

SECTION VIII

Special Protection Measures

(Articles 22, 38, 39, 40, 37(b)-(d), 32-36)

- A. Children in Situation of Emergency
 - 1. Refugee Children (Article 22)
 - 2. Children in Armed Conflicts (Article 38), including Physical and Psychological Recovery and Reintegration (Article 39)
- B. Children involved with the System of Administration of Juvenile Justice
 - 1. The Administration of Juvenile Justice (Article 40)
 - 2. Children Deprived of their Liberty, including any Forms of Detention, Imprisonment or Placement in Custodial Settings (Article 37 (b)-(d))
 - 3. The Sentencing of Children, with Particular Reference to the Prohibition of Capital Punishment and Life Imprisonment (Article 37 (a))
 - 4. Physical and Psychological Recovery and Social Reintegration of the Child (Article 39)
- C. Children in Situation of Exploitation, including Physical and Psychological Recovery and Social Integration
 - 1. Economic Exploitation of Children, including Child Labour (Article 32)
 - 2. Drug Abuse (Article 33)
 - 3 & 4 Sexual Exploitation and Sexual Abuse (Article 34) Sale, Trafficking and Abduction (Article 35)
 - 5. Other Forms of Exploitation (Article 36)
- D. Children belonging to a Minority or Indigenous Group (Article 30)

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent inter-governmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration 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 re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardian and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 37

States Parties shall ensure that:

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

Article 32

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

8A-1

Refugee Children

Article 22

Introduction

1. India has been subject to a periodic influx of refugees over the last few decades, from countries as diverse as Afghanistan, Iran, Iraq, Burma, Bangladesh, Somalia, Sudan, Sri Lanka and Tibet. Ethnic and religious similarities of some refugee groups with Indians means that India is a feasible direction in which to move, not only in terms of geographical proximity but also in terms of cultural affinity.¹
2. The situation of refugees in India generally depends upon the extent of protection they receive from either the Indian Government or the United Nations High Commission for Refugees (UNHCR). Certain categories of refugees are recognised by the Indian Government and are entitled to rehabilitative measures by the Government whereas certain categories not recognised by the Government are taken care of by UNHCR in Delhi.²
3. Although India is not a signatory to the 1951 Convention on the Status of Refugees and its 1967 Protocol, India has had one of the best records of treatment of refugees. India has been more liberal than most States in practice, by according special facilities for education, shelter and food for the refugees, thus fulfilling the provisions of the 1951 Convention and the 1967 Protocol.³

Constitutional and legal framework

4. The legal framework dealing with refugee-related issues is contained in the relevant provisions of the Indian Constitution, related domestic legislation and regulations dealing with citizenship, naturalisation and foreigners, such as the Foreigners Act, 1946 and obligations assumed by India under various international human rights instruments and a series of judicial pronouncements.
5. The Constitution of India contains provisions on the status of international law in India. Leading among them is Article 51 (c), which states that:
“The State [India] shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another.”
6. Additionally, the Constitution of India seeks to protect aliens, except enemy aliens, under Articles 14, 20(1), (2) and (3), 21, 22, 25(1), 27, and 28(3). In all these provisions of the Constitution the guarantee is extended to all persons, including “refugees”, a fact that has also been acknowledged by courts in India.
7. India also deals with the question of admission of refugees and their stay until they are

officially accorded refugee status, under legislations which deal with foreigners who voluntarily leave their homes in normal circumstances.

8. As far as international standards are concerned, India has ratified the following:

- The International Covenant on Civil and Political Rights [ICCPR] in 1976.
- The International Covenant on Economic, Social and Cultural Rights [ICESR] in 1976;
- The Convention on the Elimination of all Forms of Discrimination Against Women [CEDAW] in 1974 and
- the UN Convention on the Rights of the Child [CRC] in 1992.

9. All these Conventions impose legally binding obligations on States Parties regarding the rights of people under their jurisdiction. Provisions which can be specifically applied to refugees include Article 12, para 2 of the ICCPR, which states that “everyone shall be free to leave any country, including his own”, as well as Article 13, which refers to expulsion of aliens only being permitted after a decision has been reached according to law. Relevant articles from the CRC include Articles 3, 22, 37 and 28. CEDAW includes relevant provisions in Article 1.

10. Regarding the status of the refugee child in India, the country is a party to the 1989 UN Convention on the Rights of the Child, wherein Article 22 clearly provides for a more specific obligation to determine the refugee status of a child, based on international or domestic law. However, India has not formulated legislation to meet this obligation. The refugee child in India, therefore, will be subject to India’s current approach to all refugees in general within its constitutional framework.⁴

11. The chief legislation for the regulation of foreigners is the Foreigners Act, 1946, which deals with the matter of “entry of foreigners in India, their presence therein and their departure therefrom”. Paragraph 3(1) of the Foreigners Order, 1948 (10) lays down the power to grant or refuse permission to a foreigner to enter India, in the following terms:

“No foreigner shall enter India—

- (a) otherwise than at such port or other place of entry on the borders of India as a registration officer having jurisdiction at that port or place may appoint in this behalf; either for foreigners generally or any specified class or description of foreigners, or
- (b) without leave of the civil authorities having jurisdiction at such port or place.”

Refugee categories

12. The situation of refugees in India generally depends upon the extent of protection they receive from either the Indian Government or the UNHCR. Refugees can broadly be said to fall into the following categories:

13. Refugees who receive full protection according to standards set by the Government of India (GOI). Though India has not ratified the 1951 United Nations Convention on the Status of Refugees and its 1967 protocol, it provides shelter to over 300,000 refugees from neighbouring countries. Tamil refugees from Sri Lanka and Tibetan refugees fall in this category.

