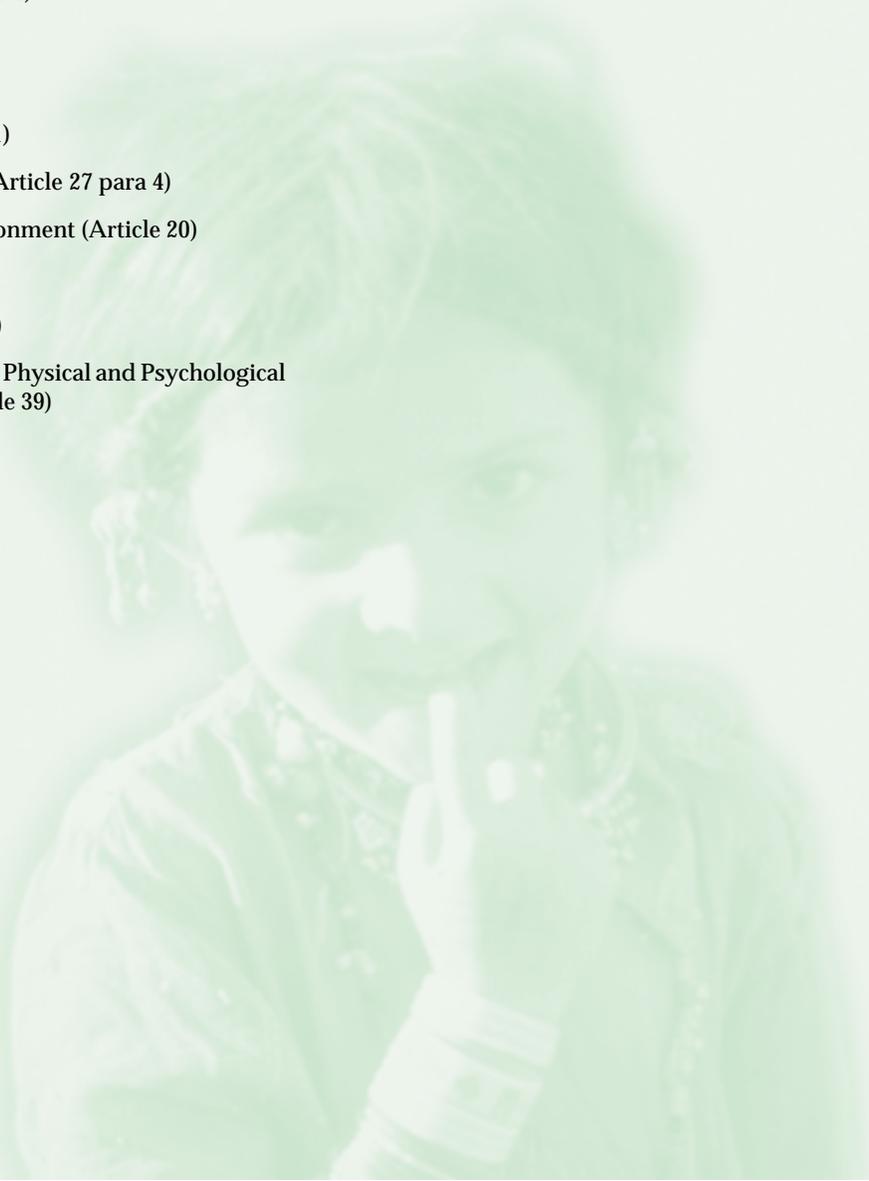


SECTION V

Family Environment and Alternate Care

(Articles 5, 18 (para 1-2), 9-11, 19-21, 25, 27 (para 4) and 39)

- A. Parental Guidance (Article 5)
- B. Parental Responsibility (Article 18 paras 1-2)
- C. Separation from Parents (Article 9)
- D. Family Reunification (Article 10)
- E. Illicit Transfer and Non-Return (Article 11)
- F. Recovery of Maintenance for the Child (Article 27 para 4)
- G. Children Deprived of their Family Environment (Article 20)
- H. Adoption (Article 21)
- I. Periodic Review of Placement (Article 25)
- J. Abuse and Neglect (Article 19), including Physical and Psychological Recovery and Social Reintegration (Article 39)



Article 5

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

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or who in his or her own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, *Kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (1) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (2) Recognise that inter-country adoption may be considered as an alternative if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (3) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (4) Take all appropriate measures to ensure that in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (5) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 26

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve full realisation of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

5A

Parental Guidance

Article 5

Family in India

1. The family is perceived as a unit of two or more persons united by the ties of marriage, blood, adoption or consensual unions, generally constituting a single household, and interacting and communicating with each other. It is considered the basic unit of society, to meet the needs of the individuals and those of other societal institutions. It determines the development of individuals, in that it is a major source of nurturance, emotional bonding and socialisation. Enriching family life can, therefore, best enhance human development.

2. A family is defined by the Civil Procedure Code, 1908, in order XXXII-A6 as follows:

- a)
 - (i) a man and his wife living together,
 - (ii) any child or children, being issue of theirs; or of such man or such wife;
 - (iii) any child or children being maintained by such man and wife;
- b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children, being maintained by him;
- c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;
- d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and
- e) any combination of one or more of the groups specified in (a), (b), (c) or (d) of this rule.

3. Families in a large and culturally diverse country such as India are fairly well developed, strong and based on a range of kin-extensions. They have a plurality of forms that varies with class, ethnicity and individual choices. This picture is in consonance with the flexible definition of family in the CRC, which includes kinship and community arrangements. The normative family composition types in India are the extended/joint family and elementary/ nuclear family. In many rural areas, the traditional joint family system is still very strong, where a child grows in the company of his/her own siblings, cousins and grandparents. The term “joint family” is used more commonly than “extended family” in India. The elementary or nuclear family comprises couples and their unmarried children, and is generally financially independent of other families. This structure appears to be becoming the norm in most urban areas. A variation of an elementary/ nuclear family is the supplemented nuclear family, which comprises a nuclear family with single relatives. In tribal societies, kinship structures are still strong, and community care of children, especially during difficult times like migration and natural calamities, is quite common.

Strengths of the family structure

4. The conceptual framework of the Convention with regard to the child, the family and the State is basically compatible with the values of the Constitution, statutes and other laws in India. The legal systems of the region contain principles regulating family relations which do not come into conflict with some basic perceptions on the role of the family and the State in the Convention. The philosophy of the Convention sometimes even incorporates tenets that are more familiar to the indigenous legal traditions of India. These local legal traditions which are more in harmony with the Convention's value system were modified through centuries of colonial rule, and may need to be restored if some of the concepts on the family that the Convention recognises are adhered to.¹

5. Family relations in India are governed traditionally by religious and personal laws. The major religious communities have their separate personal laws. They are governed by their respective religious laws in matters of marriage, divorce, succession, adoption, guardianship and maintenance. The personal laws of minority communities have been left untouched on the basis of the policy of non-interference in the personal laws of any community unless the demand for change comes from within those communities.

6. A strong concept of parental and family responsibility for children emerges from Hindu and Muslim personal laws. A striking common focus on the assumption of responsibility for minor children in the event of death or dissolution of a marriage (according to local laws where divorce has been recognised) emerges in a review of ancient texts. The texts rarely refer to an order of guardians. The *karta*, or head of the family, was usually responsible for all members of the joint family and on his death another member assumed his role, creating a situation of family relationships that were continuous.

7. Early systems of law in the region also clearly placed the nurturing and care-giving responsibility within the family, thus reflecting a strong concept of family privacy. Hindu law also recognised the important concept of family support or familial assistance, and this was often linked with the right to maintenance from the property of family members. Islamic law recognised a principle that was unique for early legal systems when it conferred a preferential right of custody on the mother of a child of tender years.

Challenges to the family structure

8. The family in India is often understood as an ideal homogeneous unit with strong coping mechanisms. However, it is important to recognise that there may be inherent problems within the family. Moreover, families have plurality of forms that vary with class, ethnicity and individual choices, requiring specific interventions. The concept of family responsibility for children in the earlier systems in the region, while humane in its approach, was combined with a corresponding concept of sweeping family authority. Early legal systems did not recognise the concept of the personal autonomy of the child. Family authority was usually exercised by males, though parts of India such as Kerala and the North-East recognised wide powers in the woman as the head of the household and matrilineal systems of property and inheritance rights. In many cases, the family was and is also the source of inequality, exploitation and violence in addition to its idealistic picture of the source of nurturance, emotional bonding and support.

