



Children in India and their Rights

Dr. Savita Bhakhry



NATIONAL HUMAN RIGHTS COMMISSION, INDIA

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Manav Adhikar Bhawan, C Block, GPO Complex, INA
New Delhi -110 023, India

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Type Setting:
Jyoti Suyal



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First Edition : 2006
First Reprint : 2008
Second Reprint : 2012
Revised Edition : 2016

The views expressed by the author in this publication
are not necessarily the views of the NHRC.

Printed by : Royal Press, B-82, Okhla Industrial area, Phase-I, New Delhi-110 020.



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Justice Shri H. L. Dattu

Chairperson, NHRC

PREFACE

In India, children below the age of 18 years, account for almost 472 million of its population. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for them. The Directive Principles of State Policy specifically guide the State that children of tender age are not abused and they are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. Furthermore, childhood is to be protected from exploitation and moral and material abandonment.


In December 1992, India ratified the Convention on the Rights of the Child. This Convention brings together children's human rights articulated in other international instruments. The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognizing children's rights in this way, it firmly sets the focus on the whole child, meaning thereby that a basic quality of life should be the right of all children, rather than a privilege enjoyed by a few.

In September 2000, India joined 191 other States at the UN Millennium Summit in accepting the challenge of meeting the Millennium Development Goals by 2015, many of which had a direct impact on the well being of children. In April 2013, India adopted a new National Policy for Children thereby affirming its commitment to rights based approach for children. It has now begun work on the 17 Sustainable Development Goals and its 169 targets to wipe out poverty, hunger, inequality and other social, economic and environmental ills by 2030.

Despite these developments and progressive steps being taken, children suffer from poverty, homelessness, exploitation, neglect, preventable diseases, unequal access to education and justice that do not recognize their special needs. Girl child today is more at risk than ever before. Inadequate public investments are a major factor accounting for the poor reach and quality of basic social services like health, education, nutrition, water and sanitation.

“Children in India and Their Rights”, a revised edition, written by Dr. Savita Bhakhry, Joint Director (Research), NHRC, makes an attempt to look into significant children’s issues including the role played by the National Human Rights Commission, India in protecting and promoting the rights of children. In this endeavour she has been ably guided by Dr. S. N. Mohanty, Secretary General and Shri J. S. Kochher, Joint Secretary (Training & Research), NHRC.

New Delhi
December 10, 2016


(H. L. Dattu)

From the Desk of the Secretary General



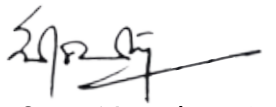
Dr. Satya N. Mohanty
Secretary General, NHRC

Spreading human rights literacy among various sections of society and promoting awareness of the safeguards available for the protection of these rights through publications, seminars and other available means is one of the main functions of the NHRC, as per Section 12(h) of the Protection of Human Rights Act, 1993 as amended in 2006. The Commission has been serving this purpose within its best means ever since it came into existence in October 1993.

The first print of "Children in India and Their Rights" was brought out by the Commission in 2006. Considering the enormous demand for this book and the overall developments that had taken place for children in the country at the global level since 2006, the NHRC thought it apt to bring out the revised edition. It consists of milestones at the national and international levels, critical analysis of the situation of children in India, role of NHRC in protecting and promoting children's rights and way forward.

While bringing out this revised edition, the Commission is optimistic that it will enlighten the readers on a range of issues concerning children and their rights. I place on record my appreciation for Dr. Savita Bhakhry, Joint Director (Research), NHRC for undertaking this task along with her other assignments under the supervision of Shri J. S. Kochher, Joint Secretary (Training and Research), NHRC.

New Delhi
December 10, 2016



(Dr. Satya N. Mohanty)



Abbreviations

AAV	:	Antyodaya Anna Yojana
ANM	:	Auxiliary Nurse Midwife
ART	:	Anti-Retroviral Treatment
ASHA	:	Accredited Social Health Activist
AWCs	:	Anganwadi Centres
AWWs	:	Anganwadi Workers
BPL	:	Below Poverty Line
BSY	:	Balika Samridhhi Yojana
BBBP	:	Beti Bachao Beti Padhao
CARA	:	Central Adoption Resource Agency
CEDAW	:	Convention on the Elimination of All Forms of Discrimination against Women
CFNHRI	:	Commonwealth Forum of National Human Rights Institutions
CHCs	:	Community Health Centres
CIF	:	CHILDLINE India Foundation
CMRA	:	Child Marriage Restraint Act, 1929
CRC	:	Convention on the Rights of the Child
CSR	:	Child Sex Ratio
CSSM	:	Child Survival and Safe Motherhood
CSWB	:	Central Social Welfare Board
CWCs	:	Child Welfare Committees
DPEP	:	District Primary Education Programme
DWCD	:	Department of Women & Child Development

DWCRA	:	Development of Women and Children in Rural Areas
ECCE	:	Early Childhood Care and Education
FRUs	:	First Referral Units
Gol	:	Government of India
Hague Convention 1993	:	Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993
HRE	:	Human Rights Education
I/C	:	In-charge
ICC	:	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICDS	:	Integrated Child Development Services
ICPD	:	International Conference on Population and Development
ICPS	:	Integrated Child Protection Scheme
ICTCs	:	Integrated Counselling and Testing Centres
IDMI	:	Infrastructure Development in Minority Institutions
IEC	:	Information, Education and Communication
IGMSY	:	Indira Gandhi Matritava Sahyog Yojana
ILO	:	International Labour Organization
IMR	:	Infant Mortality Rate
ITPA	:	Immoral Traffic (Prevention) Act, 1956
IYC	:	International Year of the Child
JJA 1986	:	Juvenile Justice Act, 1986
JJA 2000	:	Juvenile Justice (Care and Protection of Children) Act, 2000
JJBs	:	Juvenile Justice Boards
JSY	:	Janani Suraksha Yojana
JSSK	:	Janani Shishu Suraksha Karyakram

Kg	: Kilograms
KSY	: Kishori Shakti Yojana
LHVs	: Lady Health Visitors
MCH	: Mother and Child Health
MDMS	: Mid-day Meal Scheme
MDGs	: Millennium Development Goals
MHA	: Ministry of Home Affairs
MHRD	: Ministry of Human Resource Development
MMR	: Maternal Mortality Ratio
MWCD	: Ministry of Women & Child Development
NACO	: National AIDS Control Organization
NBA	: Nirmal Bharat Abhiyan
NCERT	: National Council of Educational Research and Training
NCF	: National Crèche Fund
NCG	: National Coordination Group
NCM	: National Coordinating Mechanism
NCPCR	: National Commission for Protection of Child Rights
NFSA	: National Food Security Act, 2013
NGO/NGOs	: Non-governmental Organization/Non-governmental Organizations
NHM	: National Health Mission
NHP 1983	: National Health Policy, 1983
NHP 2002	: National Health Policy, 2002
NHRC	: National Human Rights Commission
NHRI	: National Human Rights Institutions
NPC	: National Policy for Children
NPE	: National Policy on Education

NPP	: National Population Policy
NP-NSPE	: National Programme of Nutritional Support to Primary Education
NREGS	: National Rural Employment Guarantee Scheme
NRHM	: National Rural Health Mission
NSDP	: National Skill Development Programme
NSSK	: Navjat Shishu Suraksha Karyakram
OHCHR	: Office of the High Commissioner for Human Rights
PCMA	: Prohibition of Child Marriage Act, 2006
PHCs	: Primary Health Centres
PHRA	: Protection of Human Rights Act, 1993
POA	: Programme of Action
PPP	: Public-Private Partnership
PRIs	: Panchayati Raj Institutions
PSE	: Pre-School Education
RCH	: Reproductive and Child Health
RCH-II	: Reproductive and Child Health Programme-II
RGNCs	: Rajiv Gandhi National Crèche Scheme
RGSEAG	: Rajiv Gandhi Scheme for Empowerment of Adolescent Girls
RGSEAB	: Rajiv Gandhi Scheme for Empowerment of Adolescent Boys
RKSK	: Rashtriya Kishor Swasthya Karyakram
RMNCH+A	: Reproductive, Maternal, Newborn, Child and Adolescent Health Approach
RMSA	: Rashtriya Madhyamik Shiksha Abhiyan
RRE	: Red Ribbon Express
RTE Act, 2009	: Right of Children to Free and Compulsory Education Act, 2009
SAARC	: South Asian Association for Regional Cooperation

SBA	: Swachh Bharat Abhiyaan
SABLA	: Rajiv Gandhi Scheme for Empowerment of Adolescent Girls
SCERT	: State Council of Educational Research and Training
SCPCR	: State Commissions for Protection of Child Rights
SITA	: Suppression of Immoral Traffic in Women and Girls Act, 1956
SPQEM	: Scheme for Providing Quality Education in Madrasas
SRB	: Sex Ratio at Birth
SSA	: Sarva Shiksha Abhiyan
TFR	: Total Fertility Rate
TPDS	: Targeted Public Distribution System
TSC	: Total Sanitation Campaign
UEE	: Universalization of Elementary Education
UDHR	: Universal Declaration of Human Rights
UGC	: University Grants Commission
UN	: United Nations
UNGA	: United Nations General Assembly
UNICEF	: United Nations Children's Fund
UNODC	: United Nations Office on Drugs and Crime
UPR	: Universal Periodic Review
WASH	: Water, Sanitation and Hygiene
WIFS	: Weekly Iron Folic Acid Supplementation

* * * * *

Chapter 1



Introduction

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

To dichotomize and juxtapose these theoretical models of the child-adult relation reveals fundamentally different ways of seeing and understanding the very essence of childhood and children. In this sense, childhood is not a static, objective and universal fact of human nature, but a social construction which is both culturally and historically determined. The history of Hebrews, Greeks and Romans, whose cultures had a great impact upon the Western society, bears testimony to the fact that children, by and large, were taken for granted by their parents and the patriarchal society at large. The resultant effect of all this was that they were treated as objects of intervention rather than as legal

subjects in their own right. Many labelled them as a 'problem population' whereas others reduced them to being seen as property and thus treated them as non-entities. The Roman law, for instance, provided for the *patria potestas* whereby the father was endowed with absolute power and authority over his family. It included *just vitae necisque*, the power of life and death, and a *fortiori*, of uncontrolled corporal chastisement over wife, children and other family members (Oppenlander, 1981: 386). Ancient Greeks left girls and children born with disabilities on the wild hillsides, where exposure or animals were sure to kill them, and the practice was continued routinely in Rome until Christianity became the State religion. The killing of unwanted children may have become less common in the centuries since then, but it never completely disappeared. In the given adult-child power relation, the usual cliché of childhood being a 'golden age' not only seemed to be a myth but a distant dream for majority of these children.

The French historian, Philippe Ariès, in his landmark book *Centuries of Childhood*, also claimed that 'the idea of childhood did not exist at all in earlier times', as once the 'child' moved from the biological dependence of 'infancy' it 'belonged to adult society' (Ariès, 1962: 125). According to his analysis, children were 'miniature adults' as they dressed, behaved and conversed similarly, and were engaged in the same social activities and work. And that the concept of childhood as a discrete life stage emerged in Europe between the fifteenth and eighteenth centuries as part of a process driven by two primary imperatives. First, there was an affective or 'coddling' dimension "in which the child, on account of his (sic) sweetness, simplicity and drollery, became a source of amusement and relaxation for the adult" (Ariès, 1962: 126). Second, there was an educational dimension inspired by 'churchmen or gentlemen of the robe ... moralists and pedagogues' (Ariès, 1962: 128-33). This secured control over children's innate 'depravity' and was developed through the influence of the Reformation, with its emphasis on discipline and knowledge of theology, humanities and sciences. It was consolidated during the period of European Enlightenment with the ascendancy of 'rationality'. Initially restricted to the domain of upper-class childhood, Ariès contended that the affective and educational dimensions eventually diffused across society and childhood became institutionalized (Goldson, 1997: 3).

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

Lloyd deMause, another historian, in *The History of Childhood* painted a very negative image of childhood and family life in the past. In fact, he went to the extent of saying that 'the history of childhood is a nightmare from which we have only recently begun to awaken'. He further contended that 'the further back in history one goes, the lower the level of child care, and the more likely children are to be killed, abandoned, beaten, terrorized and sexually abused' (Mause, 1974: 1-2). According to him, childhood was not discovered in the way that Ariès suggested. On the contrary, it was a human universal that gradually evolved itself from one stage to the other. These stages were: (i) Infanticidal (Antiquity to 4th century A.D.); (ii) Abandonment (4th - 13th centuries); (iii) Ambivalent (14th - 17th centuries); (iv) Intrusive (18th century); (v) Socialization (19th - mid-20th century); and (vi) Helping (mid-20th century onwards).

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

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

'disappearance of childhood', as propounded by Neil Postman (1982), at a time when there was a growing recognition that children have rights, was 'facile'. His contention is that 'Childhood has not disappeared and it will not do so. A childhood in which children are granted a moral status, in which their rights are taken seriously, will be a better childhood, not a worse one' (Freeman, 1997: 5-7).

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

Our two great epics, the *Ramayana* and the *Mahabharata* also eulogize the Indian view of childhood whereby there is an intense parental longing for children, and their upbringing is characterized by affectionate indulgence. This 'child-centeredness', however, was found to be limited to boys only. The Indian tradition all along has been indifferent, if not overtly hostile, to the developmental fate of girls. Secondly, the Indian tradition subscribed to an ideology that

downgraded the role of the environment and nature in the development of a child, and instead emphasized upon a deterministic conception of mystical heredity. This mystical heredity in the Mahabharata was reduced to the *karmas* of the previous life and the attributes of the father (especially his caste) transmitted through his 'seed' (Kakar, 1981: 199-200). These epics also displayed as to how young children, especially boys, were placed under the tutorship and guidance of respected *gurus* (teachers) wherein moral precepts enjoined in the *shastras* (sacred scriptures) were taught on a one-to-one basis. But, this too, was confined to the boys of the ruling upper-castes.

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

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

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

In traditional India, thus, in comparison to the West, it was early childhood rather than adulthood that was considered to be the 'golden age' in individual's life history. Shashi Pande has distinguished Western and Indian social relations by suggesting that in the West, intimacy in a relationship develops out of some shared activity, as when a father takes his son on hunting and fishing trips as a means of developing (or proving) a mutual trust and camaraderie, whereas no such 'hidden agenda' is needed for a cultivation of a relationship in Indian society (Pande, 1968: 425-32). However, before getting lost in any self-congratulatory adulation, it is to be noted that the gravest drawback of the Indian tradition is the inferior status accorded to girl children. For girls, in comparison to boys, learning the mandatory skills of household work, cooking and childcare,

etcetera constituted the daily activities around which their lives revolved. In this, of course, the mother, grandmother, aunts, sisters and sisters-in-laws, her allies against the discriminations and inequities of the existent patriarchal order and values groomed her. In fact, late childhood marked the beginning of an Indian girl's deliberate training in how to be a 'good woman', and hence the conscious inculcation of culturally designated feminine roles. M.N. Srinivas, in his book, *Marriage and Family in Mysore* writes that "It is the mother's duty to train her daughter up to be an absolute docile daughter-in-law..." (Srinivas, 1942: 195). Girls were also married at an early age, which invariably marked the end of their childhood. The low status accorded to the girl child was perhaps one of the reasons for the prevalence of female infanticide in traditional India which continues to exist even today.

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

During this period, in India too, the early legal statements were conspicuously silent on children's rights. The Ten Commandments, arguably the most influential of all legal codes, contains a clear normative pronouncement on parent-child relations but it is in terms of respect for parents and is silent on the obligation of parents to love and nurture children. One of the earliest recognitions of children's rights perhaps is found in the Massachusetts *Body of Liberties* of 1641 where parents are told not to choose their children's mates and not to use unnatural severity against their children. Children, furthermore, were given 'free liberty to complain to the Authorities for redress'. But this was also the law that prescribed the death penalty for children over 16 who disobeyed parents. There is no evidence though that children did successfully litigate against their parents but nor is there any that disobedient children were executed. The document,

nevertheless, remains interesting in showing, as it does, that even some two centuries ago protection of children went hand in hand with adding the power of the State to parental authority (Freeman, 1997: 47-48).

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

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

At this point of time, the British ruled India. Being a colony of the British, the plight of its children especially those belonging to the lower strata of society was certainly gloomy. As Britain was negotiating its place within a new emerging economic, social and political world order, it was a time of great uncertainty for India and this inevitably affected its children too. Despite all this, moral panic and political reaction of that time dovetailed into the already existing reform and philanthropic efforts towards children which mobilized charity crusades and inspired voluntary effort. But, all this took a back seat in the face of growing imperialism of that time that had taken one of its worst forms. This development spelled doom for children as they were thought of as 'Bricks for Empire Building' and like others continued to be exploited in different ways. The ensuing freedom struggle, that nearly spread over 100 years – from mid-nineteenth to the mid-twentieth century – aimed not merely at achieving political independence from the British rule, but also at reinvigorating the debilitated sunken society of India which under decades of slavery had lost its initiative, values and vitality. It was the endeavour of leaders like Raja Ram Mohan Roy, Mahatma Gandhi and others to awaken the people and rouse them to overcome their backwardness, be it illiteracy or socio-cultural practices like child marriage or neglect in the upbringing of children, etcetera. As a result, the long years of struggle for freedom saw an all-round spate of activities which may be termed

as 'social action' so as to come out of the prevailing weaknesses in society and build self-reliance in the people. Consequently, the care of the child came to be viewed upon as a vital element in the resurrection of the nation. Mahatma Gandhi and later Pt. Jawaharlal Nehru, in person, gave much of their time to inculcate social concern for the citizens of tomorrow – the children. Advancing literacy, in Western societies, to a large extent, helped to change attitudes towards children. The resultant effect of all this was that a large number of dedicated visionaries, charitable and voluntary organizations moved by the harrowing tales of children, worked relentlessly to improve the overall position of children in society along with that of women. All of them invested their time, knowledge and resources towards better health, education, and growth of the weaker children. It was during this period that some of the oldest voluntary organizations such as 'The Children's Aid Society' and '*Balkan Ji Bari*' came into being in 1920s in the service of children belonging to the poor, uneducated and helpless families. The entire century of freedom struggle may well be termed as the 'evanescent dawn of voluntary action' when people learnt to pool their common resources to remove social ills rather than rely upon an alien regime which had no State Policy nor a programme to meet the needs of children. This was also the beginning of a spirit of independence at the group social action level (Luthra, 1979 : 90-91). This period moreover witnessed the enactment of laws such as the Apprentices Act, Reformatory Schools Act and Factories Act which became important factors in shaping and structuring of a new childhood.

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

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

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

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

Declaration of Geneva (1924)

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

It would be seen from the above that the primary purpose of this chapter is to provide a broad overview about children as well as provoke a rethinking of settled ideas about children and childhood so as to interrogate dominant notions which are underpinned by naturalistic and biologically determined conceptualizations. There is no universal picture of children or for that matter childhood. Moreover, in order to understand childhood in its entirety, it is

important to demystify the glory of any one class, caste, region, gender or time. The need of the hour is to unpack the manner in which children and childhood so far have been understood. Who would wish to beg or grovel, to be the recipient of *noblesse oblige* or charity when they can demand what is their due? Rights are entitlements; they are trumps; they are valuable commodities. And, they are also, as it is now learnt, weapons to undermine power. A rights strategy is one way in which the hitherto excluded can be included, within the community and within the socio-economic and political structure.

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Chapter 2

Milestones : National and International

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

Major Constitutional Provisions

Fundamental Rights

- **Article 14. Equality before law.**— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- **Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**— (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) (3) Nothing in this article shall prevent the State from making special provision for women and children. (4) Nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

- **Article 17. Abolition of untouchability.**— “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.
- **Article 19. Protection of certain rights regarding freedom of speech, etc.**—(1) All citizens shall have the right – (a) to freedom of speech and expression; (b) ; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India;
- **Article 21. Protection of life and personal liberty.**— No person shall be deprived of his life or personal liberty except according to procedure established by law.
- **Article 21A. Right to education.**—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.
- **Article 23. Prohibition of traffic in human beings and forced labour.**— (1)Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- **Article 24. Prohibition of employment of children in factories, etc.**— No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Directive Principles of State Policy

- **Article 39. Certain principles of policy to be followed by the State.**— The State shall, in particular, direct its policy towards securing —; (e) the tender age of children are not abused and.....are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 45. Provision for early childhood care and education to children below the age of six years.**—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
- **Article 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.**— The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- **Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**— 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
- **Article 51. Promotion of international peace and security.**— The State shall endeavour to —; (c) foster respect for international law and treaty obligations ;
- **Article 51A. Fundamental duties.**— It shall be the duty of every citizen of India —; (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

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

The *First Five-Year Plan (1951-1956)* adopted a welfarist approach towards the needs and resources of children and clubbed them along with women to meet the problems and challenges that had emanated out of the Second World War and the partition of the country. The Plan identified health, nutrition and education as special issues of concern for children. In order to give focussed attention to these issues, it decided to forge a viable partnership with the voluntary sector. Correspondingly, in 1953, the *Central Social Welfare Board (CSWB)* was constituted with the objective of assisting voluntary agencies in organizing welfare programmes for children, women and handicapped persons. The Board assisted 591 child welfare organizations during the First Five-Year Plan. Besides, in collaboration with State Governments, the Board set-up *State Social Welfare Boards* throughout the country. In 1954, *Welfare Extension Projects* were started by the CSWB to reach children and women in rural areas through the creation of *balwadis* and *mahila mandals*. Special programmes were also taken up to meet the needs of delinquents, destitute, handicapped and other groups of children. For this, extensive training was provided to childcare functionaries engaged in carrying out different kinds of programmes for children. In addition, the Government of India passed the *Protection of Civil Rights Act, 1955* and ratified the *International Labour Organization (ILO) Convention No. 5 of 1919* on minimum age of work in industry.

The *Second Five-Year Plan (1956-1961)* was also welfarist in approach and aimed to stabilize the child welfare system in the country. Consequently, the activities of CSWB were strengthened. In 1956, the *Suppression of Immoral Traffic in Women and Girls Act (SITA)* was enacted in pursuance of Government of India's ratification of the *United Nations 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* in the year 1953. Some of the other legislation enacted in the year 1956 were the *Hindu Adoption and Maintenance Act, Hindu Minority and Guardianship Act,*

Women's and Children's Institutions (Licensing) Act and *Young Persons (Harmful Publications) Act*. In 1957, the Welfare Extension Projects initiated by CSWB were reviewed and substituted by the *Coordinated Welfare Extension Projects* in 1958. The year saw equal participation of the Central and the State Governments in implementing schemes and programmes concerning destitute and delinquent children defined under the *Children's Act, 1960*. Special programmes were undertaken for education, training and rehabilitation of handicapped children. During the Plan period, existing health, nutrition and education services were furthermore strengthened and expanded. In 1957, the *National Bravery Award Scheme* was instituted and 14 November, which coincides with the birthday of India's first Prime Minister, Pt. Jawaharlal Nehru, was declared as *Universal Children's Day*.

At the international level, the United Nations General Assembly adopted the *Declaration of the Rights of the Child* on 20 November 1959. Prior to this, in 1948, the United Nations General Assembly adopted the *Universal Declaration of Human Rights* (UDHR). The UDHR contains three specific references about children and their rights. Article 25.2 states that "Motherhood and childhood are entitled to special care and assistance." It further states in Article 25.2 that "All children, whether born in or out of wedlock, shall enjoy the same social protection". In Article 26, which deals with the right to education, a provision (26.3) is made to ensure that "Parents have a prior right to choose the kind of education that shall be given to their children". When the UDHR was adopted, it was thus assumed that children's rights had been taken care of on the whole. But, this was not so. Children continued to be recognized as a vulnerable group, who required specific measures and explicit rights for their overall survival, development, protection, participation and empowerment. It was in this background that the General Assembly adopted the Declaration of the Rights of the Child mentioned above.

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

However, much before the 1959 Declaration came into existence, the Constitution of India reflected all these 10 principles including the articles contained in the UDHR. Nonetheless, the Government of India subscribed to the principles enshrined in the 1959 Declaration and ensured that adequate steps were taken to guarantee these rights to children. It thus moved ahead with its *Third Five-Year Plan (1961-1966)* laying utmost emphasis on inter-sectoral coordination of services for children in terms of health, education and welfare services. The Third Plan also recognized the fact that the child was a human being with special needs. A notable achievement of this Plan was the establishment of the *Department of Social Security* in June 1964, so as to give concerted attention to the problems and needs of children¹. To counter poor levels of nutrition, *Applied Nutrition Programme* was introduced in 1963. Later, in the year 1965, *Food and Nutrition Board* was set-up in the Department of Food. Recognizing the need to rectify the existent imbalance of educational facilities at the primary, middle and high school levels and the fact that the State was unable to fulfill its constitutional obligation of providing free and compulsory education to all children within a period of ten years, the Third Plan set-up an *Education Commission* under the chairmanship of Dr. D. S. Kothari to find out possible solutions. The recommendations of the Kothari Commission led to the formulation of the *National Education Policy* in 1968 which in a way gave fillip to the overall efforts made in the education sector. A *Committee on Child Care* was further constituted whose recommendations gave way to a comprehensive *Scheme of Family and Child Welfare* in 1967

UN Declaration of the Rights of the Child (1959)

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

¹ In January 1966, this Department was renamed as the *Department of Social Welfare*. In August 1979, it was elevated to the status of an independent *Ministry of Social Welfare*. This Ministry is today known as the *Ministry of Social Justice and Empowerment* in the Government of India.

thereby providing integrated services to pre-school children in villages and basic training to women in craft, health education, nutrition and child care.

The *Fourth Five-Year Plan (1969-1974)* focussed on development of a package of basic minimum services for children. It also drew attention to the problems of neglected and destitute children and introduced a *Scheme for Children in Need for Care and Protection*. In 1974, the *National Policy for Children* was adopted. The Policy Resolution recognized children as the nation's supremely important asset and declared that it is the responsibility of the State to nurture them. Besides, it emphasized that it shall be the duty of the State to "provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development." And that the "State shall progressively increase the scope of such services so that within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth"². To achieve these objectives, it called for the adoption of following measures – comprehensive health programme; provision of nutritional services, nutrition and nutrition education to expectant and nursing mothers; free and compulsory education to all children up to the age of 14 years; provision of non-formal education, promotion of physical education and other types of recreational as well as cultural and scientific activities in schools and community centres; provision of special assistance to children belonging to the weaker sections of society; upliftment of children in distress; protection against neglect, cruelty and exploitation of children; protection against child labour; provision of special facilities for children ailing from various kinds of disabilities and encouragement and assistance to gifted children especially those belonging to the weaker sections of the society. In achieving the above, the Policy gave special recognition to the role of voluntary organizations.

Right to health being a basic human right, the Fourth Five Year Plan accorded high priority to *Mother and Child Health Programme (MCH)*. The *Special Nutrition Programme*, *Balwadi Nutrition Programme* and *Prophylaxis Scheme against Blindness* due to Vitamin A deficiency among children were introduced during the period 1970-1971. The voluntary organizations too continued to work in partnership with the Government and some on their own.

