Indian schools have entrance examinations, collect capitation fees, have

strenuous interview procedures and so on at the stage of admission; several schools also adopt a system of classifying 'toppers' in one section and failures in another. Tackling such inequality is a very complicated process and requires intervention that may fall outside the purview of education laws. Nevertheless, one solution that has been presented is that admission, selection procedures, and grouping should be made 'transparent and open to democratic scrutiny and public challenge'. Therefore, a rights-based law which adopts the principle of equality should adopt a two-pronged approach of banning identifiable discriminatory processes as well as ensuring that all other processes in schools are documented and made public in order to facilitate public scrutiny and challenge, if required.

Another facet of equality in education to be addressed is the equality of respect and recognition in education, *i.e.,* status-related inequalities based on class, caste, race, religion, language, gender and sexuality, profession of parents, disability and so on. In order to solve problems that arise out of status-discrimination, two approaches have been suggested – a policy of inclusion coupled with information dissemination on status-inequality, *i.e.,* equality education and human rights education. It is also important to look at 'human rights education' from the point of view of minimum entitlement in school curriculum.

Equality of power also forms an important element of equality in education. Power may be said to operate from the macro to the micro level. At the micro-level or school-level, equality of power may be facilitated through democratic decision-making on issues concerning the school, where children as well as parents are allowed to participate in the decision-making processes. For example, the Government of Karnataka has introduced school-level democratic decision-making to some extent through the Karnataka Grama Panchayat's (School Development and Monitoring Committees [SDMC]) (Model) Bye-Laws, 2006.

The bye-laws provide that an SDMC, which includes parents and children, should be formed in every government/government-aided school. All decisions regarding the school are required to be taken by this body; and all members are given equal decision-making power during meetings. At the macro-level, democratising education would imply that all actors in education have the opportunity to engage in education planning. An ideal rights-based law may also need to acknowledge and provide for methods of participatory education planning at the Centre and State levels.

We conclude that in a rights-model of legislation for elementary education, all the facets of equality should be included and methods of facilitating such equality should be made part of the legal entitlements of a child.

QUANTITATIVE MINIMUM ENTITLEMENTS

Entitlements may be divided into two categories – quantitative and qualitative. It should be noted that this categorisation is not intended to be in the nature of water-tight compartments.

One important aspect of quantitative entitlements is the concept of 'free' education. The meaning of 'free' in the international context is at variance with the manner in which 'free' is conceptualised in the Indian context. While the Committee is against direct costs such as imposition of fees, donations, capitation fees, *etc.*, there seems to be some ambiguity with respect to 'indirect costs'. The Committee has laid down that indirect costs, though generally not permissible, may be allowed on a case-to-case basis. There is no uniform international State practice on this issue.

While assessing a demand that text books should also be provided free of cost as part of 'free education', the Constitutional Court of the Czech Republic has held that free does not imply that the State has to bear all costs. The Court has stated that 'free' in primary education means that the State would bear the costs of establishing schools, their maintenance and operation. However, tuition and teaching materials need not be free. Reportedly provided free of charge in Austria, Bulgaria, Denmark, Finland, Germany, Iceland, Italy, Japan, Sri Lanka and Sweden. In some others, like Nepal and Russia, subsidies are provided for text books. Loan arrangements are also made in countries like Armenia where textbooks are reportedly loaned to pupils against payment of an annual fee and/or the parents have to contribute to the cost of textbooks.

The UN Special Rapporteur has recommended that 'free' would imply that all direct and indirect costs of education should be the responsibility of the Government. A similar approach is taken by the Committee on the Rights of the Child. The meaning of the term 'free' may also be inferred from the Observations of the Committee on the Rights of the Child (ComRC). For example, in its 27th Session, the ComRC observed as follows: 'In addition, the Committee is concerned that in practice primary education is not free and that many parents have to pay school fees as well as related costs such as for uniforms and equipment, which remain too expensive for most families.'

Despite the international variance in the meaning of this term, if costs, both direct and indirect, are viewed as a 'barrier' to education, then automatically, in a rights-approach, there can be no room for direct or indirect costs of education. Experiences at the field show that the notion of free education cannot be limited to a tuition fee waiver or a few incentives such as mid-day meal scheme. For example, a majority of children from scheduled castes and scheduled tribes require residential schools to receive meaningful school education. Despite all existing incentives, the economic and social conditions of such parents compel them to withdraw their children from schools due to their inability to provide them with the bare minimum requirements at home which would facilitate learning after school hours.

The concept of free education must take into account such factors as well. Other important aspects of minimum quantitative entitlements are related to minimum schooling years, infrastructure requirements, number of schooling hours, ratio of students to teacher, qualification of teachers, number of neighbourhood schools and so on.

Another crucial component of minimum entitlement is closely connected with the issue of bridge/transition course. In order to ensure that the right to formal schooling ultimately reaches children who have been marginalised due to socio-economic conditions, the law should also provide for a right to be integrated into mainstream schools after imposing an outer limit on the number of years in a bridge course and the options available to the child after the completion of the bridge course.

QUALITATIVE MINIMUM ENTITLEMENTS

Under the category of qualitative entitlements, one of the most complex aspects is the curriculum of education. In this context, it is apt to mention that the UN Special Rapporteur has stated that the right to education in international human rights law includes not only the right to 'human rights in education' but also includes the 'right to human rights education.' Curriculum is not only important from the point of view of entitlements but is also important in the context of compulsion and the nature of relationship between the State and the parent regarding the child's education.

Since 'compulsion' involves State coercion, it has on several occasions been diametrically opposed to parental religious, moral and philosophical convictions.

Therefore, any law on FCE should clarify the following aspects of compulsion:

- Compulsion of attendance and consequences of non-attendance
- Compulsion in curriculum.

COMPULSORY ATTENDANCE WITHIN A RIGHTS-BASED FRAMEWORK

Compulsory attendance backed by punitive measures is the central attribute of the truancy model of legislation. In contradistinction to the truancy model, a rights approach should necessarily be enabling. This implies that a rights-based law should aim to provide solutions to problems/barriers. In any event, a rights-approach does not permit the imposition of punishment on persons who are unable to send their children to school due to socio-economic or cultural barriers.

It should be reiterated at this point that the nature of the punitive measure is immaterial, *i.e.,* even community service (punitive measure) as provided for under the Right to Education Bill, 2005 goes against the basic tenor of a rights-approach to education.

The imposition of punitive measures is a classic illustration of Amartya Sen's argument that in the overzealous attempt to create a law enforcing a human right, the human right itself may be detrimentally affected. In their zeal to ensure school attendance, officials restrict their activity to strict enforcement of the law and refuse to address policy issues that fall outside the purview of law. The entire State machinery is more concerned with policing attendance rather than creating environments which are conducive to compulsory education by addressing complex problems arising out of child labour, child marriage, lack of housing, malnutrition, migration and so on.