9. As a social institution, the family has consisted of more or less formal rules and regulations,

organised around the fulfilment of societal needs. It has historically been a part of the ethnic community, which has promoted patriarchy in the family, especially in the upper economic groups where property is the base. In a patriarchal structure, age, gender, and generation strictly determine roles and responsibilities and control and distribution of resources. Control over resources and assumption of superiority gives the man the authority to make decisions about his dependants, which would mainly include women and children. With the advent of industrial civilisation and with the advancement of technology, new factors of social transformation have begun to accumulate, which are potent enough to create devastating social changes and shatter many of the old foundations of family life. The old role of the family and the scope of economic security it could provide have been eroded. The family is gradually becoming the smallest unit of human association, which is essential for the prime act of procreation. Similarly, large families have become, in most cases, an economic liability instead of an economic asset. The breaking up of the old family system is brought to notice by an increase in child crimes, in the rate of divorces and in cases of desertions.

10. An emerging trend is the formation of some alternative family or household compositions, such as:

- Childless families (due to infertility or out of choice) such as families which fall in the double-income-no-kids category.
- Families which are planning to have only one child,
- Single-parent families or households (due to unwed parenthood, death of a spouse, desertion, separation, divorce or migration of a spouse)—such type of families are on the rise.
- Reconstituted/ step-families.
- Consensual unions.²

Counselling

11. The demands of modern life are such that stress is on the increase. Until recently, the child was the focus while dealing with children with special needs and behavioural problems. Later this shifted to mother-child interaction. The emergence of Family System Therapy led to the realisation that family is a dynamic unit and therefore, the focus should be shifted from the child to the relationships of various sub-systems, where the child is seen in the context of the family and the family is seen in the context of the community.³

12. Family courts have been established in 19 States/UTs as per the provisions laid down by the Family Court Act, 1984. The Act provides for the establishment of family courts with a view to promoting conciliation in, and securing speedy settlement of disputes relating to, marriage and family affairs and matters connected therewith. Section 6 of the Act empowers the State Government to determine the number and categories of counsellors required to assist a family court in the discharge of its functions.⁴ All family law matters such as marriage, matrimonial causes, maintenance and alimony, custody, education and support of children and settlement of property come within the jurisdiction of the Family Courts.

13. Family counselling services in India are supported by the scheme of financial assistance to voluntary organisations for setting up family counselling centres. This scheme primarily aims to protect the family and the society at large from breaking up on account of marital discord, dowry disputes, alcoholism, drug abuse or other social problems. The main objective

of the scheme is to provide preventive, curative and rehabilitative services to individuals, families and the community. Similarly, parental education programmes and awareness campaigns for parents and children on the rights of the child are being undertaken by NGOs working in the area of child welfare and development.⁵

14. In many states, the Department of Social Defence has been supporting 'family counselling centres'.⁶ Many such services are being offered by voluntary organisations to assist families in dealing with their problems. The Nutrition, Health and Education (NHED) components of ICDS comprise basic health, nutrition and development information related to children and development. Nutrition education is imparted to women through counselling sessions, home visits and demonstrations. *Anganwadi* workers use fixed days as mother-child protection days, organising small group meetings of mothers, home visits, etc. All efforts are made to reach out to women, including pregnant women and nursing mothers, to promote improved behavioural actions for care of pregnant women, young children and adolescent girls at household and community level. Sustained support and guidance is provided in the period of pregnancy and early childhood, to mothers/families of young children, building upon local knowledge, attitude and practices. This helps to promote early childhood care for survival, growth, development and protection.⁷

15. The Central Social Welfare Board (CSWB) under the Department of Women and Child Development (DWCD) organises seminars and awareness camps for women, covering various issues related to the family. Parental education programmes and awareness campaigns for parents and children on the rights of the child are being taken up by NGOs at State and district levels in the area of child welfare and development. Training is provided to concerned professionals of many NGOs on various aspects of child rights, and they in turn generate awareness among people. International agencies like UNICEF and other voluntary bodies have also been making efforts to create awareness about the rights of children among various sections. There are various collaborative efforts, which are doing some excellent work. Voluntary Action Bureau (VAB) and Family Counselling Centres (FCC) under CSWB provide counselling and rehabilitative services to women and children who are victims of family maladjustment and atrocities.⁸ Leading public schools in India have counselling centres for both parents and children. These centres not only provide career counselling but also provide psychological and emotional guidance.

5B

Parental Responsibility

Article 18

16. As noted earlier, families in the region take many forms, since joint as well as polygamous families are recognised in customary and religious laws and social practice. Female-headed families and families formed by co-habitation without marriage are also a reality. In addition to the variety of legal norms in these areas, there are also uniform laws which try to reconcile the standards set by the Convention on this issue.

17. Traditional laws in India, and the south-Asian region as a whole, whether religious or customary, emphasise the aspect of family support. Islamic law recognises a man's duty to support his wife and children. The obligation of support in traditional Hindu law has, in fact, been used in India as a basis for the post-Independence codified legislation which now regulates the subject of family support in Hindu law. Thus, both parents have an obligation to maintain a marital or non-marital child. The Criminal Procedure Code, which applies uniformly to all citizens of India, creates a parallel statutory remedy on the subject of family support. This statute is the major law on child support in India, and reflects a different approach to the issue of parental responsibility for financial support.

Policies and legislation

18. According to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children. Further, the provision lays down that the legitimate and illegitimate child may claim maintenance from his or her father or mother as long as the child is a minor.

19. Section 24 of the Guardians and Wards Act, 1890, makes the guardian duty-bound to look in to the support, health and education of the ward.

20. Rule 133 of the Islamic law states that every man is bound to maintain his children and grandchildren till the time of weaning. After the time of weaning, in the absence of property, through which they can be maintained, the children and grandchildren shall be maintained:

- a. In the case of sons and grandsons who have not attained puberty and unmarried girls, by the father; and if the father is poor, then by the mother, if she is rich, and if both father and mother are poor, then by the nearest grandparent—paternal or maternal if they are rich. Such maintenance is subject to reimbursement against the person liable to maintain.

Box 5.1: Landmark judgement

In a recent judgement, the Supreme Court (Githa Hariharan Vs. Bank of India and Vandana Shiva Vs. J. Bandopadhyaya) declared that the mother was as much the child's natural guardian as the father. Since traditionally much of India has been

a patriarchal society where the father is considered the legal guardian, the Supreme Court judgement is a landmark judgement that brings family reality into consonance with the requirements of the CRC.

- b. In the case of major children, excluding married daughter disabled on account of some disease or physical or mental infirmity, by the father only, but if both the father and mother are rich then by both of them in proportion of 2/3 : 1/3.
- c. In the case of illegitimate sons who have not attained puberty and legitimate unmarried daughters, by the mother only.⁹

21. Under the Juvenile Justice (Care and Protection of Children) Act, 2000, the competent authority which makes an order for sending a neglected juvenile or a delinquent juvenile to a juvenile home or a special home or a fit institution may make an order requiring the parent or other person liable to maintain the juvenile to contribute to his maintenance, if able to do so, in the prescribed manner.

22. The Maternity Benefit Act, 1961, provides maternity benefits to working women on completion of 80 days of working. They are not required to work during six weeks immediately following the date of delivery or miscarriage. Upon the submission of medical certificate, advance maternity benefits are allowed. This benefit is also applicable to plantation labourers and contains enabling provisions to extend the same to agricultural workers. Under the Welfare Fund Act, a number of schemes for the welfare of *beedi* workers are being implemented. These include health, maternity benefit, housing, education, recreation, etc. The Factories Act, 1948, lays down provisions for providing creches in every factory wherein more than 30 women workers are ordinarily employed. The *Beedi* and Cigar Workers (Conditions of Employment) Act, 1966, the Plantation Labour Act, 1951, the Contract Labour (Regulation and Abolition) Act, 1970, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, also lay down provisions for providing creches for women workers as per the rules mentioned under each Act. The Plantation Labour Act, 1951, provides that women workers be provided time off for feeding children.¹⁰

Programmes

23. Measures adopted to render appropriate assistance to parents and legal guardians include facilities like day-care centres, crèches, play-houses, early childhood care centres and *Anganwadi* centres which are run by Governments, State/UTs as well as by NGOs.¹¹ The Central Sector

Box 5.2: *Udisha*

Udisha, the national initiative for quality improvement in training of child care functionaries and care-givers, is fundamental to the improvement in the quality of early childhood care for survival, growth and development.

Udisha recognises parents and communities as the ultimate link in the training chain where behavioural change must take place to promote care, development and active learning of the young child.

It envisages a key transformation in approaches to training of child care functionaries and care-giver education. This is through a holistic approach to the young child, reflected in a new child-centred curriculum that is

structured along the life-cycle and development continuum of the child. This pulls together different sectoral interventions, with a rights perspective.

Udisha seeks to address the physical, social, emotional and intellectual development of children, by promoting a convergence of actions in the areas of health, nutrition, early learning and better parenting.