The *Fifth Five-Year Plan (1974-1979)* saw a shift in focus from 'child welfare' to 'child development' wherein emphasis was laid on further integration and coordination of services, increased allocations and introduction of new schemes for children. The adoption of National Policy for Children led to the constitution of the *National Children's Board* in December 1974 under the presidentship of the Prime Minister for planning, reviewing and coordination of services and

² See 1974 National Policy for Children, Government of India, New Delhi.

programmes to meet the needs of children. The scheme of *Integrated Child Development Services* (ICDS) was launched on 2 October 1975. The scheme adopted a multi-sectoral approach to child well-being, incorporating health, education and nutrition interventions, implemented through a network of *anganwadi* centres (AWCs) at the community level. At these centres, *anganwadi* workers and their helpers provided essential key services to 0-6 year old children along with expectant and nursing mothers, laying emphasis on supplementary nutrition, immunization, health check-ups and referral services, health and nutrition education to adult women, micronutrient supplementation and pre-school education to 3-6 year old children through a single window delivery, at the village level. Launching of the ICDS was a logical culmination of efforts pursued through the earlier four Five-Year Plans. In 1975, the Government ratified the *ILO Convention No. 123 of 1965* relating to minimum age for employment in underground mines. The *Minimum Needs Programme* was also launched in order to enhance the capacity of families and communities.

The year 1979 holds great significance in the history of child welfare and development. Being designated as the *International Year of the Child* (IYC) by the United Nations General Assembly, number of activities and programmes were undertaken throughout the world in this year. In India, a *National Plan of Action* was prepared to observe the IYC. The main theme of the National Plan of Action was 'Reaching the Deprived Children'. Based on the model of National Plan of Action, many State Governments in India including non-governmental organizations formulated their own plans of action with specific programmes and activities to be taken up during the year in their respective regions and area of operation. All this gave a great impetus to the on-going programmes related to children in India. In addition, the year saw the then United Nations Commission on Human Rights³ starting work on the drafting of the *Convention on the Rights of the Child*. The initiative to draft the Convention came from Poland and the United Nations Commission on Human Rights responded by setting-up a multi-country Working Group.

In India, another important achievement during the year was setting-up of the *National Children's Fund* to provide assistance to voluntary organizations. During the IYC, the *National Awards for Child Welfare* was instituted. In the health sector, the Government of India signed the *Alma Ata Declaration* of 1978 and committed itself to the goal of 'Health for All by 2000'. The *Expanded Programme of Immunization* was also introduced in 1978. In the area of nutrition, various nutrition intervention programmes being implemented were fortified and expanded including the *Prophylaxis against Iron and Vitamin A*

³ The Human Rights Council replaced the former United Nations Commission on Human Rights in March 2006.

Deficiency Programmes. In 1975, the *Scheme of Crèches/Day Care Centres for Children of Working and Ailing Mothers* was launched by the CSWB. In 1976, the *Bonded Labour (System) Abolition Act* was enacted, the *Child Marriage Restraint Act of 1929* was amended and in the year 1978 SITA that was enacted in 1956 got amended.

The *Sixth Five-Year Plan (1980-1985)* reiterated the approach and strategy adopted for children during the Fifth Plan and further promoted integration and intensification of child welfare and development programmes started earlier. During the *International Year of Disabled* in 1981 vigorous efforts were made to implement various education, training and rehabilitation programmes for the physically handicapped children. Preventive and development services of domiciliary nature were accorded priority over institutional care for destitute, delinquent and handicapped children. The problem of working children and their welfare simultaneously received attention of the planners for the first time during the Sixth Five-Year Plan and appropriate programmes were undertaken to improve the health, nutrition and educational status of working children. In 1981, the *Central Child Labour Advisory Board* was set-up to review the implementation of existing laws concerning child labour. In 1982, the *Scheme of Early Childhood Education* was introduced as a strategy to reduce dropout rate and improve the rate of retention in schools. The *Development of Women and Children in Rural Areas (DWCRA)* was another scheme that was introduced in the year 1982.

A major milestone during the Sixth Plan period was the formulation of the *National Health Policy* in the year 1983 (NHP 1983). It set out certain specific targets like bringing down the high rates of infant and child mortality through widespread provision of comprehensive primary health care services, universalization of immunization, acceleration of other mother and child health services, nutrition programmes for pregnant women, nursing mothers and children, especially in the tribal, hilly and backward areas. The same year, the Government of India recognized the *International Code on the Marketing of Breast Milk Substitutes* that was adopted by the World Health Assembly and formulated the National Code for Protection and Promotion of Breast Feeding. ICDS was used as a major nutrition intervention programme as well as a vehicle for promoting elementary education among children.

The *Seventh Five-Year Plan (1985-1990)* led to spatial expansion and enrichment of child development services. In order to give focussed attention and direction to child development, a separate *Department of Women and Child Development*⁴ was set-up for the first time in the Ministry of Human Resource Development in September 1985. The ICDS continued to be the main integrated national

⁴ Its status was elevated to that of an independent *Ministry of Women and Child Development* in 2006 and issues concerning children that were earlier being dealt by the Ministries of Human Resource Development and Social Justice and Empowerment were transferred to it.

programme for early childhood survival and development during the Seventh Plan period. With the passage of time, it expanded its range of interventions to include components focussed on adolescent girls' nutrition, health, awareness and skills development.

To deal effectively with the problem of neglected children and children in conflict with law, the *Juvenile Justice Act, 1986* was legislated, repealing the earlier Children's Act of 1960. To implement the provisions of the 1986 Act, a *Scheme of Prevention and Control of Social Maladjustment* was initiated in 1986-1987. The Government also enacted the *Child Labour (Prohibition and Regulation) Act, 1986*. In 1987, the *National Policy on Child Labour* was announced. *National Child Labour Projects* were started in areas where there was high concentration of child labour. Simultaneously, efforts were made to expand crèche services for children of working women. The main thrust in the programmes for children who were handicapped was on prevention of disabilities and development of their functional skills. In 1985, the *Scheme of District Rehabilitation Centres* was introduced as a Pilot Project. In 1986, the Government further modified the SITA and changed the nomenclature of the Act to *Immoral Traffic (Prevention) Act* to cover all persons, whether male or female, exploited sexually for commercial purposes. Besides, stringent punishments were prescribed for offences involving children. Another notable milestone of the Seventh Plan was the setting-up of a *Central Adoption Resource Agency (CARA)* in 1990, a nodal body to deal with matters relating to adoption of orphan, abandoned and surrendered children. It was given the mandate to monitor and regulate in-country and inter-country adoptions. Under the MCH programme, efforts were made to reduce Infant Mortality Rate (IMR) and Maternal Mortality Ratio (MMR). In the year 1985-1986, the *Universal Immunization Programme* was launched under the MCH programme to protect infants from six major diseases which affected early childhood mortality and morbidity, viz., tuberculosis, diphtheria, pertussis, poliomyelitis, measles and tetanus. The NHP 1983 set the goal of universal immunization against these six vaccine preventable diseases by 2000. In 1986-1987, emphasis was laid on *Oral Rehydration Therapy Programme* to prevent diarrhoeal deaths among children. The *National Diarrhoeal Disease Control Programme* was made part of the MCH Programme.

In the education sector, the strategies of the Seventh Plan underwent a change in the middle of the Plan period with the adoption of a new *National Policy on Education (NPE)* in 1986. Taking a holistic view, the NPE visualized education as a dynamic, cumulative, life-long process, providing diversity of learning opportunities to all segments of society. Its main purpose was to fulfill the objective of "Education for All" by providing early childhood care and education, universalizing elementary education through formal and non-formal methods,

reducing wastage and involving the local community in the management of early education. As a result, new schemes were implemented like the *District Primary Education Programme* in 1986 and the *Operation Black Board* in 1987. Besides, the *Scheme of Non-formal Education* was revised. Few of the other important initiatives taken by the Government in selected areas especially in educationally backward States, were the *Shiksha Karmi Project* and *Lok Jumbish Project* in Rajasthan, *Bihar Education Project* and the *Andhra Pradesh Primary Education Project*. The NPE in its own way tried to provide scope for equal access to education to all, irrespective of class, caste, creed or gender. In addition, it envisaged a common educational structure – 10+2+3 and common core curriculum throughout the country. It sought to remove disparities by catering to the needs of Scheduled Castes, Scheduled Tribes, the handicapped and other vulnerable groups. To look into the problems of street children, the then Ministry of Welfare introduced the *Integrated Programme for Street Children*.

At the regional level, India actively promoted and supported the 1986 decision of South Asian Association for Regional Cooperation (SAARC) to take up the issue of children as a summit concern, and to declare first a year and then a decade for the girl child (1990-2000). At the international level, the Convention on the Rights of the Child (CRC) was approved by the General Assembly of the United Nations on 20 November 1989⁵. The Convention was formally opened for signature and ratification on 26 January 1990, and various nations vied to be the first to sign and ratify, a race that was ultimately won by Ghana when the Secretary General of the United Nations received its instrument of ratification on 5 February 1990. Previous United Nations human rights treaties had taken several years to receive the minimum number of ratifications necessary for their entry into force. The CRC had behind it the full resources of UNICEF which, having decided that the Convention was in the best interest of the child, determined to achieve the target of universal ratification as a top priority. Allied with UNICEF in this effort was a worldwide network of non-governmental organizations, focussed in the NGO Group on the Convention. These included Save the Children Alliance, which had a long standing claim of priority in the field of child rights, and Defence for Children International, which chaired the NGO Ad-hoc Group that worked on the negotiation of the Convention. Many of the proposals made by the NGO Ad-hoc Group for the Convention were adopted by the Government representatives on the Working Group, and are reflected in the final text of the Convention. The resultant effect of all this was that in virtually every country there was a coherent and concerted pressure for ratification applied by UNICEF, from outside, and by national non-governmental coalitions or coordinating committees for child rights, from inside. The net outcome was that, by 2 September 1990, just over 8 months

⁵ 20 November 1989 also happened to be the thirtieth anniversary of the adoption of the 1959 Declaration of the Rights of the Child.

after the Convention had been opened for signature, the twentieth ratification was received and the Convention came into effect – more quickly than any other human rights treaty. The previous record of this kind was held by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which too had a strong non-governmental lobby pushing for its ratification in many countries, but it took almost three times as long as the CRC to come into effect.

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

The CRC is the most complete statement of child rights ever made. It takes the ten principles of the 1959 Declaration of the Rights of the Child, and expands them to 54 articles, of which 41 relate specifically to the rights of children, covering almost every aspect of a child’s life. It is indeed an innovative document in overall human rights theory and practice. In fact, it is the first United Nations human rights instrument since the UDHR which brings together as inextricable elements of the life of an individual human being the full range of civil and political rights, and economic, social and cultural rights. It can do this because it treats children as complete individuals, rather than as elements in an economic or socio-political system. The Convention aims to create a balance between the rights of children and those of the parents or adults responsible for their survival, development and protection. This is achieved by according children the right to participate in decisions concerning them and their future. It is, thus, a holistic document for each article is intertwined with the others. Not only this, the various articles exert an influence on the interpretation and implementation of each other. The rights defined in the Convention are thus interdependent; as none of the articles can be dealt in isolation. They have to be applied and implemented simultaneously if at all the rights of every child is to be respected⁶. The articles of the CRC could be seen at a glance in the Box.

As can be seen from the Box, the Convention not only provides for monitoring

⁶ See Christine Lundy, *An Introduction to the Convention on the Rights of the Child*, Canada, Full Circle Press, 1997.

CRC at a Glance

Preamble

Part I : Operational Articles

- Article 1** Child means a person who is below the age of 18 years
- Article 2** Non-discrimination
- Article 3** Best interests of the child
- Article 4** Measures for implementation of child rights
- Article 5** Parents, family, community rights and responsibilities towards the child
- Article 6** Inherent right to life
- Article 7** Right to be registered at birth and right to a name and nationality
- Article 8** Right of the child to preserve his/her identity
- Article 9** Non-separation of child from parents
- Article 10** Children and parents to travel without hindrance for family reunification
- Article 11** Take measures to combat illicit transfer and non-return of children abroad
- Article 12** Views of child to be given due weightage
- Article 13** Right to freedom of expression and access to information
- Article 14** Right to freedom of thought, conscience and religion
- Article 15** Right to gather in groups, clubs and organizations on their own or with support from adults
- Article 16** No child to be subjected to arbitrary or unlawful interference with his/her privacy, honour and reputation
- Article 17** Ensure that child has access to information and media
- Article 18** Both parents have common responsibility for raising their children
- Article 19** Importance of preventing abuse and neglect in family or in care
- Article 20** Special protection towards child who is deprived (temporarily or permanently) of family environment
- Article 21** Recognize and permit adoption ensuring the best interests of the child
- Article 22** Special protection to refugee children
- Article 23** Special protection to disabled children
- Article 24** Right of the child to the highest attainable standard of health
- Article 25** Right of the child to periodic review placed under institutional care
- Article 26** Right of the child to benefit from social security
- Article 27** Child's right to a standard of living adequate for overall development
- Article 28** Right of the child to education
- Article 29** Education to be directed towards child's fullest possible development of his/her capacities
- Article 30** Special efforts to protect and promote rights of children from marginalized groups and indigenous children

- Article 31** Child's right to play, recreation and participation in cultural life
- Article 32** Right of the child to be protected from economic exploitation
- Article 33** Protect children from the illicit use of narcotic drugs and psychotropic substances
- Article 34** Protect child from all forms of sexual exploitation
- Article 35** Take all appropriate measures to prevent abduction of, sale of or traffic in children for any purpose or in any form
- Article 36** Protect children against all other forms of exploitation
- Article 37** No child to be subjected to torture or other cruel, inhuman or degrading treatment or punishment including capital punishment or life imprisonment
- Article 38** Ensure respect for rules of international humanitarian law applicable to children in armed conflicts
- Article 39** Promote physical and psychological recovery and social reintegration of a child victim (following abuse, torture or any other form of cruel, inhuman or degrading treatment or armed conflicts)
- Article 40** Administration of juvenile justice for all those alleged as or accused of having infringed the penal law
- Article 41** CRC establishes minimum standards. If the law and practice in a particular State exceeds the standards set in the Convention, the higher standard will prevail

Part II : Enforcement

- Article 42** Dissemination of the principles and provisions of the CRC
- Article 43** Establishment of the CRC Committee
- Article 44** Submission of reports from States Parties to CRC Committee
- Article 45** Working method of the Committee

Part III : Administrative Issues

- Article 46** Signature by all States
- Article 47** Ratification. Instruments of ratification to be deposited with the UN Secretary General
- Article 48** Open for accession by any State
- Article 49** Entry into force of the Convention
- Article 50** Process of amending the Convention
- Article 51** Reservations with regard to Articles in the Convention at the time of ratification /accession
- Article 52** Denunciation of the Convention
- Article 53** Depositary of the Convention
- Article 54** Deposition of the original text of the Convention

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

The focus in the *Eighth Five-Year Plan (1992-1997)* was on human development through advocacy, mobilization and community empowerment and it accorded high priority to survival and development of children. The ICDS continued to be the basic strategy for child survival and development focussing on areas predominantly inhabited by the tribal people, Scheduled Castes as well as drought-prone regions and urban slums. In fact, the scheme of ICDS was universalized covering all the community development blocks and major slums in the country. The MCH Programme especially its universal immunization programme was strengthened further to increase coverage. As has been pointed earlier, the Government of India ratified the CRC in the year 1992, this provided a strong base for initiating necessary legal and other developmental measures for protecting and promoting the rights of children in consonance with the CRC.

For better protection of human rights in the country, the Parliament enacted the *Protection of Human Rights Act, 1993* (PHRA) to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts. Accordingly, the *National Human Rights Commission* (NHRC) in India was established on 12 October 1993. The constitution of the NHRC is in conformity with the *Paris Principles* which were adopted at the first international workshop on national institutions for the promotion and protection of human rights held in Paris in October 1991, and

endorsed by the United Nations General Assembly in its Resolution 48/134 of 20 December 1993. The NHRC is an embodiment of India's concern for the promotion and protection of human rights. During 1993-1994, the *National Crèche Fund* (NCF) was set-up to meet the growing demand for crèches. A *Scheme of Assistance to Homes for Infants (Shishu Greh) to Promote In-country Adoption* was pioneered and concerted efforts were simultaneously made to tackle the problem of social deviance, juvenile delinquency and juvenile crime through preventive, correctional and rehabilitative services. On 15 August 1994, a programme to *Eliminate Child Labour in Hazardous Employment* by 2000 was announced. Prior to this, Government of India joined the *International Programme on Elimination of Child Labour* launched by ILO. Subsequently, the *National Authority for Elimination of Child Labour* was constituted on 26 September 1994 to lay down policies and programmes for elimination of child labour. The enforcement of Child Labour (Prohibition and Regulation) Act, 1986 was also strengthened. In pursuance of the National Policy on Child Labour, specific projects were undertaken in industries where the incidents of child labour were found to be very high. Measures were taken to cover families of child labourers under income generation schemes. Public opinion on the evils of child labour was mobilized through investigative journalism, use of electronic media and the support of activists.

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

In the education sector, the main strategy for achieving the target of “Education for All by 2000” was adoption of a decentralized approach to planning. In pursuance of the revised *National Policy on Education, 1992* and its *Programme of Action*, various steps were taken to expand early childhood care and education activities, and universalize elementary education. An NGO Cell was specifically set-up in 1994 to facilitate networking with NGOs on varied issues concerning children. In the year 1994, *District Primary Education Programme (DPEP)* was launched as a centrally sponsored scheme in 42 districts of seven States, with the aim of revitalizing and strengthening the existing system, tackling problem areas, developing innovative approaches with the district as a unit of planning. In adopting a holistic approach, emphasis was laid on converting existent programmes and services, and encouraging community participation. In addition, with a view to enhance enrolment, attendance and retention and alongside improve the nutritional status of primary school children, a centrally sponsored scheme – *National Programme of Nutritional Support to Primary Education (NP-NSPE)*, popularly known as *Mid-Day Meal Scheme (MDMS)* was launched on 15 August 1995.

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

At the international front, the *World Conference on Human Rights* was held in Vienna in the year 1993. The *Vienna Declaration and Programme of Action* urged States to ratify and implement promptly the CRC and the CEDAW. Taking a cue from all these developments, the Government of India submitted its *Initial*

Country Report on CRC to the UN Committee on the Rights of the Child in February 1997. This Report was due for submission in 1995. In the year 1995, however, a four Member team of the CRC Committee visited India in October to make on the spot assessment about the specific problems of children in India. The CRC Committee as mentioned above, is made up of ten independent experts. Governments that ratify the Convention must report to the Committee, first within two years of ratification, and then every five-years. The Committee has circulated detailed guidelines to States Parties as to what their reports should contain as the process of reporting involves a rigorous review of actions taken by them. It encourages 'popular participation and public scrutiny of Government policies', which goes on to show that States Parties are publicly and internationally accountable for the treatment meted out to their children.

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

In the *Ninth Five-Year Plan (1997-2002)*, efforts were made to expedite effective implementation and achievement of the goals set in the two Plans of Action besides instituting a *National Charter for Children* to ensure that no child remains illiterate, hungry or lacks medical care. To ensure the 'survival, protection and development' of children, especially that of the girl child, the Ninth Plan concentrated on tackling the problem of declining sex-ratio along with other related problems of female foeticide⁷ and infanticide. These problems were dealt with the adoption of a two-pronged strategy having direct and indirect measures. While the direct measures included effective implementation of the existing legislation, the indirect measures were directed to change the mindset of the people in favour of the girl child, besides empowering women to exercise their reproductive rights and choices. In this endeavour, UNICEF made special efforts to launch a 10-year old cartoon character named *Meena* along with her pet parrot *Mithu* and brother *Raju*. The *Meena Initiative*, popular till date with both adults and children, uses the CRC and the CEDAW as tools with which to advocate for the rights of the girl child in South Asia. Meena makes a claim for the rights of all children and highlights the duties of families and obligations of States to realize those rights. Meena's questioning and reasoning seeks to enable families and communities to come up with positive solutions to deep-rooted discrimination, answers that are realistic and culturally sensitive. Special efforts were made along with to ensure effective enforcement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

⁷ The term today used for female foeticide is pre-natal sex selection. Some sections hesitate to use the new terminology owing to its apparent overlap with abortion.

In order to fulfill the birth right of every child to 'development', especially of those belonging to the disadvantaged and deprived groups as well as those with special needs, the Ninth Plan continued to focus on three major areas of child development, viz. health, nutrition and education. In the field of 'Health', the scope of the erstwhile programme of CSSM was widened and a comprehensive programme of *Reproductive and Child Health* (RCH) was initiated aimed at providing integrated health and family welfare services to meet health care needs of women and children. A few of its essential components included effective maternal and child health care services, increased access to contraceptive care, prevention and management of unwanted pregnancies, reproductive health services for adolescents and screening and treatment of cancers, especially uterine, cervical and breast cancer. Simultaneously, continued emphasis was laid on health components of the ICDS and its universalization, which completed 25 years in October 2000. Under the Universal Immunization Programme, significant achievements were made to arrest the problem of diphtheria, pertussis, neo-natal tetanus, tuberculosis, poliomyelitis and measles. The special drive of Pulse Polio launched during 1995-1996 was continued to eliminate the problem of poliomyelitis. All this had a definite impact in reducing the Infant Mortality Rate. In addition, the Government of India committed to provide safe drinking water and sanitation facilities to every village to achieve the goal of "Health for All".

During the Ninth Plan period, the Department of Family Welfare in the Ministry of Health and Family Welfare came up with the *National Population Policy, 2000* (NPP) to give a new thrust to efforts for improving the quality of lives people lead and achieve reduction in birth rate, death rate and population growth rate by laying emphasis on voluntary, informed choice and consent of citizens as the ground rule for fertility regulation and population stabilization. The NPP is in line with the *Programme of Action (PoA)* of the *International Conference on Population and Development (ICPD)* held at Cairo in 1994 to which India is a signatory. This was a paradigm shift in the thinking on family planning programming, the aim of which shifted from population control to individual well-being, that is, target free approach in administering family planning services. It recognized the rights of individuals to have children by choice and not by chance. A *National Commission on Population* was also set up in May 2000 under the chairmanship of the Prime Minister.

In the field of "Nutrition", children below the age of 6 years along with expectant and nursing mothers, received highest priority in line with the provisions of the *National Nutrition Policy, 1993* and the *National Plan of Action on Nutrition, 1995*. Despite the shortfalls that were recorded in terms of feeding and funding by the State Governments, the coverage under Special Nutrition Programme

reached 31.5 million children in the age group of 0-6 years. Similarly, the coverage under the NP-NSPE, commonly known as MDMS, reached 105 million school children in the age group of 6-14 years by the end of the Ninth Plan. In addition, central assistance for nutrition component under the *Pradhan Mantri Gramodaya Yojana*, launched in 2000-2001, was extended to eradicate malnutrition amongst children below three years.

In the field of "Education", in consonance with the National Policy on Education as revised in 1992 and its Programme of Action, special thrust was given to the measures of Universal Primary Education. As a result, the country made impressive achievements whereby the number of schools increased four-fold from 2.31 lakh in 1950-51 to 9.88 lakh in 1999-2000, while the enrolment at the primary level jumped up by about six times from 19.2 million to 113.6 million. In 2001-2002, the *Sarva Shiksha Abhiyan* (SSA) was launched with the aim of providing quality elementary education to all children in the 6-14 age group by 2010, besides bridging all gender and social category gaps at primary stage by 2007 in partnership with the States. In all these endeavours, the girl child and the children belonging to socially and economically disadvantaged groups, viz. the Scheduled Castes, Scheduled Tribes, Other Backward Classes and minority populations were given priority along with special incentives like free textbooks, uniforms, scholarships, hostel facilities, etcetera. At the same time, the Ninth Plan continued its efforts towards universalizing the early childhood care and education services in the age group of 0-6 with a special focus on the girl child.

Concerted efforts were alongside made to eliminate all forms of discrimination and violations against the girl child. For instance, special incentives were provided to the mother and the girl child so that the birth of a girl child in a family was rejoiced. To this effect, in the year 1997, *Balika Samridhi Yojana* (BSY) was launched whereby a special package consisting of ₹ 500/- to the mother and annual scholarship ranging from ₹ 300/- to ₹ 1,000/- for education of girl children from class 1 to 10 was provided to all those families living below the poverty line to ensure that all girl children went to schools. The incentive of ₹ 500/- to the mother on the delivery of a girl child was limited to two girl children only. Similar initiatives were launched by other State Governments. In 1999, the BSY was reviewed and recast to make it more effective. In 1999, the Government with the support of UNICEF launched a special service for children called CHILDLINE. This is a free phone service that can be accessed by a child or anyone on behalf of the child by simply dialing the number 1098⁸. Realizing the need for an effective service delivery to children in need of care and protection, a *National Initiative for Child Protection* was launched through

⁸ As of March 2015, CHILDLINE was operational in 346 cities/districts in 33 States through its network of over 600 partner organizations across India.

the National Institute of Social Defence and Childline India Foundation. It aimed at building partnerships with the State Departments of Social/Child Welfare, Childline Service and allied systems for protection and promotion of children's rights. In 1998, the Government of India instituted a *Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children*.

Strong regulatory and administrative measures were taken to prevent exploitation of child labour. A thorough review of the Juvenile Justice Act, 1986 was undertaken and the Act was subsequently repealed by the *Juvenile Justice (Care and Protection of Children) Act, 2000* (JJA 2000). Likewise, a review of major existing child-specific and child related legislation was also undertaken to plug the loopholes in their implementation, viz. the Child Marriage Restraint Act, 1929; the Immoral Traffic (Prevention) Act, 1956; the Child Labour (Prohibition and Regulation) Act, 1986; and the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

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

Efforts were concurrently made to develop a national level *Information Network System* for women and children with emphasis on collection of gender-specific data with the objective of preparing a *Gender Development Index* so as to assess the socio-economic status of women and children on a continuing basis. A scheme entitled *Kishori Shakti Yojana* (KSY) was introduced as an enriched version of the *Scheme for Adolescent Girls* implemented as part of the ICDS scheme, to improve the nutritional and health status of girls in the age group of 11-18 years as well as equip them with vocational skills so that they could be gainfully engaged.

In the year 1999, the *Total Sanitation Campaign* (TSC) under the restructured *Central Rural Sanitation Programme* was launched as a flagship programme for providing universal access to safe drinking water and improved sanitation facilities for all which included women and children, by adopting a "community led" and "people centered" approach. It laid emphasis on number of activities – information, education and communication (IEC) for generation of effective demand for sanitation facilities; construction of individual household latrines; construction of toilets in schools, sanitation and hygiene education to students and

construction of community sanitary complexes. Safe drinking water and improved sanitation, needless to mention, play a major role in the overall well-being of the people, in particular women and children, as it has a significant bearing on the infant mortality rate, maternal and child health, longevity and productivity.

In January 2000, the CRC Committee reviewed the Initial State Party Report submitted by the Government of India and gave its *Concluding Observations and Recommendations*. India's next *Periodic Report on CRC Implementation*⁹ was also due for submission in 2000. However, the Government of India could only submit the Report in 2001. The 2001 Report made all-out efforts to address the Observations and Recommendations that were given by the CRC Committee in connection with India's Initial Report. The CRC Committee at its 932nd & 933rd meeting held on 21 January 2004 considered India's Second Periodic Report and gave its Concluding Observations and also recommended that India should submit its next Periodic Report by 10 July 2008. Further, the due Report should combine the Third and Fourth Periodic Reports. Not only this, the proposed Report should not exceed 120 pages. Thereafter, it expects India to report every five years as foreseen by the Convention.

At the international front, in September 2000, building upon a decade of major United Nations conferences and summits, world leaders came together at the United Nations Headquarters in New York for the *Millennium Summit* to adopt the *United Nations Millennium Declaration*, committing their nations to a new global partnership to reduce extreme poverty and setting out a series of other time-bound targets like achieving universal primary education, promoting gender equality and empowerment of women, reducing child mortality, improving maternal health, combating HIV/AIDS, malaria and other diseases, and ensuring environmental sustainability – with a deadline of 2015 – that became known as the *Millennium Development Goals* (MDGs).