14. Tamil refugees live in different camps and are given small monthly stipends and food rations such as rice, sugar and kerosene by the Government of Tamil Nadu. Currently, it is estimated that there are about 160,000 Sri Lankan Tamil refugees in India.⁵ About 68,629⁶ of these refugees, live in more than 130-plus refugee camps, in Tamil Nadu and about 30,000 live outside these camps in cities and towns across Tamil Nadu⁷. Children are

Box 8.1: Home away from home

As many as 60 per cent of the Tibetans now in India were born here. For Yang Chen, a teenager, India is the only home that she has known. Yet her heart is in Tibet, the land of her ancestors and her parents, who fled Tibet to settle in India with the Dalai Lama 41 years ago. She has never seen her homeland and is apprehensive how she will adjust there once Tibet is free, yet, she believes that she will return and settle down there. Her father, Gyurme,

who is also the *pradhan* (chief) of Delhi's largest Tibetan settlement, with about 300 families in the Majnu-ka-Tilla area, is thankful for all that the Indian Government has done for him and his fellow Tibetans. But, in his heart India remains his temporary home and he feels confident that his daughter will settle down well in Tibet when they return. In his words " that is our home."

Source: *The Hindu*, 30 July 2000

entitled to education, medical assistance, hut maintenance, and basic amenities that have been made available to all refugees.

15. As per available information, at present there are about 93,100 Tibetan refugees in India. Of these, 68,639 refugees have been resettled with Government assistance and self-employment under agriculture and handicraft schemes. Schemes for re-settlement of the remaining refugees are at various stages of implementation in different States. The rehabilitation is being achieved through schemes of the GOI and by the relief agencies under the Tibetan Administration in India.⁸

16. At the request of His Holiness the Dalai Lama, the GOI responded generously by setting up the Tibetan Schools Society (renamed the Central Tibetan Schools Administration or CTSA) to manage institutions for the education of Tibetan refugee children. A host of organisations and individuals, both local and international, also provided assistance. The Department of Education (DoE, formerly known as the Council for Tibetan Education) of the Central Tibetan Administration, was established in 1960 to oversee the education and care of Tibetan refugee children. In addition, there was a pressing need to set up alternative homes for the many orphans and displaced children, where they would be provided with modern education, while being raised in a family atmosphere which maintained Tibetan religion, culture and traditions. Hence, the establishment of the Tibetan Children's Village (TCV) and the Tibetan Homes Foundation (THF).⁹

17. In addition to the refugees under the care of the GOI, there are about 20,800 Category II refugees, including Afghan and Burmese refugees as on January 1, 1996. Their presence in India is acknowledged and protected under the principle of non-refoulement by the United Nations High Commissioner for Refugees.¹⁰

18. There are also refugees who have entered India and have been assimilated into their communities. Their presence is not acknowledged by either the Indian Government or UNHCR.

19. An estimated 157,000 persons of various ethnicities were displaced in several States in North-East India. Once sparsely populated, the population of this region has swelled in recent decades with the arrival of millions of ethnic Bengali Hindus and Muslims from Bangladesh and the neighbouring State of West Bengal.

20. As many as 350,000 Kashmiris, mostly Hindu Pandits, have been displaced since 1990 as a result of the long-standing conflict in Kashmir. Some 250,000 were living in or near the city of Jammu, both in camps for the displaced and in their own homes; an estimated 100,000 other displaced Kashmiris were living elsewhere in India, many in the New Delhi area.¹¹

Government interventions

21. The Office UNHCR, New Delhi, in collaboration with the Indian Chapter of SAARCLAW, hosted a round-table workshop titled “National Legislation on Refugees” on 30 April 1999 which considered priorities for the future.¹²

22. As per information available, the GOI’s major efforts pursuant to Article 22 have been to set up refugee camps for immediate relief and subsequently to arrange for voluntary repatriation to home countries. States like Tamil Nadu have taken steps to encourage refugees to voluntarily opt for repatriation. Similarly, refugee camps have been set up to provide relief to children in areas affected by terrorism, particularly Jammu and Kashmir, along with State-level NGOs. This apart, an SOS Children’s Village, which has been functioning in Jammu and Kashmir, is providing a family-like atmosphere to children who are victims of terrorism.

Rehabilitation in Kashmir

23. The Central Government has consistently facilitated the State Government in reviving its administrative vigour, rebuilding the infrastructure and economy damaged by militancy, providing relief to affected people, stimulating further development based upon people’s participation and ensuring equitable provision of basic services and minimum needs. Some of the noteworthy efforts made in these directions are briefly stated below:-

1. **Rehabilitation of widows and orphans:**

For widows, orphans, handicapped and aged persons adversely affected by militancy, the Government of Jammu and Kashmir set up a rehabilitation council in 1995. The council has at present a corpus fund of Rs 8.28 crore. A significant number of beneficiaries have been covered under the Rehabilitation Scheme. During the years 1997-98 and 1998-99, scholarship at the approved rates of Rs 200-300/- p.m. was provided to 1416 school-going orphan, marriage assistance at the rate of Rs 10,000/- was extended to 91 widows, 18 rehabilitation camps were held, 1943 artificial limbs/appliances distributed and pension at the rate of Rs 300/- p.m. was given to 1192 old-aged persons.