Udisha is seen as an important element in empowering child care workers, parents and communities for a continuous process of assessment, analysis and informed action—to promote the fulfilment of young children's rights to live, grow and develop.

Scheme of running crèches/day care centres was started in 1975 in pursuance of priority objectives of the National Policy for Children adopted in 1974. It aims to provide day-care services mainly for children (0-5 years) casual, migrant, agricultural and construction labourers. Children of women who are sick, incapacitated due to sickness or suffering from communicable diseases are also covered under the scheme, which is framed to cater to the very low economic groups. Services available to children include sleeping and day-care facilities, supplementary nutrition, immunisation, medicine, medical check-up and entertainment. The scheme is being implemented by the CSWB through a voluntary social welfare organisation, and two other

Box 5.3: A few interventions by NGOs

Mobile Crèches has been running day-care centres for children of migrant construction workers in Mumbai and its suburbs since 1972. They arrange day-care centres in safe places, where they keep children away from the dangers of the construction site. They provide nutritious mid-day meal, snacks and milk. Doctors come for check-ups and to immunise children. The organisation also arranges for non-formal education with story-telling, play, singing, art and craft, and finally gets children admitted to municipal schools.

Mobile Crèches has been extending services to the construction sites, slum areas and resettlement colonies in Delhi. There are altogether 28 such centres. The core of the programme lies in building positive interactions based on partnership and sharing of perception and knowledge. They carry out daily interaction with parents at the centres on issues pertaining to early childhood care, education and other issues of common concern. They conduct camps (local and outstation) for community members. This interaction also involves the male members of the child's family and has proved to be a holistic way to address familial problems, which directly or indirectly affect the child.

Ashraya, located in Bangalore, Karnataka, is committed to finding a solution for children within the framework of their own biological families, or in adoptive homes. *Ashraya* has crèches at about 30 large construction sites, providing almost 300 children with a safe haven within the building site itself. The trained and committed staff impart literacy and craft training. A nutritious diet, medical cover and immunisation, has improved the health of the children dramatically. Parents' involvement has grown through family meetings and informal interaction between them and the staff of *Ashraya*.

In 1996, *Ashraya* started a residential school for children of migrant labourers, 100 km from Bangalore, near Madanapally, called the Neelbagh Residential School. The school imparts non-formal education to children and has a large component of vocational training as part of the curriculum.

Navjeevan Bala Bhavan is an organisation for street children in Vijayawada, Andhra Pradesh. Under their project

called *Bala Vikasa Kendra*, they provide recreation, basic education, counselling, nutrition and first-aid facilities to more than 150 children in and around Autonagar. At present, more than 75 children attend classes at *Bala Vikasa Kendra* every day. Out of these, 70 per cent are boys and 30 per cent are girls.

The **Spastic Society of Tamil Nadu**, in Thiruvallur district has initiated Community Participation Rehabilitation in early intervention and developed a horizontal model with the support of UNICEF, Chennai. This programme is in full partnership with parents of disabled children, with ICDS personnel and with Primary Health Centres. After three years of preparation, one project has been handed over to Parents, Self-Help Group. The focus of this village-based activism, is the empowerment of the disabled people and their families.

Indian Council for Child Welfare, Tamil Nadu, is running 113 crèches in different districts depending on the need. Health care, play-way teaching a nutritious noon meal, leisure activities and celebration of festivals are some of the services provided in these crèches. The mothers are periodically oriented on parenting skills and on better child-rearing practices. The council runs three crèches in industrialised areas like Ambattur Industrial Estate (AIEMA) and Madras Export Promotion Zone (MEPZ). Financial assistance and counselling services are extended to the children and their parents so that the children can pursue their formal education and vocational training.

In Usilampatti, Madurai district Tamil Nadu, apart from extending support to children and parents from the lower socio-economic strata, the focus is on disabled children. The Council was able to reach out to 559 beneficiaries through its counselling and related services.

The **Indian Council for Child Welfare, Assam**, runs 34 crèches for children of six to seven years of age. These centres are run mostly in rural areas. The family counselling centre run by the Social Welfare Advisory Board in the police headquarters of Ulubari, Assam, has been handed over to the State Council for Child Welfare.

Box 5.4: International conference on early childhood care for survival, growth and development

A new vision for young children in the twenty first century is being evolved — a vision that focuses on promoting early childhood care for survival, development, protection and participation. The vision includes strengthening of family and community capacity to promote care for young children, girls and women. An international conference was organised from 3-5 October 2000 in New Delhi, in order to facilitate India's new strategy for young children.

It was felt that parents and family members would

continue to be the main influence on young children's lives in the foreseeable future, especially for children under three or four years of age. Perhaps, the greatest and most lasting effect on a child's learning and development can come from improvement in the capacity of parents to provide a supportive environment for learning and development. The various possible ways to support and work with parents and family members and the particular combination of how to go about this work was discussed at the conference.

Source: Brochure on International Conference on Early Childhood Care for Survival, Growth and Development, UNICEF

national level voluntary organisations, namely, the Indian Council for Child Welfare (ICCW) and *Bharatiya Adim Jati Sevak Sangh* (BAJSS) all over the country. The National Crèche Fund (NCF) was set up in March 1994. The general crèches assisted by the NCF follow the pattern of the Department of Women and Child Development's Crèche Scheme, and provide children below five years services with day care facilities, supplementary nutrition, immunisation, medical and health care and recreation. Children of parents who are extremely poor are eligible for enrolment.

24. The scheme is being implemented through voluntary organisations or *Mahila Mandals*. The financial norms for the NCF are the same as that for the crèches under the scheme of Assistance to Voluntary Organisations for crèches for Working and Ailing Mothers. The voluntary organisations/Mahila Mandals are required to open the crèches in schools or in places close to schools, in rural and urban slums dominated by SCs/STs. They are encouraged to involve the communities in the implementation of the scheme so that the crèches become self-supporting.¹² At present, there are about 14,925 Crèches supported by the above scheme benefitting approximately 373,000 children.¹³ With regard to destitute children, the Government of India (GOI) proffers the Integrated Approach to Juvenile Justice, a scheme under which institutions are set up to look after children who are in need of care and protection. Besides, family assistance is provided through individuals, families and communities. Sponsorship services for poor families are also rendered by various institutions as.

5C

Separation from Parents

Article 9

25. Separation from parents in the best interest of the child usually takes place when either parent is not in a position to take care of the child because of poverty, ailment, alcoholism or imprisonment; or when parents are not known; or when children are abandoned, or when children become victims of man-made natural disasters.

Neglected juveniles

26. If a neglected juvenile is brought before the juvenile court, the court acts in the interest of the child and directs him/her to be sent to the children's home in order to provide him/her with proper habitation and care for its physical and moral health.

27. According to the Juvenile Justice (Care and Protection of Children) Act, 2000, during the pendency of any inquiry regarding a juvenile, the juvenile, unless kept with a parent or guardian, would be sent to an observation home or a place of safety for such period as may be specified by the order of the Juvenile Board.¹⁴ For more details of the Act, see section on The Administration of Juvenile Justice.

Children of prisoners

28. The Annual Report of the National Commission for Women 1995-96 reports that a number of infants and children accompanied their mothers into the prisons. Facilities for child care, therefore, were also observed and were found to be adequate in only two jails. The National Commission for Women has recommended that infant care facilities like crèches and the ICDS project be established /run in each prison/custodial home for proper care and development of children accompanying women inmates.¹⁵

Children in hospitals

29. In India, normally all hospitals allow the parents or the guardian to stay with an ailing child in the hospital.

Custody

30. While the father is always the natural guardian, the mother is given the custody of the child on the basis of what is termed as the "tender age theory". Custody is granted during pendency of a matrimonial dispute between parents [Section 26 of the Hindu Marriage Act (HMA)]. Under the HMA, however, courts have to be guided by the principles of the Hindu Minority and Guardianship Act (HMGA). The mother ordinarily has custody of a child till the age of five years. Under Muslim law, among Sunnis, the custody of the girl child remains with the mother till the age of seven and till the age of two under Shia law (till the child is weaned). In the absence of the father, male relatives get preferential rights for custody.