During the *Tenth Five-Year Plan (2002-2007)*, the Government of India adopted a 'rights-based' approach towards children with regard to their 'survival, development, protection and participation' and placed the child at the top of country's development agenda. The first year of the Tenth Five Year Plan saw the launching of the revised *National Health Policy 2002* (NHP 2002). The Policy focused on the need for enhanced funding and an organizational restructuring of the national public health initiatives so as to facilitate more equitable access to health facilities. It further endorsed and promoted the need to institutionalize partnerships with diverse providers to rapidly increase the supply of health services, expand coverage, improve technical quality of care at all levels, and

⁹ This report was titled as *Convention on the Rights of the Child - India First Periodic Report 2001* though it was the 'Second Report on CRC' implementation that was submitted to the CRC Committee by the Government of India.

control costs for users. The year 2003 saw the amendment of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The amended Act is known as the *Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act*. It brought within its purview all actions relating to sex selection prior to conception, restricted the sale of imaging and ultrasound machines only to clinics registered under the Act, and strengthened enforcement with more stringent penalties for violation. Emphasis was simultaneously laid on compulsory registration of births and deaths, as visualized in the NPP 2000.

All out efforts were made to improve the coverage levels in respect of the six vaccine - preventable diseases. Special efforts were also made to improve the coverage levels through the Universal Immunization Programme. Attempts, in particular, were made to assess the health needs of all children at PHC level through area-specific micro-planning whereby all their needs were met through high quality RCH services. Further, under the Child Survival Programme of RCH universal screening of all pregnant women was undertaken to identify and manage those at high risk from the point of view of bringing about reduction in the pre-natal and neo-natal mortality and morbidity. In addition, the NPP and the revised NHP 2002, extended policy and programmatic support with definite targets to ensure child survival.

The *National Rural Health Mission (NRHM)*, a new flagship programme with the aim to improve the availability and accessibility to quality health care services was launched in April 2005, to cater to rural and tribal population, especially poor marginalized women and children, with special focus on 18 States¹⁰ having weak public health indicators and weak infrastructure. Its core components included – access to improved health care at household level through the female health activist in each village called the Accredited Social Health Activist (ASHA); a health plan for each village prepared by the community and facilitated by Panchayat members; strengthening of the existing sub-centres, primary health centres, community health centres and rural hospitals for quality, preventive, promotive, curative and outreach services; formulation and implementation of inter-sectoral district health plans prepared by the District Health Mission taking into account nutrition, drinking water, sanitation and hygiene; vertical integration of health and family welfare programmes such as the Reproductive and Child Health Programme-II (RCH-II), National TB Control Programme, National Leprosy Eradication Programme, Iodine Deficiency Control Programme, National Vector-Borne Disease Control Programme, and the National Programme on Prevention of Blindness at national, state, district and block levels; public-private partnership (PPP) for achieving public health goals; and regulation of private sector. The purpose of RCH-II (2005-2010) was to bring about a reduction in three critical

¹⁰ The names of 18 States are – Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Jammu & Kashmir, Manipur, Mizoram, Meghalaya, Madhya Pradesh, Nagaland, Odisha, Rajasthan, Sikkim, Tripura, Uttarakhand and Uttar Pradesh.

indicators of health – Total Fertility Rate (TFR), Maternal Mortality Ratio (MMR), and Infant Mortality Rate (IMR), with a view to achieve the goals envisioned in the NPP, MDGs, NHP 2002 and Vision 2020 India. These three indicators were part of the eleven monitorable targets of the Tenth Five-Year Plan.

RCH-II formed an important and integral component of the NRHM 2005-2012. Its main object was to promote institutional deliveries by enhancing access to basic essential obstetric care and neonatal care at primary health centre (PHC) level; emergency obstetric care at the level of community health centre (CHC); train ANMs/LHVs/Staff Nurses as skilled birth attendants who could manage complicated pregnancies prior to referrals; and implement *Janani Suraksha Yojana* (JSY) providing cash incentives to expectant mothers opting for institutional deliveries from BPL households. JSY was put into action in 2005 by modifying the nutrition-improving *National Maternity Benefit Scheme*. It continues to be implemented in all the States and Union Territories with a special focus on low performing States, namely, Uttar Pradesh, Uttarakhand, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Odisha and Jammu & Kashmir. In all these States, pregnant women delivering in government health centres, such as, sub-centres, PHCs, CHCs, first referral units (FRUs), general wards of district or State hospitals or accredited private institutions are eligible for cash assistance under the JSY. In the remaining States, declared as high performing States, only BPL, Scheduled Caste, Scheduled Tribe women delivering in government health centres are eligible for cash assistance.

Along with this, the two direct feeding programmes concerning special nutrition, as part and parcel of the ICDS and the NP-NSPE or MDMS were streamlined and strengthened. Moreover, as a follow-up of the announcement made by the Prime Minister in his Independence Day Speech of 2001, a *National Nutrition Mission* was set-up in 2002 with an overall responsibility of reducing and eliminating both macro and micro nutritional deficiencies among children below 6 years of age, with special focus on infants between 6-18 months, attributed largely to faulty infant feeding and caring practices. The overall approach adopted for the holistic development of children through the ICDS, with emphasis on exclusive breast feeding followed by introduction of complementary feeding at six months, continued with the on-going scheme for the Adolescent Girls, viz. KSY. In 2002, the MDMS was extended to children studying in centres under the *Education Guarantee Scheme* and *Alternative and Innovative Education* and in 2004 it was universalized at the primary level (Classes I – V). Furthermore, recognizing the increasing need for support services of crèches/day care centres, the *Rajiv Gandhi National Crèche Scheme* (RGNCS) for children of working mothers was launched on 1 January 2006 by merging the NCF with the Scheme of Assistance to Voluntary Organizations for Crèches/Day Care Centres for the Children of

Working and Ailing Women. The RGNCS provided crèche services to children in 0-6 age group, which included supplementary nutrition, emergency medicines and contingencies. It had an in-built component of monitoring of crèches carried out by identified independent agencies like women study centres in universities, technical institutions and State Women Development Corporations.

The *National Rural Employment Guarantee Scheme* (NREGS) under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 was one more programme implemented in a phased manner during the Tenth Five Year Plan. Introduction of this programme, to some extent, led to a positive impact on the lives of young children in rural and tribal areas as part of the income earned by the beneficiaries, more so women, was spent in giving nutritious and balanced food and education to their children. In Phase-I, NREGS was introduced in 200 of the most backward Districts of the country. Another 130 Districts were added in Phase-II of the programme during 2007-2008. In Phase-III, it was extended to all the remaining rural Districts of the country from 1 April 2008. The main aim of the NREGS was to enhance livelihood security of households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in a financial year to every household whose adult member(s) volunteered to undertake unskilled manual work. Various provisions under the NREGS seek to ensure that women have equitable and easy access to work, decent working conditions and equal payment of wages so that it has a positive impact on their economic well-being and their families. Access to economic resources has improved the social status of women whereby they have greater say in the way money earned by them is to be spent in households.

As regards education, the Government of India adopted the *2000 Dakar Framework for Action on Education for All*. The Framework identified six goals, which included, *inter alia*, improving and expanding early childhood care and education for most vulnerable and disadvantaged children; ensuring by 2015 all children, particularly girls, have access to complete, free and compulsory primary education; achieving gender equality in education by 2015, and improving all aspects of quality of education along with ensuring excellence of all. The *Constitution (Eighty-sixth Amendment)* Act took place on 12 December 2002, making free and compulsory education a Fundamental Right for all children in the age group of 6-14 years by inserting Article 21A, 51A (k) and amending Article 45. The inserted Article 21A proclaims that "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." Article 51A (k) states that it shall be the duty of every citizen of India "who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years". Correspondingly, the amended

Article 45 provides for “early childhood care and education for all children until they complete the age of six years”. In order to ensure implementation of education as a Fundamental Right to all children of the age of six to fourteen years, the Tenth Plan adopted a new approach towards achieving the goal of *Universalization of Elementary Education* (UEE). It vigorously called for effective accomplishment of the SSA which was launched in 2000-2001 by the Government of India with the precise objectives of having all children in regular schools, education guarantee centres, alternative schools or ‘back-to-school’ camp by 2005; bridging all gender and social category gaps at primary stage by 2007 and at elementary education level by 2010; universal retention by 2010, with emphasis on education for life. The SSA was seen as the culmination of all previous endeavours and experiences in implementing various education programmes. While each of these programmes and projects had a specific focus – Operation Blackboard on improving physical infrastructure; DPEP on primary education; Shiksha Karmi Project on addressing teacher absenteeism, and Lok Jumbish Project on girl’s education – SSA was seen as a single largest holistic programme addressing all aspects of elementary education in the Tenth Plan period¹¹.

Through the SSA, it was furthermore visualized to solve the problems of low rates of enrolment and retention, besides high drop-out rates, especially amongst girl children belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Minorities. The Government aimed to cover with this programme children who had never enrolled in schools or those who had dropped-out without completing eight years of elementary schooling. In terms of pre-school education, the Early Child Care Education component of ICDS continued to be a significant input for providing a sound foundation for development as well as the first step in the education ladder. In addition, focussed attention was given to strengthening the early joyful period of play and learning in the young child’s life to ensure a harmonious transition from the family environment to the primary school.

In its quest to guarantee quality basic education through-out the country, the Government of India, in the year 2004, imposed an Education Cess at the rate of 2 per cent on direct and indirect Central Taxes.

As regards ‘protection’, a prominent legislation – the *Goa Children’s Act, 2003* was enacted during the Tenth Five-Year Plan for safeguarding children. The Act ensures overall protection for children and the young against exploitation of

¹¹ See Eleventh Five-Year Plan 2007-2012, Social Sector Volume II, Planning Commission, Government of India, pp. 1-5.

all kinds and against moral and material abandonment. The 2003 Act was amended in 2005 to deal more stringently with various forms of child abuse and to regulate children's homes and hospitals. In 2003, the Government of India ratified the *1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Hague Convention 1993).

Two more significant laws amended during the Tenth Plan that had a bearing on children were – the Hindu Succession Act, 1956 and the Juvenile Justice (Care and Protection of Children) Act, 2000. The *Hindu Succession (Amendment) Act, 2005*, removed gender discriminatory provisions by giving equal rights to daughters. The *Juvenile Justice (Care and Protection of Children) Amendment Act, 2006* brought about much required clarification in the definitions of "child in need of care and protection" and "juvenile in conflict with law". Besides, it made amendments in several important Sections of the principal Act. Prime among them being, Section 10(1) which stated that "As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board". And, that "in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail." Similarly, a child in need of care and protection was to be produced before the Child Welfare Committee (CWC) within a period of twenty-four hours [Section 32(1)]. Few new Sections were also inserted like 7A after Section 7 of the principal Act which focussed on the "procedure to be followed when claim of juvenility is raised before any court". Other new Sections inserted in the principal Act were Section 21 and 62A. Section 21 prohibited publication of name, etc., of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act whereas Section 62A called for constitution of Child Protection Unit responsible for implementation of the Act in every District of the State.

Another notable legislation enacted was the *Prohibition of Child Marriage Act, 2006*. It replaced the Child Marriage Restraint Act, 1929. The offences under the Act have been made both cognizable and non-bailable. Other salient provisions of the Act being : child marriage to be made void at the option of the contracting party, who was a child at the time of the marriage up to two years after obtaining adulthood; provision for maintenance to the female contracting party until her remarriage; and passing of appropriate custody orders by the District Court for children born out of a child marriage. All these changes were made taking into consideration the welfare and best interest of the child. The 2006 Act enhanced the punishment for male adults marrying a child including for persons performing,

abetting, promoting, attending or participating in a child marriage, with rigorous imprisonment of two years and a fine up to ₹1 lakh.

The year 2006 was significant as the Commission for Protection of Child Rights Bill, 2005 was passed by the Parliament which led to the establishment of the *National Commission for Protection of Child Rights* (NCPCR) in March 2007. This was a big achievement not only for the children of the country but also for the Government as it saw the fulfillment of its commitment made earlier to the United Nations CRC Committee. The NCPCR ensures that all laws, policies, programmes and administrative mechanisms are in consonance with the child rights perspective, enshrined in the Constitution of India and the CRC ratified by the Government of India in the year 1992. In addition, it inquires into complaints and takes *suo motu* notice of matters relating to deprivation and violation of child rights; non-implementation of laws relating to survival, protection and development of children; and non-compliance of policy decisions, guidelines or instructions aimed at mitigating their hardships thereby ensuring their welfare and empowerment. Twenty-six States and four Union Territories – Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand, West Bengal, Chandigarh, Dadra & Nagar Haveli, Delhi and Puducherry – have set up their State Commissions for Protection of Child Rights (SCPCR).

The year 2006 will also be remembered in the annals of women and child development in India as it witnessed the upgradation of the Department of Women and Child Development to a full-fledged independent *Ministry of Women and Child Development* (MWCD) in the Government of India. Besides, in July 2006, the Government of India issued a notification expanding the list of banned occupations in Part A of the Schedule pertaining to the Child Labour (Prohibition and Regulation) Act, 1986. As per this notification, employment of children as domestic workers or servants and employment of children in dhabas (road side eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centers was banned.

At the international level, the Special Session of the UN General Assembly on Children was held in May 2002. It attracted 69 Summit-level participants and 190 high-level national delegations apart from delegates representing NGOs from countries all over the world. It was for the first time in the history of UN meetings that more than 400 children participated as delegates. This Special

Session dealt at length with the MDGs¹² and set forward quantitative and qualitative goals for children to be achieved by all the United Nations Member States by the year 2015. Having accepted the Millennium Summit Declaration of 2000 and to achieve the targets set by the UN General Assembly, the then Department of Women and Child Development subsequently drew up a fresh *National Plan of Action for Children* in the year 2005 (NPAC-2005) with a hope that it would provide a roadmap for steps to be taken for bringing about improvement in the lives of children.

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

In 2006, the Committee on the Rights of the Child issued *General Comments*¹³ No. 8 & 9 relating to the *Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment* and the *Rights of Children with Disabilities*. Prior to this, in the year 2005, it had issued *General Comments No. 6 & 7* pertaining to *Treatment of Unaccompanied and Separated Children Outside their Country of Origin* and *Implementing Child Rights in Early Childhood*. In the year 2003, the Committee had issued *General Comments No. 3, 4 & 5* relating to *HIV/AIDS and the Rights of the Child, Adolescent Health and Development in the Context of the CRC* and *General Measures of*

¹² As mentioned earlier, these goals are – eradication of extreme poverty and hunger; achievement of universal primary education; promotion of gender equality and empowerment of women; reduction in child mortality; improvement in maternal health; combating HIV/AIDS, malaria and other diseases; ensure environmental sustainability and global partnership for development.

¹³ The CRC Committee gives *General Comments* with a view to clarifying the normative contents of specific rights provided for under the Convention on the Rights of the Child or on particular themes of relevance to the Convention, thereby offering guidance about practical measures of implementation. Broadly speaking, *General Comments* provide interpretation and analysis of specific articles in the CRC or deals with thematic issues related to the rights of the child. *General Comments* constitute an authoritative interpretation as to what is expected of States Parties as they implement the obligations contained in the CRC.

Implementation of the Convention on the Rights of the Child. Before this, in the year 2002, it had issued *General Comment No. 2* on the subject of the *Role of Independent Human Rights Institutions*. *General Comment No. 1* was issued in the year 2001 and deals with the *Aims of Education*.

The *Eleventh Five-Year Plan (2007-2012)* continued to focus on 'survival, development, protection and participation' rights of children eyeing on their inclusion and empowerment. First and foremost, the Plan gave utmost importance towards a uniform definition of children as laid down in the Constitution of India, the NPC-1974, CRC, NPAC-2005, and *the Millennium Declaration*. In view of that, it recognized the challenge to amend all laws to ensure a uniform definition of children. Alongside, it gave importance to early childhood care and education for children in 0-6 age group by focussing on their holistic development covering all children with special focus on vulnerable children. The drive for universalization of ICDS further continued covering remote villages, *dhanis* and *saporis* leading to subsequent expansion of *anganwadis* from 10.5 lakhs to 13.17 lakhs¹⁴ by the end of the Eleventh Plan period, against the requirement of 14 lakhs, with emphasis on hot cooked meals and community involvement for better functioning of ICDS centres.

Two new schemes were introduced from the platform of ICDS – *Indira Gandhi Matritava Sahyog Yojana (IGMSY)* and *Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG-SABLA)*. These addressed the needs of the pregnant and lactating mothers and adolescent girls respectively, across the life cycle continuum. IGMSY was introduced on a pilot basis in 53 districts covering all States/Union Territories for providing cash incentives directly to women during pregnancy and lactation so as to improve their health and nutrition status along with infants, benefiting nearly 12.5 lakh mothers every year. A centrally sponsored scheme, it made use of the ICDS structure making women of 19 years of age and above eligible for first two live births. It excluded all organized sector employees from the IGMSY as they are entitled for paid maternity leave. Each beneficiary is paid an amount of ₹ 4,000/- in three installments between the second trimester and till the child attains the age of six months on fulfilling specific conditions related to maternal and child health. Transfer of the amount to the beneficiary is done either through a nationalized bank or a post office or a cooperative bank. SABLA, primarily for out of school adolescent girls (11-18 years), was implemented in 200 districts on a pilot basis using the ICDS set up, to address their multi-dimensional needs. The Scheme, implemented through the State Governments and the Union Territories, gets full financial assistance from the Central Government for all inputs

¹⁴ The figure of 13.17 lakhs is as per the *Twelfth Five - Year Plan 2012-2017, Social Sectors, Volume 3, Planning Commission, Government of India, Sage Publications India Pvt. Ltd, New Delhi, 2013*, see p. 185. The figures given in the Ministry of Women & Child Development, Government of India, Annual Report 2014-2015 (English), New Delhi is 13,04,611, see p. 24.

other than nutrition for which fifty percent assistance is provided to States by the Centre.

Among the other notable achievements of the Eleventh Five-Year Plan was the implementation of NRHM in mission mode to bring about a reduction in infant and maternal mortality along with the setting up of the State Commissions for Protection of Child Rights in different States. A new programme on basic newborn care and resuscitation, *Navjat Shishu Suraksha Karyakram* (NSSK) was launched in 2009 to address important interventions of care at birth, which included prevention of hypothermia and other infections, early initiation of breast feeding and basic newborn resuscitation. For the first time, *Bivalent Polio Vaccine* for two wild polio virus (P1 and P3) was introduced in the immunization programme in January 2010, first in Bihar and then in Uttar Pradesh, the two endemic States in the country for wild polio virus where indigenous transmission still continues. Diagnosis of HIV in infants and children below 18 months by using DNA PCR Testing (Early Infant Diagnosis) was also rolled out in 2010 through *Integrated Counselling and Testing Centres* (ICTCs) and *Anti-Retroviral Treatment* (ART) Centres. The cost of the test is fully borne by the Government and is to be repeated up to three times till the child is 18 months old. The *Red Ribbon Express* (RRE), after a successful first run in 2007-2008, revisited in December 2009 to December 2010 with services, IEC material to educate and inform people on all aspects of HIV/AIDS. The NRHM also came on board with NACO whereby one coach exhibited information on TB, H1N1, malaria, reproductive health and child services. All those not able to visit the train were reached by outreach services through IEC vans and folk troupes in the villages of the Districts through which the RRE passed. Building on the progress of JSY, another major programme started in June 2011 was the *Janani Shishu Suraksha Karyakram* (JSSK) to eliminate out of pocket expenses for both pregnant women and sick neonates.

A subsequent major achievement was the enactment of the *Right of Children to Free and Compulsory Education Act, 2009* (RTE Act, 2009) by the Government of India. It came into force on 1 April 2010, translating the constitutional provision for children's education in the age group of 6 to 14 years to a justiciable right. It includes provisions against corporal punishment and makes 25 per cent reservation for disadvantaged children in private schools mandatory. As a result, the vision and strategies of the ongoing SSA were harmonized with the RTE mandate and its programme norms revised and financial outlays enhanced. The NCPCR was given the responsibility of monitoring the child's right to education under Section 31 of the RTE Act, 2009. Other major Central Government schemes and programmes of elementary education that continued to be implemented were MDMS, Scheme for Teacher Education, Scheme for Providing Quality Education in Madrasas (SPQEM), and Infrastructure Development in Minority Institutions

(IDMI). MDMS, in fact, was universalized at the elementary level in 2008-2009 and the coverage of Teacher education was almost universal. Another flagship scheme launched in 2009 was *Rashtriya Madhyamik Shiksha Abhiyan* (RMSA) with the objective of making good quality education available, accessible and affordable to all children studying in classes IX and X by providing secondary schools within reasonable distance of any habitation. This scheme was built upon the success of SSA.

Prior to the RTE Act, 2009, on 4 December 2007, the Ministry of Women and Child Development launched a new centrally sponsored scheme *Ujjawala* addressing to prevention, rescue, rehabilitation, reintegration and repatriation concerns of young children and women victims of trafficking and commercial sexual exploitation. A sum of ₹ 30 crore was allocated for this scheme. In 2008, another scheme known as *Dhanalakshmi*, fully funded by the Centre to tackle the acute problem of declining sex ratio was started on pilot basis across the seven States of Andhra Pradesh, Bihar, Chhattisgarh, Odisha, Jharkhand, Punjab and Uttar Pradesh. The total amount provided to each beneficiary was ₹ 13,500, along with an insurance cover. Its main purpose was to bring about a change in the mindsets of family members towards the girl child. It provided cash transfers to the family of the girl child (preferably the mother) on fulfillment of certain conditionalities like birth registration, immunization, enrolment and retention in school, and marriage after attaining the age of 18 years. The year saw the *Information and Technology (Amendment) Act, 2008* and the *Code of Criminal Procedure (Amendment) Act, 2008*. The former Act addressed exploitation of children through the internet. One of its sections, namely, Section 67 (b) provides punishment for publishing or transmitting material depicting children in sexually explicit acts, etcetera in electronic form. The latter Act brought about notable changes that included women judges to hear rape cases as far as practicable, recording of statements of rape victims to be held at their residence by a woman police officer in the presence of parents or guardian, and investigation in child rape cases to be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station.

In order to reach out to all children, especially those in difficult circumstances, the Ministry of Women and Child Development in 2009-2010 introduced the centrally sponsored scheme known as the *Integrated Child Protection Scheme* (ICPS) with the aim of providing a safe and secure environment for the well-being of children in need of care and protection, and those in conflict with law. Based on the cardinal principles of "protection of child rights" and "best interests of the child", it brings together multiple existing schemes of the Ministry like the – (i) Integrated Programme for Street Children, (ii) Programme for Juvenile Justice, and (iii) Assistance to Homes for Children (*Shishu Greh*) to Promote In-country Adoption,

under one comprehensive umbrella and integrates additional new interventions for protecting children. The execution of the scheme is the shared responsibility of the government, family, community, professionals and civil society. Modifications in Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006 further took place in 2011 and Section 58 was replaced with a new section that dealt with transfer of juvenile or child who is mentally ill or addicted to alcohol or other drugs to a psychiatric hospital or psychiatric nursing home in accordance with the provisions of the Mental Health Act, 1987 or Rules made under it. The signing of memorandum of action between the Government of India and the respective State Governments and Union Territories is a prerequisite for the implementation of the ICPS.

At the international front, in October 2007, the Government of India ratified the United Nations *Convention on the Rights of Persons with Disabilities* that was adopted by the UN General Assembly in 2006, hence committing itself to the rights of children with disabilities. In May 2011, the Government of India ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000. In 2007, the UN Committee on the Rights of the Child adopted *General Comment No. 10* relating to *Children's Rights in Juvenile Justice* facilitating State Parties to administer juvenile justice in compliance with the CRC. In 2009, *General Comment No. 11* relating to *Indigenous Children and their Rights* under the Convention and *General Comment No. 12 on Children's Right to be Heard* were adopted. Taking note of the intensity and extent of violence inflicted on children, the CRC Committee in the year 2011 adopted *General Comment No. 13 on Freedom from all Forms of Violence* with the aim of putting an end to violence and thus respecting and promoting the human dignity and physical and psychological integrity of children as rights-bearing individuals. Furthermore, the Government of India submitted to the UN Committee on the Rights of the Child its combined Third and Fourth Periodic Report on the Convention on the Rights of the Child¹⁵, which was considered at its 1885th and 1886th meetings held on 2 and 3 June 2014, and adopted, at its 1901st meeting, held on 13 June 2014.

The Eleventh Plan thus committed itself to create a protective environment ensuring every child's right to survival, development, protection and participation. Recognizing that children and women are not homogenous categories, it laid emphasis on mapping of specific deprivations and addressing the issues related to inclusion, education, health and protection through planned interventions.

¹⁵ See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIND%2f3-4&Lang=en for details of the combined Third and Fourth Periodic Report of India.

The *Twelfth Five-Year Plan (2012-2017)* built upon the achievements of the Eleventh Plan. The fulfillment of child rights constituted a sensitive lead indicator of development at the national, state, district and local levels. Key child related policies, programmes and laws were given focussed attention to accomplish the “best interests” of children and achieve the monitorable targets of the Twelfth Plan for children. These monitorable targets being – improving the child sex ratio from 914 in 2011 to 950 by 2017; preventing and reducing child under-nutrition (percentage of underweight prevalence in 0-3 years children) by half (50 per cent) of NFHS-3 levels; reducing anaemia in girls and women by half (50 per cent); ensuring that all children receive a protective environment at the level of family and community and through health and child care centres, schools and other facilities; and ensuring that 80 per cent or more panchayats, districts and cities progressively become child-friendly.

In order to improve the quality of delivery for achieving child survival, development and nutrition outcomes, ICDS was further restructured to embody a genuinely integrated life cycle approach to early childhood care and development. The restructuring has led to repositioning of the *anganwadi* centres into vibrant child friendly early childhood development centres (*Bal Vikas Kendras*) to be owned by women in the community. The package of services given under the ICDS has also been redesigned to enhance the nutritional component and strengthen early childhood care and education. Improved initiatives are being undertaken to converge ICDS with the NRHM, TSC and SSA. Piloting of *anganwadi* centres with crèche services is also being envisaged.

The *Protection of Children from Sexual Offences Act, 2012* passed by the Parliament in May 2012 was taken forward. The Act seeks to protect children from offences of sexual assault, sexual harassment and pornography thereby safeguarding their interests. It is a step towards creating child-sensitive jurisprudence as it lays emphasis on child friendly procedures for reporting, recording of evidence, investigation, trial of offences and provision for establishment of special courts for speedy trial of such offences. The NCPCR and the SCPCRs have been made the designated authority to monitor the implementation of the Act. In June 2012, the Right of Children to Free and Compulsory Education (Amendment) Act passed by the Parliament was notified in the Gazette. It came into force with effect from 1 August 2012.