The other aspect of compulsory attendance is the creation of legal exceptions to compulsion. The truancy model coupled with the exceptions to compulsion is a method of negating 'social accountability.' A study of Statelaws reveals that the clause on exceptions to compulsion is often used as a method of completely negating State's accountability. For example, several State laws make 'absence of a neighbourhood school' an exception to compulsion.

Instead of imposing a duty on the State to provide neighbourhood schools, the benevolent State exempts parents from penalty where there are no neighbourhood schools. Such an approach is completely opposed to a rights-based model. In a right sapproach, a neighbourhood school would arguably be a minimum quantitative entitlement which is justiciable.

COMPULSORY EDUCATION VS. FREEDOM OF RELIGION

On the issue of compulsion and legal exceptions, one needs to examine the conflict between compulsory education and right to freedom of religion. At the very outset it is important to clarify that all human rights instruments re-affirm parental choice with respect to education in accordance with their religious and moral conviction. Article 25 of the Constitution guarantees freedom of religion. However, this is subject to the other provisions in Part III of the Constitution, which deals with fundamental rights. This would imply that the fundamental right to freedom of religion [Article 25] is subject to the fundamental right to FCE [Article 21-A].

Three types of conflicts may arise between education and religion:

1. Direct conflict where parents may want to provide purely religious education to their children. For example, where a child is inducted into the monastic order of a particular religion at the age of six and thereafter is being given religious instruction; the obvious question is whether such a practice should be exempted as a religious/cultural right or whether it may be viewed as violation of a child's fundamental right to primary education. In cases of such direct conflict, it may be argued that since Article 25 of the Constitution, is subject to Article 21-A, no parent would be in a position to choose religious education to the exclusion of free and compulsory formal secular education.
2. Conflict, which has plagued many countries in recent times, revolves around the limits of religious expression in schools. For example, bans on wearing hijabs, schools displaying pictures of gods and goddesses of a particular faith, prayers conducted in a particular faith and so on. In such cases, there may be conflicts between a student's right to education, right to religion and the secular nature of the State especially in public schools.
3. Conflict occurs where religious beliefs are opposed to the curriculum of education in government schools. The following case illustrates the need for clarity on the right to content of education, as part of the guarantee to FCE. The issue of parental choice and content regulation

was dealt with by the European Court of Human Rights in the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark. The applicants were parents of children who were going to State primary schools in Denmark. As per the Danish Constitution, all children have the right to FCE in State primary schools. The State had introduced compulsory sex education in State primary schools as part of the curriculum. This change in the curriculum was introduced by a Bill passed by the Parliament. There were guidelines and safeguards against a) showing pornography, b) teachers giving sex education to pupils when they were alone, c) giving information on methods of sexual intercourse and d) using vulgar language while imparting sex education. The applicants, who were parents of school going children, gave several petitions to have their children exempted from sex education in the concerned State schools. However, these requests were not met and all of them withdrew their children from the said schools.

The applicants argued that the Denmark Government had violated Article 2 of Protocol No. 1 to the European Convention on Human Rights which states "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions." The State argued that Article 2 would cover only religious instruction and not all forms of instruction.

The Court rejected this argument and held that any teaching should respect parental' religious and moral convictions. However, the Court also held that article 2 would be violated only if while imparting sex education, the teachers advocated sex at a particular age or particular type of sexual behaviour. Moreover, the parents still had the freedom to educate their children at home to instill their own religious convictions and beliefs and therefore, imparting sex education *per se* was not a violation of the Article 2.

The Danish Case assumes importance in the Indian context because there have been several controversies regarding curriculum in schools in the context of religion. For instance, the saffronisation of education by the Bharatiya Janata Party and Indian government's policy of 'modernisation of Madrasas (religious schools of Muslims)' pose serious questions of curricular entitlements and safeguards. While these two examples raise several complex questions regarding curriculum, it also has a common thread – that of a right to secular education of all children, irrespective of their religion. The saffronisation of education combines content regulation with the need for social accountability of the Government.

A combination of a positive and a negative right to curriculum may adequately guard against problems such as saffronisation. Every child should have a right to a core non-negotiable content in education that is coupled with a duty of the State to refrain from arbitrarily interfering with such content. In defining the core minimum content of curriculum, it is advisable to prescribe the non-

negotiable minimum in terms of competencies that need to be achieved at the end of each grade. The advantage of defining the core minimum in terms of competencies is that it gives States and teachers the freedom to contextualise learning within a specific local setting by creating localised syllabus. As regards the negative right, given the nature and increasing evidence of polarisation based on religion in India, it may be stated that right to education should at least include certain safeguards against propaganda-driven curriculum or syllabus.

Therefore, guarding against arbitrary alteration or revision of existing curriculum would necessitate the creation of a systematic process and procedures for developing and revising syllabus at all levels – Centre, State, District and so on. Therefore, the negative right is procedural right against arbitrary State intervention, whereas the positive right is a substantive right to minimum competencies. The case of madrasas raises the crucial question of balancing the interests of religious minority institutions and the right of the child to secular education. Madrasas are largely autonomous and therefore decide upon their curriculum, hours of study, duration of study and so on. The Central Government's policy of modernising madrasas by introducing subjects such as mathematics and science has been criticised as being violative of not only Madrasas' autonomy but also doing injustice to children's right to secular education and free and compulsory full-time formal education.

Without getting into the merits and demerits of modernising madrasas, it may be argued that while minority groups have the right to manage their own educational institutions, the same cannot be considered as having fulfilled the requirement of Article 21-A unless:

- Certain core minimum in terms of competencies is adhered to
- There are procedural safeguards against arbitrary alteration of syllabus

COMPULSION AND MEDIUM OF INSTRUCTION

Another controversial issue in the Indian context would be medium of instruction and right to education. For example, while defining the nature of the relationship between the parent and the State and also defining the scope of compulsion, the law should address whether a child should be compelled to attend a government school where the medium of instruction is completely alien to the child. Alternatively, the law should examine whether the right to education includes the right to be educated in a manner that is not alien to the child, *i.e.,* where language is not a barrier to education.

This issue has been examined by the European Court of Human Rights in the Belgian Linguistic Case. The applicants were French-speaking Belgian nationals who were aggrieved that the Belgian Government had not set up any government school in their District whose language of instruction was French. It is important to note that there were other French-medium schools, which were not within the same District. The Court held that the State was under no obligation to respect the linguistic preferences of parents. This is because Article 2 of Protocol No. 2 to the European Convention on Human Rights states that

the State "…shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." The Court held that the phrase 'religious and philosophical convictions' does not include linguistic preferences. The Court further held that non-provision of education in a particular language of instruction does not amount to discrimination based on language.