2. **Relief to displaced persons due to cross-border firing/shelling:**

Due to regular and intense cross-border firing/shelling, a large number of people in villages adjacent to the Line of Control (LoC) have got displaced. Also, a number of families have got displaced as a result of the Kargil intrusion. As per available information, 23,611 persons, comprising about 4000 families in Kargil and about 300 families in Leh have been displaced. In addition, there are reports of displacement of some 46,000 persons from the Jammu area. To overcome the difficulties faced by displaced persons and to provide them with essential items, a relief policy for displaced persons is under implementation which provides for free ration at the rate of nine kilos of foodgrains per month per person, 10 litres of kerosene oil per family, Rs 200/- per month per head, cost of medical treatment, including cost of drugs and fodder for livestock. The State Government projected a total expenditure of Rs 350 million for implementing the relief package till May 2000. Till November 1999, the Central Government released a sum of Rs 170 million for providing relief to displaced persons. This includes Rs 150 million sanctioned from the National Defence Fund and Rs 20 million from the security-related expenditure of the Ministry of Home Affairs. The

Prime Minister's Office has also released Rs 78 million at the rate of Rs 13 million per month on December 3, 1999 for providing one-time relief for six months to people from Kargil and Leh.

3. Return and rehabilitation of displaced persons in Kashmir:

Targeted attacks by militants against civilians in the initial phases of the terrorist violence in Jammu and Kashmir forced a situation where a vast majority of Kashmiri Pandits and a sizeable number of Sikhs and other Hindus, and some Muslims, had to flee from the valley in 1990 and thereafter. About 51,000 families were displaced from the Kashmir Valley. Out of this, 14,654 families in Jammu and 4100 families in Delhi reside outside camps and are drawing relief; 4674 families live in camps in Jammu, 235 in Delhi and 18 in Chandigarh. The Government of Jammu and Kashmir is giving cash relief of Rs 600/- per head per month, subject to a maximum of Rs 2400/- per month per family plus dry rations: nine kilos of rice, two kilos of *atta* (flour) per person and one kilo of sugar per family per month. The Government of Delhi is also providing the same rate of cash relief plus basic dry rations. The rates have been revised for Jammu and Kashmir and Delhi as on April 1, 1999. Other State/UT Governments, where Kashmiri migrants are residing, are also giving relief as per the rates prescribed by them.

Both the Central and the State Governments are keen on the return of migrants to their homes and the State Government is engaged in the preparation of a detailed action plan in this regard. The matter of safe and honourable return of migrants to their native places in the Valley has been assigned the topmost priority by the State Government. A comprehensive policy for the return and rehabilitation of Kashmiri migrants is under formulation by the State Government.

4. Relief/ improvement of facilities in Kashmiri migrant camps:

There are 29,074 migrant families registered in Jammu, 19,338 families registered in Delhi and 2,710 families registered in other States. Out of this, 4674 families are staying in relief camps in Jammu and 235 families are staying in relief camps in Delhi. In Jammu, where a sizeable number of migrants are staying in relief camps, migrant families have been provided with one-room tenement accommodation. Necessary physical facilities like water, electricity, sanitation, etc., have been provided free of cost. There are 12 dispensaries within Jammu to provide medical facilities. The living condition of the migrants in these camps is closely monitored by the Ministry of Home Affairs to make improvements. In 1996, the then Prime Minister announced a special package of Rs 66 million for improvement of facilities in Jammu camps. The amount was utilised on construction of one-room tenements, *Sulabh*-type toilet complexes, drainage systems and school buildings. A sum of Rs 20 million was released from SRE in late 1998-99 for improvement of living conditions in Jammu camps.¹³

Assistance from UNHCR

24. Out of approximately 200,000 refugees in India today, UNHCR is exercising its mandate over 17,174 refugees mainly in the New Delhi area.¹⁴

25. The assistance given by UNHCR cover the following areas:

Health care facilities

26. UNHCR provides medical aid and health care services through the outreach community centres set up at Saket, Defence Colony and Viaspuri in New Delhi. UNHCR, in affiliation with the All India Institute of Medical Sciences (AIIMS), Government-run hospitals and the Public Health Centre (PHC), provides medical aid to the refugees at its community centres. Medical cards are issued at the PHC to refugees requiring medical assistance. At AIIMS, there exists a special refugee counter, complete with interpreters.

27. Refugee communities have tried to come-up with their own alternatives to the services offered by UNHCR. The Burmese refugees run their own PHC, which is financially assisted by the Voluntary Health Association of India (VHAI), which provides Rs 1000 monthly, and the Burmese Students League, which pays the room-rent of Rs 750.

Vocational training

28. UNHCR has been assisting vocationally trained refugees and those refugees possessing skills to find employment for the last eleven years. However, UNHCR concedes that many skilled and trained refugees are unable to obtain employment.

29. UNHCR is of the view that most refugee students find education in India very difficult and prefer vocational training.

30. Refugees can take-up vocational training in tailoring, air ticketing, tourism, refrigeration and in the automobile industry as mechanics, among others. UNHCR directs refugees to recognised vocational training institutes, where they are permitted (by UNHCR) to take-up only one course, within a budget of Rs 2000 during their entire stay in Delhi. However, additional financial assistance is provided in a few exceptional cases. UNHCR offers courses in English language for the refugees, the duration being six months.

UNHCR guidelines for refugee children

31. UNHCR recognises that usually over half of any refugee population consists of children and in that an essential consideration is that refugee children have certain rights as children and certain additional rights as refugees. Thus, refugee children are entitled to special protection and assistance from UNHCR.

Education

32. The Office of UNHCR in New Delhi, under the Project CM 201, provides educational facilities at the primary and secondary levels. At present, there are 7600 children who are beneficiaries at the primary and lower secondary level. UNHCR, on granting refugee status to the family, gives

Box 8.2: Profile of UNHCR refugees

About 51 per cent of UNHCR-registered refugees are in the productive age-group of 18 to 59 years and of these nearly 55 per cent are women. The second largest group, i.e. about 41 per cent falls in the age-group of five to 17 years. Of the remaining, nearly five per cent are below four

years and about 46 per cent of these are females. The remaining four per cent are 60 years of age and above. More than 52 per cent of all refugees are females and 1339 households are headed by women comprising 5,486 persons.

them information regarding schools located in their locality. Under the educational assistance scheme, each child at the primary level is entitled to a monthly allowance of Rs 175 for tuition fees, Rs 1000 annually for other fees and a yearly allowance of Rs 1,000 for scholastic material. Students at the lower secondary level receive a monthly tuition fee of Rs 225, Rs 1000 for admission and Rs 1000 for scholastic material. UNHCR phased out assistance for higher secondary education in 1992 due to lack of credible students.