The Twelfth Plan saw the revamping of the TSC as the *Nirmal Bharat Abhiyan* (NBA) or the *Clean India Campaign*. The objective of the NBA is to achieve sustainable behaviour change with the provision of sanitary facilities in all communities in a phased, dispersion mode with ‘Nirmal Grams’ or clean villages as outcomes. The new strategy is aimed at transforming rural India into

'Nirmal Bharat'. The NBA foresees an integrated approach to 'Water, Sanitation and Hygiene' (WASH). Likewise, in order to give fillip to sanitation coverage across the country, covering tribal, rural and urban areas on a war footing in a time bound manner, the *Swachh Bharat Abhiyaan* (SBA) was launched on 2 October 2014 with the main aim of attaining 100% open defecation free India by 2019. Its other objectives are to bring about an improvement in the general quality of life by motivating all to adopt healthy sanitation practices. These include safe storage and handling of drinking water, proper washing of hands before every meal, personal hygiene plus menstrual hygiene, cleanliness of the house and surroundings, food hygiene and community hygiene. Though the SBA covers everybody in the county, its prime target groups are children, adolescents, mothers and women. For this purpose, convergence with other major schemes like ICDS, SSA, NRHM and NREGS and Ministries/Departments such as Women and Child Development, Education, Health, Panchayati Raj and Drinking Water and Sanitation is being focused upon. Being receptive to new ideas, the SBA foresees children to be a good channel to influence parents to adopt proper sanitary habits. It also visualizes schools and *anganwadis* as appropriate institutions for changing the behaviour, mindset and habits of children from open defecation and urination to the use of lavatory through motivation and education.

The *Criminal Law (Amendment) Act, 2013* was brought forth to make improvements in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012, especially with regard to offences of sexual nature. The definition of trafficking of person or persons, including minor, has been widened under Section 370 and 370A of the Indian Penal Code. Similarly, the definition of rape under Section 375 and its punishment under Section 376 has been expanded.

The *National Food Security Act, 2013* (NFSA) was enacted by the Government of India. It came into force on 5 July 2013. As per the NFSA, eligible households are entitled to receive 5 kgs. of food grains per person per month for a period of three years from the date of commencement of the Act at subsidized price of ₹ 1/-, ₹ 2/- and ₹3/- per kilogram for coarse grains, wheat and rice respectively and 35 kilograms per household per month to *Antyodaya Anna Yojana* (AAY) beneficiaries from the State Governments under the Targeted Public Distribution System (TPDS). Thereafter, prices will be suitably linked to minimum support prices. Under the NFSA, the Government also makes allocation of subsidized food grains for other schemes administered by various Ministries/Departments of the Central Government such as the MDMS, Wheat Based Nutrition Programme of MWCD, RGSEAG-SABLA, *Annapurna Scheme* of Ministry of Rural Development,

Welfare Institutions Scheme and Scheduled Castes/Scheduled Tribes/Other Backward Classes Hostels Scheme administered by the Department of Food and Public Distribution. The Wheat Based Nutrition Programme is used for the beneficiaries of ICDS Scheme only. Food grains delivered under the Scheme are used for providing supplementary nutrition to pregnant women and lactating mothers either by way of "take home rations" or nutritious "hot cooked meal", and fulfilling of nutritional standards of children in the age group of 6 months to 3 years and 3 to 6 years including those who suffer from malnutrition in the given age group through the local *anganwadi*. In addition, nutritional support is to be provided by way of one mid-day meal, free of charge, every day, except on holidays, to children studying in lower and upper primary classes in schools run by local bodies, Government and Government aided schools. The NFSA entitles every pregnant woman and lactating mother to maternity benefits of ₹ 6,000/- as well.

The Plan moreover initiated a review of the National Policy for Children (NPC) that was adopted in 1974 from the "rights perspective". On the basis of review undertaken by the Ministry of Women and Child Development for more than a year, a *National Policy for Children 2013* was formally adopted by the Government of India. The 2013 Policy lays emphasis on survival, health and nutrition for all children before, during and after birth, and throughout the period of their growth and development. Besides, every child has equal right to education, development, protection and participation. A comprehensive review of this policy is to be taken up once in five years by the Ministry of Women and Child Development in consultation with all stakeholders, including children. The year 2013 saw the formulation and adoption of another policy for children below six years of age known as the *National Early Childhood Care and Education Policy*. It reaffirmed provision of integrated services for holistic development of all children, along the continuum, from the prenatal period to six years of age thus ensuring a sound foundation for survival, growth and development of children with focus on care and early learning for every child. It further recognizes the synergistic and interdependent relationship between health, nutrition, psycho-social and emotional needs of the child. Following this, the *National ECCE Curriculum Framework, Quality Standards for ECCE, and Age Appropriate Child Assessment Cards* for children in the age bracket of 3 to 6 years were formulated, notified and circulated to all the States and Union Territories. This has led to Annual ECCE Curriculum Development and Contextualization as per the National ECCE Curriculum Framework by all the States and Union Territories. The transaction of the annual curriculum is to be supported by pre-school education (PSE) kit and activity book containing local and culturally relevant play and learning material.

Besides, the Twelfth Plan witnessed improvement in the quality of maternal and child health programme under the changed nomenclature of *National Health Mission (NHM)*, a flagship programme earlier known as NRHM. The *Reproductive, Maternal, Newborn, Child and Adolescent Health Approach (RMNCH+A)* is the core of the NHM during the period 2012 to 2017. Launched in 2013 by the Ministry of Health and Family Welfare, its aim is to protect the lives and safeguard the health of women, children and adolescents and provide an understanding of 'continuum of care' along with integrated service delivery at various life stages including adolescence, pregnancy, childbirth, postnatal period, childhood and reproductive age. The programme reiterates the need to focus on the most vulnerable and underserved sections of the population. Through these interventions, it envisaged to bring about improvement in child survival, in particular, infant and under-five mortality, and maternal health, i.e. Millennium Development Goals 4 and 5. Another dimension of this approach is to ensure that critical services are made available at home, through community outreach and health facilities at various levels (primary, first referral units and tertiary health care facilities).

Linked to this has been another new initiative of Government of India known as *Mission Indradhanush* ensuring full immunization of all children up to two years and pregnant women for tetanus toxoid vaccine building on the fact that child survival and health of the mother are intricately linked and the two cannot be addressed in isolation. And, the health of the mother is further determined by her overall status as an adolescent. Launched in December 2014, it primarily seeks to focus on the 201 identified districts across 28 States¹⁶ where 0-2 age group have either not been immunized or partially immunized. The basic aim is to accelerate the process of immunization in the country and achieve full immunization coverage by 2020.

Rashtriya Kishor Swasthya Karyakram (RKSK), another venture of the Ministry of Health and Family Welfare, was started in January 2014 to ensure holistic development of adolescents in the age group of 10-19 years with special focus on marginalized and underserved groups. It expands the scope of adolescent health programming in India from sexual and reproductive health to nutrition, injuries and violence (including gender based violence), non-communicable diseases, mental health and substance misuse. The strength of the programme is the overall paradigm shift from the existing clinic based services to adoption of promotion, prevention and reaching out approach to adolescents in their

¹⁶ The names of these States are Andhra Pradesh (5 Districts), Arunachal Pradesh (5), Assam (8), Bihar (14), Chhattisgarh (8), Delhi (2), Gujarat (9), Haryana (5), Jammu & Kashmir (5), Jharkhand (6), Karnataka (6), Kerala (2), Madhya Pradesh (15), Maharashtra (7), Manipur (4), Meghalaya (3), Mizoram (4), Nagaland (6), Odisha (10), Puducherry (1), Punjab (3), Rajasthan (9), Tamil Nadu (8), Telengana (2), Tripura (3), Uttar Pradesh (44), Uttarakhand (1) and West Bengal (6).

own environment, that is, in families, schools, colleges and communities. Key drivers of the programme are community based interventions like outreach by counsellors, social and behaviour change communication and strengthening of adolescent friendly health clinics across levels of care. The *Weekly Iron Folic Acid Supplementation (WIFS)* Programme is a major component of the RKSK to meet the challenge of high prevalence and incidence of anaemia amongst adolescent girls and boys across the country. Its long term goal is to break the intergenerational cycle of anaemia and achieve the short term benefit of a nutritionally improved human capital.

Another new centrally sponsored scheme on pilot basis targeting adolescent boys launched by the Ministry of Women and Child Development in March 2014 was *Rajiv Gandhi Scheme for Empowerment of Adolescent Boys (RGSEAB) – Saksham*. Operational in 20 Districts¹⁷ from 7 States and Union Territories – Andhra Pradesh, Delhi, Madhya Pradesh, Odisha, Rajasthan, Uttar Pradesh and Sikkim, the scheme aims at all-round development of adolescent boys by making them self-sufficient, gender sensitive and conscientious citizens, when they grow up. The scheme covers all adolescent boys – school going and out of school in the age group of 11 to 18 years by providing to them services like IFA supplementation, health check-up, counselling on adolescent reproductive sexual health (ARSH), nutrition and health education, life skill education, sports and recreation, vocational training and career counselling for adolescent boys aged 16 and above under the *National Skill Development Programme (NSDP)*.

During the Twelfth Five-Year Plan, the ICPS scheme was revised from 1 April 2014 with improved financial norms for child maintenance in homes, specialized adoption agencies, open shelters, sponsorship, foster care and after care. As on November 2014, there were 625 child welfare committees and 612 juvenile justice boards across the country. CHILDLINE (1098) services, as mentioned earlier, were extended to 346 cities/districts in the country by 31 March 2015. In addition, a National Portal for Missing and Found Children named *Trackchild* was made operational under the child tracking system.

A new scheme, *Beti Bachao Beti Padhao (BBBP)*, addressing the issue of declining child sex ratio through a national level mass media campaign and focussed multi-sectoral interventions in 100 gender critical districts with the aim of changing the social mind set, covering all States and Union Territories, was launched on 22 January 2015. It is a collaborative venture of the Ministries of Women and Child Development, Health and Family Welfare and Human Resource Development. Initiatives such as preventing sex selection, safe birth of

¹⁷ The Districts have been selected on the basis of a composite index based on indicators relevant to the condition of adolescent boys across the country.

girl child, ensuring health care and nutrition of girl child, and guaranteeing her education have all been built into the scheme.

Internationally, the CRC Committee adopted three *General Comments* – No. 14, No. 15 and No. 16 in 2013 to ensure the application of and respect for the best interests of the child by the States Parties to the Convention (General Comment 14), highest attainable standards of health for the child (General Comment 15) and protection of children’s rights emanating from the business sector (General Comment 16). The CRC Committee adopted General Comment No. 15 recognizing fully that most mortality, morbidity and disabilities among children could be prevented if there is political commitment and sufficient allocation of resources directed towards fulfilling children’s rights to the enjoyment of the highest attainable standards of health. It interprets children’s right to health as defined in Article 24 of the CRC as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through implementation of programmes addressing the underlying determinants of health. General Comment No. 16 principally addresses States’ obligations regarding the impact of business on children’s rights arising from the CRC and its Optional Protocols¹⁸ thereto. As of now, there is no international legally binding instrument on the business sector’s responsibilities vis-à-vis human rights. However, the Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises as well. For that reason, the business sector too must respect, protect and fulfill children’s rights and States must ensure this including provisions of effective remedies in case of violations.

The poor recognition given by State Parties to play and recreational activities of children as recognized in Article 31 of the CRC impelled the CRC Committee to make another *General Comment No. 17* in 2013. Through this General Comment, it addresses the significance among States about the child’s right to leisure, play, recreational activities and cultural life. General Comment No. 18 of CRC Committee is on the elimination of harmful practices and has been issued along with General Recommendation No. 31 of CEDAW Committee that is the Committee monitoring the implementation of CEDAW. This 2014 joint general recommendation and general comment is to be read in conjunction with relevant respective General Recommendations and General Comments issued by the two Committees earlier, in particular, CEDAW General Recommendation No. 19 (issued in 1992) on violence against women, CRC General Comment

¹⁸ These Optional Protocols to the CRC are – (i) on the Sale of Children, Child Prostitution and Child Pornography, and (ii) on the Involvement of Children in Armed Conflict.

No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence.

The *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* adopted by the UNGA in December 2011 came into force in April 2014, allowing children from Member States who have ratified to bring complaints about violations of their rights directly to the CRC Committee if they have not found a solution at the national level. The Government of India has not become a party to this Optional Protocol so far.

Building on the MDGs, especially work related to unfinished targets, the United Nations in September 2015 further adopted a set of 17 universal *Sustainable Development Goals* (SDGs) with 169 associated targets, resolving thereby, that is between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources. It also resolves to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities. The new goals and targets came into effect on 1 January 2016 and will guide the decisions to be taken over the next 15 years. The Government of India needs to give due priority and focussed attention to this task.

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

- a) *Laxmikant Pandey vs. Union of India* [AIR (1984) SC 469, AIR (1986) SC 276, AIR (1987) SC 232] on Adoption of Children.
- b) *Sheela Barse vs. Union of India* [1986 SC 1773] on Child a National Asset be Kept Separate from Other Prisoners and Released on Bail instead of being Kept in Jail.

- c) *M.C. Mehta vs. State of Tamil Nadu* [1997 SC 699] on Eradicating Child Labour.
- d) *Vishal Jeet vs. Union of India* [1990 (3) SCC 318] on Eliminating Child Prostitution.
- e) *Unni Krishnan vs. State of Andhra Pradesh* [1993 (1) SC 645] on Education of Children.
- f) *Gaurav Jain vs. Union of India* [1997 (8) SCC 114] on Children Forced into Prostitution and Children of Prostitutes and their Welfare.
- g) *Gita Hariharan vs. Reserve Bank of India* [AIR 1999 SC 1149] on Guardianship.
- h) *Centre for Enquiry into Health and Allied Themes (CEHAT) & Others vs. Union of India & Others* [2000 SC 301] on Pre-natal Sex Selection.
- i) *Kumar V. Jahgirdar vs. Chethana Ramatheertha* [AIR 2004 SC 1525] on Custody of Child between the Divorced Parents.
- j) *Sakshi vs. Union of India* [2004 SC 3566] on Child Abuse.
- k) *Rajesh K. Gupta vs. Ram Gopal Agarwala & Ors.* [AIR 2005 SC 2426] on Custody of the Child.
- l) *Nil Ratan Kundu vs. Abhijit Kundu* [2008 (9) SCC 413] on Selection of Proper Guardian of a Minor.
- m) *Mausami Moitra Ganguli vs. Jayant Ganguli* [AIR 2008 SC 2262] on the Paramount Consideration of the Welfare of the Child.
- n) *Bachpan Bachao Andolan vs. Union of India & Ors.* [(2011) 5 SCC 1] on Prohibiting Engagement of Children in Circus and Trafficking of Children, their Bondage and Forcible Confinement and Abuses.
- o) *Shaleen Kabra vs. Shiwani Kabra* [(2012) 5 SCC 355] on Welfare and Custody of Children.
- p) *Shankar Kisanrao Khade vs. State of Maharashtra* [(2013) 5 SCC 546] on Child Rape and Sexual Abuse.
- q) *Shabnam Hashmi vs. Union of India & Others* [(2014) 4 SCC 1] on Right to Adopt a Child by All Communities.
- r) *ABC vs. NCT of Delhi* [(2015) SCC OnLine SC 609] on Allowing Unwed Mother to be Guardian of Child under the Guardians and Wards Act, 1890.

In accomplishing the milestones, both at the national and international level, the non-governmental and civil society organizations have played an equally important role along with the Government in virtually every aspect concerning children. The media too has played a critical role in shaping public opinion

and creating mass awareness. The collaborative initiatives of the Government of India and UNICEF over the years have focussed on enhancing the capacities of the electronic and print media personnel in the Ministry of Information and Broadcasting so as to integrate and represent issues concerning children and their rights effectively. As a result, the media is gradually focussing on children's issues in a qualitative way. This is certainly a positive sign for the future and it is hoped that the media will increase its responsibility to include monitoring of child rights violations in a significant and persistent manner.

It would be seen from this chapter that India has come a long way from 1947 to 2016 in accomplishing both the national and international milestones. All these efforts bear testimony to the overall concern of the Government and other stakeholders in reaching out to its children, a supremely important asset of the nation. India is a home to almost 472 million children who are below the age of 18 years. While dealing with the complex dimensions of child rights, both in terms of numbers and in quality, it is satisfying to see the progress in several fronts such as immunization and enhancement of literacy rates in recent years. But at the same time, continuation of other critical indicators like infant mortality, sex ratio imbalance at birth, adverse child sex ratio, malnutrition and regional disparities are issues of concern. Our efforts, then, should primarily be directed towards overcoming these obstacles. Children in India represent diverse cultures, religions, castes, communities and economic groups. The development of this human resource should be considered as a key national concern not only by the Government but by all stakeholders. It is the prime responsibility of all concerned to ensure that proper foundation is laid in the early stages of children's life, so that their potential is properly harnessed for the growth and development of the nation. The Government, of course, is committed to do its best. However, despite its best efforts, there are children who suffer from hunger, diseases and discrimination of varied kinds. Not only this, they are subjected to exploitation and atrocities of all kinds. The next section makes an earnest effort to examine these critical issues for which remedial steps need to be taken immediately if all children are to be valued as a national priority.

Chapter 3

Critical Analysis of the Situation of Children in India

The preceding chapter exemplifies the manner in which independence facilitated the overall process of acquiring equality, dignity and protection for the children of the country. Other than the constitutional provisions, children have been given priority in the Five-Year Plans. A National Policy for Children was adopted way back in 1974, declaring children to be nation's most precious asset but gave very little to them in terms of investment. In the wake of the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992, with goals for the decade. In the year 1992 itself, it ratified the Convention on the Rights of the Child (CRC) and thereafter in its Periodic Country Reports submitted to the UN Committee on the Rights of the Child dwelled at length about the measures taken for ensuring children's rights. These Reports and the "Millennium Development Goals : India Country Report 2015" undoubtedly record some positive changes in the situation of children in India. But, there are significant problems and performance gaps too. The intent of this chapter is to focus on the critical areas which call for immediate attention of all concerned.

Uniform Definition of Child

The Constitution of India and the laws enacted for children in India over the years have defined the 'age of child' differently. Furthermore, most of them are not in consonance with the CRC, which the Government ratified way back in 1992. The different age-specifics under different laws not only create a dilemma, but also set the stage for injustice primarily because whether the same human being is or is not a child will depend upon the law that is being invoked in a given case. Moreover, when the laws are in conflict with one another due to diverse definitions, it is but natural a difficult task to decide the 'best interests of the child'. The new National Policy for Children, 2013 defines a child as "any person below the age of eighteen years". Being a policy document, it has no legal force. It therefore becomes all the more essential that the definition of the term 'child' be brought in conformity with the CRC, viz. "below 18 years of age", by establishing this as the standard 'age' and bringing into line other Acts to meet this definition.

Sex Ratio at Birth

Sex ratio at birth (SRB) is defined as the number of girls born for every 1,000 boys born. It is a more refined indicator measuring the level of gender biased sex selection as it is not affected by post birth factors, such as differential mortality or age misreporting. Gender biased sex selection is a discriminatory practice against girls that is manifested through sex ratio imbalances at birth. The most dominant contributory factors include deeply entrenched son preference, rapid fertility decline and misuse of technology. Estimates of the number of girls missing at birth are a strong indicator of the scale and magnitude of this discriminatory practice¹.

The issue of sex ratio imbalance was brought centre stage when Census data pointed towards steep decline in child sex ratio from 945 in 1991 to 927 girls in 2001 in the 0-6 year age group. The sex ratio at birth, as per the data provided by the Sample Registration System of the Office of the Registrar General of India as a three year moving average, declined progressively during the first half of the decade 2000-2010, when it was below 892 girls per 1,000 boys, dropping as low as 880 in 2003-2005. Thereafter, the sex ratio at birth improved steadily, reaching 906 in 2007-2009, 905 in 2008-2010 and again 906 during 2009-2011. According to the 2011-2013 Sample Registration System Report, the sex ratio for birth was found to be 909 girls. From 2008 to 2011, the sex ratio at birth seems to have stagnated, ranging between 906 and 908². All this reveals an alarming trend about the number of girls 'missing'³ at birth.

Gender biased sex selection and skewed birth ratio is reflected throughout the critical life stages of the child, that is 0-6 years, 7-14 years and 15-19 years. In fact, it stabilizes during the 7-14 year period and worsens in the age group of 15-19 years. Discrimination, other than sex selection, of the girl child could be in terms of inadequate nutrition, denial or limited access to education and health, and domestic violence. All this has serious ramifications as fewer girls in society will lead to increased violence against women, rape, abduction, trafficking and a resurgence of practices such as polyandry. In some parts of the country, women are already being bought as brides, making commodification of women a real threat. However, following the amendment in the PCPNDT Act in 2003 and with renewed efforts for more rigorous implementation of the Act to curb the misuse of technology, there has been a shift towards arresting the gender imbalance in sex ratios in a few States. Further, research studies undertaken on

1 See UNFPA-India 2015 publication titled "How many girls are missing at birth in India? Trends in Sex Ratio at Birth (2001-12)". This can also be accessed at india.unfpa.org.

2 Ibid.

3 The number of missing girls at birth can be computed by comparing the actual number of girls born with the number expected to be born. The resultant gaps represent the estimated number of girls missing due to sex selection.

the subject have shown entrenched practices that are structural causes of gender imbalance – stringent marriage norms, patrilineal inheritance and patrilocal residence, old age support of parents by sons and lack of autonomy of women – are being reshaped as a consequence of the skewed sex ratio. In addition, communities and governments need to take proactive steps in treating both boys and girls at par as girls have an equal right to be allowed to be born and grow to their full potential.

Adverse Child Sex Ratio

Child sex ratio is calculated as number of girls per 1,000 boys in the 0-6 years age group. As per the 2011 Census, the child sex ratio has gone down further to 918 girls as against 927 recorded in 2001 Census, which is definitely adverse to girls. In India, the 1991 Census had reported child sex ratio of 945 girls per 1,000 boys, which signifies that two decades later, the child sex ratio has worsened by 27 points. Prior to the 1991 Census, this ratio had fallen from 976 in 1961, to 964 in 1971, and 962 in 1981. In other words, during the last six decades the overall child sex ratio has fallen to quite an extent, which is indeed alarming. This negative trend reaffirms the fact that the girl child is more at risk than ever before. Apart from the States and Union Territories of Arunachal Pradesh (972), Mizoram (970), Andaman & Nicobar Islands (968), Puducherry (967), Kerala (964), Karnataka (948), Tamil Nadu (943), Goa (942), Himachal Pradesh (909), Gujarat (890), Chandigarh (880), Delhi (871), and Punjab (846), the child sex ratio has shown a declining trend in the remaining States and Union Territories in 2011 in comparison to 2001 Census⁴. The State of Jammu & Kashmir has seen the steepest fall of 79 points and Punjab the largest increase of 48 points, though the State of Punjab is among the three States that has the lowest child sex ratio. Jammu & Kashmir (862) and Haryana (834) are the two other States having low child sex ratio. The 2011 Census has seen a declining trend in child sex ratio even in North Eastern States, exceptions being Mizoram and Arunachal Pradesh. The overall rural child sex ratio has also shown a steep decline from 935 in 2001 to 919 in 2011, whereas urban child sex ratio has decreased by 4 points from 906 in 2001 to 902 in 2011 Census. A stage may soon come when it would become extremely difficult, if not impossible, to make up for the missing girls. The declining child sex ratio has already started showing its ramifications in States like Punjab, Haryana, Delhi, Gujarat, Rajasthan, Maharashtra, Tamil Nadu, Madhya Pradesh and Himachal Pradesh. In States like Punjab and Haryana this ratio has declined to less than 850 girls per 1,000 boys whereas in Gujarat to less than 900. The Government needs to recognize this discrimination. Girls have a right to live just as boys do. Moreover, missing numbers of either sex, and the resulting imbalance, is bound to destroy the social and human fabric.

⁴ See data of the Ministry of Health & Family Welfare, Government of India, 2015.

Right to Life and Access to Health Services

Despite stated official intent and Government interventions, consecutive health surveys reveal considerably high infant and under-five mortality. The highest mortality graph persists in the youngest age groups, but neither the National Health Mission nor other health services target the first-week and first-year mortality, which have stagnated for years. The first-week deaths account for half of all infant deaths (39/1000 live births), and have reduced only 10 points over five years; the perinatal mortality level has fallen only four points, to 18/1000 over the same period⁵. It is further observed that while the Registrar-General records and reports causes of death for all ages, data presently available relates to 0-4 and below 5 year age groups. There is little or no targeted programming for older age groups among children. The Ministry of Health and Family Welfare places them under a 'general health' category, where age disaggregations have to be culled out. The CRC life-saving responsibility does not stop at five or six years. Even the child sex ratio figures are given only for 0-6 age group, which needs to be looked into.

Other than this, the focus is skewed to vaccine-preventable diseases, which are not the leading causes of child deaths. Poor nutrition levels persist, with stunting among children aged below three years down only from 51 to 45 per cent, the level of wasting up from 20 to 23 per cent, and underweight levels reduced only from 43 to 40 per cent. The all-India trend of the proportion of underweight (severe and moderate), wasting, stunting among children below three years of age signifies why India has not been able to achieve MDG targets to reduce malnutrition and infant mortality⁶.

The Government should recognize basic childhood health needs, and focus all services to address actual causes of death and damage; 100% immunization cover for all children is only one among health protections to be ensured; diarrhoea, respiratory tract infections and unspecified "fevers" too deserve attention. The Government should revisit current budget provisions and re-examine programming for children's health and nutrition throughout childhood, to ensure that adequate resources and services reach every child.⁷

⁵ See "Human Rights in India : Report on Children's Status", *National NGO Child Rights Coalition Joint UPR Submission to UN Human Rights Council*, November 2011, pp. 7-8.

⁶ Ibid.

⁷ Ibid.

Right to Education

Ever since India became independent, there has been a demand for legislation relating to free and compulsory education in the country. The Constitution of India acknowledging the right to education under Article 45 of the Directive Principles of State Policy stated that “the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years”, but its outcome was not fruitful. The Constitution (Eighty-sixth Amendment) Act of 2002 made right to education a Fundamental Right by inserting Article 21A, 51A(k) and amending Article 45. As mentioned earlier, the inserted Article 21A proclaims that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” Article 51A(k) states that it shall be the duty of every citizen of India “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years”. Correspondingly, the amended Article 45 provides for “early childhood care and education for all children until they complete the age of six years”. These developments and the obligations arising out of the Convention on the Rights of Child paved the way for the enactment of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009). It came into force on 1 April 2010. It is the first official Central Government legislation which confers the right to education by law and is applicable all over the country except the State of Jammu and Kashmir. The Act was amended in June 2012.

The Act not only gives elementary education the status of a fundamental right but marks a significant shift in terms of policy and legal framework governing education. The Act provides special provisions for children not admitted to or who have not completed elementary education, focuses on the role and duties of appropriate government and local authority to establish schools and sharing of financial and other responsibilities, lays emphasis on duties of parents and guardians, extent of responsibility of schools and teachers, no capitation fee and screening procedure for admission, no denial of admission or holding back and expulsion, no physical punishment and mental harassment is to be caused to a child, follow up of specified norms and standards, role of school management committees, qualifications for appointment and terms and conditions of service of teachers, duties of teachers and redressal of their grievances, pupil-teacher ratio, filling up vacancies of teachers, teachers to be deployed only for educational purposes, teachers not to indulge in private tuitions, curriculum and evaluation procedure, examination and completion certificate, monitoring of child’s right to education by NCPCR/SCPCR, and constitution of national advisory council/state advisory councils. However, despite its praiseworthy aims, the Act is

caught up in much controversy. The two most contentious issues surrounding the RTE Act, 2009 relate to Section 12(1)(c) and Section 16.