Even though it may be argued that lack of schools in a particular medium of instruction does not amount to discrimination, given the extent of migration and diversity in language in the Indian context, the latter may be a genuine barrier to school education. For example, in Manipur, several Naga children are being educated in a language and curriculum that is completely alien to them. As a result of this, the Naga underground movement has issued threats to the Manipuri schools demanding that the Naga population in these schools be taught in a manner that is acceptable to the Nagas. This is illustrative of the fact that in order to make elementary education an effective right, the law should necessarily address the language issue in such a manner that it enables all children to attend schools.

ROLE OF THE COMMUNITY WITHIN A RIGHTS FRAMEWORK

The law would also need to lay down the kind of relationship the State should create with respect to 'State–communities–children' in the context of education. For example, how would the law respond to employers who engage children in labour; how would the law respond to the government's slum demolition drives which completely ruin a school-going child's ability to attend schools? These two examples are classic cases of third party intervention that hinders a child's right to education. The State's duty to protect the right would imply that the State should protect a child's right to education from any form of interference or hindrance. Another aspect of the 'State–communities–children' relationship is the empowerment of communities, *i.e.,* communities should be empowered with a right of participation in school education. The Karnataka example of community participatory methods of school management is a case in point. Using such creative legal tools, the law could create avenues for legal claims to be made by children viz-a-viz such imperfect obligations. It has also provided a brief insight into some very controversial issues that need to be debated and discussed in order to arrive at a rights-based model of elementary education.

MODEL OF LEGISLATION

ASSESSMENT OF STATE LEVEL LEGISLATIONS FROM THE 'RIGHTS' PERSPECTIVE

Clarity regarding the phrase 'rights-based' alone is not sufficient for realising the fundamental right to education. In order to effectively ensure that every child is guaranteed the core non-negotiable minimum, the model of legislation

becomes crucial. For example, how can a child in Sikkim and a child in Kerala be guaranteed this core non-negotiable minimum right to education? If, for example, a child in Sikkim receives only five years of compulsory education and a child in Kerala receives eight years of compulsory education, then this would definitely be violative of 'equitable' education.

Prima face, there exists a case for the creation of uniform standards across India for ensuring that children are entitled to the same guarantees and core non-negotiable minima. This prima facie case for uniformity is further strengthened by our analysis of the existing State-level laws on elementary education. The following States' laws have been examined – Jammu and Kashmir, Maharashtra, West Bengal, Himachal Pradesh, Karnataka, Tamil Nadu, Kerala, Rajasthan, Delhi, Sikkim, Punjab, Andhra Pradesh, Madhya Pradesh and Meghalaya. The Meghalaya law does not even pay lip service to the concept of compulsory elementary education.

All the State laws penalise poor parents for their children's poor attendance in schools and are in no way enabling. Many of them even criminalise non-attendance and make the offence punishable with a fine. Clearly these laws are based on the truancy model of education. In addition, most of the State laws do not guarantee compulsory education to all children. On the contrary, to quote Weiner, "…compulsory education laws in India do not make education compulsory: they merely establish the conditions under which state governments may make education compulsory in specified areas [emphasis provided by authors], *i.e.,* they merely make compulsory education permissive.

It is entirely up to the discretion of the local authority concerned to draw up a scheme for compulsion under such laws. Therefore, where compulsory education is merely permissive, the question of a justiciable right to education does not arise at all, unless a particular area is brought under a scheme of compulsory education. The West Bengal Primary Education Act, 1973; the Bombay Primary Education Act, 1947; the Tamil Nadu Compulsory Primary Education Act, 1994; the Karnataka Education Act, 1983; the Rajasthan Primary Education Act, 1964; Delhi Primary Education Act, 1960; the Kerala Education Act, 1958; the Assam Elementary Education Act, 1974; Sikkim Primary Education Act, 2000; Punjab Primary Education Act, 1960; and the Andhra Pradesh Education Act 1982 fall under this category. Surprisingly, even post – Article 21-A, most states continue to maintain on document that compulsory education for all children is merely permissive, and this is clearly unconstitutional. The extent of State inaction is evidenced by the very fact that even after four years of the Constitutional amendment in 2002, they continue to be governed by obsolete laws which are clearly violative of the Constitutional mandate.

Out of the remaining laws that we analysed, the Jammu and Kashmir School Education Act, 2002; the Himachal Pradesh Compulsory Primary Education Act, 1997; and the Madhya Pradesh Jan Shiksha Adhiniyam, 2002 make primary education compulsory. However, out of these three, the Himachal Pradesh Act again seems to directly contravene the mandate of the Constitution as it defines

a child as a person between the age of 6 and 11. This leaves us with the Jammu and Kashmir law and the Madhya Pradesh law. Apart from defining a child as aged between 6 and 14, the Jammu and Kashmir law does not specify any other details or minimum entitlements.

It does not affirm any principle of human rights law. It fails to provide for a grievance redressal mechanism or monitoring method. The Madhya Pradesh law makes compulsory education mandatory for all children from the age of 6–14 years. It also refers to the principle of non-discrimination. It defines 'free' as a tuition fee waiver. However, it provides that where the Parent Teacher Association of a particular school consents to imposing a school development fee, then such a fee may be imposed. Arguably, this too would directly violate the constitutional mandate of free education for all children between the age of six and fourteen. Therefore, the current position regarding State laws on compulsory education is that none of them has been amended to bring it in line with the basic guarantees provided by the Constitution. In addition, all of them fall squarely within the truancy model of legislation.

This analysis clearly demonstrates:

- There is no uniformity amongst State level laws
- None of the State laws uses a rights-based approach to elementary education.

UNDERSTANDING THE SIGNIFICANCE OF EDUCATION AS A CONCURRENT LIST ENTRY IN THECONSTITUTION

Education Transferred From State List to Concurrent List

Having clearly demonstrated that the State laws lack uniformity and are also clearly violative of the Constitutional mandate, the question that needs to be examined is how can we ensure uniformity in the enforcement of standards in elementary education? In order to answer this, it is important to briefly look into the legislative powers that are vested with the Centre and State with respect to elementary education.

The Constitution, which is based on the principle of federalism, adopts a three-fold distribution of legislative powers. Different subjects for legislation find mention in one of the three lists, namely the Union List, State List and Concurrent List in the Seventh Schedule to the Constitution. While the Parliament and State Legislatures have exclusive legislative power over entries in the Union List and the State List respectively, both the Parliament and the State Legislatures have the power to legislate over entries in the Concurrent List.

The three identified rationales underlining the placement of certain entries in the Concurrent List are:

1. To secure uniformity in the main principles of law
2. To guide and encourage local efforts
3. To provide remedies for mischief arising in the local sphere, but extending, or liable to extend beyond the boundaries of a single province.

Education, which was originally in the State List, was subsequently transferred to the Concurrent List by means of a Constitutional amendment in 1976. Entry 25 of the Concurrent List reads as follows: "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." The exclusion of entries 63–66 from the Concurrent List is immaterial for the purposes of this document.

Purpose and Implication of the Transfer of Education from State list to Concurrent list

The significance of the 1976 amendment and its implications are discussed in the National Education Policy of 1986 and 1992. The Policy clearly refers to the 'substantive, financial and administrative' implications of the amendment.