33. Educational assistance at the primary and secondary level are made available under UNHCR's general programmes. At higher levels, assistance is given through UNHCR's Refugee Education Account. UNHCR also cooperates with UNESCO and with other Governmental and Non-Governmental Organisations in several countries to provide educational assistance. Language courses are organised and offered free of cost to refugees by UNHCR, as well as by the Government in several countries. However, there are no schemes or grants that encourage young refugees to go in for higher studies.

Counselling

34. Counselling services have been recognised as important for refugees and are to be provided under various UNHCR programmes in order to help refugees solve their problems, as well as help them to avail of facilities that may be open to them. Special welfare programmes for divided families, women and children have been laid down by UNHCR. Included in the vulnerable groups, identified by UNHCR as requiring special assistance and protection, are refugee women, children, the disabled and abuse victims. An important function of UNHCR is also the reunification of families. Guidelines laid down for refugee women and children have been elaborated.¹⁵

Displacement due to natural disasters

35. Declaration of the current decade as the International Decade for Natural Disaster Reduction (IDNDR) by the United Nations has helped substantially in giving more thrust to disaster preparedness and mitigation by the disaster managers in the country.

36. During this decade, India has faced many major natural disasters. These include cyclones in Orissa (1999), Andhra Pradesh (1990 and 1996) and Gujarat (1998), earthquakes in Uttarkashi (1991), Latur (1993), Jabalpur (1997) and Gujarat (2001).

37. Understandably, these natural disasters cause untold misery and displacement of population with particular hardship for women and children. State and Central Governments take immediate measures to provide relief to the people through temporary shelter, health care, creches, and emergency food. UN, international and donor agencies and NGOs assist government in relief operations.

38. The following assistance has been provided to the Government of Gujarat under the schemes of the Department of Women and Child Development (DWCD) for the rehabilitation of women and children affected by the earthquake in Gujarat¹⁶:

i) Construction of 10 Hostel Buildings for Working Women with Day Care Centre for Children

A non-recurring grant of Rs 25,200,000/- as Central Government share for construction of working women hostels for 600 working women by Gujarat Women Economic Development Corporation, Gandhinagar, Gujarat is approved for sanction.

The grant represents 75% of the total estimated cost of Rs 33,600,000/- as admitted for construction of the working women hostels subject to the condition that in case the actual expenditure on this project is less than the estimated cost, 75% of the difference between the estimated cost and the actual expenditure will have to be refunded by the organisation to the Ministry.

ii) To set up 20 temporary Working Women Hostels

The GOI have approved the proposal for sanctioning Rs 1,000,000/- as Central Government's assistance for setting up of 20 temporary Working Women Hostels.

iii) Setting up of Short Stay Homes

The GOI have approved the proposal to set up 50 Short Stay Homes and have sanctioned an amount of Rs 22,500,000/-.

iv) Training of poor women on traditional/non-traditional trades under NORAD Scheme

The GOI have approved a sum of Rs 5,000,000/- as grant—in-aid for training to women affected by earthquake in traditional and non-traditional trades.

v) Grant-in-aid to Voluntary Organisations in the field of Women and Children

The GOI have approved a sum of Rs 2,000,000/- to the Government of Gujarat for grant-in-aid to Voluntary Organisations in the field of women and children.

Endnotes

- 1 South Asian Human Rights Documentation Centre web-site.
- 2 *ibid.*
- 3 No UI/352/98/99 dated 24 July, 2000, Ministry of External Affairs, GOI.
- 4 Compiled from UNICEF web-site.
- 5 South Asian Human Rights Documentation Centre web-site.
- 6 July 30 2000, *The Hindu*.
- 7 South Asian Human Rights Documentation Centre web-site.
- 8 *ibid.*
- 9 The Office of Tibet, the official agency of His Holiness the Dalai Lama in London, February 2000 (www.TibetanGovt.com).
- 10 South Asian Human Rights Documentation Centre web-site.
- 11 United States Committee for Refugees web-site.
- 12 Proceedings of Roundtable Workshop titled " National Legislation on Refugees", 30 April 1999.
- 13 Annual Report, 1999 - 2000, Ministry of Home affairs, GOI, pp. 18-20.
- 14 South Asian Human Rights Documentation Centre web-site.
- 15 *ibid.*
- 16 F.No. Dy. 447/JS (WD)/2001, Department of Women & Child Development, GOI.

8A-2

Children in Armed Conflicts**Article 38****Including Physical and Psychological Recovery and Social Reintegration****Article 39****Introduction**

39. CRC amplifies other international instruments by providing a special obligation on the part of governments to respect the rights of children in situations of armed conflict.

40. While India is not in a situation of armed conflict, there are major instances of terrorism, both cross-border and internal, and children are the unwitting victims of such strife.

Involvement of Children

41. Article 51 A of the Constitution states: "It shall be the duty of every citizen of India to defend the country and render national service when called upon to do so." However, there is currently no compulsory recruitment in India.

42. The age of recruitment in the army is from 16 to 25 years. Persons who are recruited at the age of 16 years undergo basic military training for up to two and a half years from the date of enrolment and are then inducted into regular service.

43. A situation of internal disturbance also exists in the North-east of India in the States of Nagaland, Manipur, Tripura and Assam. This sometimes disrupts normal life and interferes with children's access to education, health and other basic services often creating fear and psychological problems.