Section 12(1)(c) compels all private schools to allocate 25% of their seats in Class 1 (or pre-primary, as applicable) for free to “children belonging to weaker section and disadvantaged group” to be retained until they complete elementary education. Private schools are to be reimbursed for each child enrolled under the provision (Section 12(2)) at the level of State expenditure per child or tuition fee charged at the school, whichever is less. The threats to close unrecognized private schools within three years of the enactment of RTE Act, 2009 received much public attention and have been embroiled in controversy. “The public controversy lies in the *de facto* State subsidization of private schools and in their presumed role in strengthening elementary education. Proponents of the free seats provision claim that it is an equity measure aimed at opening up a highly stratified school system to disadvantaged children, and also that it is the best way to achieve universal elementary education of purportedly better quality because of insufficient State sector capacity. Critics maintain that the provision marks the most explicit institutional legitimization of the private sector without sufficient efforts to strengthen the decaying State sector and mount concerns regarding social equity. Complicating the implementation of the RTE Act are powerful private school lobbies that launched a Supreme Court case arguing that it impinged on their right to run their schools without undue government interference, and that the Act was unconstitutional”⁸. In April 2012, a Supreme Court verdict upheld the Act after a long and contentious hearing.

Section 16 of the RTE Act, 2009 mandates that “No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education”. In addition, Section 30(1) states that “No child shall be required to pass any Board examination till completion of elementary education”. These measures as opposed to the traditional policy of failing children and detaining them in the same class and conducting end-of-the-academic term examinations lie at the heart of assessment-related controversy presently going in the country. It is important to understand some critical concerns being raised in the debate between the pedagogic efficiency of a traditional one of end-of-the-term examination (exemplified in its most extreme and celebrated form in the Board exams) and the reformatory, non-threatening and comprehensive school-based, teacher-guided form of assessment (clubbed under the banner of “continuous and comprehensive evaluation” or CCE). Both are based on sound principles which need to be recognized and supported rather than being

⁸ Prachi Srivastava and Claire Noronha, “Institutional Framing of the Right to Education Act – Contestation, Controversy and Concessions”, *Economic & Political Weekly*, May 3, 2014, Vol. XLIX No. 18, p. 52.

dismissed in haste. To hold the child responsible for not attending the school regularly when the school in question does not inspire the child in any manner and detaining him or her for “not knowing adequately enough” when the system is probably at fault in delivering, may not be an appropriate solution for the malaise. For by blaming the child or the teacher alone, one personalizes a structural malaise and shifts the onus entirely on them to perform. It is more important to create a system which supports teachers to teach and students to learn rather than create a system based on fear of chastisement⁹.

Several research studies from the field across the country reveal that most of the schools do not have separate toilets for girls in schools, no provision for drinking water, no libraries or computer labs, do not comply with the mandated teacher-pupil ratio 1:30, no playgrounds, no boundary walls, girl students mostly clean the classrooms, discrimination on the basis of gender, caste and religion is in practice, levels of awareness pertaining to RTE Act, 2009 among communities are low, and finally parents of students are not aware of school management committees and their functioning is ineffective. There is thus need to strengthen the delivery mechanisms in school education, especially at the grassroots and all this can only happen if the Act is effectively implemented.

Prohibiting Child Marriage

It is a reality that child marriage constitutes a serious human rights violation and affects both girls and boys. However, there is sufficient evidence pointing to the fact that child marriage makes girls more vulnerable to abuse, violence and exploitation as compared to boys. The 2011 Census reveals shocking statistics about child marriage. There were over 27 lakhs children in the 10-14 age group, overwhelmingly girls, who were married. Uttar Pradesh had the largest number of such children and was followed by Maharashtra, Bihar and Rajasthan, each having over 2 lakhs such children. The data also showed that about 1.7 lakh children in this tender age group were already widowed, separated or divorced. Girls are more vulnerable simply because they are females. It is not only a cause and consequence of gender inequality but constitutes a range of interlinked and interdependent human rights violations against their physical, psycho-social, health, education, economic, dignity and integrity throughout life. For instance, child marriage undermines the right to health by exposing girls to forced and traumatic initiation into sex as well as to early unplanned and frequent pregnancies. The younger the bride, the more likely she will face serious health complications due to the physical immaturity of her body at the time of child birth. In addition, young girls are vulnerable to HIV and other sexually transmitted

⁹ Disha Nawani, “Rethinking Assessments in Schools”, *Economic & Political Weekly*, January 17, 2015, Vol. L No. 3, pp. 37-38 & 41-42.

infections from husbands who usually are older and more sexually experienced. Moreover, child marriage denies young girls the right to education due to which they face a lifetime of economic dependence, and are stigmatized if they return to their families of origin or seek divorce or escape from their marriages. It also violates the right to freedom from all forms of physical or mental violence as set out by Article 19 of the CRC. Some young girls may even experience and live in conditions that meet international legal definitions of torture and of slavery-like practices including sexual slavery, child servitude, child trafficking and forced labour. When girls are denied their right to health, education and personal security, their intellectual, financial, social and personal development is stunted. A child bride's lack of education and peer interactions limits her support system. Without independence, skills, mobility and linkage with the outer world she is restrained in her ability to overcome challenges for herself, her children, or her family. Consequently, child brides are unable to participate as equals in public life. As a result, the overall development of their communities and nations are deprived of their contributions. In nutshell, the practice of child marriage proved to be an obstacle to nearly every millennium developmental goal : eradicating poverty and hunger (MDG-1); achieving universal primary education (MDG-2); promoting gender equality (MDG-3); protecting children's lives (MDG-4); and improving women's health (MDG-5 and MDG-6).

In view of this, there is legal recognition of the fact that children must not be married before they are physically and mentally ready for it. For instance, at the international level, there is a *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* that was adopted by the General Assembly of the United Nations on 7 November 1962. However, much before this Convention was adopted, a law prohibiting child marriage was in place in India since 1929 known as the Sarda Act that was later renamed as the Child Marriage Restraint Act (CMRA). It prohibited marriage of girls below the age of 15 years and boys below the age of 18. In 1978, the law was amended to raise the minimum age of marriage to 21 years for males and 18 years for females. As the title of the Act suggests, it merely was a law to prevent the solemnization of child marriages, but did not address the situation of children who were married even before the law could prevent it. It provided no respite to children who were married even before they could stand on their feet. Given the inherent drawbacks in the CMRA, it was replaced in 2006 by the Prohibition of Child Marriage Act (PCMA). The legal age of marriage prescribed in the 2006 Act remains the same as it was in the CMRA. The implementation of the law remains a challenge as customary practices and personal laws of different religious communities, which govern family matters, are at times upheld resulting in discrimination. Furthermore, the new Act does not allow the question of consent in case of minors and treats child marriage as a punishable offence.

Under the Hindu Marriage Act, 1955, the parties to the marriage must have the capacity to consent and a marriage where consent is obtained through force is voidable and can be annulled by a decree of nullity¹⁰. This law governs all Hindus, Sikhs, Jains and also Buddhists. Under the Islamic law, both the bride and groom must consent to the marriage and also express the same verbally and in writing. Under the Indian Christian Marriage Act, 1872, if a party to a marriage is a minor, the consent of father, if living, or if the father is dead, the consent of the guardian of such minor or if there is no guardian, then that of the mother is essential before marriage. A marriage of a minor without such consent is not valid¹¹. The PCMA also creates confusion by declaring some marriages void and some others voidable. Marriage of a minor solemnized by use of force, fraud, deception, enticement, selling and buying or trafficking is a null and void marriage, while all other child marriages are voidable at the option of the parties to the marriage and hence valid marriages until they are nullified by the court¹². If the law does not attribute consent to a child, it must render all child marriages void, as all child marriages then become marriages that have taken place either through some form of coercion or use of fraud, trafficking and such other illegal means, or by influencing the mind of the child¹³. Moreover, as per the law any child marriage solemnized in contravention of an injunction order issued under Section 13, whether interim or final, shall be void *ab initio*¹⁴.

In 2013, the United Nations General Assembly adopted a *Resolution on Child, Early and Forced Marriage* to which India subsequently became a party. Initially, there was much criticism about India not supporting the Resolution. In the 2013 Resolution, the Human Rights Council decided to convene a panel discussion and requested the Office of the United Nations High Commissioner for Human Rights to prepare a paper on preventing and eliminating child, early and forced marriage. The UN General Assembly first ever panel discussion on child marriage was held a year later in September 2014 wherein it was asserted that culture cannot be a justification for the same and that it is within the power of the people to change cultures and traditions that are retrogressive, offensive to the sensitivities of its people and those which simply undermine the core values. The synthesis report of

¹⁰ Section 5 and Section 12 of the Hindu Marriage Act, 1955 as amended in 1978.

¹¹ See HAQ - Centre for Child Rights, Response to Questions for OHCHR Report on Preventing Child, Early and Forced Marriages for 26th Session of the Human Rights Council titled "Child Marriage in India : Achievements, Gaps and Challenges". Accessed on 6 August 2015 at <http://www.haqcrc.org/haqs-submissions-uncrc-committee>.

¹² See Section 3 and 12 of the Prohibition of Child Marriage Act, 2006.

¹³ HAQ, *op.cit.*

¹⁴ See Section 14 of the Prohibition of Child Marriage Act, 2006.

the UN Secretary General on the Post-2015 Sustainable Development Agenda¹⁵ calls for the practice of child, early and forced marriage to be ended everywhere along with an end to all forms of gender inequality, gender based discrimination and violence against women and children.

Perhaps, the most significant development is the *November 2014 Resolution of the United Nations General Assembly* that clearly notes child, early and forced marriage is linked to and perpetuates other harmful practices and human rights violations, all of which have a disproportionately negative impact on women and girls. Equally significant is the first ever Joint General Recommendation/Comment issued by the Committee on the Elimination of Discrimination against Women (No. 31) and the Committee on the Rights of the Child (No. 18) in November 2014 focussing on harmful practices against women and girls. The Joint General Recommendation/Comment sets out a comprehensive review of the normative context, causes for persistent practices and a holistic framework to address these, including data collection, legislation and enforcement, and prevention strategies. It further reiterates that States have a duty to comply with the obligations in both the Conventions, including a *due diligence* obligation to prevent acts that impair the recognition and enjoyment or exercise of rights by women and children.

Of late, there have been significant developments in the Commonwealth as well initiating a number of discussions and commitments about child, early and forced marriage and other forms of violence against women. Prominent among them being the *Commonwealth Round Table on Child, Early and Forced Marriage* that took place in London in October 2013; *Commonwealth Heads of Government Meeting* held in Colombo in November 2013; the Commonwealth Secretariat contribution to the 2014 OHCHR report on preventing and eliminating child, early and forced marriage; and their advocacy event held on Human Rights Day on 10 December 2014. The representatives of NHRIs and the Commonwealth Forum of National Human Rights Institutions (CFNHRI) thereafter met in Kigali on 5-6 May 2015 to discuss prevention and elimination of child, early and forced marriage and came up with a statement known as the *Kigali Declaration*. Prior to this, in 2012 the *Eleventh International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights* (ICC)¹⁶ adopted the *Amman Declaration and Programme of Action* setting out a wide range of advocacy and action programmes to promote gender equality and guarantee to women and girls their rights. The United

¹⁵ This report (A/69/700) is titled as "The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet" dated 4 December 2014.

¹⁶ The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in 2016 has changed its name to Global Alliance of National Human Rights Institutions (GANHRI).

Nations Universal Periodic Review (UPR) also highlights this as a key human rights issue.

As the global momentum builds towards ending early child marriage, it calls for a commitment regarding the adoption of policies and practices that impact on preventing and eliminating child marriage. This is equally true for India which came up with a *National Strategy on Prevention of Child Marriage* much before the 2013 UN Resolution laying emphasis on specific areas of action, such as, law enforcement, access to quality education and other opportunities, changing mindsets and social norms, empowerment of young adolescents, and development of monitorable indicators. The need of the hour is to implement it in all earnestness. The United Nations Committee on the Rights of the Child giving its concluding observations on the combined third and fourth periodic reports of India on the CRC has also recommended the Government of India to “ensure the effective implementation of the Prohibition of Child Marriage Act, 2006, including by emphasizing that the Act supersedes the different religious-based Personal Status Laws”. It further recommends the Government to take “the necessary measures to combat the requirement of dowries, child marriage and the practice of devadasi, including by conducting awareness-raising programmes and campaigns with a view to changing attitudes and instituting counselling and reproductive education, with a view to preventing child marriages, which are harmful to the health and well-being of girls”¹⁷.

Addressing Child Labour

In India, despite constitutional safeguards, national and state level laws and regulations, national child labour policy, national scheme for rehabilitation of child labour, and the enactment of the Right of Children to Free and Compulsory Education Act in 2009, millions of children are engaged in labour, often under hazardous conditions. This deprives them of their childhood, dignity and fundamental rights like health, education, and above all, in developing capabilities and availing opportunities as normal children in the society.

The earlier Child Labour (Prohibition and Regulation) Act, 1986, defined “child” as a person who has not completed fourteenth year of age. Section 3 of the Act further stated that employment of children below the age of 14 years was prohibited in certain occupations and processes. Altogether, there were 18 occupations and 65 processes where employment of children was prohibited. Some of the prohibited occupations and processes were transport of passengers, goods or mails by railways; building and construction work; catering establishment at a railway station; work relating to fireworks and explosives; abattoirs and

¹⁷ See United Nations CRC/C/IND/CO/3-4, dated 7 July 2014, para 52, p. 11.

slaughter houses; automobile workshops and garages; foundries; mines and collieries; plastic and fiberglass units; handloom and power loom industry; domestic servants, in dhabas, restaurants, hotels, motels, tea shops, spas, or other recreational centres; circus and caring of elephants; beedi making; carpet weaving; cement manufacturing; cloth printing, dyeing and weaving; tanning and wool cleaning; brick kilns; lock making; glass industry; soap and detergent manufacturing; manufacturing of sports goods; zari making; rag picking and scavenging; food processing; paper making; beverage industry; etc. The Act also regulated the working conditions of children in employment where they were not prohibited from working. The Act provided for Child Labour Technical Advisory Committee (a body of experts) to advise the Central Government on inclusion of additional occupations and processes to the Schedule of the Act. Section 2 (i) of the Child Labour (Prohibition and Regulation) Act, 1986 defined the jurisdiction of both Central and State Governments in implementation of the Act.

The said law was chiefly enacted to ban employment of children below 14 years of age. However, the law proved to be inadequate both in its understanding and the framework provided by it in dealing with the problem of child labour. By distinguishing between hazardous and non-hazardous forms of labour, and identifying certain processes and occupations from which children are prohibited from working, it left a large range of activities that children are engaged in and thus continued to be exploited and abused.

The landmark judgment given by the Supreme Court of India in *M. C. Mehta vs. State of Tamil Nadu and Others* on 10 December 1996 in Writ Petition (Civil) No. 465/1986 deserves special mention over here as it gave the following directions – survey for the identification of working children, withdrawal of children working in hazardous industries and ensuring their admission to formal or non-formal schools, contribution at the rate of ₹ 20,000/- per child to be paid by the offending employers of children to a Welfare Fund to be established for this purpose, employment to one adult member of the family of the child withdrawn from the work and if that is not possible a contribution of ₹ 5,000/- to the Welfare Fund to be made by the State Government, financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of ₹ 20,000 / 25,000 deposited in the Welfare Fund as long as the child attends school, and regulating the hours of work for children involved in non-hazardous occupations, so that the working hours do not exceed six hours per day and education provided for at least two hours a day. The expenditure on education was the responsibility of the concerned employer. The Supreme Court since then has continuously monitored the directions given by it.

The UN Committee on the Rights of the Child giving its concluding observations on the combined third and fourth periodic reports of India in para 81 and 82 states that “despite some efforts made by the State party, there is still a large number of children involved in economic exploitation, including child labour in hazardous conditions, such as in mining, bonded labour in the informal sector as domestic servants and in agriculture (CRC/C/15/Add.228, para. 72). In line with its previous recommendations (CRC/C/15/Add.228, para. 73), the Committee recommends that the State party : (a) Expedite the adoption of the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, and develop a comprehensive strategy to prevent and eliminate all forms of child labour, including imposing sanctions against individuals involved in child labour, ; (b) Consider ratifying International Labour Organization (ILO) Conventions No. 138 concerning Minimum Age for Admission to Employment, No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and No. 189 concerning Decent Work for Domestic Workers”.

The Union Cabinet in May 2015 endorsed the prohibition of employment of children below 14 years in all occupations and processes except those pursuing home based family enterprises, entertainment and sports activities, excluding the circus, after school or during vacations, as per the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 along with additional salient amendments to it. The rationale given by the Government for this move is that it will bring the proposed child labour law in alignment with the Right of Children to Free and Compulsory Education Act, 2009 that makes education a fundamental right for all children in the age group 6-14 years while the child rights activists altogether hold a different view. The Child Labour (Prohibition and Regulation) Act of 1986 also banned the employment of children up to the age of 14 years but this was restricted to hazardous occupations only while the proposed Amendment Bill, 2012, introduced in the Rajya Sabha on 4 December 2012 and referred to the Standing Committee on Labour and Employment on 12 December 2012, prohibits employment of children below 14 years in all occupations and processes, and where the child helps the family or family business after school hours or during vacations, the work carried out should be of non-hazardous nature. And, where the child works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials, or any such other entertainment or sports activities, such work should not affect the school education of the child. The new provisions introduce a new category of persons called “adolescent”, aged between 14 and 18 years, and prohibits their employment in hazardous occupations and processes. In addition, it proposes stricter punishment for employers employing any child or adolescent and provides for constitution of Child and Adolescent Labour Rehabilitation Fund for one or more districts for the rehabilitation of the child or adolescent rescued.

The Rajya Sabha, on 19 July 2016, unanimously passed the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 so as to bring it in accord with the statutes of the International Labour Organization. The Lok Sabha too passed the Bill on 26 July 2016. It received the assent of the President on 29 July 2016 and is called the Child Labour (Prohibition and Regulation) Amendment Act, 2016. This Amended Act has come in for lot of criticism as it has left some serious concerns unaddressed to ensure a safe childhood for all children. The need of the hour for the Government is to ratify the ILO Convention No. 138 and 182, which provides for minimum age of entry into employment, and prohibits and eliminates worst forms of child labour.

Issue of Child Trafficking

Trafficking in children is a global phenomenon and with the passage of time has gained momentum. The reasons for the increase in this phenomenon are multiple and complex. It feeds on poverty, despair, war, crises, ignorance and girls and women's unequal status in most societies.

Trafficking has been defined in varied ways over its history. During the close of the twentieth century, trafficking was defined to largely accommodate the specific needs of the organization or body developing the definition. It was thus defined differently, among others, in terms of human rights, criminal activity, irregular migration, labour exploitation and modern slavery. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol) that was adopted by the United Nations General Assembly in 2000, brought the much needed and widespread consensus on a working definition of trafficking. This Protocol defines trafficking as ".....the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation"¹⁸. It further specifies that "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". Furthermore, "the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used"¹⁹ and "the recruitment,

¹⁸ Article 3(a) of the Trafficking Protocol.

¹⁹ Article 3(b) of the Trafficking Protocol.

transportation, transfer, harbouring or receipt of a child for the purpose of exploitation” shall also be considered “trafficking in persons” even if this “does not involve any of the means set forth in subparagraph (a) of this article”²⁰.

The UN Trafficking Protocol is an important step in the growing body of instruments that consolidates understanding of trafficking as the movement and exploitation of human beings for whatever purpose. Ironically, trafficking has often been confused as movement only for commercial sexual purposes, and has thus not been comprehensively dealt within law. In many countries, anti-trafficking laws are also the prostitution laws, which seek to criminalize or regulate or control the sex industry and sex trade. There is clearly an urgent need to review laws that do not take account of a comprehensive understanding of trafficking and to ensure that adequate protection in law is provided for both adults and children who are victims of this heinous act. This holds true for India as well.

Trafficking is prohibited by the Indian Constitution. The right against exploitation is a Fundamental Right guaranteed by the Constitution of India under Article 23 which states - “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

In accordance with the Constitution, the Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956, which criminalizes trafficking. The Act does not prohibit prostitution, but does prohibit prostitution related activities such as keeping a brothel or allowing premises to be used as a brothel, living on the earnings of prostitution and procuring, inducting or taking a woman or a girl for the purpose of prostitution. The Act was amended in 1986 and renamed as the Immoral Traffic (Prevention) Act (ITPA). The ITPA introduced several initiatives including setting up of Protective Homes to provide protection and services to victims and education and vocational training to at-risk groups. Besides, the Act provides for the appointment of Special Police Officers assisted by women police to investigate trafficking offences, and for the setting up of Special Courts.

The implementation of the ITPA is hampered by the existence of certain Sections, such as, Sections 8 and 20, which are the most commonly invoked Sections for any enforcement being done under the ITPA. These Sections result in prosecution of the trafficked persons and result in further victimization of the victims/trafficked persons. It has been found that instead of prosecuting the traffickers under Sections 3, 4, 5 and 6, most prosecutions take place under Section 8 of the ITPA. It has also been felt that the ITPA should be amended to focus on the traffickers, to ensure speedy recording of evidence, to enhance penalties against traffickers and deny easy bail to them.

²⁰ Article 3(c) of the Trafficking Protocol.

The Indian Penal Code 1860 (IPC) proscribes the kidnapping or abduction of a woman with intent to marry her by force, forcing a woman into illicit intercourse, or compelling a woman directly or indirectly to go from a place for this purpose. If a girl is a minor, inducing her by any means to go from place to place is punishable, as is importing a girl below the age of 21 years into India for the purpose of inducing her into illicit sex.

The Juvenile Justice (Care and Protection of Children) Act, 2000 and subsequent amendments made to it in 2006 and thereafter, is another law whose provisions are invoked in order to provide care, protection, treatment and rehabilitation to children in need of care and protection as well as those who come in conflict with law. But, there seems to be a wide gap in theory and practice in the implementation of this Act. This is equally true of the Indian Information Technology Act, 2000 which declares online pornography a punishable offence (Section 67). The Juvenile Justice (Care and Protection of Children) Act, 2000 was repealed in 2015, the information about which is given in the subsequent section on "Juvenile Justice".

Other than this, the Government of India, pursuant to the directions given by the Supreme Court in *Vishal Jeet vs. Union of India* and *Gaurav Jain vs. Union of India*, the Central Government in 1998 drew up a Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children and constituted a National Advisory Committee for purposes of combating trafficking, rehabilitating victims of trafficking and commercial sexual exploitation, and improving legal and law enforcement systems to arrest trafficking. Furthermore, it set up State Advisory Committees on trafficking for the same purpose, devolving authority and seeking to mobilize greater State resources in the fight against trafficking; and initiated a new centrally sponsored scheme in partnership with the civil society called the Integrated Child Protection Scheme.

The Criminal Law (Amendment) Act, 2013 that was brought forth to make improvements in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012, especially with regard to offences of sexual nature, is the latest development as Section 370 of the given Act defines "trafficking of person". The definition of trafficking of person or persons, including minor, has been widened under Section 370 and 370A of the Indian Penal Code and is in consonance with the 2000 UN Trafficking Protocol.

Despite all these developments, the conviction rate of traffickers continues to be on the lower side. One of the reasons usually cited for poor implementation of the aforesaid laws and schemes is that the problems faced at the ground level by the field staff or the implementing agencies have never been discussed at

length with the policy makers, in spite of the fact that the field staff as well as the implementing agencies by virtue of their experience in the field possess a storehouse of knowledge, skills and abilities. It is high time to reverse this process. For any change to be effective, consultations have to be two-way and wide ranging. It is imperative that all stakeholders including the field staff be taken into confidence. Besides, there is a need to have proper structures for prevention, rescue, rehabilitation and reintegration along with proper coordination between the police, the judiciary and government institutions and repeal of ITPA. Consequently, the Ministry of Women and Child Development, Government of India has come up with the draft of Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 which has received enormous criticism on account of inherent flaws. It is hoped that the final document will take care of these flaws.

Juvenile Justice

The Apprentices Act, 1850 was the first legislation that laid the foundation of juvenile justice system in the country. The concept consequently gained momentum with the enactment of the Indian Penal Code (1860), Reformatory Schools Act (1897), Code of Criminal Procedure (1898) and recommendations made by the Indian Jail Committee (1919-1920). The latter Committee categorically mentioned that the child offender should be given altogether a different treatment from the one given to an adult offender. It held that imprisonment of child offenders should be prohibited and recommended for provision of reformatory schools, or their equivalent, and constitution of children's courts with procedures 'as informal and elastic as possible'. The Committee furthermore drew attention to the desirability of making provisions for children who had not committed crime so far, but could do so in the near future on account of living in criminal or inhuman surroundings or those without proper guardians or homes. It called for special enactment to cover all these children living in difficult conditions. Since then, legislative provisions relating to juvenile justice in the country have gone through various shades of orientation and emphasis.

As India was ruled by the British at that point of time, it could not enact a central legislation for the entire country. As a result, individual provincial governments enacted their own legislation for children in conflict with law in their respective jurisdictions. The Acts passed by different provincial States of British India brought within its sphere two categories of children, viz., (i) delinquent children, and (ii) destitute and neglected children. A delinquent child was defined as one found to have committed an offence whereas a destitute and neglected child was one found to be living in difficult circumstances and being vulnerable needed care and protection against exploitation and abuse. Both these categories of children were to be handled by the juvenile courts. They were to be kept in remand homes and certified schools or released on probation,

with a possibility of imprisonment when the nature of offence was serious and the character of the offender so depraved as to justify imprisonment. The Acts differed in the finer details, such as their definition of delinquent and neglected children. The most important difference that had far-reaching consequences for children was the differential age limits for defining the child. It varied from 13 to 18 years under these Acts, and a person could be dealt with as a child in one State but not so in another. Nonetheless, during this period, by and large, the “welfare” approach was adopted for children – whether delinquent, destitute or neglected.

Independence ushered a new era for such children in the country as it led to the enactment of the first central legislation, namely, the Children’s Act in 1960 by the Government of India. The Act, provided for the care, protection, maintenance, welfare, education, training and rehabilitation of the neglected and delinquent children. The Central Government, however, did not make any effort to make the law applicable throughout the country as it assumed to be a model to be followed by the States in the enactment of their respective Children Acts. For the first time in India, the Children Act prohibited the imprisonment of children under any circumstance. It provided for separate adjudicatory bodies – a Children Court and a Child Welfare Board – to deal with delinquent and neglected children. The Act also introduced a system of three-tier institutions, namely, an observation home for receiving children during the pendency of their proceedings, a children’s home for accommodating neglected children, and a special school for delinquent children. It, however, introduced a sex discriminatory definition of child – less than 16 years for boys and less than 18 years for girls. All States which enacted their Children Acts following the 1960 Children Act had provisions similar to it but not the same. Even the definition of the term child differed from State to State. As a result, delinquent and neglected children were subjected to differential treatment emanating from the diverse conceptions of child and childhood.

The need for a uniform Children Act across the country paved the way for the enactment of the Juvenile Justice Act, 1986 (JJA 1986). It promoted ‘the best interest of the juveniles’ by incorporating into its fold not only the major provisions and clauses of the Constitution and the 1974 National Policy Resolution for Children but also the universally agreed principles and standards for the protection of juveniles such as the 1959 United Nations Declaration of the Rights of the Child and the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The JJA 1986 overruled imprisonment of juveniles in police lock-up or jail. Other than this, it stipulated two main authorities – a Juvenile Welfare Board and a Juvenile Court – to deal with neglected juveniles and delinquent juveniles. It also stipulated establishment of various kinds of institutions for the care of juveniles – a juvenile home for the

reception of neglected juveniles, a special home for the reception of delinquent juveniles, a observation home for the temporary reception of juveniles during the pendency of any inquiry regarding them, and a after-care home for the purpose of taking care of juveniles after they were discharged from a juvenile home or a special home. It further guaranteed a wide range of dispositional alternatives with preference for family or community-based placement, and a vigorous involvement of voluntary agencies at various stages of the juvenile justice process. The basic ideology for adopting this differential approach was to save children from devastating ill-effects of criminalization, penalization and stigmatization. With the enactment of the JJA 1986, the “welfare” approach gave way to the “justice” paradigm.