The Policy states as follows:

- "The Union Government would accept a larger responsibility to reinforce the national and integrative character of education, to maintain quality and standards (including those of the teaching profession at all levels), to study and monitor the educational requirements of the country as a whole in regard to manpower for development, to cater to the needs of research and advanced study, to look after the international aspects of education, culture and Human Resource Development and, in general, to promote excellence at all levels of the educational pyramid throughout the country." Therefore, clearly, the Department of Education (Government of India) envisaged standard-setting by the Centre as one of the outcomes of this amendment.

Interestingly, such an argument was even made at the time of drafting the Constitution, where Mr Frank Anthony strongly advocated for Central control over elementary education in order to build a strong uniform cohesive policy on education:

- "I feel that my proposal for education throughout the country should be controlled from the Centre will have to approval and endorsement of eminent educationists, men of vision and of men with statesmanship. What is happening today? On the threshold of independence (I cannot help saying it) certain provinces are running riot in the educational field. Provinces are implementing not only divergent but often directly opposing policies. And it is axiomatic that a uniform, synthesised, planned education system is the greatest force to ensure national solidarity and national integration. Equally, divergent, fissiparous, opposing educational policies will be the greatest force for disintegration and the disruption of this country."

It may be inferred from the 1976 transfer from the State List to the Concurrent List had a specific purpose and significance. It created an avenue for the Centre's intervention in the field of elementary education.

COUNTERING THE DEFEAT OF THE CONSTITUTIONAL AMENDMENT OF 1976

Having emphasised upon the purpose of this amendment, a question arises as to the legal tools that are available to the Centre for standard-setting, through which basic norms on FCE can be enforced in States. The only legally enforceable tool of standard-setting that is available to the Centre is that of enacting a Central legislation. Since education is in the Concurrent List, State Legislatures too have complete power to legislate on education.

This power of the States is subject to Article 254(2) of the Constitution, *i.e.,* in the event that the States enact a law, the provisions of the State law should not conflict with those of the Central law on the same subject. Where there is no Central law on a particular subject in the Concurrent List, the State Legislature is competent to legislate in that field. Till date there has been no Central law on elementary education. Jammu and Kashmir, Meghalaya, Madhya Pradesh, Andhra Pradesh, Punjab, Sikkim, Delhi, Rajasthan, Kerala, Tamil Nadu, Karnataka, Bihar, Himachal Pradesh and West Bengal have enacted laws on the subject of elementary education within their respective States.

In addition to State level legislations, between 1996 and 2005, several draft Central Bills on Right to Education, albeit with different names, have been debated and discussed at the national level. The latest effort in 2005–2006 has been abandoned by the Centre and the Centre has instead passed the buck on to the States. However, the Centre has been magnanimous enough to circulate the 2005 Bill as a Model Bill 2006 for States to emulate. It is important to decry this development as a complete eye-wash and legislative fraudulence since this Model Right to Education Bill has no legal value whatsoever.

The Model Bill is not only unenforceable but also does not affect the legality of the existing State laws. The farce of terming the Right to Education Bill, 2005 as a Model Bill is evidenced by the fact that even after it was circulated amongst all the States; the Minister for Education from Maharashtra stated that ration cards of parents of out-of-school children would be cancelled. This is despite the fact that the socalled Model Bill clearly envisages only one punitive measure for compelling attendance, which is mandatory community service by parents.

In complete contrast to the unenforceable 'model' Bill, legally enforceable model rules have been adopted by the Centre in other branches of law. For example, under the Industrial Employment (Standing Orders) Act, 1946, the Centre has incorporated several Model Standing Orders that have the force of statutory orders which cannot be derogated. Similarly, under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006, the Central Government's Model Juvenile Justice (Care and Protection of Children) Rules, 2002 will acquire legal enforceability (which they did not have prior to the 2006 amendment) if adopted by the Parliament.

Unless a Central law is enacted governing FCE, the entire purpose of transferring education from the State List to the Concurrent List through the

1976 Constitutional amendment would be defeated. Moreover, the idea of 'partnership' and standard setting that is envisaged by the current National Policy on Education would also be defeated in the absence of a Central Law. It is important to develop a Central law in such a manner that it balances the two-fold purposes of standard-setting and Centre-State partnership as envisaged in the Indian Education Policy.

True partnership would be possible only where the Central law gives adequate flexibility to States to develop and incorporate innovations into the law without diluting core minimum standards. This flexibility is also important because under the Constitution, after the 73rd and 74th Amendment, the Panchayat Raj Institution and the urban local self-government bodies have also been given importance in the context of education.

The Central core minimum standards should be such that it enables need-based localised interventions. For example, Karnataka has taken the progressive measure of developing delegated legislation to institutionalise community participatory methods of monitoring and developing schools in rural areas within the existing Panchayat Raj Institutional framework. This has been done by constituting School Development and Monitoring Committees at the school level. Similarly, in Andhra Pradesh, novel experiments have been initiated drawing linkages between child labour and education.

Such processes should be encouraged and permitted within the overall framework of the Central law and the latter should not operate as a bar against such regional innovations. Therefore, the Central law should merely lay down core norms, standards and systems of accountability that are required to be adhered to by all States. These can best be accommodated through a skeletal Central legislation.

In order to supplement the skeletal legislation, the Central Act may provide for the enactment of Model Rules that have statutory force, which would be binding on States in the event of State inaction with respect to delegated legislation. In enacting such a skeletal legislation, the limitations of the law should be kept in mind and change should be progressively brought about.

The law should also make provisions for institutionalising its periodic review with a view to facilitating progressive changes that address its own lacunae. It is amply clear that in order to ensure that there is a uniform standard for elementary education across all States, the Centre should direct its efforts at enacting a skeletal umbrella legislation which follows the rights-based approach described earlier.

6

Children's Right Protection under Fundamental Rights

There is wide de script ion about fundamental rights in part III of our constitution regarding children. Fundamental rights are limitations upon all the powers of the Government, Executive as well as Legislative and they are essential to the preservation of public and private rights, notwithstanding the representative character of political institutions. The rights are regarded as fundamental because they are most essential for the individual for the development of his full intellectual, moral and spiritual potentialities. The negation of these rights will keep the individuals personality underdeveloped. The Fundamental Rights in Indian Constitution guarantees some fundamental rights only to citizens of India while the others guaranteed to any persons, within which the fundamental rights of the children are also implicitly included. The children have rights to enjoy all the fundamental rights which are guaranteed to the citizens of India. There are also some fundamental rights expressly provided for children and some other fundamental rights which are also applicable for children. Article 14 guarantees equality before law and equal protection of laws to all persons within the territory of India.