Rehabilitation

44. Punjab has at least a few thousand children affected by the trauma of the decade-long violence in the state. They have either been orphaned or their families have lost the bread-winner.

45. Efforts have been made to provide some educational facilities and opportunities of rehabilitation to child victims. Some of these efforts are:

- Since April 1, 1994, providing Rs 300 p.m. to school-going and Rs 500 p.m. to college-going wards of victims of violence in Punjab.
- Providing a subsistence allowance of Rs 1000 p.m. to orphans, destitutes, physically disabled persons who are victims of violence in Punjab, till they get employment.
- Since March 1, 1992, providing ex-gratia grant of Rs 50,000 in cash and National Savings Certificates of the same value to widows/widowers' sons and daughters, grandsons and grand-daughters, mother, father, dependent brothers and sisters of those killed in violence by militants or security forces in Punjab.

- Providing land to open an SOS Village near Rajpura for militancy-affected children, with 15 children under the care of one house-mother. The children are provided nutritious food and free education by the SOS village organisation.
- Since May 1, 1990, providing Rs 10,000 each for the marriage of daughter/sister of the sole bread winner who was killed by militants/security forces or who got killed in the November 1984 riots.¹

46. According to a study sponsored by UNICEF, New Delhi, it was found that victims of violence (children and women) have also been provided with relief and rehabilitated by various agencies such as religious organisations, NGOs and *panchayats*, besides the State.

47. All pro-State victims and most of the other affected survivors have been provided with monetary compensation and pension. Ninety-six per cent have been provided with opportunities for employment, and educational scholarships have also been provided to children.²

48. Some key priorities of the Indian Government in emergency situations, including armed conflict, include:

- Providing psychological and emotional support to children affected by disaster and violence through child guidance approaches.
- Involving non-governmental organisations increasingly in the rehabilitation of families and children affected by natural calamities and communal violence.³

Endnotes

¹ Punjab State Plan of Action for Children, 1997, Government of Punjab.

² Victims of Militancy, A study conducted by the Institute for Development and Co-operation, Chandigarh, sponsored by UNICEF, 1999, New Delhi.

³ NI/PC/SAP/908/2000 dated 31 July 2000, National Institute for Public Cooperation and Child Development, GOI.

8B-1

The Administration of Juvenile Justice

Article 40

Introduction

49. Juvenile Justice is commonly understood as a notion of fairness and justice and also an alternative system of dealing with children through laws. The idea of fairness concerning children is the fundamental ideological premise of Juvenile Justice, which ensures that the mental and physical incapacities of a child are taken into account. Fairness and justice not only demand children's that liability ought to be diminished but also ordain that they must be subject to protective and restorative measures as are most conducive to their reintegration into society.¹

50. In a landmark step, the GOI has repealed the Juvenile Justice Act, 1986, and introduced the Juvenile Justice (Care and Protection of Children) Act, 2001 that has come into force from 1st April, 2001. This chapter outlines the provisions of the Juvenile Justice Act, 1986, the background to and process leading to the Juvenile Justice (Care and Protection of Children) Act, 2001, and its main features.

51. 'Delinquency' signifies deviant behaviour, a behaviour pattern that violates institutional expectations, i.e., expectations that are shared and recognised as legitimate within a social system. The word 'delinquency' has been preferred for use, with respect to children, while excluding the use of word 'crime', 'criminal' and 'offence' from the purview. The object is to view the 'problem child' from a broader perspective of social behaviour that the child encounters with legal intervention but with a liberal, welfare-oriented approach.

52. There has been unanimity of opinion in the usage of the word 'delinquency' on account of the following:

- It frees juveniles from the stigma of 'crime', 'criminal' and other negative and deterrent labels.
- It addresses a broader range of behavioural problems of children.
- It provides a common platform for social workers and functionaries involved in the administration of justice.
- Technically, juvenile (offending) behaviour is different from adult criminal acts.
- Delinquent behaviour has less individual responsibility compared to adult criminality
- Overall, it embodies a correctional system, where penal sanctions have no validity.

53. Juveniles resort to delinquency often because of social factors. They are children for whom life is full of drudgery, abuse and exploitation. In most cases they are victims before they become perpetrators, and hence get entangled in a vicious cycle. They are forced to become deviants due to factors such as poverty and lack of a normal home life.²

Administration of juvenile justice

54. The Ministry of Social Justice and Empowerment has been responsible for the implementation and administration of the Juvenile Justice Act, 1986 which has since been replaced by the Juvenile Justice (Care and Protection of Children) Act, 2001 that has come into force from 1st April, 2001.

55. The Juvenile Justice Act that came on the Statute Book as the Juvenile Justice Act, 1986 (53 of 1986), could be proclaimed as the first all-India child welfare enactment seeking to promote 'the best interests of juveniles' by incorporating into its folds not only some of the major provisions and clauses of the Indian Constitution and National Policy for Children but also universally agreed principles and standards for the protection of juveniles such as the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Objective No VII of the JJA and Article 3 of CRC).³

56. The relevant international instruments applicable, besides the CRC itself, in the area of administration of juvenile Justice, are the United Nations Guidelines for the Prevention of Juvenile Delinquency popularly known as the Riyadh Guidelines, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, or the Beijing Rules (adopted by India in 1985). These contain the global consensus on principles and standards related to

Box 8.3: Juvenile Justice Act, 1986: key points

- The Act was designed for the care, protection, development and rehabilitation of the neglected and delinquent juvenile.
- It aimed to provide a uniform legal framework of justice across the country.
- The Act dealt with “neglected” and “delinquent” children differently.
- The Act covered children up to 16 years (boys) and 18 years (girls) of age.
- A neglected delinquent child after being picked up or arrested could be sent to a police station or jail but might be kept in an observation home, a place of safety or with parents or guardians.
- If found that an offence been committed, and if institutionalisation was chosen, children were to be placed in a juvenile/special home.
- Inquiry in relation to delinquent children was conducted by those magistrates who had special knowledge of child psychology and welfare.
- Summons procedure followed, irrespective of whether the offence committed was minor or most serious.
- The Act spelt out the machinery and infrastructure, including juvenile welfare boards, juvenile courts observation, homes, special and after-care homes.