The implementation of the JJA 1986 brought to the forefront many loopholes in terms of age determination, separate trials, court proceedings, notification of charges to parents or guardians, filing of reports by probation officers, reasons for and length of confinement, rehabilitation and after care of juveniles. The juveniles were often not provided with a copy of the rules governing their detention and the written description of their rights. Many juveniles housed in institutions run by the Government did not know the purpose of their stay and the future of their institutionalization. Like the 1960 Children Act, the JJA too promoted a sex discriminatory definition of a juvenile. In case of a boy, a juvenile was one who had not attained the age of 16 years and in case of a girl who had not attained the age of 18 years. Moreover, most of the States and Union Territories who had formulated their Rules for the implementation of the JJA 1986 were devoid of the basic infrastructure consisting of juvenile welfare boards, juvenile courts, observation homes, juvenile homes, special homes and after care homes. Obviously, these lagged the required measures for observance of minimum standards for institutional care or for the advancement of non-institutional care, such as foster care, sponsorship, adoption, etcetera. As a result institutionalization of juveniles continued, with all its wrongdoing. The chasm between reality and the application of the law was felt all the more with the adoption of the 1989 CRC by the UN General Assembly and its ratification by the Government of India in 1992. The provisions of the CRC with regard to children in conflict with the law are amplified in two other United Nations instruments, both of which were adopted in 1990 – the United Nations Guidelines for the Administration of Juvenile Delinquency and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty²¹. Both provide detailed directions about the processes to be followed by the juvenile justice system in dealing with persons below the

²¹ These two United Nations instruments were prepared in parallel with the negotiation of the CRC itself. These two along with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) are the accepted minimum standards to which States should adhere to when setting up or amending their existing juvenile justice system.

age of 18. Subsequently, the 1993 World Conference on Human Rights in Vienna and the successive adoption of Vienna Declaration and Programme of Action also made a definitive impact on all concerned dealing with the plight of these children in India including the Government.

The net outcome of all these developments was that a new Act, namely, the Juvenile Justice (Care & Protection of Children) Act, 2000 (JJA 2000) was introduced in the country. The objects and reasons stated for the new enactment was consolidation of 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 their ultimate rehabilitation through their various established institutions under the enactment. JJA 2000 endorsed the "justice" as well as the "rights" approach towards children and made use of a better terminology by providing for "juveniles in conflict with law" and "children in need of care and protection". Not only this, it kept both the categories separate pending their inquiries. This segregation aimed to curb the influence on the child in need of care and protection from the one in conflict with law. It also brought about standardization in the definition of a 'juvenile' or a 'child' in the entire country barring the State of Jammu and Kashmir. 'Juvenile' or 'child' was a person who had not completed eighteenth year of age. This uniformity in age for both boys and girls made the juvenile justice system in conformity with the CRC. Juveniles in conflict with law included all those children alleged to or found to have committed an offence. They were to be handled by the juvenile justice board. Children in need of care and protection covered a range of 'at risk' children and were to be dealt by the child welfare committee. The 2000 Act, though passed with good intentions, overlooked the inclusion of certain substantive and procedural due process rights. An amendment to the said Act was brought in 2006 and 2011 to cover up the gaps existing in the 2000 Act.

The public outrage following the 16 December 2012 gang rape case in Delhi, where a juvenile was among the five accused, raised lot of hue and cry leading to demands that minors 16 years and above, accused of serious crimes, should be tried as adults opened a pandora box once again. After heated debates on the issue, this demand was incorporated in the Juvenile Justice (Care and Protection of Children) Bill, 2014 and introduced in the Lok Sabha on 12 August 2014 for enactment of a new law and then passed on to the Rajya Sabha. It's chairman however referred the said Bill to its Department-Related Parliamentary Standing Committee on Human Resource Development on 22 September 2014

for examination²² as it had positive and regressive proposals like inclusion of a transfer system that will enable children alleged to have committed heinous crime to the adult criminal justice system, and potentially to be sentenced to life in prison. The Parliamentary Standing Committee in its 264th Report on the Juvenile Justice (Care and Protection of Children) Bill, 2014 tabled in the Parliament on 25 February 2015 expressed reservations to some of the proposed changes and noted in categorical terms that “.....juvenile crime is a miniscule proportion of total crime committed and that the same is not significantly increasing majority of juvenile offenders came from poor, illiterate families and were homeless or living without parents..... Hence, it is not the stringent punishment for juvenile offenders that will result in reduction of juvenile crime, attempts should be made to improve the socio-economic condition of families thereby satisfying the developmental needs of children.the Committee can only conclude that the existing juvenile system is not only reformative and rehabilitative in nature but also recognizes the fact that 16-18 years is an extremely sensitive and critical age requiring greater protection. Hence, there is no need to subject them to different or adult judicial system as it will go against Articles 14 and 15(3) of the Constitution”. Despite the conclusive observations made by the Parliamentary Standing Committee, the Cabinet again approved selective exclusion of 16-18 years old children committing ‘heinous offences’ on 22 April 2015. The revised Bill was introduced in the Lok Sabha on 7 May 2015 and passed as well. In December 2015, the Bill was passed by the Rajya Sabha. It received the assent of the President on 31 December 2015 thereby repealing the JJA 2000 with the Juvenile Justice (Care and Protection of Children) Act, 2015. The 2015 enactment has led to a reversal of more than 150 years of progressive juvenile justice jurisprudence in the country. In addition, it will reverse commitments made to the United Nations flowing from several conventions and guidelines which India ratified, in particular, the CRC. Lastly, it will overrule the concluding observations given in July 2014 by the UN Committee on the Rights of the Child on the combined third and fourth periodic report of Government of India pertaining to the administration of juvenile justice.

It needs to be underlined that the Committee on the Rights of the Child considering the third and fourth combined periodic report of India, at its 1885th and 1886th meetings, held on 2 and 3 June 2014, adopted significant concluding observations on the administration of juvenile justice at its 1901st meeting held on 13 June 2014 urging Government of India to bring its juvenile justice system fully in line with the CRC, in particular articles 37, 39 and 40, and other

²² The NHRC too on the basis of a National Workshop to Discuss the Juvenile Justice (Care and Protection of Children) Bill, 2014 organized in August 2014 and several meetings held thereafter with representatives of civil society organizations had forwarded its comments on the 2014 Bill to the Department-Related Parliamentary Standing Committee on Human Resource Development of the Rajya Sabha Secretariat on 31 October 2014. For more details, see Chapter 4 of this Book.

relevant standards, including the Committee's General Comment No. 10 given in 2007 on children's rights in juvenile justice. It also urges the Government to (a) give effect to the Juvenile Justice Rules of 2007, which establish the minimum age of criminal responsibility at 18 years, and maintain the minimum age at an internationally acceptable level; (b) provide the Juvenile Justice Boards with adequate human, technical and financial resources, designate specialized judges for children and ensure that such specialized judges receive appropriate education and training; (c) ensure the provision of qualified, independent, free or subsidized legal and other appropriate assistance to children in conflict with the law, at an early stage of procedure and throughout the legal proceedings; (d) promote alternative measures to detention, such as diversion, probation, mediation, counselling, or community service, wherever necessary, and ensure that detention is used as a last resort and for the shortest possible period of time and that it is reviewed on a regular basis with a view to withdrawing it; (e) in cases where detention is necessary, ensure age-appropriate separation of children in observation and special homes and ensure that children in conflict with the law are not detained together with children in need of care and protection or with adults, and that detention conditions are compliant with international standards, including with regard to access to education and health services; and (f) to that effect, make use of the technical assistance tools developed by the Interagency Panel on Juvenile Justice and its members, including the United Nations Office on Drugs and Crime (UNODC), UNICEF, OHCHR and NGOs, and seek technical assistance in the area of juvenile justice from members of the Panel²³.

State Population Policies and their Impact on Children

The population policies framed by some of the State Governments is another grey area that is having a negative impact on children. These policies are not only inconsistent with the National Population Policy, 2000 but are of coercive nature making use of penalties, incentives and disincentives leading to violation of the rights of women and children. In the year 2003, the Supreme Court of India by upholding the constitutional validity of disqualifying candidates with more than two children under the Haryana Panchayati Raj Act, 1994 opened a Pandora's box. This is because many are choosing to give away their 'excess' children in adoption or disown them in order to stand for elections. Furthermore, the withdrawal of facilities in some States after the second child is bound to have an impact on the status and value of the girl child in the family. All these developments are definite formulas for gender discrimination and continuation of prenatal sex selection in the country.

²³ See United Nations CRC/C/IND/CO/3-4, dated 7 July 2014, paragraph 88, pp. 20-21.

Discrimination Against Children

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

Other Issues Requiring Attention

Implementation of New National Policy for Children

Almost after four decades of adopting a National Policy for Children in 1974, the Government of India adopted a new National Policy for Children in 2013. The new Policy recognizes a child as any person below the age of 18 years and reaffirms that every child is unique and a supremely important national asset requiring different responses for their survival, development, protection and participation. Besides, all children must grow in harmonious family environment supported by a strong social safety net. And, all children are to be protected from all forms of harm, abuse, neglect, violence, maltreatment and exploitation in all settings including care institutions, schools, hospitals, crèches, families and communities. It reiterates that survival, health, nutrition, development, education, protection and participation are the undeniable rights of every child and need to be given the highest priority. The Ministry of Women and Child Development in the Government of India being the nodal Ministry for overseeing and coordinating the implementation of this Policy including its publicity must ensure that children's best interests and rights are accorded due credit in planning, resource allocation, governance, monitoring and evaluation. Furthermore, it must make sure a National Coordination and Action Group for Children under the Minister-in-charge of the Ministry of Women and Child Development to monitor the progress with other concerned Ministries as its Members. Similar coordination and action groups are to be formed at the State and District levels. The Ministry of Women and Child

Development, in consultation with all related Ministries and Departments, must also formulate a National Plan of Action for Children. Similar Plans at the State, District and local level should be formulated to ensure action on the provisions of this Policy. The National, State and District Coordination and Action Groups must monitor the progress of implementation under these Plans. The NCPCR and SCPCRs have to ensure that the principles of this Policy are respected in all sectors at all levels in formulating laws, policies and programmes effecting children. A comprehensive review of the new National Policy has to be taken up once in five years in consultation with all stakeholders including children. It is hoped that the tasks associated with the implementation of the new National Policy are carried out in all earnestness so that the Policy becomes a reality and not simply a paper expression.

The Committee on the Rights of the Child while giving its concluding observations on the combined third and fourth periodic reports of India has urged Government of India to give priority to the development of the National Plan of Action and similar plans at the State and District levels for putting into action the National Policy for Children. It has further urged the Government for timely allocation of sufficient human, technical and financial resources for operationalization of the National Policy as well as facilitate active involvement of children, youth, parents, NGOs and other interested and relevant stakeholders.

Child-centered Planning

It is a harsh reality that children in India are devoid of holistic child-centered planning that requires inter-departmental and inter-ministerial coordination. As a result, policies, programmes and actions concerning them have not brought out the desired results. The Ministry of Women and Child Development being the nodal Ministry for all matters concerning children, a National Coordinating Mechanism (NCM) was constituted way back in January 2000 through an executive order issued by the Ministry. It is not known whether the NCM is still in operation after it met for the first time in September 2000 or has been renamed or reconstituted.

The Five-Year Strategic Plan (2011-2016) of the Ministry of Women and Child Development, Government of India²⁴ talks about constitution of a National Coordination Group (NCG) way back in 2004 for monitoring the implementation of the CRC and to oversee all activities directly related to child rights. The Group was headed by the Secretary of the then Department of Women and Child Development

²⁴ The Five-Year Strategic Plan (2011-2016) of the Ministry of Women and Child Development, Government of India can be accessed at http://wcd.nic.in/sites/default/files/MWCD_Strategic_Plan_10-02-2011.pdf.

and members of the Group included senior officers of Ministries and Departments dealing with issues relating to children. This Group was reconstituted under the chairpersonship of Minister of State (I/c), Women and Child Development in 2007 to deliberate on issues pertaining to children and also monitor the implementation of the National Plan of Action for Children 2005. The Strategic Plan document on page 219 further states that "It will now be a priority for the Ministry to review the role and functioning of the NCG and draw out its terms of reference. The NCG will be composed of experts from within the Government, the civil society, including NGOs and professionals. The Ministry also proposes to create thematic sub-groups or working groups under the NCG for a rigorous and focussed follow up on convergence issues within each sector".

However, these measures seem to be only on paper and have not been put into practice as they have not yet led to better coordination among Ministries and Departments at all levels to implement policies and programmes related to children. It is for this reason that the UN Committee on CRC in its concluding observations on the combined third and fourth periodic reports of India recommends that the Government of India must "strengthen its efforts to ensure that the Ministry of Women and Child Development has sufficient authority to coordinate all activities related to the implementation of the Convention at the inter-ministerial, federal and state levels, and that the National Coordination and Action Group functions effectively at all levels"²⁵. Now that there is a new National Policy for Children, there is an urgent need to develop a new National Plan of Action for implementation of this Policy. The NCG perhaps could facilitate this entire process.

Child Budgeting

Child budgeting is an important analytical tool that facilitates in taking stock of commitment made by the Government towards all kinds of investments for children, and in the process of doing so identifies gaps in resource investment. Such an analysis facilitates in identifying those areas of child rights which have hitherto remain neglected. Sufficient resourcing of progressive framework(s) by the Government is the first step in realization of constitutional and national policy commitments. It is also an instrument to oversee the utilization of allocated provisions through fiscal decentralization, participation, transparency and accountability in accordance with commitments made by the Government both at the national and international levels. Despite India's significant economic progress and impressive growth rates, the proportion of child budget in the Union Budget has never been more than five per cent. Even this allocation has always been tilted in favour of educational schemes for children neglecting equally other important concerns of theirs.

²⁵ See United Nations CRC/C/IND/CO/3-4, dated 7 July 2014, paragraph 16, p. 3.

The fact that child budgeting is now being given due recognition in the Five-Year Plan documents as well as by all prominent Ministries, it is essential that Government of India pays equal attention to investments on all aspects of their life, including child protection issues such as child labour, child marriage, discrimination against girl children plus prenatal sex selection and infanticide, orphans, destitute children, street children, trafficked and sexually abused children.

The UN Committee on the Rights of the Child making its concluding observations on the third and fourth combined periodic report of India has expressed its concern that “budget allocations do not adequately take into consideration child protection needs”. There is also mismanagement of allocated resources, a problem which is exacerbated by high level of corruption, and the lack of effective monitoring and evaluation systems. “In the light of its day of general discussion in 2007 on Resources for the Rights of the Child – Responsibility of States” and taking into consideration Articles 2, 3, 4 and 6 of the CRC, the UN CRC Committee further recommended Government of India to “(a) substantially increase budget allocations all social sectors, in particular education, health and child protection, including earmarked resources for children at the federal and state levels; (b) establish a budgeting process with a child rights perspective, which specifies clear allocations for children in the relevant sectors and agencies, including specific indicators and a tracking system; (c) establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated for the implementation of the Convention at the federal and state levels; and (d) take all necessary measures to prevent and combat corruption²⁶.”

It is indeed disheartening to see that children have received a little more than three per cent (3.26% to be precise) of the total budget in 2015-2016 compared to 4.52% in the 2014-2015 budget. In fact there has been a consistent decline in the share of budget for children from 2012-2013 onwards. During 2015-2016, the overall budget for children seems to have been reduced perhaps due to substantial cuts in the allocations relating to the ICDS Scheme, SSA, MDMS, RMSA and health related schemes for children. By reducing allocations for children, the Government of India somehow appears to be retreating on its commitment made towards CRC when it ratified the same in 1992. The realization of children’s rights cannot be a by-product of a national planning aimed at something else. Children definitely must get the best attention of the State but are devoid of it.

Child Participation

Participation is one of the core principles of the CRC, which claims that children and young people have the right to freely express their views and that there is

²⁶ See United Nations CRC/C/IND/CO/3-4, dated 7 July 2014, paragraph 18, p. 4.

an obligation to listen to children's views and to facilitate their participation in all matters affecting them within the family, schools, local communities, public services, institutions, government policy, and judicial procedures in accordance with the child's age and maturity. Respecting children's views means that their views should not be ignored; it does not mean that children's opinions should be automatically endorsed. Expressing an opinion is not the same as taking a decision, but it implies the ability to influence decisions. A process of dialogue and exchange needs to be encouraged in which children assume increasing responsibilities and become active, tolerant and democratic. In such a process, adults must provide direction and guidance to children while considering their views in a manner consistent with the child's age and maturity. Through this process, the child will gain an understanding of why particular options are followed, or why decisions are taken that might differ from the one he or she favoured.

The child's evolving capacity represents only one side of the equation, the other involves adults evolving capacity and willingness to listen and learn from their children, to understand and consider the child's point of view, to be willing to re-examine their own opinions and attitudes and to envisage solutions that address children's views. In other words, for adults, as well as for children, participation is a challenging learning process.

In India, this kind of genuine participation is not happening. The process being followed is sheer tokenism. Children's participation is especially relevant in the area of education. Their participation is equally important when decisions are to be taken on the need to separate a child from his or her parents or in matters pertaining to juvenile justice. True participation only will entail and decide whether a particular thing or decision is in the 'best interests of the child'.

Review of Other Policies Impacting on Children

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

Chapter 4

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

Protecting and promoting children's rights, is one specific area on which the NHRC has continuously tried to focus its attention ever since it was constituted in October 1993. It observed from the very beginning that despite there being major provisions in the Constitution of India for survival, development and protection of children together with laws to safeguard their interests and the fact that the Government of India ratified the CRC, children all over the country, especially those belonging to weaker sections, are vulnerable and their dignity and human rights often trampled. Though, the initial few months of the NHRC were spent on making an overall assessment about the range of issues affecting children, but once this task was accomplished, the Commission engaged its attention on preventing and eliminating child labour, child marriage, trafficking in children, sexual violence against children including rape, pre-natal sex selection and infanticide. Along with these, it made efforts to ensure their right to health and dealt with concerns like juvenile justice and missing children.

Addressing Child Labour

The Commission, first and foremost, took the task of dealing with the problem of child labour in the country, starting with those employed in hazardous industries. In order to provide suitable remedies, it made an assessment of the existing situation in those parts of the country where child labour was prevalent, in particular hazardous industries like the glass-work and carpet making industries in Uttar Pradesh; the beedi, match-sticks and fireworks industries in Tamil Nadu; silk reeling and twisting industry in Karnataka; slate-pencil making industry in Madhya Pradesh and the road building and construction industry in Gujarat. It paid particular attention on the glass-works industry in the district of Ferozabad, Uttar Pradesh, where some 50,000 children were reported to be working. Despite the establishment of the National Authority for the Elimination of Child Labour and functioning of National Child Labour Projects set up by the Government of India with the goal of ending child labour in the country, the Commission evolved an integrated programme, involving the coordinated efforts of a number of Central Ministries, the Government of Uttar Pradesh, non-governmental organizations and other stakeholders, and called for expeditious

and effective implementation of this programme. The integrated programme was based on three inter-related concepts: income-support for the families from where children went to work in the glass-work industry; schooling, including the creation of new facilities, for children weaned away from employment; and rigorous implementation of the Child Labour (Prohibition and Regulation) Act, 1986, under which there were conspicuously few prosecutions and lamentably fewer convictions. The Commission thus took a somewhat different approach to that of the Government as it felt that the problem of child labour will continue even in hazardous industries until the reality of free and compulsory education for all up to the completion of the age of 14 years is realized.

This issue was of such critical significance to the Commission that the then Chairperson addressed a letter in January 1996 to the Presidents of all the major political parties in India. In it, he observed that despite the promise of Article 45¹ of the Constitution, one incontrovertible fact faces the nation, the number of those who are illiterate in the country exceeds the entire population of India at the time of independence. This grim reality enfeebles the country in every way, whether civil and political, or economic, social and cultural. It affects the dignity and self-esteem of countless Indians and exposes them to constant violations of their human rights. In its most aggravated form, this finds painful expression in tens of millions of youth working as child labour, or even as bonded labour, in hazardous or utterly demeaning circumstances².

Later, taking a cue from the landmark judgment delivered by the Supreme Court on 10 December 1996, in writ petition (civil) no. 465/1986 *M.C. Mehta vs. State of Tamil Nadu and Ors.*, the Commission ensured that the directions given in the judgment to end child labour were implemented by all States and Union Territories³. The Chairperson, Members, Special Rapporteurs and senior officers of the Commission have toured extensively to oversee the implementation of Supreme Court directions in States like Bihar, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan and Uttar Pradesh where child labour is widespread.

For eradicating child labour from the carpet belt in Uttar Pradesh, the Commission in the year 1999 guided the State in designing a special programme known as *Child Labour Abolition Programme*. The highlight of the programme was the release of an enforcement manual that provided details of an integrated action

1 As mentioned earlier, Article 45 of the Constitution of India (Provision for free and compulsory education for all children until they complete the age of fourteen years) was amended by the Constitution (Eighty-sixth Amendment) Act, 2002. The amended Article 45 now provides for "early childhood care and education to children below the age of six years".

2 See NHRC Annual Report 1995-96.

3 These directions can be seen on p. 64 of this Book.

plan to eradicate child labour with the full involvement of State Departments/Agencies, Panchayats and non-governmental organizations working in the area. The plan provided for mandatory registration of all the looms and the issuance of 'Child Labour Free Certificates' to the units/establishments which did not employ children. The then Special Rapporteur of NHRC continued to make periodic visits to the districts of Allahabad, Varanasi, Bhadoi and Mirzapur, and based on his reports issued specific directions to the State Government in respect of the detection and withdrawal of children employed in hazardous occupations/processes, the admission of such children into the formal and non-formal system of schooling, particularly in schools established under the National Child Labour Project, the economic rehabilitation of the affected families, and the prosecution of offending employers. In addition, the Commission continued to interact with the carpet manufacturers and exporters urging them to withdraw children from work and send them to schools. While doing so, the Commission pointed towards the need to substitute adult labour for child labour. A number of women were provided vocational training in carpet weaving in Mirzapur, Bhadoi and Jaunpur districts with the help of non-governmental organizations. They were helped, through various schemes of the Government, to acquire looms and work as individual or collective production units. All these efforts of the Commission increasingly helped in dispelling the widespread myth that the economically disadvantaged do not want their children to be educated.

In the subsequent year, i.e. 2000, the Commission constituted a Committee to study all aspects of child labour situation in the lock industry in Aligarh. In the same year, it engaged an NGO to conduct a study on the *Impact, Community Response and Acceptance of Non-Formal Education under the National Child Labour Project – A Case Study of Carpet Weaving Belt of Mirzapur and Glass Bangle Region of Ferozabad in Uttar Pradesh*. Simultaneously, one-day workshops were held in Aligarh, Kanpur, Moradabad and Allahabad by the Labour Department of Uttar Pradesh along with UNICEF. These workshops were useful in sensitizing the concerned agencies about the evils of child labour as well as steps that needed to be taken for its eradication.

Likewise, the Commission has taken concerted remedial action for eradication of child labour in the States of Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Punjab, Tamil Nadu, and other States by undertaking regular reviews on the issue since 2000⁴. As in the case of the State of Uttar Pradesh, the Commission has issued specific directions to the above mentioned State Governments in respect of detection and withdrawal of children employed in hazardous occupations/processes, the admission of such children into the formal and non-formal system of schooling, particularly the schools established

⁴ For more details, see the Annual Reports of the NHRC.

under the National Child Labour Project, the economic rehabilitation of the affected families, and the prosecution of offending employers. The NHRC also advised these State Governments to launch an advocacy campaign for education, awareness generation and sensitization of offending employers in consultation with the Central Employers Organizations.

On the basis of complaints received that child labour is still prevailing in slaughter houses all over India, the Commission considered the matter in its sitting dated 16 March 2001 and sent notices to the Chief Secretaries and Administrators of all the States and Union Territories directing them to issue necessary instructions to the concerned authorities responsible for eradication of child labour to inspect the slaughter houses under their jurisdiction and ensure that child labour, if any, is stopped, the owners are prosecuted for violating the law and all children released are provided the wherewithal to get schooling and other facilities.

With the objective of establishing conceptual and definitional clarity on child labour as well as the strategy and methodology of identification and withdrawal of children employed in hazardous occupations/processes and other related issues including sharing of best practices among different States, the NHRC has been conducting national and state level workshops on elimination of child labour across the country in collaboration with State Governments and non-governmental organizations. In order to create awareness among the masses, NHRC in 2004 came out with a 'Know Your Rights' series, in which one of the booklets exclusively deals with the issue of child labour.

To ascertain ground realities, the Commission as per its mandate to undertake and promote research in the field of human rights, has conducted some useful research projects on child labour with NGOs, technical and academic institutions. Prime among them have been – *Current Trends in Child Labour in Beedi Industry*; *Freedom Mortgaged and Future Abandoned : Bonded Child Labour in Karnataka Silk Industry*; and *Land, Labour and Human Rights Violations in Bundelkhand and Sonbhadra Region of Uttar Pradesh*.

The Commission has all along pursued with the Government of India to recast the Child Labour (Prohibition and Regulation) Act, 1986 as the law proved to be weak and ineffective in curbing child labour. Second, it was in contradiction with Article 21A of the Constitution and the Right of Children to Free and Compulsory Education Act, 2009 that makes schooling compulsory for all in the age group of 6 to 14 years. Third, the 1986 Act does not regulate adolescent labour as mandated by ILO Conventions No. 138 and 182. The Commission is hopeful that with the enactment of the *Child Labour (Prohibition and Regulation)*

Amendment Act, 2016 there will be cent percent enrolment and retention of school going children, which alone can provide a lasting solution to the problem of child labour in the wake of some serious concerns being unaddressed by the 2016 Act.

Addressing Concerns of Children Working as Domestic Help

In 1996-1997, the NHRC received disturbing reports of the employment of children below the age of 14 years as domestic servants in the homes of government officials. Unacceptable as the practice is in any circumstance, the Commission felt that the employment of such children as domestic help in the homes of government officials was particularly wrong. Following a meeting in January 1997, the Commission decided to recommend that an appropriate rule be included in the conduct rules of government servants, both at the Central and State levels, which while prohibiting such employment would also make it a misconduct inviting a major penalty. The Commission accordingly requested the Minister of State in the Ministry of Personnel, Public Grievances and Pensions to take appropriate steps to introduce the rule in the Central Civil Services (Conduct) Rules, 1964 and the All India Services (Conduct) Rules, 1968. It also proposed the precise wording required for this purpose. Thereafter, the Commission addressed letters to the Chief Ministers of all the States to amend their service conduct rules. This view of the Commission effected necessary amendments to Conduct Rules of the Central and State Government servants prohibiting such employment. By virtue of these amendments, employment of children below 14 years by the government servants as domestic help now attracts disciplinary action.

Prohibiting Child Marriage

The widespread persistence of child marriage in certain parts of the country, especially on *Akshaya Trutiya*, popularly known as *Akha Teej*, when hundreds of child marriages are openly performed despite there being a law in existence to prevent and combat the same, made the Commission examine this problem in its enormity. On assessment of the problem, the Commission felt the need to amend the Child Marriage Restraint Act, 1929 (CMRA) so as to provide for higher penalty for all those violating the provisions of the given Act and that the offence should be made cognizable and non-bailable. In December 1999, it further considered the question whether it would be preferable to provide for compulsory registration of marriages in the Hindu Marriage Act, 1955 itself through appropriate amendments, instead of making such a provision in the CMRA. This matter was taken up for discussion with the Secretary, Legislative Department in September 2000. The Secretary, Legislative Department felt that it

may first be desirable for the Commission to gather information as to how many States have made Rules under Section 8 of the Hindu Marriage Act.