Article 15: Prohibits discrimination on the ground of religion, race, caste, sex, class or place of birth or any of them. But Article 15(3) enables the state to make provisions in its law for giving favourable treatment to make special treatment to children and women. Though, no ground is mentioned, preferential treatment is permitted on consideration of inherent weakness of children, Article 15(3) serves as an exception to Article 15(1) and 15(2), Article 15 in general

prohibits the discrimination on the ground of religion, race, caste, class, sex or place of birth. H.M.Seervai is of the view that since Article 15(1) does not make age a prohibited ground of discrimination the reference to children in Article 15(3) appears to be pointless.

It is submitted that specific positive provisions serves the purpose of avoiding any controversy and demonstrates the concern, however inadequate of the framers of the constitution that state shall strive to promote the welfare of the people including children. Our solicitude for children and repulsion for the exploitation of children of tender age impelled our founding fathers to make a specific mention of them; the state can make law for the welfare of children, giving them preferential treatment over other persons in the society.

It further proclaims that the state shall, in particular, direct its policy towards securing that the health and strength of the tender age of children. It further enjoins that childhood and youth are to be protected against exploitation against moral and material abandonment. Apart from that the Constitution also endeavours to provide free and compulsory education for all children until they complete the age of fourteen year.

Article 21 says-no person shall be deprived of his life or personal liberty except according to the procedure by law: This provision of the constitution is very important for human race and humanity. In-Francis Coralie Mullin v. Union Territory of Delhi-Hon'ble Apex Court has interpreted, that right to live includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing with fellow human beings. Virtually right to livelihood received protective umbrella under canopy of Articles 14 and 21 of the Constitution of India. The basic facilities enumerated are the minimum requirements which must exist in order to enable a person to live with human dignity and no government has right to take any such action which will deprive a person of the enjoyment of the basic essentials.

Article 21A: The Constitution (86th Amendment) Act 2002 has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that-the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine-. Indian civilization recognizes education as one of the pious obligation of the human society. To establish and administer educational institution is considered a religious and charitable object. Education in India has never been a commodity for sale. Looking at the economic front even after six decades of achieving independence, 30% of the population is living below poverty line and bulk of the remaining population is struggling for existence under poverty conditions. The fundamental rights cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individuality dignity.

In Unni Krishnan, J.P. and others v. State of A.P. and others the Supreme Court declared that the right to education for the children of the age 6 to 14 is a

fundamental right. Even after this, there was no improvement. A demand was raised from all corners to make education a fundamental right. Consequently, the government enacted Constitution (86th amendment) Act, 2002 which would make education a fundamental right. The state have a duty to impart education and particularly primary education having regard to the fact that the same is the fundamental right within the meaning of Article 21A, but as the Government has limited resources nor the ability to provide for the same it appears that the legislature has permitted the societies to institute educational institutions from the savings made from the unaided institutions.

Article 23 of the Constitution prohibits traffic in human beings, beggar and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most valuable section of the society. It is a known fact that many children are exploited even by the parents who allow their exploitation because of their poverty. And in the absence of parents their exploitation by close relatives still deeper. They are deprived of education, made to do all sorts of work injurious to their health and personality. In rural areas, children are pledged by destitute parents to the landlords as full-time servant or part-time worker to look after both domestic and agricultural operation. In urban areas, the exploitation of children on myriad form exists such as helpers to artisans and skilled workers and also as domestic servants. Millions of children are exploited in violation of this fundamental right and no adequate legislature and administrative measures have been taken by the state.

The word-beggar-has been explained by the Hon'ble Apex Court in-People Union for Democratic Rights v. Union of India-and held that labour or service for remuneration which is less that minimum wage, amounts to violation of article 23. Even inadequate payment for the work rendered by the child amount to beggar or forced labour. Sometimes, the children of tender age are enticed for the flesh trade, thus all in violation of Article 23.

Article 24 says that-No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment-.

In the context prevailing poverty in the country it would be extremely difficult to implement the above provision. Employment of children below a particular age is prohibited so also hazardous or injurious work may be prohibited to children taking into consideration their physical structure. This article does not create an absolute bar to the employment of children below the age of 14 years. Moreover, it does not prohibit their employment altogether. The employment is prohibited only in factories or mine or in any other hazardous occupation. This provision raises a question as to what are the 'hazardous' employment. While interpreting the nature and extent of hazardous employment Hon'ble Apex Court in-labour working on Salal Project v. State of J.K-has held that child below the age of 14 years cannot be employed and allowed to work in construction process. This Article however does not prohibit their employment in any innocent or

harmless job or work. In a landmark judgment in 'M. C. Mehta v. State of Tamil Nadu', the Apex Court has held that children below the age of 14 years cannot be employed in any hazardous industry, mines, or other works and has laid down exhaustive guidelines how the state authorities should protect economic, social and humanitarian rights of millions of children, working illegally in public and private sections. The matter was brought before the court by a public spirited lawyer Mr. M. C. Mehta by way of public litigation under art 32 of the constitution. He told the court about the plight of the children engaged in Sivakasi Cracker Factories.

Thus from the study of above articles it is quite clear that children have been given full protection under fundamental rights.

THE CHILD MARRIAGE RESTRIANT ACT, 1929

Child Marriage Restraint Act 1929 popularly known as the Sarda Act after its sponsor Rai Sahib Harbilas Sarda to the British India Legislature in India was passed on 28 September 1929, fixed the age of marriage for girls at 14 years and boys at 18 years. It came into effect six months later on April 1, 1930 and it applies to all of British India, not just to Hindus. It was a result of social reform movement in India. The legislation was passed by the British Indian Government.

SIGNIFICANCE

It was the first social reform issue which was taken up by the organized women in India. They played a major role in the development of argument and actively used the device of political petition and in the process contributed in the field of politics.

The various organized women associations got the opportunity of playing independent political role when the cautious British India government, under the pressure of the world opinion, the social reformist in India and Nationalist freedom fighters, referred the Sharda's Bill (Hindu Child Marriage Bill) to a select committee of ten headed by Sir Moropant Vishwanath Joshi.

The All India Women's Conference, Women's India Association and National Council of Women in India, through their members developed and articulated the argument in favour of raising of the age for marriage and consent before the Joshi Committee. Even the Muslim women represented to the Joshi Committee. The Muslim women presented their views in favour of raising the age limit of marriage even when they knew that they would face opposition from Muslim Ulemas. Pro-reform politicians, such as Motilal Nehru, were caught off guard when the organized women's association met with leaders to ask for their support in the bill. The all-India women's association pressured politicians for their support in the bill, standing outside their delegations holding placards and shouting slogans such as 'if you oppose Sarda's bill, the world will laugh at you'. It was also this group who pushed for, and eventually succeeded in having Gandhi address the evils of child marriage in his speeches.

Victory for the bill can be credited to the women's association, who presented the act as a means for India to demonstrate it's commitment to modernity. Women in India were now challenging the double standards set in place by ancient *shastras*. Declaring they would begin to make their own laws, free of male influence, the women's organization brought liberal feminism to a forefront.