31. However, courts generally favour the principle of welfare of the child in determining custody, which would depend upon the facts of each case. Even if custody is granted to one

parent, the other parent has a right of visitation and cannot be denied access to the child. The orders of custody can also be modified with changed circumstances.¹⁶ In the Juvenile Justice Act, 1986, which covers neglected as well as delinquent children, there are suitable provisions to ensure that the child separated from one or both parents has the right to maintain parental relations as well as direct contact with the concerned parents.¹⁷

5D

Family Reunification Article 10

32. Migration of a parent or sibling to a foreign country is an important strategy for the economic survival of those left behind at home, particularly among the vulnerable groups of people. Thousands of families in India depend on the remittance of migrant workers as a source of livelihood. In a way, these families have developed their own 'safety net' by searching for a job elsewhere, but at a cost. Families that migrate for economic reasons have to deal with social and psychological problems created for the children left behind at home as well as the problem of dealing with tensions in the new place of work. In most cases, only one parent migrates so that the child is left behind with the other parent. The separation of the child from the parent can extend to long periods and would depend upon the economic status of the family.

33. Such Indian migrant families are dealing with increasingly restrictive conditions being placed on the right to family reunification by the host countries. Most countries which account for a major share of Indian migrants abroad, now prescribe detailed procedures for allowing the family to join, leading to delay and uncertainty which have been extremely detrimental to children's healthy development. There is a long waiting list of children in India seeking to join their parents abroad. Often, delays have ruined children's chances. In many cases, they pass the age of 18 while still awaiting their visas. A positive, humane and expeditious approach to the issue of granting visa to members of separated families is strongly recommended.

34. Foreigners who desire to visit India, can do so after obtaining a visa from the Indian Mission in the country of their residence, or in the country nearest to them. People of all nationalities can visit India for tourism, business, education or family reunions. Employment visas are also granted if backed by employment contracts. Visas for the spouse and children of foreigners employed in India are automatically granted. A large number of Indians are now seeking job opportunities abroad.

35. According to the Indian Foreigners Act (1946), foreigners may be refused admission at any point of entry if they do not possess valid documents.

36. There appear to be no reported cases where applications to enter or leave the country have resulted in the applicant or the applicant's family being persecuted or discriminated against. This also applies to asylum-seeking individuals.

5E

Illicit Transfer and Non-Return

Article 11

37. This article is primarily concerned with parental abductions or retention outside the jurisdiction of the State Party. Though the article includes non-parents in its scope, it should be noted that Article 35 covers the sale, trafficking and abduction of children. Article 11 applies to children taken for personal rather than “financial” gain, whereas “sale” and trafficking” have a commercial or sexual motive. Those who abduct children for purely personal motives are usually, though not invariably, parents or other relatives.

38. Such instances of illicit transfer and non-return of children abroad, usually by one of the parents, have been rarely reported in India. India, at present, is not a signatory to the Hague Convention on the Civil Aspects of International Abduction (1980).¹⁸

Box 5.5: Separated women abandoned by law

It is more than six years since lawmakers were expected to consider an important amendment in the Criminal Procedure Code that would have enhanced the maintenance amount for separated women. The allotted sum was Rs 500 and the proposal was to enhance it to Rs 1,500.

In the current session of Parliament, the Minister of State for Home Affairs, admitted that the Bill was still awaiting the lawmakers’ approval.

The Law Commission had recommended enhancement of maintenance allowance to Rs 5,000 per month. The Government says it will again move a Bill in the *Rajya Sabha* to implement the Law Commission’s recommendation.

A woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers any of the disabilities indicated in Section 125(4) of the Code; after divorce, she is entitled to claim maintenance from the former husband.

A woman thrown out of her in-law’s house can legally receive an immediate relief of Rs 500 only. The Code which stipulates payment of maintenance has remained unchanged for the last 27 years, though prices have sky rocketed.

Initially, Section 125 of the Code had fixed the maximum

maintenance amount at Rs 250. It was amended last in 1973 and the amount was increased to Rs 500. The Act was supposed to provide quick relief to a woman belonging to any religion.

But no amendment has been made in the Code to ensure that she gets urgent interim relief to sustain herself and her children. Due to the tardy litigation process, the immediate relief to the woman in need is ever eluding. In practice, a woman gets the final relief after meeting the heavy expenses of a prolonged multi-tier litigation process.

In its 154th report, the Law Commission recommended that the ceiling of Rs 500 should be waived and a woman who is earning a livelihood also be entitled to maintenance amount. In determining the maintenance amount, the magistrate must take into account not only the food expenditure and education of children, but also money to be set apart for emergencies. It also suggested deletion of the section which deprives a wife from claiming maintenance if “living in adultery.”

Later, the Commission felt that the maintenance amount should be Rs 5,000.

Recovery of Maintenance for the Child

Article 27

39. Under most of the personal laws in India, the primary responsibility for the maintenance of a child rests with the father. If the father has no means or insufficient means, then the mother has the obligation to provide for the child. Under all the matrimonial statutes of India, children are treated as part of ancillary proceedings. Under the Hindu Marriage Act, 1955, Special Marriage Act and Indian Divorce Act, proceedings for maintenance are generally filed by the parent with whom the child resides or who has its custody. An interim application is filed by such parent, but it is done during pendency of a proceeding under the Act. Such proceedings could be divorce, judicial separation or restitution of conjugal rights. The court may take note of the wishes of children and pass orders pertaining to maintenance, taking note of its need and education as befitting the status of parties. The order of the court can vary, depending upon the circumstances of the case. The orders can also be passed in a final proceeding where the court decides upon the status of the marriage, but it is always subject to variation as the needs of the child are never static.

40. Under Section 20 of the Hindu Adoption and Maintenance Act, a Hindu is bound to maintain his children (legitimate and illegitimate) as long as they are minors. A daughter is liable to be maintained as long as she is unmarried and unable to maintain herself from her earnings and property. According to Section 125 of the Code of Criminal Procedure, 1973 (Cr. P. C), a magistrate of first class may, upon proof of neglect or refusal (as mentioned in the Section), order such a person to make a monthly allowance for the maintenance of his wife or child, at a monthly rate not exceeding Rs 500. Ordinarily, maintenance is to be paid till the child attains 18 years, but in the interest of the child, it can continue beyond this age, if the child is studying. Otherwise, it continues in the case of exceptional situations like the ill-health of the child. All orders passed are enforceable like a civil decree, and courts can order attachments of salary. There is no fixed quantum and it would depend upon the income of the parent and the need of the child.

41. Under Islamic law, children are liable to be maintained by their parents. In addition to this, the wife can initiate proceedings under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

42. In cities where the Family Courts Act of 1984 is implemented, matters of maintenance, custody and access come under the jurisdiction of the Family Courts. In such cases the Counsellor submits to the court, a report relating to the home environment of the parents, their personalities and relationship with the child in determining the amount of maintenance to be granted to the child. In case of a neglect juvenile, a competent authority can make an order under the Juvenile Justice (Care and protection of Children) Act, 2000, requiring the parent or other person liable to maintain the juvenile.

43. Section 125 (3) of the Code of Criminal Procedure states that if any person so ordered fails without sufficient cause to comply with an order on maintenance, then the magistrate

may, for breach of order issue a warrant for levying the amount and may sentence such a person to imprisonment, for a term which may extend to one month or until payment if sooner made.

Box 5.6: Fostering families—Creating a home away from home

"Bonny baby!", they called her. "But will she live?" asked her five-year-old brother. He was too shocked to speak when he saw how little his new sister was. When she was brought to the SOS Village in Faridabad, nobody knew whether she'd make it or not. But she did. After ten days of struggle for survival in the incubator, the one-month-old girl sleeps peacefully in her red wool dress, waiting to be given a name. She's quite unaware of who or where her real mother is or how she was disowned by her real parents. And she'll never know who they are.

After being born prematurely in the seventh month to an unwed mother in Varanasi, her mother's relatives made sure she wasn't brought up there. "An SOS official who wanted her to survive and have a family, brought her here. Now, she is the youngest member of the SOS village (one of 32 in India) here. We're going to name her soon after a *puja* ceremony," says Niharika Chamola, SOS Educational Counsellor.

Be it the earthquake at Latur or the Orissa cyclone that left many children homeless, SOS has changed the definition of an 'orphanage' by giving children in its care an SOS family besides basic education. The SOS childrens villages in India try to give a permanent home to the kids with a strong foundation for an independent and secure life," says Naushad Raza, another Educational Counsellor.

Five-year-old Anubhav loves dancing, while his nine-year-old sister Apoorva wants to become a pilot. Their mother, Kamalini, says, "Anubhav came to me when he was just a few days old, his mother died while giving birth to him, therefore he's more attracted to me than my other kids. Apoorva is a topper, she's always absorbed in books. I know she'll become successful someday. What does Anubhav want to become when he grows up? "Hrithik Roshan," he

says. For Kamalini, these kids are family. "I gave up the choice to have my own kids. It's been nine years since I began taking care of these kids, it works like any other household, we share our joy and grief together. I help the kids with their homework and take them out for movies and picnics. I also try to save enough money to buy them things, make fixed deposits for a brighter tomorrow."