The Chief Secretaries of all the States were accordingly requested to send the requisite information. It learnt that except for Maharashtra, the registration of marriages was not compulsory anywhere. After obtaining all the information and considering the issue from all angles, the Commission took a view that the CMRA needed to be recast. It thus recommended to the Government of India for the same and suggested that it was necessary, first of all, to provide for registration of all marriages – whether religious or civil. Further, just as there were registers of births and deaths, there should be registers of marriages where any marriage in any form, performed within the area, must be registered. This would provide an authentic record of the marriage and put an end to all disputes regarding the performance of the marriage. The register must have columns regarding the names of parties marrying, their age, their status (unmarried, divorced, etc.), names of both parents of both sides, their addresses, method of performing the marriage (Hindu rites, Muslim marriage, civil marriage, etc.), the name of the person solemnizing the marriage, the date of marriage and the venue. It also made certain specific suggestions for the amendment of the CMRA and forwarded the same to the then Department of Women and Child Development in the Ministry of Human Resource Development, Government of India. Prominent among the suggestions for amendment to the CMRA were – a responsibility to be placed under the Act on local administrative officers to prevent impending child marriages whether performed singly or in groups. The local official should be empowered to move the court for prevention of mass marriages taking place on certain days like *Akshaya Trutiya* by a general court order that may be communicated to the villages over the media, by publication or by beating of drums. For single marriages, a specific injunction order can be obtained. All marriages that breach such an injunction will be void *ab initio*. In case of urgency, *ex parte ad interim* injunction can be granted without notice. It should also be opened to others – friends, well-wishers, NGOs, public spirited and respectable citizens to move the court for an injunction. While a marriage in violation of an injunction order should be void, all other child marriages should be voidable.⁵

In pursuance of these, the Government of India introduced “The Prevention of Child Marriage Bill” in the Rajya Sabha on 20 December 2004 incorporating all the suggestions of the NHRC. Later, the Bill was tabled in the Lok Sabha on 29 November 2005. The Bill was also sent for examination of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances,

⁵ For more details with regard to the amendments suggested to CMRA by the Commission, see Annexure 3 of the NHRC Annual Report 2000-2001, pp. 222-226.

Law and Justice. Pending the passage of the Bill into an Act, the Commission wrote to concerned Ministries/ Departments in the Central Government and the State Governments/Union Territories to organize mass-scale awareness programmes/ campaigns, in association with the personnel implementing the Integrated Child Development Services Scheme at the grass root level, local self-governments/Panchayats and District Legal Service Authorities to educate and sensitize people about the demerits of child marriage.

On account of persistent efforts made by the Commission, the new Act – The Prohibition of Child Marriage Act, 2006, was enacted. The new Act got the assent of the President of India on 10 January 2007. The NHRC on its part continues to monitor the scourge of child marriage in the country.

Dealing with Trafficking in Children

Alerted by press reports about the alarming increase in child trafficking and its ramifications like commercial sexual exploitation and other kinds of abuse, etcetera in Tamil Nadu and Goa in the year 1995-1996, the NHRC issued notices to the two State Governments as well as to the then Department of Women and Child Development, Government of India, calling for reports on the situation. Simultaneously, it also decided to have this issue considered on a regular basis by its Core Group, consisting of representatives from the National Commission for Women, the Department of Women and Child Development, UNICEF and selected NGOs. The Core Group reviewed the existing laws and ways of improving their enforcement; it discussed the efforts made and difficulties faced in rehabilitating children who were victims of trafficking. Besides, the NHRC pressed for greater efforts at the level of SAARC to strengthen laws and devise cooperative measures to deal with trans-border movements; and encouraged organization of workshops. In view of the global consequences of this problem, the Commission furthermore represented itself at the *First World Congress Against Commercial Sexual Exploitation of Children* that was held in Stockholm from 26-31 August 1996.

In the year 2001, a Member of the Commission was designated to serve as the *Focal Point on Human Rights of Women including Trafficking*. Under the guidance of the Focal Point, an *Action Research on Trafficking in Women and Children in India* was conducted along with the UNIFEM. The main objective of the Action Research was to study the magnitude, trends and dimensions of trafficking; undertake vulnerability mapping of geographical areas prone to trafficking with special reference to demand, supply and transit points, so as to assess the causes and factors responsible for trafficking; examine the role of

the Government, especially its different law enforcement agencies in preventing and combating trafficking, along with the investigation into and prosecution of traffickers, protection of trafficked victims including the process of their rescue/recovery, rehabilitation and reintegration; and the overall role of national institutions, civil society organizations and others in preventing and combating trafficking. Besides, the Action Research examined the relationship between missing persons and trafficking, migration and trafficking, tourism and trafficking and culturally sanctioned practices and trafficking. The report of the Action Research was released to the general public on 24 August 2004. The report brought forth startling facts, such as children are trafficked not only for commercial sexual exploitation but also for various other purposes. Based on the findings of the Action Research, the report made useful suggestions and recommendations to prevent and end trafficking. The report of the Action Research can be seen on the website of NHRC - www.nhrc.nic.in. Taking into account its recommendations as well as the recommendations of an earlier *National Workshop to Review the Implementation of Laws and Policies Relating to Trafficking : Towards an Effective Rescue and Post-rescue Strategy* organized by the NHRC in collaboration with PRAYAS, a field action project of the Tata Institute of Social Sciences, Mumbai, the Commission evolved a comprehensive *Plan of Action to Prevent and End Trafficking in Women and Children in India* and disseminated it to all concerned across the country for taking appropriate action to prevent and combat trafficking at their end. This is being monitored till date by the Research Division of the Commission.

Subsequently during 2005-2006, the Commission along with the Ministries of Home Affairs, Women and Child Development, the National Commission for Women and UNICEF, decided to formulate an *Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women*. Based on the field experiences of all concerned, a draft Integrated Plan was devised and discussed thoroughly with all the stakeholders working in the field by holding regional and national level workshops in Guwahati, Hyderabad, Goa and New Delhi. A Task Force was further constituted for finalization of the Integrated Plan of Action (IPoA). As the Task Force somehow was not able to complete the task on time, the Commission on its part finalized the Integrated Plan and forwarded the same to the Ministry of Women and Child Development for taking it to its logical conclusion. It was visualized that the IPoA on adoption by the Government of India will replace the 1998 Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children. It is with this intent that the whole exercise of evolving IPoA was initiated by the NHRC. But, the same has not seen the light of the day. Taking into consideration the increasing magnitude of the problem of trafficking and the increasingly younger age of victims of trafficking, it will be worthwhile to revisit the IPoA by the Ministry of Women and Child Development, Government of India.

Ever since the Commission embarked on the Action Research, it simultaneously has been sensitizing the judicial officers, police officers, administrative officers, functionaries of Homes, NGO representatives and the civil society at large. A network of Nodal Officers, two in each State – one from the police department and the other from the social welfare/women and child development department, has been created to effectively deal with the problem of trafficking. An Anti-human Trafficking Unit has also been set up in the Ministry of Home Affairs, Government of India and the same is now being replicated in different States across the country with the help of their respective State Governments.

During the course of the Action Research, some cases where the victims of trafficking had not received justice were brought to the notice of the Commission by the members of the Action Research Team. Immediate action was taken on those cases and justice delivered to the victims. Other than this, a few cases of trans-border trafficking were also brought to the knowledge of NHRC. In one such instance, intervention by the Commission enabled a girl child, who had been in jail for two years on charges of soliciting, to find justice.

Further, the NHRC and the Ministry of Women and Child Development, Government of India in partnership with the UNICEF and the National Law School of India University, Bangalore prepared a *Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation in 2006*. The purpose of the Handbook was to facilitate the judicial officers to the actual situation of the trafficked victims so that they proactively safeguard the rights of victimized women and children, through a sensitive interpretation of the law.

The NHRC has also been pressing for the review of the Immoral Traffic (Prevention) Act, 1956 in India⁶ in the light of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, which the Government of India ratified on 5 May 2011. This exercise was earlier undertaken by the Commission as part of its Action Research and later it forwarded its comments to the Ministry of Women and Child Development for consideration and acceptance. But, this exercise like the IPoA seems to have been left mid-way by the Ministry.

In the year 2011, the NHRC in collaboration with the National Commission for Women organized a *National Conference on Human Trafficking*. The recommendations which emanated out of the conference need proper follow up. In 2014, the Commission organized a *National Conference on Human Rights of Women*. One of the objectives of this National Conference was to focus on

⁶ The Act was earlier known as the Suppression of Immoral Traffic in Women and Girls Act, 1956.

measures to eliminate trafficking in women and girls including steps for their protection, assistance and redressal in consonance with the CEDAW, Trafficking Protocol (2000), IPoA and Amman Programme of Action⁷. The said Conference made substantive recommendations on the issue of trafficking like repealing the existing domestic legislation on trafficking and in its place enacting a new legislation on human trafficking in accordance with the provisions given in the Trafficking Protocol, CRC and CEDAW; each district in the country to have a dedicated Anti-human Trafficking Unit; continuous and regular training of law enforcement officials; assistance to victims of trafficking; integrating technology in all aspects of law enforcement mechanism, including video conferencing facilities during trial of cases to protect the rights of victims and witnesses; and the Focal Point in NHRC on Anti-human Trafficking to be revived and made functional. Action is being taken by the NHRC on all these recommendations.

Due to persistent efforts of NHRC and different stakeholders the “Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016” proposed by the Ministry of Women and Child Development, Government of India has been examined and comments forwarded to the Ministry and the National Commission for Women. Besides, the NHRC in collaboration with the Tata Institute of Social Sciences, Mumbai is conducting a *National Research on Human Trafficking in India* as a sequel to the Action Research on Trafficking in Women and Children in India undertaken by it way back in 2004. The main objectives of the study are to understand the changing dimensions of human trafficking; make an assessment of the extent of human trafficking; the economics of trafficking; the processes involved in human trafficking, plus cross-border trafficking, trafficking in militancy and other affected areas; the current response system, including the legal framework, State and non-State interventions; and the way forward to address the identified gaps.

Focussing on Sexual Violence Against Children

Sexual violence against children is another issue in which the Commission has taken concrete measures. Pained with the plight of child victims, vis-à-vis the manner in which the issue was being reported by the media, the Commission decided to intervene in the matter in the year 1998, when a two-month campaign was launched in New Delhi in collaboration with the then Department of Women and Child Development in the Ministry of Human Resource Development, Government of India, UNICEF and few non-governmental organizations. A

⁷ The Amman Declaration and Programme of Action were adopted at the Eleventh International Conference of the ICC that took place in Amman, Jordan from 5-7 November 2012. It was hosted by the Jordan National Centre for Human Rights in cooperation with OHCHR, ICC and the Asia Pacific Forum of National Human Rights Institutions. It sets out the steps that NHRIs around the globe have agreed to undertake in order to promote and protect the rights of women and girls.

mid-term appraisal of the campaign revealed that irrespective of the medium, message or location, the campaign effectively raised awareness about sexual violence against children. The respondents were however of the view that in order to further enhance awareness among the people at large, the electronic media too should be involved and mobilized. As a result, the NHRC, in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers. The participants for these workshops were drawn from 20 States. It was during the course of these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. Based on the deliberations of these workshops, the Commission and the Prasar Bharati, with support from UNICEF, prepared *A Guidebook for the Media on Sexual Violence Against Children*. The main objective of the guidebook was to encourage media professionals to address the issue of sexual violence against children in a sensitive and effective manner, in agreement with the rights and best interests of children.

The Commission furthermore evolved *Guidelines for Speedy Disposal of Child Rape Cases*. The task of evolving these guidelines was undertaken by it when the Commission was apprised about incidents of sexual assault and rape of minor girls in Kerala by an NGO. The NHRC was facilitated in this task by Home Secretaries and Directors General of Police of all the States and Union Territories. These guidelines were subsequently forwarded to all concerned for information and compliance. For example, the guidelines state the recording officer should not be below the rank of Sub-Inspector and should preferably be a woman police officer; there should be no insistence on recording at the police station, it can be carried out at the residence of the victim also; the investigation officer shall ensure that medical examination of the victim of sexual assault and the accused is done preferably within 24 hours in accordance with Section 164 A of the Cr.P.C.; and the identity of the victim and the family should be kept a secret and their protection ensured. The Commission has specifically prescribed that trial of such cases should be held in camera by fast track courts, preferably presided over by a woman judge; the recordings, if possible, should be done by video conferencing so that the victim is not subjected to the trauma of being in close proximity of the accused; and the Magistrate should commit the case to session within 15 days after the filing of the charge sheet.

In December 2012, the gruesome gang rape of a young woman in Delhi once again brought to the forefront the threat of insecurity faced by women and girls in the country. The massive protests that followed the incident was an indication of the fact that the general public wanted an improved criminal justice system and better safety and security of women and girls in the country. In the backdrop of this incidence, the Commission organized a *Consultation on Violence against*

Women on 8 January 2013 in New Delhi. The consultation took note of violence committed against girl children.

The Consultation was attended by Directors General of Police of States/Union Territories, officials of various Union Ministries, National Commissions, lawyers, representatives of women's groups, NGOs and student fraternity. Based on the deliberations of the Consultation, the Commission made detailed suggestions/recommendations covering legislative, judicial and police reforms. These were then forwarded to Chairman, Justice J.S. Verma Committee. This Committee was especially constituted on 23 December 2012 to look into possible amendments in the Criminal Law providing for speedy trial and enhanced punishment for criminals accused of committing sexual assault of extreme nature against women and girls. The other members on this Committee were Justice Smt. Leila Seth, former judge of the High Court and Shri Gopal Subramaniam, former Solicitor General of India. The recommendations/suggestions made by the NHRC were also forwarded to the Rajya Sabha Secretariat that had invited suggestions on the Criminal Law (Amendment) Bill, 2012 for examination by the Department-related Parliamentary Standing Committee on Home Affairs headed by Shri M. Venkaiah Naidu, Member Parliament, Rajya Sabha.

The Justice Verma Committee submitted its report to the Government of India on 23 January 2013. In light of the Justice Verma Committee's report, the Government of India promulgated the Criminal Law (Amendment) Ordinance, 2013 on 3 February 2013. Some of the suggestions/recommendations made by the Commission found place in the Ordinance. The Ordinance was later replaced by the Criminal Law (Amendment) Act, 2013.

The issue of sexual violence against girls was again taken up by the Commission as part of a two-day National Conference on Human Rights of Women which it organized on 18 and 19 February 2014. The detailed recommendations that emanated out of the working group on "violence against women and girls" were forwarded to the concerned Secretaries of the Ministries of Women and Child Development, Home Affairs, Health and Family Welfare and Chief Secretaries, Administrators and Directors General of Police of all the States and Union Territories for compliance. They were further directed to forward to the Commission an action taken report so that it is apprised about the status of implementation of the given recommendations. Some of the significant recommendations made were – effective implementation of existing enabling legislations for women and girls; public officials should be held accountable for not complying with laws and regulations relating to violence against women and girls; standard operating procedures be devised for all stakeholders (judges, police, doctors, lawyers, counsellors) in dealing with cases of violence against

women and girls; and making safe spaces for women and girls by creating fast track courts, *mahila thanas* (women police stations), and gender cells within police stations for effective adjudication of cases.

Approaching the Issue of Pre-natal Sex Selection and Infanticide

Faced with the widely prevalent misuse of sex determination tests in India, the Commission during the year 1995-96 approached the Medical Council of India, to know about the ethical aspects of such tests. After a thorough review of the matter by the Council, it decided to suggest suitable amendments to the regulations governing the code of medical ethics, in order to enable undertaking of disciplinary proceedings against errant doctors. Thereafter, the issue of 'discrimination' as a cause of human rights violations was examined in great detail in the Commission's Annual Report of 1999-2000, especially in relation to gender. In the light of the recommendations made by the CRC Committee in its concluding observations in connection with the initial country report on children submitted by the Government of India, the Commission reiterated the need for undertaking a vigorous and comprehensive national campaign against pre-natal sex selection and infanticide. During the course of *Regional Consultation on Public Health and Human Rights* held in 2001 and thereafter the *Regional and National Public Hearings on Right to Health Care* organized by it in 2004, the Commission again took up the issue of pre-natal sex selection and infanticide. The issue featured again when the NHRC organized a *Colloquium on Population Policy – Development and Human Rights* in January 2003 in collaboration with the Ministry of Health and Family Welfare, Government of India and the United Nations Population Fund. To counter this problem, the Commission has maintained that vigorous and comprehensive measures be taken by all States and Union Territories to put an end to the gruesome problem of pre-natal sex selection and infanticide.

In 2007-2008, the NHRC undertook a research project entitled *Research and Review to Strengthen Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act's Implementation Across Key States* in collaboration with the United Nations Population Fund. The main objective of the research was to review the cases registered by the States and Union Territories under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) including the hurdles faced in filing of such cases, the overall process by which the cases reach the final stage of conviction, i.e. the court proceedings and orders passed in these cases, thus focussing on the impediments in the implementation of the Act. It also covered the State and District level implementation machinery. The research was undertaken in 18 States – Andhra Pradesh, Assam, Bihar, Delhi, Gujarat, Goa, Haryana, Jharkhand,

Karnataka, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal. The study came up with interesting findings about the implementation of the PCPNDT Act which were shared in October 2010 during the course of a one-day *Conference on Pre-natal Sex Selection in India : Issues, Concerns and Actions* organized by the Commission. In most of the States the implementation structures had been constituted as per the PCPNDT Act. However, gaps were found in their functioning and effective delivery. For instance, the relevant authorities did not meet regularly as mandated under the Act. The relevant sections of the PCPNDT Act were not properly cited while filing cases in the court and the total number of cases filed in the courts across States was very few. Another issue was withdrawal of cases by District Appropriate Authorities despite being non-compoundable in nature. Majority of the cases filed were under the offence of 'non-registration of clinics'. The judiciary, public prosecutors, doctors and women in general needed to be sensitized about the provisions contained in the PCPNDT Act.

Consequently, the recommendations of the research study were forwarded to all the States and Union Territories for compliance. Prominent among these recommendations were – the need to enhance the effectiveness of existing implementation structures and systems; greater engagement with and empowerment of implementing authorities; and need to sensitize the judiciary, public prosecutors, doctors and other stakeholders about the implementation of the PCPNDT Act and its provisions. As a follow up to the study, a reporting format was designed by the NHRC and sent to the Chief Secretaries and Administrators of all the State Governments and Union Territories for sending an action taken report. The issue continues to be monitored by the NHRC.

Right to Health and Nutrition

The violation of the rights of children has been considered in the Commission from the angle of health and nutrition too. The issue of nutritional anaemia which apart from affecting women's health and lives has serious ramifications on children's lives was first identified as a violation of right to life and right to health in 1996-1997. The Commission observed that easily avoidable iron and iodine deficiencies were not only causing serious health problems among pregnant women but also resulting in death and mental disabilities in infants, permanently affecting their intellectual future. Over the following years, the NHRC worked with the Government Ministries both at the Central and State levels and other partners to deal with the problem. In 1998, it constituted a Core Group on Health, consisting of health experts, to seek advice in tackling this important health related human rights issue.

In 2000, it organized a *Workshop on Health and Human Rights in India with Special Reference to Maternal Anaemia*. This workshop made some valuable

recommendations and contributed to a wider recognition of the right to health. It resulted in some important changes in national health practice including national distribution of supplements to pregnant women; nutrition education; and improved mother and child health services in rural areas. During the year 1999-2000, the Commission examined both the observations and recommendations of the CEDAW Committee and the CRC Committee before which the Government of India had presented its country report and recommended several steps which the Government of India should take to improve the health of children. It recommended, in particular, the gender sensitization of health workers, and a specifically targeted health care campaign to combat discrimination against girls and women with regard to access to nutrition so as to effectively combat maternal anaemia. It further recommended the strengthening of the Government of India National Reproductive and Child Health Programme and called for concerted efforts to upscale the National Nutritional Anaemia Control Programme from the point of view of bringing down maternal mortality and low birth weight amongst children. In addition, it called for a vigorous and comprehensive national campaign against prenatal sex selection and female infanticide.

In the year 2000, it organized another *Workshop on Human Rights and HIV/AIDS*. This workshop covered a range of issues, including rights of women in vulnerable environments and their reproductive rights, which if not taken care of would impact their children. Besides, it threw light on rights of children and young people. The report of the national workshop was subsequently considered in-depth by the Commission, which upon formulating its own recommendations forwarded them to the concerned authorities for appropriate action. Prominent among these was that public health action should focus on preventing mother to child transmission of the virus and measures to achieve this objective should receive prioritized attention from health policy makers both at the Central and State levels. Later, in the year 2004, the Chairperson of the Commission addressed letters to the Union Ministers for Human Resource Development, Health and Chief Ministers of all States and Union Territories urging them to take steps to prevent discrimination of children affected by HIV/AIDS with regard to access to education and health care. In particular, the Commission recommended to enact and enforce a legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from schools. Moreover, it recommended that children whose parents are unable to take care of them due to HIV/AIDS must be especially taken care of and protected. Institutional arrangements must be made for extending medical aid to such children. In no way, hospitals and medical professionals should be allowed to turn away people who are HIV positive from being treated.

Later, acting on a press report regarding significant increase in the prevalence of HIV positivity among pregnant women attending antenatal clinics in Andhra Pradesh, the Commission reiterated its recommendations to all authorities on the prevention of mother-to-child transmission of HIV/AIDS. From the point of view of spreading awareness on Human Rights and HIV/AIDS, the Commission in 2007-2008, made a film and video-spot on the rights of persons infected/affected by HIV/AIDS. This was telecast by the Government of India as well as by the private channels and shown during various awareness programmes conducted by the NHRC. The Commission, on its part, has been continuously following-up with NACO, State AIDS Control Societies and the Ministry of Health and Family Welfare to take necessary steps to ensure the infected people's right (including that of women and children) to medical care, shelter and livelihood.

A two-day Regional Consultation on Public Health and Human Rights was organized by the Commission in 2001 with a view to bring together the policy makers, public health experts, legal professionals, human rights activists and others to deliberate on issues like nutritional deficiencies, access to health care and tobacco control. All these have direct bearing on the rights of children. These activities were held in collaboration with the Ministry of Health and Family Welfare, the then Department of Women and Child Development, UNICEF, UNAIDS, WHO, NACO and Lawyers Collective. Important recommendations generated at the consultation on access to health care and nutrition were adopted by the Commission and forwarded to the concerned stakeholders for action.

In the year 2004, the Commission in collaboration with the *Jan Swasthya Abhiyan* – a civil society network of around 1,000 non-governmental organizations working in the health sector, held public hearings on right to health care in five regions (western, southern, northern, eastern and north-eastern) of the country. During the day-long public hearings, selected cases or instances, wherein individuals or groups who had suffered denial of right to health care and had not received mandated health care from a public health facility were brought before the Commission. Some of these cases were of women and children. Through these public hearings, the Commission was able to bring together the victims and families of victims, NGOs and concerned authorities on the same platform, which helped in the resolution of individual problems, identification of systemic problems and forging of partnerships. A large number of victims and kith and kin of affected or deceased victims from marginalized sections were able to present their testimonies before the Commission. These were looked into not only by the Commission but by the concerned authorities as well.

The five regional meetings were followed by a national level public hearing, in which the structural deficiencies noted in various regional public hearings were presented along with state-wise systemic and policy issues related to denial of

health care. Special presentations were made on issues such as women's right to health care, children's right to health care, right to essential drugs, rights of mentally ill persons, health rights in the context of the public sector, health rights in situations of conflict and displacement, health rights in the context of HIV/AIDS, and occupational and environmental health rights. In addition, a *National Action Plan to Operationalize the Right to Health Care* (NAP) was proposed. The NAP recommended enactment of a National Public Health Services Act that would recognize and legally protect the health rights of various sections of the population, who have special health needs, including women and children, at various levels – the village/community, sub-centre, primary health centre, community health centre, sub-divisional and district hospital. These recommendations were then forwarded to the Ministry of Health and Family Welfare, Government of India and incorporated in the Mission Document (2005-2012) of the National Rural Health Mission.

In order to know the status of implementation of recommendations made by the NHRC on different issues relating to right to health, the Commission convened a *Review Meeting on Recommendations of the Core Group on Health and Public Hearing on Health* in March 2006 and soon after organized a *National Review Meeting on Health* in March 2007. The National Review made a series of recommendations, prime among them being – the need to ensure universal provision of guaranteed health services, in particular, services for maternal health, child health, emergency medical care, need for Medical Council and Nursing Council of India to have a relook and work out courses for nursing practitioners. Medical Council of India to have an in-built compulsory rural attachment for medical students, need for public private partnerships in health care and a regulatory mechanism to ensure quality standards by private partners to fulfill public health goals, need to enact a National Clinical Registration and Regulation Act for running health care facilities and protecting patients' rights, proper drug procurement mechanism to ensure guaranteed availability of all essential drugs at affordable prices, create awareness about the availability of essential drugs by printing a booklet/pamphlet and making it available at PHC/CHC/District Hospitals, need to develop 'emergency medicines' as a specialty to improve the emergency medical services in the country, efforts to include provision of complete ante-natal and post-natal care and need to take care of key childhood diseases, maternal health services to focus on safe institutional delivery services along with health education concerning safe motherhood, States to enact a Public Health Act and evolve a redressal mechanism to ensure right to health. This Meeting also recommended that silicosis is an occupational health hazard and needs required interventions and convergence of efforts of concerned stakeholders, that is, Labour and Health Departments of the Government, National Institute of Occupational Health, National Institute of Miners' Health, industries and NGOs.

Many of the recommendations made by the NHRC in its National Review Meeting got reflected in the Twelfth Five Year Plan (2012-2017) document of the Government of India like – reduction of infant mortality rate, reduction of maternal mortality ratio, prevention and reduction of anemia among women aged 15-49 to 28 per cent, improving child sex ratio in the 0-6 year age group from 914 to 950, prevention and reduction of communicable and non-communicable diseases (including mental illnesses) and injuries and reduction of poor households out of pocket expenditure.

The NHRC is presently working on the following health concerns – accessibility, availability, quality and affordability of health care services; women and children’s health; ethical issues and illegal practices; drinking water and sanitation issues affecting health; and occupational health & safety. For this purpose, it organized a two-day *National Conference on Health Care as a Human Right* in November 2013. It was followed by a *National Conference on Silicosis* in July 2014. In the year 2015, the Commission reconstituted its Core Advisory Group on Health and Expert Group on Emergency Medical Care. The Core Advisory Group on Health also deliberated on the *Draft National Health Policy 2015* and the suggestions made by it were later forwarded to the Ministry of Health and Family Welfare, Government of India. At the same time, the Commission is engaged in the follow up of right to health recommendations relating to the second universal periodic review which the Government of India accepted in the United Nations in Geneva in the year 2012. These broadly refer to – intensifying efforts to improve maternal health by ensuring access to information and counselling on sexual and reproductive health rights as set out in the National Population Policy; taking practical steps to reduce high level of maternal and child mortality, *inter alia*, through better access to maternal health services; and ensuring women’s access to adequate obstetric delivery services and sexual and reproductive health services. All these are intricately related to the survival rights of children.