Although this is a victory for the women's movement in India, the act itself was a complete failure. In the two years and five months it was an active bill, there were 473 prosecutions, of which only 167 were successful. The list goes on with 207 acquittals, with 98 cases still pending during August 1932. Out of the 167 successful prosecutions, only 17 or so did either all of or part of their sentence. The majority of cases were in Punjab and the United Provinces.

A 1931 census was available to the public during the summer of 1933 in order to give a status report of how the bill was doing:

- "The number of wives under fifteen had increased from 8.5 million to 12 million, but the number of husbands under the age of fifteen had gone from 3 to more than 5 million. The number of wives under the age of five had quadrupled (originally the numbers were about 218,500, which then shot up to 802,200). The percentage of widowed children had decreased from about 400,000 to about 320,000."

Though these numbers are startling, during the six months between when it was passed and when it became an active bill, it's suggested that only about three million girls and two million boys were forced into a child marriage; the largest per cent of these marriages were between Muslim children. The bill's census report, however, shows that the law reached and affected the masses, even if the numbers are very slight. However, the Act remained a dead letter during the colonial period of British rule in India.

THE CHILD MARRIAGE RESTRAINT ACT, 1929

Section 1: Short title extent and commencement:

(1) This Act may be called the Child Marriage Restraint Act, (1929).
(2) It extends to the whole of India (except the State of Jammu and Kashmir) and it applies also to all citizen of India without and beyond India.
(3) It shall come into force on the 1st day of April, 1930.

Section 2: Definitions: In this Act, unless there is any-thing repugnant in the subject or context:

(a) "Child" means a person who, if a male, has not completed twenty one year of age, and if a female, has not completed eighteen years of age;
(b) "Child marriage" means a marriage to which either of the contracting parties is a child;
(c) "Contracting party" to a marriage means either of the parties whose marriage is (or is about to be) thereby solemnised and
(d) "Minor" means a person of either sex who is under eighteen years of age.

Section 3: Punishment for male adult below twenty one years of age marrying a child—Whoever, being a male above eighteen years of age and below twenty one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

Section 4: Punishment for male adult above twenty one years of age marrying a child— Whoever, being a male above twenty one years of age, contracts a child marriage shall be punishable with simple imprison- ment which may extend to three months and shall also be liable to fine.

Section 5: Punishment for solemnising a child marriage— (1) Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine unless he proves that he had reason to believe that the marriage was not a child -marriage.

Section 6: Punishment for parent or guardian concerned in a child marriage:

(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine. Provided no woman shall be punishable with imprisonment.

(2) For the purpose of this section, it shall be presumed unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent marriage from being solemnised.

Section 7: Offences to be cognizable for certain purposes. The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this Act as if they were cognizable offences:

(a) For the purpose of investigation of such offences: and

(b) For the purposes of matters other than (i) matters referred to in Section 42 of that Code and (ii) the arrest of a person without a warrant or without an order of a Magistrate.

Section 8: Jurisdiction under this Act-Notwithstanding anything contained in Section 190 of the (Code of Criminal Procedure, 1973) (2 of 1974), no Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

Section 9: Mode of taking cognizance of offences—No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

Section 10: Preliminary enquiries into offences—Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall unless

it dismisses the complaint under Section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) either itself make an enquiry under Section 202 of that Code or direct a Magistrate subordinate to it to make such enquiry.

Section 11: Repealed by the Child Marriage Restraint (Amendment) Act, 1949 (41 of 1949), Section 7.

Section 12: Power to issue injunction prohibiting marriage in contravention of this Act:

(1) Notwithstanding anything to the contrary contained in this Act the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in Sections 3,4,5 and 6 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the Court shall afford the applicant an early, opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this Section disobeys, such injunction shall be punished with imprisonment or either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

The Child Marriage Restrain Act, 1929: Commentary

To eradicate the evil of child marriage, the Child Marriage Restraint Act was passed in 1929. The object is to eliminate the special evil which had the potentialities of dangers to the life and health of a female child, who could not withstand the stress and strains of married life and to avoid early deaths of such minor mothers.

It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India within and beyond India.

It came into force from the Ist day of April, 1930:

(a) "Child" means a person who, if a male. is under twenty one years of age, and if a female, is under eighteen years of age

(b) "Child marriage" means a marriage to which either the contracting parties is a child;

(c) "Contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnised;

(d) "Minor" means a person of either sex who is under eighteen years of age.

The penal provisions do not invalidate the fact of marriage nor do the penal provisions apply to a child. Its section 3 provides that, who ever, being a male above eighteen years of age and below twenty one, contracts a child marriage shall be punished with simple imprisonment, which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

Whoever, being male above twenty one years of age contracts a child marriage shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine.

In the Indian social set-up a male adult can be imputed greater sense of foreseeability of the consequences of this social evil of child marriage and in this context the punishment prescribed by the law to deter them is too mild in effect specially in this era of social justice when penology has become more reformative than deterrent.

Whoever performs, conducts or directs any child marriage shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine, unless he proves that he had reasons to believe that the marriage was not a child marriage (section 5).

Though their liability under the criminal law is that of the abetters, but it should not preclude their direct responsibility for the offence and suitable amendment should be made in the Act to punish them as principal offenders. If this social evil is to be eradicated the role of such intermediaries should be brought to book with deterrent punishment. The present law is lukewarm in this regard.

Consummation of "Gauna" is not part of marriage ceremony. The marriage being complete before the consummation, a person may be convicted under this Act, though consummation has not taken place.

Section 6 provides that where a minor contracts a child marriage any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine.

Provided that no woman shall be punishable with imprisonment. Under this section, it is presumed that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised. Minors are incapable of entering into any valid contract and marriage under the Hindu law is not a contract. So the words "where a minor contracts a child marriage" in section 6(l) ought not to be literally interpreted as per its dictionary meaning but ought to be understood as meaning "where a child marriage" takes place or where a minor enters into a child marriage.

The child bride or the child bridegroom are mere passive actors in such a marriage and the active participants are the parents, guardians or the custodians of such children. As the law is not mindful about the active culpability of these

persons, this Act has not yielded the desired results. The imposition of fine only lacks the deterrent effect which is needed most in such cases. Further this Act does not take into account the performance of preparatory ceremonies of such a marriage like engagements, *etc.* Some provision should be made in this Act to prevent and punish such actions also if they culminate in child marriage.

It is note worthy that a contravention of the provisions of the Act does not render the marriage invalid as the validity of the marriage is a subject beyond the scope of the Act. A marriage under the Hindu Law by a minor male is valid even though the marriage was not brought about on his behalf by the natural or lawful guardian.

The marriage under the Hindu Law is a sacrament and not a contract. The minority of an individual can operate as a bar to his or her incurring contractual obligations, but it cannot be an impediment in the matter of performing a necessary "Sanskara". A minor's marriage without the consent of the guardian can be held to be valid on the application of the doctrine of factum valet.