Source: A Report of the National Consultation on Juvenile Justice, Better Implementation of the Juvenile Justice System, 11-13 February 1999, Susan Matthews, page 37

juvenile justice. One of the avowed objectives of Juvenile Justice in fact, is to bring the operation of the Juvenile Justice system in the country in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

57. The Beijing Rules recognised that children, “owing to their early stage of human development require particular care and assistance with regard to physical, mental and social development and require legal protection in conditions of peace, freedom, dignity and security”.⁴

58. The Supreme Court of India said, in its judgement in the case of Sheela Barse Vs. Union of India (AIR 1986 SC 1773) that “...instead of each State having its own Children’s Act, different in procedure and content from the Children’s Act in other States, it would be desirable if the Central Government initiates Parliamentary legislation on the subject, so that there is complete uniformity with regard to the various provisions relating to children in the entire territory of the country.” In the statement of objects and reasons appended to Bill No 103 of 1986 pertaining to the Act under consideration it was specifically stated that the above referred Act would replace the corresponding law on the subject such as the Children Act, 1960, and other State laws on the subject.

59. A general review of the working of the Juvenile Justice Act all over the country discussed in the Report of the National Consultation on Juvenile Justice revealed that despite the formulation of rules by almost all the State/UTs under Section 62 of the JJA, there were still quite a few States/UTs which had yet to constitute Juvenile Welfare Boards and Juvenile Courts, as required under Section 4 and 5 of the Act; as a result, powers conferred on the board or the courts continue to be exercised by the District Magistrate; or the Sub-divisional Magistrate; or any Metropolitan Magistrate or Judicial Magistrate of the first class or as the class maybe.⁵

60. According to the Ministry of Social Justice and Empowerment, the major problems in the effective implementation of Juvenile Justice in the country lay with the allied systems, such as:

- Lack of timely assistance from the police.

Box 8.4: Care and protection of children

Children are our priority areas. They are more vulnerable; they have less power; they have, in most societies, less control over their own lives. Some children are more marginalised than others. 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 runaway street children.

- Influence of the media on the child, which causes conflicts of identify.
- Abuse and exploitation by unsociable elements, resulting in addiction.

Such children need special care and protection. The programmes of Social Defence Division focus on children in crisis situations, such as street children, children who have been abused, abandoned children, orphan, children in conflict with the law, children affected by conflict or disasters, etc.

Source: Annual Report, MSJ&E, 1999-2000

- Employers abusing children could not be apprehended.
- Abused children were turned away and could not be rehabilitated.
- Children having to wait for long hours before getting admission in Government hospitals.

61. To overcome some of these known problems, the Ministry had initiated training for the allied systems and integrated child protection issues into the curriculum, besides liaisoning for better access to services. It had also constituted a national core group and was eliciting State Government support.

62. The other problems that clearly emerged in a general overview of the entire Juvenile Justice system in India were:

- The increasing crime rates among by juveniles and the alarming change in the nature of crimes and offences that are being committed (See Table 8.3).
- JJA Section 2 (h) prescribes cut-off age for boys at 16 years and for girls at 18 years, which is unfair, as boys over 16 years of age who may have committed an ordinary offence will be treated at par with adult criminals. Also, the CRC states 18 years as the ideal age. Fortunately, the new Act does define "juvenile" or "child" as a person who has not completed eighteen years of age.

Box 8.5: Standard minimum rules for the administration of the Juvenile Justice Act, 1986 (Beijing Rules)

Guidance to member states in developing measures to protect the human rights of children in conflict with the law:

- Member states shall seek to further the well-being of juveniles and their families and ensure their meaningful lives in the community.
- Juvenile Justice shall be an integral part of the national development process of each country.
- Age of criminal responsibility should not be too low.
- Reaction to juvenile offenders should be in proportion to the offender's age and the offence.
- Scope for discretionary power.
- Rights of juveniles, due process, and right to privacy to be respected.
- Rules regarding investigations and prosecution.
- Guidance regarding semi-institutional arrangements.

Source: A Report of the National Consultation on Juvenile Justice, Better Implementation of the Juvenile Justice System, 11-13 February 1999, Susan Matthews, page 35

Box 8.6: Bal Sangopan Yojana

This Maharashtra-based scheme primarily aims at preventing institutionalisation of children and promoting de-institutionalisation. It recognises the child's right to a family and thus includes provision for temporary or long-term care in a substitute family for a planned period to children who are orphans or whose parents are unable to care for them due to severe family crisis, death, desertion illness. The

scheme applies to children from 0-18 years. Eligibility criteria have been worked out for children, foster parents and NGOs. Foster parents receive a grant of Rs 250/- per month per child. Any registered voluntary organisation with 3 years, experience in the field of family welfare can implement the scheme. Implementing NGO will receive Rs 50 per child. *Source: A Report of the National Consultation on Juvenile*

Source: Justice, Better Implementation of the Juvenile Justice System, 11-13 February 1999, Susan Matthews, page 72