But not everyone can become a mother. It's only after two years of rigorous training that a woman is chosen to play 'mother'. "The women are observed closely—whether they're capable of performing the duties of a mother. They go through psychology tests to see if they can handle the traumas some of the children face. If someone can't be a mother, then they become an aunt to assist the mother," says Niharika.

But does the past ever haunt these kids? Do they ever wonder if their families are any different from other families? "Sometimes, the past is destructive, especially if the kids come at an older age, they remember the trauma that has touched their lives" says Kusum Sharma, one of the oldest SOS mothers. "I've brought up 33 kids. If the child comes to us at a young age, reality introduces itself in a very natural way. It happens when children start going to school—they interact with other kids and come back with questions. If I recall correctly, when one of my daughters, Manjari, was about six, I would often take the kids to play in the park. There she would see other kids come with both their father and mother. One day, she asked me why her dad didn't come to play with them. Slowly they understand the difference."

Today, 22 year-old Manjari, who specialises in human resources development, says "For me, this is my family. It's given me so much. Without them, I would be nothing."

Children Deprived of their Family Environment

Article 20

44. The radical changes in India's political, socio-cultural and economic environment have had their impact on marginalised children. The immediate causes include:

- Abandonment and destitution
- Breakdown of the family, leading to an increase in the number of runaway street children
- Influence of the media on the child, which causes conflicts of identity, role modelling and the glamour which, coupled with other factors, causes children to run away
- Abuse and exploitation

45. Such children need special care and protection. The programmes of the GOI and its counterparts in the States focus on children in crises situations such as street children, children who have been abused, abandoned children, orphaned children, children in conflict with the law, and children affected by conflict or disasters.

46. One of the initiatives in this regard is the Integrated Programme for Street Children, whose objective is to prevent destitution of children and to facilitate their withdrawal from the streets. The programme provides for shelter, nutrition, health care, education, and recreation facilities to street children and seeks to protect them against abuse and exploitation.

Box 5.7: Bid to rehabilitate orphans in Orissa

Survival, protection, education and participation would be the four *mantras* for the Orissa Government while rehabilitating children affected by the cyclone. These have been adopted from the United Nations' Convention on the Rights of the Child acceded to by India in 1992.

The Government plans to shelter the orphans in day-care centres, short-stay homes and crisis homes-cum-transit homes. The Consortium for Rehabilitation of Children (CRC), a forum comprising the Woman and Child Development Department, Orissa State Council for Child Welfare and 69 NGOs, has so far identified 1,200 orphans and 755 children-at-risk for rehabilitation.

"We have to first ensure the survival and protection of children. After that we can think of their education and participation in the mainstream," said Commissioner-cum-Secretary in the WCD Department, Tarun Kanti Mishra.

Though many children have been orphaned by the cyclone, not all are assetless. Under the Community-based Rehabilitation (CBR) programme, the Rs 75,000 ex-gratia given to these orphans would be put in a joint account in the name of a special officer from the WCD department

and the orphan's guardian. The monthly interest of Rs 700 would be spent on the child.

The State Government would also form a supervisory committee, comprising an NGO member, a local *panchayat* official and a Government official, who would periodically if the child is receiving the actual benefits.

The Government has also started a foster mother scheme, called *Operation Sneha*, under which a foster mother would be appointed for the orphans in the area. For example, in Jhantipari village of Jagatsinghpur district, a widow has been appointed as foster mother to 10 orphans, and has been provided with utensils and other household items. The rehabilitation process would continue for the next six months, after which the programme would be reviewed.

While 18 of the 87 orphanages in the State have shown interest in taking the orphans, many institutions outside the State, like Dayasadan Children's Trust, run by Saroj Goenka in Chennai, *Bharat Sevashram*, *Help, Sampark, Santi Alias Trust* and *Salam Balak Trust*, have offered to take all the children orphaned in the cyclone.

Box 5.8: Bid to rehabilitate people affected by earthquake in Gujarat

The Ministry of Social Justice and Empowerment drew up crises intervention model called Sneh Ghars/Mamta Ghars to house children, women and the aged affected by the earthquake in Gujarat. Grants amounting to Rs 274.47 lakhs were released to Indian Council for Child Welfare, Childline India Foundation, Child Relief and You (CRY), Action Aid

India Society, Helpage India and Agewell Foundation for setting up of nearly 200 Shelter Homes, Relief Campus, Crises Centres and Mobile Medicare centres in Gujarat. A comprehensive data analysis system has also been prepared to ensure follow up of those affected by the earthquake in Gujarat including children.

Source: D.O.No.5-3/2001-SD, Ministry of Social Justice & Empowerment, GOI

The target group of this programme are children without homes and family ties, i.e., street children and children specially vulnerable to abuse and exploitation such as children of sex workers and children of pavement dwellers. In addition to voluntary organisations, State Governments, UT administration, local bodies, and educational institutions are also eligible for financial assistance from the Government under this programme.

47. Under the Juvenile Justice (Care and Protection of Children) Act, 2000, Section 15 lays down six avenues to be explored so as to ensure that every opportunity is afforded to a child to remain with his/her family. It is only when these six avenues are not successful that the Board will direct that he/she be sent to a special home.

48. The scheme for Prevention and Control of Juvenile Social Maladjustment was revised in 1998-99 with a view to strengthening the implementation of the earlier Juvenile Justice Act 1986 in the country and bringing about a qualitative improvement in the services provided under the scheme to both neglected as well as delinquent children. The salient features of the revised Programme for Juvenile Justice are as follows:

- i) Establishment of a National Advisory Board (NBA) on juvenile justice to advise the Government on matters relating to the implementation of the Juvenile Justice Act 1986 in the country, including the quality of infrastructure and staff available under the Act.
- ii) Creation of a Juvenile Justice Fund.
- iii) Establishment of a Secretariat for the National Advisory Board.
- iv) Appointment of observers to report upon implementation of the Act in different States/UTs.
- v) Institution of a Chair on Juvenile Justice at the Child and the Law Centre of the National Law School of India University, Bangalore.
- vi) Training, orientation and sensitisation of judicial, administrative, police and NGO personnel responsible for implementation of the Juvenile Justice Act 1986.
- vii) Expansion of non-institutional services such as sponsorship, foster care, probation, etc., as alternates to institutional care.
- viii) Provision of scholarship to children being processed under the Act for excelling in academics or in extra-curricular activities.¹⁹

49. Guidelines for foster family care as an alternative to institutional care for children awaiting adoption as well as for uniformity in country adoption have been circulated to voluntary social/child welfare agencies and State Governments for implementation. Twenty agencies in India and six agencies abroad have been given recognition/enlistment by the facilitating Ministry for undertaking inter-country adoption during the year 1999-2000.

50. State Governments operate various programmes under Foster Family Care. For instance, in Rajasthan, the Department of Social Welfare (SWD) of the Government of Rajasthan runs *Shishu Grah*s (children's homes) independently for children in the age-group 0-6 years, left as orphans by unwed mothers or those who are referred by the police, social activists and now through Child Line Services. The Department runs these centres through NGOs, as well by giving them aid. Orphanages are being run for providing parental care to orphans and abandoned or neglected children in the age-group of 6-16 years in the case of boys and 6-18 in case of girls. Similarly, about 600 orphanages are functioning in the State of Kerala benefiting about 50,000 children.

51. A lot of care is taken to keep in mind the child's ethnic, religious, cultural and linguistic background while rehabilitating him/ her. The option of restoring the child to his/ her family is considered the best alternative. Only in the absence of this alternative, are the other options suggested and availed of.

52. Review of the quality of care and treatment provided to the child who has been placed in institutions for care and protection is another responsibility laid on the State. For this purpose, Social Welfare Officers are appointed. They monitor the situation of children placed in homes and foster care. Every social welfare officer is required to submit a monthly report of the children/ institutions under his or her jurisdiction to the superior officer. These reports form the basis of any action which needs to be taken. The Juvenile Justice (Care and Protection of Children) Act, 2000, has a provision for involving voluntary organisations in the inspection of children's homes.

5H

Adoption Article 21

53. It is an accepted fact that full-fledged emotional, physical and intellectual development of a child depends largely on the environment in which it grows up. While the love and affection of biological parents is an ideal impetus for such growth, there is a large number of children who find themselves in orphanages and other such institutions due to various circumstances. Relevant studies have proved that while institutional care may be unavoidable for such children at the initial stage, their best interests lie in being able to find families which will adopt them and provide them with the required emotional and physical security.

54. The very basic definition of adoption is that it is the creation of a parent-child relationship between persons who are not related so by birth. The minimum function of law in creating this artificial parent-child relationship is to put it on par with the natural one. In practical terms, it means that the same mutual rights and obligations that normally exist between parent and a child born to them would automatically apply to the adopted child in relation to the adopted family.