Section 7 provides that the Code of Criminal Procedure, 1973 shall apply to offences under the Act as if they were cognizable offence for the purpose of investigation.

Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1973, no Court other than a Metropolitan Magistrate or a Judicial Magistrate of the First Class can take cognizance of, or try any offence under this Act.

- *Limitation*: No Court can take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed. This further dilutes the efficacy of the law.
- *Injunction*: Section 12 empowers the Magistrate to issue injunction prohibiting marriage in contravention of this Act. The Court may issue an injunction against any of the persons mentioned in Section 3, 4, 5 and 6 of this Act prohibiting such marriage.

This injunction shall not be issued against any person unless the court has previously given notice thereof to the person concerned and has afforded him an opportunity to show cause against the issue of the injunction. This requirement of the law may defeat the purpose of social justice where there is imperative need of judicial intervention to save the welfare and interest of the child. No doubt frivolous petitions by interested persons may sometimes result in dislocation of arrangements in genuine cases and such victims may also face social humiliation but this can be safeguarded by making deterrent provisions in the Act for those who move such frivolous petitions.

The Court may either of its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

When such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

THE INDIAN CHILD WELFARE ACT OF 1978

In 1978, Congress passed the Indian Child Welfare Act. It was designed to remedy a shameful situation that existed for many years: the wholesale removal of reservation Indian children by state welfare agencies and state courts. An investigation was done in the mid-1970's by Congress of this national disgrace. It was discovered that nearly one-third of reservation Indian children had been separated from their families and placed in adoptive homes, in foster care or in institutions.

Most of the residential homes were non-Indian. The evidence also revealed that many state social workers and judges were either ignorant of Indian culture and tradition or were prejudiced in their attitudes. Many of the removals were because the family was Indian and poor. The problem had reached epidemic proportions. In one state, for example, the adoption rate of Indian children was eight times that of non-Indian children. As a result entire reservations were being depleted of their youth.

The stated purpose of the ICWA is "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." The constitutionality of the ICWA was upheld in the case of Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S., 30(1989).

The ICWA applies to child custody proceedings in state courts involving Indian children as defined in 25 U.S.C. Sec. 1903. These proceedings mean and include foster care placements, preadoptive placements and adoptive placements. The act does not apply if the child is not a tribal member or not eligible for enrolment or if the tribe is not recognized by the federal qovernment. It also does not apply to child custody disputes arising out of divorces or separation proceedings where custody is awarded to one of the parents. It further does not apply to juvenile delinquency proceedings unless the proceeding results in the termination of a parental relationship. The ICWA even applies to voluntary placements where both parents consent to adoption or foster care. The act was intended to protect parents and tribes so if a tribe asserts its rights, the requirements of the act must be followed. The consent must be in writing, recorded before a judge and the judge must certify that the terms and consequences of the consent were explained so that the parent understood. Consent is invalid if given prior to or within ten days after the child's birth. Moreover, the consent may be withdrawn at any time prior to final entry of an adoption decree. Once final, it cannot be withdrawn except on proof of duress or fraud filed within two years of the decree. The ICWA requires that:

1. If the child resides or is domiciled on the reservation or has been made a ward of the tribal court, it has exclusive jurisdiction. If the child resides off the reservation, the state and tribal courts have concurrent jurisdiction.
2. If the child resides off the reservation and a custody proceeding is initiated in a state court, it must notify the child's tribe of its right to intervene.

3. If the tribe or either parent requests it, the state court must transfer the case to the tribal court unless a parent objects or there exists "good cause" not to.
4. If the case remains in state court, the tribe has a right to intervene at any point in the proceeding and-the state court can not terminate parental rights without proof "beyond a reasonable doubt" that continued custody by the child's family is likely to result in serious emotional or physical damage to the child.
5. If the child's parent is indigent, the parent has a right to a court-appointed attorney, and separate counsel should be appointed for the child if it is in the child's best interest.
6. Before the state court can place an Indian child in a non-Indian adoptive home, the state must give sequential placement preference to (a) the child's extended family, (b) other members of the child's tribe, and (c) other Indian families, unless "good cause" exists not to. A similar preference exists to foster care placement, with Indian foster homes and tribal institutions.
7. If the state court proceeding violates the ICWA, it is subject to invalidation upon petition of the parent, Indian custodian or tribe.
8. Tribal court custody decisions are entitled to the same "full faith and credit" as state court custody decisions.
9. The state court must keep accurate records regarding Indian child placement and make them available to the federal government and the tribe.
10. When an adopted child becomes eighteen years old, the child must be permitted to discover the biological parents' names and their tribal affiliation.

Notice

Pursuant to Section 1912 of the Act in any state custody proceeding involving an Indian child, the party seeking foster placement of or termination of parental rights, shall notify the parent or Indian custodian and the child's tribe, by registered mail with return receipt requested, of the proceedings and their right to intervene. Where identity or location is unknown, notice shall be given to the Secretary of the Interior, who shall have fifteen days after receipt to notify the parent or Indian custodian and the tribe. The proceeding cannot go forward until ten days after receipt of notice by the parent or Indian custodian and tribe. The parent, Indian custodian or tribe can request: an additional twenty days to prepare for the hearing.

Intervention

In any state court proceeding involving foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian or tribe shall have the right to intervene at any stage of the proceeding. Intervention is defined as the act by which a third party is permitted by the court to make himself a party in a suit pending between other persons.

Transfer

Under Section 1911(b) in the same kind of proceedings as above, for an Indian child not residing or domiciled within the reservation, either parent,, an Indian custodian or the tribe can petition for transfer of jurisdiction of the case to the tribal court. Domicile is defined in BLD pp 572 as that place where a person has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.

The state court shall transfer unless:

(1) Either parent objects; or
(2) The tribal court declines to accept the
(3) Good cause is shown to the contrary:
    (a) It exists if the child's tribe does not have a tribal court;
    (b) It exists if any of the following circumstances exist:
        (i) The proceeding was at an advanced stage when the petition was received and the petitioner did not file promptly after receiving notice;
        (ii) The child is over twelve years old and objects to the transfer;
        (iii) Evidence could not be adequately presented to the tribal court without undue hardship to the parties or witnesses;
        (iv) Parents of a child over five years of age are not available and the child has little or no contact with the tribe or tribal members;
    (c) Socioeconomic conditions of the perceived adequacy of tribal or BIA social services or judicial systems may not be considered in a determination of good cause; and
    (d) The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

STATE COURT PROCEEDINGS

Where there is a belief that a child involved in a state court custody proceeding is an Indian, the court shall seek verification either from the child's tribe or the Bureau of Indian Affairs (BIA). In a voluntary proceeding, where the parent seeks anonymity, the inquiry shall be made without publicly disclosing identity. Where the tribe responds that the child or parent is not a member or eligible for enrolment, that is conclusive. Absent a tribal determination, the BIA's determination is conclusive. The Act mandates a tribal right of notice end intervention in involuntary but not voluntary proceedings, unless the parent or Indian custodian is prohibited from regaining custody. It specifically directs state courts to respect parental requests for confidentiality. As a result the recommended guidelines suggest that a court may want to seek verification from the BIA where a parent has requested anonymity. If a child is eligible for enrolment in more then one tribe notification shall be sent to each tribe. In addition to being informed of the right to intervene, the notice shall also inform:

(1) That counsel will be appointed to indigent parents or Indian custodians,
(2) That twenty (20) days will be allowed to prepare for the hearing,
(3) Of the right to petition to transfer the proceedings to the tribal court,
(4) Of the legal consequences of the adjudication,
(5) That the proceeding is confidential, and
(6) Of the location, mailing address end telephone number of the court.