In order to look into the health concerns of people, including women and children, especially with regard to accessing of services in the public health sector, the Commission will once again be organizing regional public hearings on right to health care in the country. So far, it has organized a regional public hearing on right to health care for the western region covering the States of Maharashtra, Rajasthan and Gujarat.

Juvenile Justice

The Commission has been concerned about the plight of juveniles who come in conflict with law and children who are in need of care and protection in the country from the very beginning. Accordingly, it has been conducting sensitization workshops on the issue of juvenile justice for a wide range of officials and functionaries responsible for juvenile justice including judicial officers. In 1996, the Commission addressed letters to the Chief Secretaries and Administrators of all the States and Union Territories on the reporting of deaths/rapes in Juvenile or Children's Homes within 24 hours. On monitoring the situation, it was found that some of the Homes were still not functioning properly. The Commission, in 2002, once again directed the Chief Secretaries and Administrators of all the States and Union Territories to ensure prompt communication of incidents of custodial deaths/rapes in Juvenile or Children's Homes. Besides, the Law Division of the NHRC has been dealing with cases of violations concerning the rights of juveniles in conflict with law and children in need of care and protection. The Research Division too has been collating information about the status of implementation of the JJA 1986 and JJA 2000 and amendments made thereafter in 2006 from all the States and Union Territories. In the year 2004, the Research Division of the Commission in collaboration with the Socio-Legal Information Centre, New Delhi undertook a research study on the *Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000*. Furthermore, in 2005, when it was informed to the Commission by the Registrar General of the High Court of Patna that the implementation of the JJA 2000 was poor in the State of Bihar, it once again directed the matter of juvenile justice be reviewed expeditiously in each State and Union Territory. Correspondingly, letters were addressed to the Secretaries of the Departments of Social Welfare in all the States and Union Territories to furnish detailed information. On the basis of information received and field visits undertaken by the Special Rapporteurs of the Commission to different parts of the country, it was revealed that the situation is far from satisfactory in almost all the States and Union Territories. For instance, the adjudicatory bodies consisting of the Juvenile Justice Boards and Child Welfare Committees had not been constituted in many districts or their numbers were insufficient vis-à-vis the required need. In many States, the institutional mechanism consisting of the Special Juvenile Police Unit and other institutions required under the Act were not in place either.

To understand the existing situation of the juvenile justice system in the country, and the fact that an amendment to the said Act was brought in 2006 to cover up the gaps in JJA 2000, the NHRC organized a two-day *National Conference on Juvenile Justice System in India* in February 2007. Its recommendations were forwarded to all the States and Union Territories for compliance. The said

conference brought to the forefront many loopholes with regard to the treatment meted out to juveniles in conflict with law and children in need of care and protection. For instance, as per the then juvenile justice law, all inquiries pertaining to a juvenile in conflict with law were to be completed within the stipulated time of four months by the Juvenile Justice Board. In reality, this was not so as many juveniles were found to be languishing in observation homes beyond four months on account of pending inquiries with the Juvenile Justice Board. In order to have first-hand information about the exact number of juveniles in conflict with law under detention in the observation homes beyond a period of four months across the country, the Commission in February 2007 called for information from all the States and Union Territories along with the date of apprehension by the Police and the date of remand to the said observation homes by the Juvenile Justice Boards. In addition, the Commission inquired about the duration of their stay and the reasons for their confinement therein. Similarly, it called for information relating to children in need of care and protection. There were shocking revelations from some of the States about juveniles whose inquiries were pending for two and above years.

In the light of Juvenile Justice (Care and Protection of Children) Bill, 2014, the Commission in August 2014 organized a *National Workshop to Discuss the Juvenile Justice (Care and Protection of Children) Bill, 2014* and on the basis of deliberations held therein and thereafter with civil society organizations, technical institutions, lawyers and child activists, forwarded its comments on the stated Bill to the Department-Related Parliamentary Standing Committee on Human Resource Development of Rajya Sabha Secretariat in October 2014. Some of these comments were – “(i)any person who has not completed 18 years of age should be treated as a child, regardless of whether he/she is in conflict with the law or is in need of care and protection.....Subjecting a child of 16-18 years to the adult penal system with the object of deterrence will not work. Rather, it will have serious repercussions on child psyche as the adult criminal justice system instead of reforming will transform the child into a hardened criminal; (ii)The distinction made between heinous and other offences in the 2014 Bill denies children between 16 to 18 years of their rights under the juvenile justice system..... as per the latest available crime statistics, the percentage of juvenile offenders to the total IPC crime offenders is 1.19%, which is very negligible. The number of juvenile offenders compared to total number of IPC offenders is even lower for offences like murder, rape, abduction, etc. Since the percentage of juvenile offenders involved in crimes specially the heinous crimes is extremely small, hence, there is no reason to necessitate changes in the existing juvenile justice system..... the Criminal Law (Amendment) Act, 2013 has not provided for harsher treatment to juveniles committing heinous offences.

The Hon'ble Supreme Court has recently also examined these issues in depth in two cases – Salil Bali v. Union of India and Subramaniam Swamy v. Union of India, and found no justification for any changes in the existing Juvenile Justice Act; (iii) Having acceded to the Convention on the Rights of the Child, the 2014 Bill contradicts and deviates from the constitutional provisions and related international instruments adopted by the Government of India, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules), United Nations Rules for Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules), United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (Riyadh Guidelines)..... There have been gross failures in the existing juvenile justice system primarily because its provisions, in particular those relating to rehabilitation, vocational training and social reintegration, have not been implemented in their letter and spirit. The need of the hour is to give effect to the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rules framed thereunder so that children in conflict with law as well as those in need of care and protection are provided the requisite infrastructure, prescribed standards of care in institutions, education, counselling, vocational training, individual care plan, etc., as per their development needs and best interests.”

It is distressing to know that the comments of the Commission were set aside in the recast Juvenile Justice (Care and Protection of Children) Act, 2015.

Issue of Missing Children

The manner in which young children went missing from one of the neighbouring villages of the National Capital Territory of Delhi, namely, Nithari in NOIDA, falling under the overall jurisdiction of the State of Uttar Pradesh, had a deep impact on the Commission. Taking *suo motu* cognizance of the matter, it noted, “.....the phenomenon of missing children is not confined to Nithari or Uttar Pradesh alone. The Commission has come across media reports of similar incidents from other parts of the country as well. The problem of missing children has thus become an issue of grave concern to the nation and more so, to the National Human Rights Commission of India as it has the mandate for better protection and promotion of human rights and also to deal with cases of human rights violations that come to its notice and make appropriate recommendations in that regard, including giving relief to the victims. The Commission is, therefore, of the opinion that this issue should be examined in depth and guidelines should be evolved to deal with such cases effectively and meaningfully to protect and promote human rights of children and also take appropriate steps where violations of human rights are found in this regard”.

Accordingly, the NHRC constituted a Committee under the chairmanship of one of its Members on 12 February 2007 to look into the issue of missing children in depth and come up with simple practical guidelines that would facilitate in tracing and restoring missing children back to their families or to agencies/ support systems where they could be taken care of and protected.

The Committee consisting of the Director General (Investigation), Acting Registrar (Law), Chief Coordinator (Training) and Senior Research Officer of NHRC held wide consultations with various stakeholders in the Government of India, including the officers of the Ministries of Home Affairs, Women and Child Development, Labour, Social Justice and Empowerment, National Commission for Protection of Child Rights, Government of NCT of Delhi, Delhi Police, National Crime Records Bureau, UNICEF and several leading NGOs in India to find out the role played by the police and local administration in different States and Union Territories in tracing missing children. The Committee also made an in-depth study of rules, guidelines, circulars and orders being followed by the police in tracing missing children, in particular important rulings/guidelines issued by the Supreme Court and High Courts in the country for protection of missing children; good practices followed in different States and Union Territories as well as the role of panchayati raj institutions, non-governmental organizations, media and civil society in tracing missing children and extending support to their families. In addition, the Committee deputed its officers to interact with parents, family members and relatives of the missing children from Nithari and other parts of country who gathered at Janpath, New Delhi to protest against the authorities for the lackadaisical attitude and behaviour in tracing their children.

The Committee submitted its report to the Commission with suitable suggestions/ recommendations to deal with the problem of missing children. These were subsequently endorsed by the Commission and forwarded to the Chief Secretaries and the Directors General of Police of all the States and Union Territories, National Commission for Protection of Child Rights, National Commission for Women and the Ministries of Home Affairs and Women and Child Development for compliance. The complete report of missing children submitted by the Committee to the Commission is available on the NHRC website – www.nhrc.nic.in.

In order to monitor the compliance of its recommendations on missing children, the Commission later devised a detailed reporting format and forwarded it to all the States and Union Territories. In 2013, it organized a *National Conference on Missing Children* in New Delhi to further gauge the status of compliance of its recommendations on missing children and advisories issued by the Ministry of Home Affairs, Government of India; find solutions to the remaining challenges confronting missing children; share best practices among States; and decide upon the future plan of action. The issue continues to be monitored by the NHRC.

Handling of Complaints Related to Children

As per the mandate given to the Commission, it has been handling complaints of violations of different kinds related to children since October 1993. Majority of the complaints handled by the Commission so far have been on the issue of child labour, child marriage, exploitation of children, sexual harassment, child trafficking, using children for purposes of prostitution, missing children, death in juvenile homes and death in other homes. The Commission from its inception on 12 October 1993 till 04 November 2016 registered a total of 14,600 cases of children in the above mentioned categories and recommended monetary relief of ₹ 3,07,37,000/- to children who were victims or their parents or guardians. Maximum monetary relief was given in cases of child labour (₹ 1,32,70,000/-).

Emphasizing on Optional Protocols to the CRC

In pursuance of its statutory responsibilities, the Commission recommended and vigorously pursued with the Ministry of External Affairs and the then Department of Women and Child Development, Government of India that the two Optional Protocols to the CRC, viz. the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict be adopted by the Government of India. The UN General Assembly had adopted both these Protocols on 25 May 2000. The former came into force on 18 January 2002 while the latter on 12 February 2002. Due to the persistent efforts of the NHRC, the Government of India ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 16 August 2005 and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict on 30 November 2005. The Commission is now pursuing with the Ministry of Women and Child Development for signing and ratification of the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure adopted by the UNGA in December 2011 and came into force in April 2014.

Highlighting Human Rights Education

One of the important functions of the NHRC vide Section 12 (h) of the PHRA, 1993 is to “spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means”. Section 12(g) of the PHRA further lays emphasis on undertaking and promoting research in the field of human rights. Similar duty has been assigned to the State

Human Rights Commissions in the respective States. The promotion of human rights literacy in a society calls for great perseverance, for it requires deep and lasting commitment. All sections of the society have a role to play in protection and promotion of human rights against social injustice, inequality, poverty and terrorism. The Commission has been serving this objective within its available means. In fact, the entire range of activities of the NHRC is aimed at creating an environment in which rights can be better promoted and protected. It is of the view that human rights education (HRE) need to percolate down to every citizen in the country. In this process, the Commission is making all out efforts to incorporate human rights education within regular education, as this would lead to children imbibing human rights culture as a natural process.

Taking note of the fact that the prevailing situation of HRE in the country was far from satisfactory, the NHRC undertook a threefold strategy in pursuit of its responsibilities under Section 12(h) of its statute– (i) it solicited the support of the leadership of all political parties represented in Parliament or the State Legislatures, to constitute Human Rights Cells at the Centre, State and District levels; (ii) wrote to Chief Ministers of all States/Union Territories, to sensitize and impart appropriate training in human rights matters, to all public servants in their respective areas; and (iii) initiated a dialogue at the central level with the concerned educational authorities of the Ministry of Human Resource Development, and its associated institutions at the Centre and State levels, to pursue the matter of human rights education at various levels of schooling.

In order to mobilize HRE in schools, during the year 1994-1995, a series of meetings were convened with authorities concerned focusing mainly on four principal issues – review of existing text books, with a view to deleting from them portions that were prejudicial to human rights; publication of a *Source Book on Human Rights* in collaboration with NCERT; preparation of modules for teacher-training, relevant to teaching human rights at various levels; and organization of a workshop for non-governmental and civil society organizations. It further recommended that *10 December each year be observed as Human Rights Day in all schools across the country*. Next, it brought out a Handbook entitled *Discrimination Based on Sex, Caste, Religion and Disability* for sensitizing teachers and teachers' educators.

For initiating HRE in universities, it urged all the Vice-Chancellors and Deans of Law Faculties to examine how best the subject of 'human rights' could be introduced at various stages of study at the university level; set-up a Working Group to coordinate, oversee and monitor matters relating to HRE at the university level; facilitated the University Grants Commission (UGC) in constituting a Standing Committee on Human Rights. This Committee prepared an *Approach Paper on HRE* focussing on several options relating to HRE including the need for basic

courses on HRE for students of all disciplines. The Approach Paper suggested introduction of Diploma and Certificate Courses on HRE aimed at various target groups and emphasized the need for research, extension education and field action projects on HRE. Accordingly, the UGC formulated a scheme for providing financial assistance for organizing seminars, workshops and symposia in colleges and universities as well as conducting various Certificate, Diploma and Degree Courses in Human Rights. On the request of NHRC, the UGC constituted a Curriculum Development Committee under the chairmanship of a Member of NHRC to frame a model curriculum for courses on Human Rights at Certificate, Diploma, Degree and Post-Graduate level. Today more than 50 universities in the country have introduced Certificate, Diploma, Under-graduate and Post-graduate courses in 'Human Rights'.

The NHRC concurrently undertook an in-house study to assess the level of HRE at the school level. The study revealed that HRE is not taught as a separate subject. However, the NCERT and the SCERTs have integrated human rights concepts in various subjects from the primary level to the senior secondary level. A questionnaire too was devised and sent to all the States and Union Territories to indicate the steps being taken by them to promote HRE in schools.

The period 1995-2004 being declared as the UN Decade for Human Rights Education, the NHRC pursued with the Government to develop a National Action Plan focussing on – strategies for raising mass awareness on human rights; sensitization of specific target groups – law enforcement machinery, in particular the judiciary, police, security forces and others; focus on secondary and higher education, including the establishment of a curriculum revision committee for revision of textbooks; development of training modules for teachers in English, Hindi and local languages; the provision of financial assistance to universities and colleges for development of specific courses in Human Rights; and establish a national resource centre that would develop human rights materials and focus on educational tools. In a major effort to establish a centre of excellence for human rights education during the UN Decade for Human Rights Education, the NHRC set-up the *National Institute of Human Rights* (NIHR) at the National Law School of India University, Bangalore in August 1999 along with a *Chair on Human Rights*.

Thereafter, it constituted a Task Force consisting of eminent academicians and legal experts drawn from various parts of the country to develop a module on HRE for school education system and a Task Force to develop a module on HRE for university education system. To evolve these modules and to obtain inputs from all stakeholders, five regional conferences were organized by the Commission during 2006-2007. These conferences were organized at Goa,

Cochin, Gandhinagar, Hyderabad, and Jaipur. Besides the academic and university fraternity, experts from the field of HRE including representatives of civil society organizations were invited to deliberate on the model modules.

This was followed up with the organization of a *National Consultation on Incorporating Human Rights Education in School and University Education System* on 6 July 2007 at New Delhi. In this programme, two books were released, namely, *Recommendations of National Human Rights Commission – Human Rights Education at the University and College Levels* and *Recommendations of National Human Rights Commission – Module on Human Rights Education for Teaching Professionals, Imparting Education in Primary, Secondary, Higher Secondary Levels*.

In continuation of these efforts, the NHRC requested the Vice-Chancellors of various universities along with the Chief Secretaries and Administrators of all the States and Union Territories to apprise it about the current status of HRE being imparted in their universities as well as schools run by Education Boards and other steps taken in this regard. It is encouraging to learn that some of the universities have taken and continue to take positive steps to give due weightage to HRE as a course at the graduation and post-graduation level. However, the situation in schools is altogether different as HRE is not taught as a distinct subject as the concerned Boards of different States and Union Territories have integrated human rights components in subjects like Civics, History, Political Science and Social Studies from primary level to senior secondary level. From the perspective of bringing about uniformity in HRE throughout the country in schools, colleges and universities, the Commission in December 2012 convened a one-day *National Conference on Human Rights Education*.

This National Conference deliberated on three substantive issues in three technical sessions - status of human rights education in India; human rights education at the university and school level : way forward ; and incorporation of human rights education in school and university system. The conference made extremely useful recommendations for school, college and university level education like - HRE should be an integral part of the right to education and there is a need to widen the scope of promoting human rights education at the school level. Moreover, it should be so designed that it provides the child with life skills and also strengthens the capacity of the child whereby she or he is able to enjoy the full range of human rights and in the process promote a culture which is infused by appropriate human rights values; in view of the above, it is not sufficient to introduce a stand-alone chapter on human rights or give information about human rights in small sections in any one of the text books, like Social Studies or Civics. There is a need, in particular, to review and examine the contents

depicting existing prejudices related to caste, class, gender, religion, region, etcetera that are embedded in various subjects in the existing school curriculum; there is a need to teach HRE at all levels of the school system, for then only, HRE would lead to promotion of rights based education in the schools. This would ensure respecting the human rights of all. There is also a need to look into the pedagogy adopted in schools for teaching of human rights; along with school children, teachers need to be trained and sensitized to HRE through pre and in-service training, with the necessary knowledge, understanding, skills and competencies to facilitate the learning and practice of human rights in schools; and that it would be ideal to train all teachers on human rights issues irrespective of the subjects being taught by them in schools along with school administrators, school management committees and other staff. The final recommendations of the Conference were forwarded to the Chief Ministers and Administrators of all the States and Union Territories by the Chairperson of the Commission for implementation. The issue continues to be monitored by the NHRC.

Other Programmes

The Commission is also monitoring other child rights issues, in particular, flagship programmes of the Government of India impacting on children like the ICDS, SSA, MDMS, NHM, etcetera under its *Human Rights Awareness and Facilitating Assessment & Enforcement of Human Rights Programme* across the country. For the said purpose, 28 Districts, one from each State, have been selected from the list of identified districts availing the 'Backward Regions Grant Fund' of the Ministry of Panchayati Raj, Government of India. Some of the backward districts so far visited are Chamba in Himachal Pradesh, Kalahandi in Odisha, Chatra in Jharkhand, Wayanad in Kerala, Mangan in Sikkim and Jamui in Bihar.

In addition, the Commission is engaged in the exercise of *Universal Periodic Review (UPR)*, a mechanism established by the UN Human Rights Council in 2006 aiming to improve the human rights situation on the ground in each of the 193 UN Member States. So far, there have been two cycles of UPR, first from 2008 to 2011 and the second from 2012 – 2016. India was reviewed in both the cycles for which the NHRC prepared its own independent report and submitted it to the UN Human Rights Council. For the second cycle, to prepare for its report, the NHRC held five regional consultations and a national consultation with NGOs, academics, government officials, state human rights commissions, other national and state commissions, and civil society. The objective was to capture ground realities including those relating to children. An oral statement was also made by the NHRC when the final outcome report of the Government of India was adopted in the Plenary Meeting of the Human Rights Council in September 2012.

The third cycle of the UPR is to commence in 2017. NHRC has once again decided to prepare an independent report and submit it to the Human Rights Council. For this, besides publicizing and disseminating the recommendations accepted by the Government of India relating to the first (18 recommendations) and second (67 recommendations) cycle of the UPR to all the Ministries, the NHRC made efforts to weave some of these recommendations into its work as well. A substantial number of these recommendations relate to children. Furthermore, it developed a framework for monitoring the implementation of all the 67 recommendations, accepted by the Government of India. The framework indicates action required on each recommendation along with its monitorable outcome plus the Ministry on whose part the action is called for. The framework undoubtedly has ample scope for improvement but keeping that aside, the framework was shared with all the concerned Ministries including with NITI Aayog followed by meetings with their respective Secretaries/Joint Secretaries/Advisors/Directors. These Ministries are External Affairs, Home Affairs, Law & Justice (Department of Justice), Health & Family Welfare, Women and Child Development, Minority Affairs, Human Resource Development, Rural Development, Social Justice and Empowerment, Finance, Consumer Affairs, Food & Public Distribution, Labour & Employment, Drinking Water & Sanitation, Housing & Urban Poverty Alleviation, Information & Broadcasting (Press Council of India) and Tribal Affairs. Furthermore, NHRC organized five regional consultations at Chandigarh (for Northern Region States), Kolkata (for Eastern & Central Region States), Bengaluru (for Southern Region States), Mumbai (for Western Region States) and Lucknow (Additional one for Bihar, Madhya Pradesh and Uttar Pradesh) followed by a national consultation at New Delhi. The main objective of these regional and national consultations was to evolve a broad consultation process with all the stakeholders so as to have first-hand information from them about the existing human rights situation in the country and in the process assess the status of progress on each of the 67 recommendations. Based on all these NHRC, India submitted its independent report to the UN Human Rights Council for Third Universal Periodic Review of India on 22 September 2016.

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

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Chapter 5

Looking Ahead

The foregoing chapters reveal that ever since India achieved independence, the executive, the legislature and the judiciary have taken a number of proactive measures to put in place an exhaustive legal and policy framework for safeguarding the rights of children so as to ensure their survival, development, protection and participation in all respects. In addition, numerous plans, schemes and programmes were initiated to address issues concerning children. Yet, the plight of children across the country has not got better and continues to be precarious. The burning issues relating to children are number of girls missing at birth due to sex selection, declining child sex ratio, protecting the overall lives of children and improving their health, bridging wide gender gaps in literacy, containing all kinds of escalating violence, especially against the girl child and the rising incidents of pre-natal sex selection, female infanticide, child marriage, child labour, child trafficking and juvenile justice. This apart, the existing loopholes in the definition of the child in various laws including those that try to protect their vulnerabilities are areas on which focused attention is required if at all the best interests of children are to be protected and promoted.

Unquestionably, there have been improvements and in some required improvements are on the anvil, for instance, with regard to legislation related to birth registration and trafficking. Then, there are certain laws whose implementation needs to be strengthened such as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; the Prohibition of Child Marriage Act, 2006 and the Right of Children to Free and Compulsory Education Act, 2009. In addition, there are issues which require immediate attention of the Government of India, the most important being the review of all legislations relating to children to ensure rational harmonization of the legislative framework to protect and promote the rights of children with the principles and provisions of the CRC. In India there are plethora of laws, schemes and programmes for children. The real challenge lies in implementing the provisions of these laws, schemes and programmes in the 'rights' perspective. The Government of India also needs to ensure a substantial increase in budget allocations on critical areas affecting children like their survival and health, education and child protection, as well as in earmarked resources for them at the Centre and State levels. Besides, it needs to establish a budgeting process with a child rights perspective, which not only identifies but also specifies clear allocations for children in the relevant and required areas along with

the establishment and strengthening of mechanisms for distribution, effective utilization and monitoring of resources allocated for implementation.

Children being nation's supreme asset, nothing concerning their survival, development, protection and participation should be ignored or sidelined. However, in a country with a large number of floating population, vast disparities, social conflict and turmoil, the challenge to attend to all their rights is even greater. The National Policy for Children, 2013 of Government of India identifies the following as key priorities –

- Survival, Health and Nutrition
- Education and Development
- Protection
- Participation

Each of the above key area is exhaustive in itself. The call of the hour is to ensure full implementation of all the measures spelled out under each of the key areas, i.e., survival, health and nutrition; education and development; protection; and participation. In order to facilitate this process, there is a need to give priority to the development of a national plan of action and similar plans, at the State and District levels, containing elements that will enable the application of the National Policy for Children at all levels. Moreover, there is a need to ensure timely allocation of sufficient human, technical and financial resources for the effective operationalization of the new National Policy for Children. And, above all, promote and facilitate the active involvement of all stakeholders including children and youth. In the light of CRC General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, it would be worthwhile to develop procedures and criteria to provide guidance to all relevant stakeholders in authority for determining the best interests of the child in every area and for giving those interests due weightage as a primary consideration. It would also be useful to ensure that such procedures and criteria are disseminated to courts of law, administrative authorities and legislative bodies, public and private social welfare institutions, as well as traditional and religious leaders and the public at large.

While working towards the key priorities of the new National Policy for Children, it would be worthwhile for the Government of India to complete the unfinished task relating to the United Nations 2000 Millennium Development Goals (MDGs) that was to be accomplished by 2015 and taking action on even more ambitious set of 17 Sustainable Development Goals (SDGs) and its 169 targets to wipe out poverty, hunger, inequality and other social, economic

and environmental ills over the next 15 years, that is, by 2030. The 17 SDGs have been built on the eight MDGs and targeted efforts will be required to reach the most vulnerable, including children, especially with regard to their survival, development, protection and participation. This is where the SDGs are expected to play a part. They stress everything from zero poverty, zero hunger, good health and well-being, quality education, gender equality, clean water and sanitation, peace, justice and strong institutions and partnerships to achieve the goals.

Turning this vision into reality should be and must be the primary responsibility of the Government of India and other stakeholders as everyone has a contribution to make towards their children.

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Important Websites

1. www.mea.gov.in
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2. www.mha.nic.in
(Ministry of Home Affairs)
3. www.wcd.nic.in
(Ministry of Women and Child Development)
4. www.envfor.nic.in
(Ministry of Environment, Forest and Climate Change)
5. www.labour.nic.in
(Ministry of Labour & Employment)
6. www.lawmin.nic.in
(Ministry of Law & Justice)
7. www.mhrd.gov.in
(Ministry of Human Resource Development)
8. www.mib.gov.in
(Ministry of Information & Broadcasting)
9. www.mohfw.nic.in
(Ministry of Health and Family Welfare)
10. www.moud.gov.in
(Ministry of Urban Development)
11. www.panchayat.gov.in
(Ministry of Panchayati Raj)
12. www.rural.nic.in
(Ministry of Rural Development)
13. www.socialjustice.nic.in
(Ministry of Social Justice and Empowerment)

14. www.tribal.gov.in
(Ministry of Tribal Affairs)
15. www.wrmin.nic.in
(Ministry of Water Resources, River Development & Ganga Rejuvenation)
16. www.yas.nic.in
(Ministry of Youth Affairs and Sports)
17. www.fcamin.nic.in
(Ministry of Consumer Affairs, Food & Public Distribution)
18. www.finmin.nic.in
(Ministry of Finance)
19. www.mdws.gov.in
(Ministry of Drinking Water & Sanitation)
20. www.mhupa.gov.in
(Ministry of Housing & Urban Poverty Alleviation)
21. www.minorityaffairs.gov.in
(Ministry of Minority Affairs)
22. www.niti.gov.in
(NITI Aayog)
23. www.nhrc.nic.in
(National Human Rights Commission)
24. www.ncm.nic.in
(National Commission for Minorities)
25. www.ncsc.nic.in
(National Commission for Scheduled Castes)
26. www.ncst.nic.in
(National Commission for Scheduled Tribes)
27. www.ncw.nic.in
(National Commission for Women)
28. www.ncpcr.gov.in
(National Commission for Protection of Child Rights)

29. www.populationcommission.nic.in
(National Commission on Population)
30. www.un.org
(United Nations)
31. www.ohchr.org
(UN High Commissioner for Human Rights)
32. www.asiapacificforum.net
(Asia Pacific Forum of NHRIs)
33. www.nhri.ohchr.org
(Global Alliance of NHRIs – GANHRI)
34. www.undp.org
(UNDP)
35. www.unicef.org
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36. www.unesco.org
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37. www.ilo.org
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38. www.savethechildren.in
(Save the Children, India)
39. www.britishcouncil.in
(British Council, India)
40. www.crin.org
(Child Rights Information Network – CRIN)

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