- Shortage of homes in different States; though states like Madhya Pradesh, Maharashtra and Bihar have reported high incidence of juvenile crimes under IPC during the year 1996, we find that in Madhya Pradesh there are just two Juvenile Homes, three Special Homes and one After-Care Organisation, in comparison to the magnitude of the crimes committed by juveniles (23.7 per cent).⁶
- It cannot be ignored that despite all the goals set by the Juvenile Justice Act, 1986, many States were reported to have pendency level in the disposal of apprehended juveniles. Of the total juveniles apprehended, 23.5 per cent were disposed of after advice or admonition, 12.0 per cent were under the care of parents/guardians, 4.2 per cent sent off to institutions, 8.5 per cent were sent to Special Homes, 4.6 per cent were dealt with fine and 7.9 per cent were either acquitted or otherwise disposed off.⁷
- The lack of special knowledge of child psychology and child welfare among the members of Juvenile Courts and Welfare Boards.
- An unsuitable environment prevails in some Homes across the country and the inadequate personnel in these homes is the weakest component of institutional management.
- Till now, the focus has basically been on developing institutions for the juveniles, consequently both non-institutional and post-institutional programmes have been neglected.
- The juvenile's apprehension by the police is the first step in State intervention, and further intervention can not be avoided in the juvenile's interest if the police take recourse to appropriate diversion, though the present Act does not permit formal diversion by the police. The juvenile police units, wherever established, also vary in terms of organisation, structure and functions, depending on the type of police department and size and the nature of problems persistent in their particular jurisdiction (See Table 8.2).
- Lack of training and sensitisation Judicial Officers, Administrators and Police Personnel.⁸

63. Whilst the Juvenile Justice Act, 1986 supposed to have separate procedures for responding to "neglected" and "delinquent" children, the borders between the two groups become merged, as the inadequacies and discrimination in the system result in children generally being inappropriately dealt with as criminals. There prevails general ignorance about the legal

Box 8.7: Supreme Court on the age of juveniles

The Supreme Court has clarified a major ambiguity in the Juvenile Justice Act, ruling that a regular court would try a juvenile if he was arrested after crossing the age of 16.

A bench comprising Mr Justice K. T. Thomas and Mr. Justice R. C. Lahoti was of the view that the Act would be applicable if the “competent authority finds the person brought before it for the first time to be under 16 years of age (18 in the case of a girl).”

“ The date of commission of offence is irrelevant for finding out whether the person is a juvenile within the meaning of Section 2(H) of the Act,” Mr. Justice Lahoti said, writing the judgment.

The court noted that “neither the definition of juvenile nor any other provision contained in the Act specifically

provides the date by reference to which the age of a boy or girl has to be determined so as to find out whether he or she is a juvenile or not.”

The court said, with illustration, that if a boy or a girl below 16 or 18 years of age, committed an offence, left the country and neither appeared nor was brought before the competent authority until he or she attained the age of 50, juvenile authority would become irrelevant.

Referring to the preamble of the Act, the bench said the legislature intended it to be applicable “from a time when the juvenile is available to the law administration and justice delivery system; it does not make any provision for a person involved in an offence by reference to the date of its commission by him.”

Source: Online edition of India's national newspaper on indiaserver.com, Monday, 15 May 2000

methods and social correctional schemes in processing juvenile delinquents. Though the JJA speaks an integral approach, there exist many gaps in coordinating all the involved machineries. The police, the prosecutor, the defence counsel, the probation officer, the case-worker, the juvenile court, the observation home and special homes, often seem to function in isolation by simply discharging their individual functions. There are few occasions for a joint appraisal and meeting of all functionaries to reflect on their experience and knowledge, to understand what these juveniles go through. Juvenile Justice needs to be seen in a more holistic sense rather than the narrow concept it presently is. There is also fragmentation that arises on account of lack of coordination between the autonomous sub-system at the input, output and process stages.⁹

64. The National Consultation Meet on the Juvenile Justice System and the Rights of the Child (21-22 January 1999) organised by the National Institute of Public Cooperation and Child Development (NIPCCD) has made several recommendations on the above problems and this is being looked at by the relevant Ministry and Implementing Authorities.

65. Refresher-cum-Inservice Training Programme on Juvenile Delinquency, was organised on 22-23 April and Training Course on Juvenile Delinquency, on 3-4 and 20-21 May, 1999, for Superintendents and Deputy Superintendents of Juvenile institutions (30). The collaborating agency was Butterflies, an NGO working for street children in Delhi.

Table 8.1: Number of Juvenile Homes in the country

Observation homes	287
Juvenile homes	290
Special homes	35
After-care organisations	50
Total	662

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

66. 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 proper care, protection and treatment and also for ultimate rehabilitation of children in need of care and protection. With the implementation of this new law, the objectives of treating children in the best possible manner and ensuring that they get their rightful place in society would be achieved. The following are the salient features introduced for the first time in this enactment:

- The law provides for separate treatment for juveniles in conflict with the law, and children in need of care and protection, so as to give clarity and distinction in the treatment of such categories.
- This law recognises the United Nations Convention on the Rights of the Child and other international conventions thus giving due recognition to international standards and practices regarding the treatment of children.
- Under the old Act, there were separate institutions: Juvenile Homes for neglected children, Special Homes for Delinquent Juveniles and Observation Homes for Juveniles. There was no clear distinction between the juvenile offender and the neglected child, which led to mixing of children of the two categories in the observation homes. In the new Act, the two categories have been clearly defined. Juvenile offenders pending inquiry will be kept only in observation homes and once the inquiry is completed, they will go to special homes for rehabilitation. Juvenile Homes have been renamed as Children and Homes, will house only neglected children.
- It prescribes a uniform age of 18 years below which both boys and girls are to be treated as children. Thus, criminal justice as applicable to adults will not apply to children who are below 18 years of age.
- Previously boys found to be juvenile offenders between the ages of 16 and 18 would be sent to jail under the new Act, boys up to 18 years of age will be kept in special

Box 8.8: The Juvenile Justice (Care and Protection of Children) Act, 2000

This is an Act to consolidate and amend the law relating to juveniles in conflict with law, and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

Whereas the Constitution has in several provisions, including clause (93) of Article 15, clause (e) and (f) of Article 39, Articles 45 and 47, imposed on the State a primary responsibility of ensuring that all needs of children are met and that their basic human rights are fully protected.