Whenever emergency removal is necessary the agency shall inquire immediately as to the residence or domicile of the child. The petition for continued emergency physical custody shall include an affidavit containing the residence or domicile of the child, tribal affiliation of the child end parents, circumstances leading to the action end any specific actions taken to assist the parents or Indian custodians in returning the child to their custody. If the child is not returned or transferred to the tribe, the agency must promptly commence e state court proceeding for foster care placement. Where a child resides or is domiciled on the reservation, the emergency placement must terminate as soon as the imminent danger or harm no longer exists or as soon as the tribe exercises jurisdiction-whichever is earlier. Temporary emergency custody shall not extend beyond 90 days, absent extraordinary circumstances, supported by clear and convincing evidence end testimony of at least, a qualified expert witness.

Where a child has been improperly removed or retained after a visit end the petitioner is responsible, the court shall immediately stay the proceedings until e determination is made. If the petitioner is found responsible, the child shall be immediately returned to his or her parents or the Indian custodian.

Adjudication of Involuntary Proceedings

All parties have the right to examine reports or documents filed with the court end no decision shall be based on any report or document not filed. It must be demonstrated that prior to commencement of the proceeding active efforts were made to alleviate the need for removal. Prevailing social and cultural conditions are to be taken into account and tribal family and social service resources are to be utilized. Orders for foster care placement must be based upon clear and convincing evidence, while termination of parental rights must be supported by evidence beyond a reasonable doubt. Both must include testimony of at least one expert witness that continued custody with the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. All evidence must show a causal relationship between the conditions and the damage.

Qualified expert witnesses include:

1. A member of the child's tribe knowledgeable in tribal customs.
2. A lay expert having substantial experience with Indians and extensive knowledge of social and cultural standards and child-rearing practices of the child's tribe.
3. A professional person having substantial education and experience in his or her specialty.

The court or any party may request the assistance of the child's tribe or the BIA in locating experts.

Adjudication of Voluntary Proceeding

Consent for termination of parental rights or adoption must be in writing and recorded before a judge or magistrate of competent jurisdiction. It must be certified that the terms and consequences were explained and understood. Where confidentiality is requested, this need not be done in open court. The document shall include the name and birth date of the child, the child's tribe, any identification numbers and the name and address of the consenting parent or Indian custodian. Foster care placements shall also include who arranged it or the name and address of the prospective foster family.

Terminations of parental rights or adoptions also must include the name and address of who arranged it. Withdrawal of consent to foster care placement can be done at any time by filing an instrument in the court where consent was executed. Withdrawal of consent to terminate parental rights or adoption may be withdrawn prior to the entry of a final decree in the court where consent was executed. The clerk of court shall immediately notify the party with placement and that party shall insure the return of the child to the parent or Indian custodian as soon as practical.

Dispositions

In adoptive placements preference is to be given, absent good cause to the contrary, to (1) the child's extended family, (2) other members of the child's tribe; or (3) other Indian families. The child's tribe and family are to be notified of this preference unless a consenting parent desires anonymity. In pre-adoptive and foster care placements, similar preferences are requited with the inclusion of licensed Indian foster homes and institutions approved by the tribe. It also requires that the child be placed in the least restrictive setting which most approximates a family that can meet special needs and which is in reasonable proximity to his or her home.

In considering all placements a determination of good cause not to follow the order of preference set out above shall be based upon the following, (1) the request of the biological parents; (2) the request of the child if of sufficient age; (3) extraordinary physical or emotional needs of the child as established by expert testimony; and (4) unavailability of suitable families. The burden is on the party urging that the preferences not be followed.

Whenever a previous adoption fails, a biological parent may petition for the return of the child unless such return would not be in the best interests of the child. In addition, when an Indian child is being removed from a foster home for further foster care placement, pre-adoptive or adoptive placement, all provisions of the Act apply.

Post-trial Rights

Whenever consent was obtained by fraud or duress, the consenting parent may petition to vacate the decree and revoke the consent within two years after

a final decree or a longer period permitted by state law. Upon filing, notice shall be given to all parties and a hearing held. If fraud or duress is found, the decree must be vacated, consent ordered revoked and the child returned to the parent.

An Indian who was adopted may, upon reaching the age of majority, apply to be informed of his or her tribal affiliation, who the biological parents are and any information involving tribal rights. If state law prohibits disclosure, assistance of the BIA shall be sought to help establish enrolment without breaching confidentiality. Whenever a final decree of adoption has been set aside or an adoptive parent consents to terminate his or her parental rights or where an Indian child is removed from a foster care home or an institution for further foster care, pre-adoptive or adoptive placement, notice shall be given to the biological parents or Indian custodian. It shall inform them of their right to petition for the return of custody. Notice may be waived in writing and can be revoked in writing; however, any proceeding occurring prior to the revocation will not be affected.

The state shall establish a single location where all records of every foster care placement, preadoptive placement and adoptive placement of Indian children will be available within seven days of a request by a child's tribe or the Secretary of the Interior. At a minimum the records shall contain a copy of the petition or complaint and a complete record of the placement determination.

CHILD LAW AND CHILD RIGHTS

Child law and child rights encompass legal frameworks and principles aimed at safeguarding the rights and welfare of children. These laws are designed to protect children from harm, ensure their basic needs are met, and promote their overall well-being. Key areas of child law include child protection, education, healthcare, and juvenile justice. Child rights are grounded in international agreements such as the United Nations Convention on the Rights of the Child, which outlines fundamental rights such as the right to education, healthcare, and protection from exploitation and abuse. Child law also addresses issues such as child custody, adoption, and child labor, providing legal protections and mechanisms to ensure children's rights are upheld. Additionally, child law often incorporates principles of child participation, recognizing children as active agents in their own lives and decision-making processes. Through legal advocacy, enforcement, and public policy initiatives, child law seeks to create an environment where children can grow, develop, and thrive in safety and dignity. The book on Child Law and Child Rights provides a comprehensive overview of legal frameworks and principles aimed at safeguarding the rights and welfare of children, covering areas such as child protection, education, healthcare, family law, and juvenile justice.

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