55. In the past, the primary considerations in adoption were the interests of the adopting parents. Interests of the child were not a priority, because these were taken care of within the close-knit family system of the past. Today, the scenario is different. The interests of the child are very much a priority, and the primary motivations of the adopting parents have also undergone changes. Depending upon their personal and social background, they are able to appreciate and accommodate the child's needs in varying degrees.²⁰

56. Various measures have been taken to regularise and legitimise the adoption process making sure that the interests of the child are regarded as a top priority. Agencies competent to authorise adoption (licensed by the Ministry of Social Justice and Empowerment) are spread all over the country, especially in the major cities. These agencies ensure a smooth administration of the whole process, including appropriate selection according to compatibility, the legalities involved, counselling and supervision following the adoption.

Legislation

57. India is a country of diversities, and various sections of the society have their own personal laws. There is no uniform civil code for people belonging to various religious and cultural groups; hence there are no universally applicable procedures.

58. Legislation related to adoption fall into two broad categories:

- (1) the Hindu Adoption and Maintenance Act, 1956 (HAMA)
- (2) the Guardians and Wards Act, 1890 (GWA)

59. HAMA applies to all Hindus, Buddhists, Jains and Sikhs. The Act authorises any adult male of sound mind to adopt a child and if he is married, he can do so only with the consent of his wife. On the other hand, a female of sound mind may adopt even if she is unmarried or a divorcee, but can only be a consenting party to the adoption, if she is married. HAMA also declares all adoptions to be irrevocable and says that all ties of the child with the family of his/ her birth shall be deemed to be severed from the time of the adoption.

60. The personal law of Muslims, Christians, Parsis and Jews does not recognise complete adoption and hence persons belonging to these communities who are desirous of adopting a child can take a child only in 'guardianship' under the provisions of GWA, 1890. This does not provide to the child the same status as the child born biologically to the family. This Act confers only a guardian-ward relationship.

61. The current legislation in India has a few lacunae. The greatest inadequacy is the absence of a uniform law for adoption, which would apply to all Indians. Besides this, the adoptive mother (if married) is not a joint petitioner, but only a consenting party. The GWA, 1890 confers only the status of ward to the adopted child and not the status of a biologically born child, hence there is no security for either the adopted child or the adoptive parents.

62. The Tamil Nadu Adoption Bill has been prepared in consultation with NGOs and experts. This legislation, when enacted, will help adoption of children by all families irrespective of religion.²¹

63. The Supreme Court of India, while acknowledging that inter-country adoption is at times necessary for those children who would otherwise languish in institutions, in its landmark judgements in the *Laxmikant Pandey vs Union of India* case directed that preference is to be given for finding homes within India for every orphaned child. The full development of a child's potential is possible only in the care of a family and as far as

possible such a family should be located in the country of the child's birth. Towards this end, voluntary coordinating agencies have been set up to promote in-country adoption. These agencies maintain a list of prospective Indian parents and match them with children available in various adoption agencies. Any adoption or voluntary coordinating agency can be contacted or approached for obtaining information on correct procedures of adoption. These agencies provide not only factual data, but also psychological and moral support all through the process of adoption.

64. The agencies employ professional social workers whose role is to ensure as smooth and untraumatic a placement of the child with his/ her adoptive parents as is possible. These workers know the minutest details of the entire procedure and thus they are indispensable in the process of adoption. Their work profile includes pre-adoptive counselling, selection of the child, legalisation and post-adoptive assistance.

Adoption procedures

65. The first contact of couples seeking to parent the child with the adoption agency is a critical one, as at that point their ideas about adoption may be vague. The social worker of the agency conducting the interview deals with the queries they have in an encouraging manner and gives them the required information in simple and clear language. Once it is apparent that the couple has made a firm decision and are likely to be acceptable as adoptive parents, they may be asked to register with the agency. Upon registration, the couple are given a list of documents they have to obtain. They are also informed of the home study report that will need to be prepared, the financial costs involved and the requirements for follow-up after adoption.

66. Assessing the ability of a prospective adoptive couple to parent a child not born to them is of crucial importance in a successful adoption. The procedure or the main tool for learning about the circumstances about the applicants, which have a bearing on their suitability, is the home study. The home study is prepared on the basis of a series of individual and joint interviews with the applicants, home visits and, if necessary, contacts with the references. The information thus collected covers varied facts related to the adoptive couple, their significant relatives, etc. This ensures that the physical and psychological environment in which the child would go will be conducive to his/ her overall development. Once the 'home study' procedure is complete and the areas of counselling, if any, have been taken care of, the process of selection of the child for the couple starts.

67. Care is taken that the child resembles them as far as possible in terms of complexion and features as this helps in the process of psychological identification.

- Only one child at a time is shown, to avoid confusion for the couple in making a choice. This, however, cannot be generalised for all the adoption agencies.
- The social worker present at the time of first physical introduction of the adoptive couple to the child assesses the initial reaction of the couple to the child.
- In order to observe the adjustment of the family to the child and vice versa, the child is in some cases placed in pre-adoptive foster care before the legal adoption of the child.

Legal procedures

68. In order to secure the child's interests (and to avoid the specific cases of secret adoption) it

is of crucial importance for the agency to ensure that the legal procedures are completed by the couple. This includes:

- Putting the couple in contact with a competent lawyer who helps them file the petition in the appropriate court.
- Advising them with regard to the documents which need to be submitted.
- Preparing them in advance about the role and the possible intervention of the scrutinising body appointed by the court to assist it in the evaluation of the adoption placement.
- Ensuring that the couple obtains a copy of the adoption/ guardianship order passed by the court.
- Every adopted child is usually issued a birth certificate. For issuing a birth certificate in respect of an abandoned or destitute child, the registration of whose birth is not available, the agency concerned makes an application to the local Magistrate along with any other material which the agency considers relevant in the form of an affidavit. The local Magistrate then passes an order and the requisite certificate is issued by the local birth certificate issuing authority of the city/town/area where the child has been found. The Magistrate ordinarily acts on the certificate granted by the CMO. In case of relinquished children, the agency adopts almost the same procedure but the original birth certificate or statement furnished by the biological mother is produced.

69. Once the adoption of the child is over, the supervision and follow-up is done based on the specifications of the court for the same. This is done in order to monitor the adjustment process of the family with the child and vice versa.

70. It is essential to ensure that the child is, or will be, legally free for adoption before considering an adoptive couple for him/ her. A child relinquished by a biological parent or guardian can be considered free for adoption after proper documents of surrender have been obtained and the stipulated three months reconsideration period has lapsed without the parent or guardian reclaiming the child. In the case of a remanded child, the agency can apply for his placement on a fit person basis after the child is declared destitute by the Juvenile Court/Board. Where the child is court committed, it is necessary to apply to the Director of Social Welfare or the appropriate Government authority of the concerned State for a release order.

71. In the whole process of adoption, the social worker also ascertains the areas, if any, in which the adoptive couple needs support and counselling. It is then the job of this worker to offer the same to the couple in the course of his/her contacts with them. Some areas of counselling which are commonly dealt with are:

- **Secret adoption:** The reasons for asking for secret adoption are carefully probed and an attempt is made to remove all misapprehensions so as to discourage such a plan. They are also informed of the considerable risks involved in secret adoption.
- **Fears of heredity:** Any anxiety about the background of the child is allayed by the assurance of a thorough medical check-up of the child prior to the placement.
- **Telling the child of his/her adoption:** Sometimes parents need counselling as to how to introduce the word adoption to the child in a natural manner, with sensitivity and understanding.
- **Disciplining the adopted child:** There is a danger of adoptive parents overindulging

the adopted child who has come into their lives after years of longing or as an attempt to overcome the feeling of guilt about how society will look upon their disciplining a child.

- **Older applicants:** Such patients are counselled against adopting a very young child or are shown certain degree of flexibility if one spouse, generally the wife is below 40 years.
- **Lack of commitment of one spouse towards adoption:** In such cases, feelings of reluctance and doubt are worked on through counselling and then the couple is left to take the combined decision.
- **Rejection of applications:** If the applicants appear to be unsuitable for any reason, the manner of conveying the rejection has to be dealt with very carefully and clearly.

72. In order to ensure the best interests of the child, as per Article 21 of the Convention, guidelines have been brought out by the Central Adoption Resource Agency (CARA), a statutory body under the GOI. These guidelines provide adequate instructions to adoption agencies for proper implementation of the programme. As already mentioned, certain other agencies like the Juvenile Welfare Board and scrutiny agencies have also been set up to monitor the adoption programme.

Monitoring

73. CARA monitors and regulates the working of adoption agencies which are recognised by the Central Government. It also works in close co-operation with voluntary coordination agencies and enlisted Indian and foreign placement agencies. The main objective of this agency is to facilitate the adoption of as many Indian children as possible. In order to meet the two-fold needs of offering support and assistance in the adjustment between the child and the adoptive parents, and observing and assessing the advisability of the placement, supervision is done during preadoptive foster care. On the other hand, post-adoptive supervision and follow-up is mainly and necessarily supportive in nature and should continue until the child is fully integrated into his/her adoptive family. In general, areas like guidance in parenthood, physical and medical care and child development are covered by the social worker during supervision. Fears, anxieties and doubts are dealt with through reassurance and discussion. Besides these, adoptive parents also need assistance in handling the reactions of the relatives, neighbours and friends. If the adoptive parents are helped to deal with their situation of being adoptive parents, they learn to handle the reactions of others.

Table 5.1: In-country and Inter-country adoptions

Year	In-country adoptions	Inter-country adoptions	Total
1995	1424	1236	2660
1996	1623	990	2613
1997	1330	1026	2356
1998	1746	1406	3152
1999	1558	1293	2851
2000*	1870	1364	3234
Total	9551	7315	16866

* This data pertains to only placement agencies recognised for inter-country adoptions

* 11 Agencies are yet to provided last quarter data

Source: D.O.No. 5-3/2001-SD, Ministry of Social Justice & Empowerment, GOI

Rights of the child

74. According to the law, an adoptive child has the same rights over the property of his adoptive parents as a biological child.

75. The rights of adopted children to find out about their biological parents and the search by a child for his/her roots and identity is a sensitive aspect of the adoption process. There are two points of view regarding what should be done in such a situation. One is that the adopted child has the right to search for his/her roots and identity, and the other is that it is the biological mother's right to keep her secret and have the confidentiality of her abandonment preserved. Not to be forgotten is the social worker's code of ethics and her responsibility to keep confidential the records of the biological mother which makes the situation more complex. The adoptive parents also become very anxious during their search because it threatens the security of their parental ties and takes them through the trauma of acknowledging the existence of another set of parents. At present, many agencies promote the view that when the child grows up, information may be given regarding the biological mother's social background, circumstances and reasons for abandonment. However, the identity of the mother is not revealed, thereby protecting all corners of the adoption triad. Adoption agencies in India have a sealed and confidential record system. There is no access to the relinquishment document and it remains a property of the court.

Inter-country adoption

76. Without doubt, the child integrates best within the country of his/her own origin because of the identification with the cultural milieu closest to his/her roots. Only in the event of no suitable family being available within the country of the child's origin should the child be rehabilitated through inter-country adoption. Moreover, sincere efforts are made by a few adoption agencies to motivate Indian parents to adopt so that a climate is created in the country for rehabilitation of destitute children. In the absence of statutory laws and government procedures until February 6, 1984, it was within the capacity of any agency to offer a child for adoption to a foreign parent. However, on the said date, the Supreme Court in a landmark judgement of the case, *Lakshmi Kant Pandey vs Union Of India (1984)* set the principles and norms, and standardised the procedures involved in inter-country adoption. According to the judgement, first preference should be given to Indian families residing in India as far as possible. This judgement was an attempt to make up for the absence of safeguard procedures and effectively tackle allegations of child trafficking and sale of babies. In the Supreme Court judgement, certain normal and procedural safeguards have been introduced to protect the interests of the child which are as follows:

- (1) Government adoption authorities in both sender and receiver countries should make inter-country adoption arrangements.
- (2) A child study report would have to be prepared by professional workers of an appropriate authority or agency to provide information about the prospective child to be given for adoption, as it would form the basis of the selection of the prospective adoptors of the child.
- (3) Similarly, the family study report would have to be prepared by a professional social worker to ascertain the basis on which the applicants were accepted as prospective adoptors. It should be ascertained that the adoptive applicants residing abroad, whether

of Indian or foreign origin, qualify to adopt a child as per the laws of the country of their residence.

- (4) It is essential that in inter-country adoption,
 - (i) the child is given the same legal status and rights of inheritance, as if she/he has been born to the adoptive parents in marriage; and
 - (ii) immigration regulations of the concerned country will permit the child to enter the country.
- (5) When the legal adoption process is concluded, the child shall have the equivalent of a birth registration certificate and shall be granted appropriate citizenship.

77. The above safeguards help in supervising the progress of the child and ensuring that the child is adopted at the earliest in accordance with the law of the country. Directives have also been issued to the adoption agencies to carry out adoption procedure as per rules and regulations laid down by the Supreme Court of India.

78. The Government has set up CARA, which works as the clearing house of information to monitor in-country and inter-country adoptions. The Ministry of Social Justice and Empowerment grants recognition to both Indian and foreign agencies which are engaged in sponsoring Indian children for adoption abroad. 77 agencies in the country have been given recognition for inter-country adoption. In addition, 293 foreign agencies have also been enlisted in more than 25 countries to sponsor inter-country adoption of Indian children.

79. There are no bilateral or multilateral agreements concluded by the State to promote the objectives of Article 21 of CRC. However, any person who is residing outside the country and expresses the desire to adopt, would have to follow the guidelines issued by the Supreme Court of India given in *Lakshmi Kant Pandey vs Union of India 1984*, which has already been mentioned above.

80. Table 5.1 shows the estimated number of children who have found homes through these agencies during the past few years, as per records available with CARA.

81. In India, there are various reported cases of secret adoption. Many people take children away from hospitals/ nursing homes through illegal means and many such cases go unreported. There are also couples who prefer to adopt a male child rather than a female child and it is very difficult to convince them otherwise. At present the process of adoption is understandably very lengthy. As the initial months are very important in a child's life, it is the intention to place the child in a family as early as possible. However, pre-adoption processes are extremely important even though they give rise to enormous paper work and a child may have to be kept in the institutions for the first few months of his/ her life.

Periodic Review of Placement

Article 25

82. An array of welfare services aimed at providing institutional care is available today in India. State governments and various NGOs are currently involved in these institutions, which include:

- Homes for destitute children
- Children's homes
 - Foster care
 - Boarding schools
- Orphanages and short-stay homes
- Night shelters

83. In order to ensure effective dissemination of facilities in institutions set up for providing alternative care to children deprived of the comforts of family life, provisions have been made to establish various supervisory bodies. The judiciary also plays an active role in ensuring the quality of care provided in these homes by bringing to the notice of the concerned authorities, any lapse in the services provided. For example, in the case of *Sheela Barse vs Secretary, Children's Aid Society*, the Supreme Court ordered that children should not be made to stay for too long in the homes. Moreover, the National Human Rights Commission (NHRC) has directed all State Governments to inform the Commission of any instance of inmates running away from various juvenile and custodial homes, within 24 hours of the occurrence.

Children in conflict with the law

84. The Juvenile Justice (Care and Protection of Children) Act 2000 replaces the existing Juvenile Justice Act 1986. This law has a child friendly approach and provides for care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles. These children, though a separate category, are also covered by the juvenile justice system. Under the JJA the authorities competent to take action in these cases are the juvenile courts. Section 5 of

Box 5.9: Little bride – Amina Begum

The case of Amina, a 10-year-old Indian child bride married with parental consent to an Arab man, was detected by an alert airhostess on a flight out of India. The child seemed to be upset and crying, and the airhostess was able to attract the attention of the authorities so that the man

was arrested and prevented from leaving the country. The case attracted a great deal of media attention in India and abroad. The prosecution that has been initiated against the man has also brought non-governmental organisations into the scene.

the JJA, empowers the State Government to constitute Juvenile Courts for any specified area by notification in an official gazette. Every juvenile court consists of a Metropolitan Magistrate or Judicial Magistrate of the First Class. The juvenile court is assisted by two honorary social workers in exercising its powers and discharging its duties.

85. The State Governments can nominate visitors as per Section 54 of JJA, to visit each of the homes established under this Act. The visitor nominated for a home is supposed to visit the homes and make a report to the State Government. For the purpose of supervision, the State Government (Section 53 of JJA) may constitute an advisory board to advise it on matters related to the establishment and maintenance of homes, mobilisation of resources, provision of facilities for education, training and rehabilitation of neglected (abandoned) juveniles and delinquent (in conflict with the law) juveniles and coordination among the various official and non-official agencies concerned. The issue has been dealt with in detail under the Article on Administration of Juvenile Justice.

Foster family care

86. The Central Adoption Resource Agency (CARA) under the Government has been set up to monitor the adoption agencies. Further, the Central Voluntary Adoption Resource Agency (CVARA) has been established in every state to monitor the functioning of institutions keeping children under their care. CVARA checks whether all the institutions dealing with children are maintaining the minimum standards of care and providing all the facilities and services required. CVARA inspects the agencies from time to time and gives suggestions if any changes are required. CVARA has to ensure that all children get individual care and attention according to their needs.

Children with disability

87. The Persons and Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, is a comprehensive law dealing with definition of various disabilities, prevention, early identification, implementation, mechanisms, education, employment, affirmative action, non-discrimination, care of the severely disabled, recognition of institutions offering services to the disabled, access to built environment, transportation and information. For effective implementation of the specifications laid down in the Act, coordination committees are proposed to be set-up at the Central and State levels. While the majority of the members are proposed to be officials, it has been provided that five persons representing NGOs or associations concerned with disabilities will be members of these committees.²²

5J

Abuse and Neglect

Article 19

Including Physical and Psychological Recovery and Social Reintegration

Article 39

88. Child abuse is an extremely complex phenomenon, which has only recently started receiving the attention that it deserves. Child sexual abuse is the physical or mental violation of a child, coupled with sexual intent, usually by an older person who is in some position of trust or powers *vis-à-vis* the child. Even though men and women can sexually abuse a child, most abusers are male. Because of the more powerful position held by males in society, one generally refers to rape of females rather than of males. Sex abuse in children is not easily accepted in society, but another form of abuse is hardly objected. Corporal punishment is meted in schools in the name of discipline. Other practices include the sale of girls to foreign “buyers”, including much older and affluent bridegrooms.

89. Implementation of laws, in the existing framework, contemplate a parent, person or organisation acting on behalf of the child victim and making a complaint to the court, police, social welfare, probation or child-care authorities. Many NGOs, particularly women’s organisations and concerned activists, have been catalysts in the community response to child abuse. These are all cases in which an individual child obtains access to justice because of the community interest. However, they can have a wider significance when they generate interest and concern with the law reform process. NGOs, have been lobbying for changes in laws to address the problem of child prostitution, and represent the public pressure to initiate new laws and policies.

Box 5.10: Separate legislation on child abuse planned

The Government is contemplating the introduction of a separate legislation on child rape and sexual abuse, which accounts for 27 per cent of the total cases of rape reported in the country. “It is time we think of a separate and specialised legislation for the new methodology of trial and proof for the offence of child rape”, stated the Law Minister, while inaugurating a ‘Sensitisation Workshop on Child Rape and Child Sexual Abuse’ in December 2000. Rape, by itself is one of the most obnoxious crimes but child rape is perhaps the most offensive, requiring special treatment. Unfortunately, the existing rape laws make no distinction between the rape of a minor and that of an adult.

The two-day workshop, jointly organised by the National Human Rights Commission (NHRC) and Angaja Foundation, an NGO working for the rights of the children, was held in December 2000 in New Delhi. The workshop stressed on the need to review the very definition of rape as for the purpose of Section 375 of the Indian Penal Code, the definition of rape applies equally to an adult and a minor.

According to latest figures compiled by the National Crime Records Bureau, the cases of child rape account for 27 per cent of the total cases of rape reported in the country. While Madhya Pradesh tops the list of reported cases of child rape with 806 in 1998, Delhi figures at the fifth place with 239 cases.

90. The involvement of the community and concerned individuals is thus crucial for improved law enforcement, the imposition of sanctions on offenders and efforts to strengthen legal controls. It is the absence of this kind of an initiative that often prevents a response from either law enforcement authorities or the legislature to grave exploitation and violence against children in domestic service, child prostitution, pornography, trafficking of child brides or trafficking of children for camel racing to Gulf countries.

91. Child sexual abuse within the family is a deeply disturbing issue, one which the family guards as a secret while others do not want to admit that it even exists.

92. The 1996 survey on child sexual abuse,²³ considered a landmark is conducted by *Samvada* in Bangalore among 348 girl students from 11 schools and colleges, threw up startling data. Conducted scientifically, the study found that:

- 83 per cent of the girls had been subjected to eve-teasing
- 13 per cent of these had been vocally and visually sexually harassed when they were less than ten years old.
- 47 per cent had been molested, 15 percent of these when they were less than ten years old; they were used for masturbation, mostly by male relatives.
- 15 per cent had been seriously sexually abused as children, 31 per cent of them when they were less than ten years old; they had been raped, forced into oral sex or penetrated with foreign objects and 75 per cent of abusers were family friends.
- Around 50 per cent of these child sexual abuse cases involved family members and close relatives, and they happened at home.

93. Rahi,²⁴ an NGO of Delhi conducted a survey specifically addressing non-lower-class women. This survey was conducted among 600 English-speaking middle and upper class women in Delhi, Mumbai, Calcutta, Goa and Chennai between the ages of 15 and 66.

- 76 per cent of the women had been sexually abused in childhood.
- Out of these, 457, 40 per cent/had been sexually abused by at least one family member.
- 71 per cent had been sexually abused by relatives and family friends.
- Two per cent of the 457 were sexually abused before they were four years of age, 17 per cent between four and eight years of age, 28 per cent between the ages of eight and twelve years and 35 per cent between 12 and 16 years.

94. In most cases, the abuser was a part of the victims' everyday life—a father, brother or male cousin, uncle, male family friend, male neighbour servant.

Legislation

95. The Indian Penal Code has laid down provisions for action against child abuse such as rape, molestation and prostitution. The GOI has adopted appropriate legislative, administrative, social and educational measures to protect children from all forms of physical and mental violence, injury, neglect, maltreatment, exploitation and abuse. The Government has also enacted a number of legislation measures such as:

- Immoral Traffic Prevention Act, 1956

The Immoral Traffic Prevention Act, 1956 (ITPA) supplemented by the Indian Penal Code (IPC) prohibits trafficking in human beings, including children and lays down severe penalties. The ITPA and IPC prescribe punishment for crimes related to prostitution.

- The Child Labour (Prohibition and Regulation) Act, 1986
An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.
- The Juvenile Justice (Care and Protection of Children) Act, 2000

96. The Juvenile Justice (Care and Protection of Children) Act, 2000, lays down a uniform legal framework for the country as whole to deal with the problem of social maladjustment. It has replaced all the corresponding laws on the subject and other State Laws and is the most comprehensive piece of legislation for protection of children.

97. The act Incorporates into its fold not only some of the major provisions and clauses of the Indian Constitution and National Policy Resolution for Children but also universally agreed principles and standards for the protection of juveniles such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the CRC, as explicitly stated in the Act itself. For more details of this Act, see section on The Administration of Juvenile Justice.

Corporal punishment

98. Corporal punishment in families is usually not reported, as the family in India is an intensely private institution.

99. The Department of Education has directed the States not to enact such legislation which goes against the International Treaties/Conventions to which India is a signatory, specifically citing the CRC. The National Policy on Education (NPE), 1986, explicitly mentions that any form of corporal punishment should be firmly excluded from the education system. The Department has issued directions to State Governments to consider the issue in all earnest and take appropriate action to prevent corporal punishment and to take action against guilty teachers and schools. The Department of Education is also in the process of:

1. Launching awareness campaigns to sensitise and dissuade teachers and parents from inflicting such forms of punishment on children.
2. Examining the possibilities of providing a clause through legislation for imposing a ban on corporal punishment.

100. The GOI, through various circulars issued under the Juvenile Justice Act, 1986, tries to ensure that a child's rights are protected in juvenile correctional institutions. Also the staff of care institutions is being sensitised to the survival, protection, development and participation rights of the children. A child with the help of the guardian, can report abuse to the police. The victim can also file a complaint to NHRC, NCW and other relevant authorities/Commissions.

Childline Service

101. This service has been initiated by the Government to help children who are suffering from neglect, abuse and exploitation. The Childline Service is a 24-hour free phone service for children in distress which can be accessed by a child in difficulty, or an adult on his/her behalf by dialling 1098. The service which was started in Mumbai is now available in 25 cities, namely, Ahmedabad, Alwar, Baroda, Bhopal, Bhubaneswar, Kolkata, Chennai, Cochin, Coimbatore, Delhi, Goa, Guwahati, Hyderabad, Indore, Kutch, Jaipur, Lucknow, Mumbai, Nagpur, Patna, Pune, Thiruvananthapuram, Varanasi, Vijayawada, Vishakapatnam. It aims to cover 30 cities

by the end of Ninth Five-Year Plan. The basic objective of the Childline Service is to respond to children in emergency situations and refer them to relevant governmental and non-governmental organisations. The service is being standardised to meet common norms and objects. Childline India Foundation has been established as an umbrella organisation to identify, provide support services and monitor efficient service delivery of the centres at various locations. It serves as a link between the Ministry and the NGOs in the field. It is now essential to monitor the effectiveness of this facility and assess the quality of follow-up actions and support provided to children through this service.

Endnotes

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