And Whereas, the General Assembly of the United Nations has adopted the Convention on the rights of the Child on the 20th November 1989;

And Whereas, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child;

And Whereas, the Convention on the Rights of the Child emphasises social reintegration of the child victims, to the extent possible, without resorting to judicial proceedings;

And Whereas, the GOI ratified the Convention on the 11th February December 1992.

And Whereas, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention of the Rights of the Child, the United Nations Standards Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their liberty (1990), and all other relevant international instruments.

Box 8.9: National Consultation Meet on the Juvenile Justice System and the Rights of the Child

Given the enormous potential of the CRC to stimulate changes in law and practice in each country for improving the situation of children, the National Institute of Public Cooperation and Child Development thought it appropriate to organise a National Consultation Meet on the Juvenile Justice System and the Rights of the Child on 21 and 22 January 1999.

The main objectives of the meet were to critically appraise the constitutional provisions and legislation concerned with the Indian juvenile justice system *vis-à-vis* rights of the child; to evolve desirable and appropriate and alternate measures for administration of the JJ system in the country in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation in protecting the rights of the child, and to develop appropriate

linkages and coordination between the formal system of JJ and voluntary agencies engaged in the welfare and development of neglected or socially maladjusted children, and thereby define the areas of their responsibilities.

The meet was attended by 84 participants, including members of the NHRC, Juvenile Welfare Boards, senior police officers, government officials, subject specialists and representatives of national and international organisations.

Conclusively, it was proposed that the action recommendations be shared with National Human Rights Commission, Ministry of Social Justice and Empowerment, voluntary organisations working in the field and the Department of Women and Child Development, so as to carry forward the process.

Source: National Consultation Meet on the Juvenile Justice System and the Rights of the Child (21-22 January 1999), A Report, National Institute of Public Cooperation and Child Development (NIPCCD), page 1

homes only and will not go to jail. They will be able to get protection and the benefits of other provisions, especially with regard to rehabilitation.

- In the old Act, juvenile delinquents were being brought before the Juvenile Court. This has been redefined as Juvenile Justice Board and will remove the stigma associated with appearing in a court like adult criminals.
- Children will not have to wait for justice indefinitely, as the new enactment provides for the disposal of cases within a limited period of four months by the concerned authorities.
- It has also been made compulsory to set up a the Juvenile Justice Board and Child Welfare Committee under the present Act either for each district or groups of districts. Previously, there was no juvenile court or juvenile welfare boards, and the powers of these courts and boards could be exercised by the District Magistrate, SDM, Metropolitan Magistrate or Judicial Magistrate (first class).
- Any offence against a juvenile is now cognisable. This will enable the police authority to take cognisance to such offence seriously and would also result in appreciable reduction in such offence against children.

Box 8.10: Training of police personnel in Madhya Pradesh

UNICEF and the State Government made a welcome beginning in Madhya Pradesh by organising seminars on JJA for police personnel all levels at zonal/range headquarters and at training institutions. UNICEF is putting in a special effort to constitute teams of suitably oriented police personnel by organising courses on 'training of trainers' and then asking them in turn to organise seminars/workshops

JJ at the local police station level.

The police administration at the police headquarters also now alive to the situation and taking action to include JJ and its administration in the training programmes of the State Police Academy at Sagar and other police training institutions.

Source: A Study of Implementation, JJA-1986 in Madhya Pradesh, sponsored by UNICEF MP State, 1998, prepared by V.P. Sahni, IPS, ADG Police [Retd.]

- Special Juvenile Police units will be set up under the new Act, which will enable trained police personnel to perform their functions more effectively while handling children.
- Role of voluntary organisations and local authorities has been specified for involving them at various stages for handling and rehabilitating children. Voluntary organisations have been given a specific role in the whole process of care and rehabilitation of such children to and extent so that various types of homes can also be set up by voluntary organisations. The voluntary organisations can also take action for ensuring the proper care of such children, and to ensure that their rights are protected. Thus section 37 (1) of the Act states that State Governments may recognise reputed and capable voluntary organisations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required. Voluntary organisations should necessarily also be involved in the inspection of various homes, facilities, etc. Section 35(2) of the Act states that the inspection committee of a State, district or city shall consist of such number of representatives from the State Government, local authority, committee, voluntary organisations and such other medical experts and social workers as may be prescribed. Any child in need of care and protection can be produced before the Child Welfare Committee (previously known as Juvenile Welfare Board) by either police officers, public servants, social workers, Childline, voluntary organisations, etc.
- Local authorities, including Panchayats, Zilla Parishads, Municipal Committees, Corporations, Cantonment Boards, can now play a role in the transfer of the juvenile or child from one home to another home even outside the State, keeping in view the best interest of the child. Previously this power was entrusted only to the State Government.
- This enactment would enable increased accessibility for children by establishing a wide network of Juvenile Justice Boards, Child Welfare Committees and different types of Homes in each district or group of districts in the country.
- Special emphasis has been given in this Act for the rehabilitation and social re-integration of children by placing all clauses for this purpose in a separate chapter. The various alternatives provided are adoption, foster-care, sponsorship and after-care. This would ultimately benefit abandoned, destitute and neglected children who would get a home and family of their own.
- In India, confirm Hindu parents can take children under adoption, as laid down in the Hindu Adoption and Maintenance Act. The parents of other communities can only take over the care of a child under the Guardianship and Wards Act, 1890. The new Act now allows for adoption of a child within the purview of the Act by any community. This has been provided for such categories of children who have a

Box 8.11: Help reform juvenile delinquents

A two-day training programme was organised by the Directorate of Social Defence, Chennai, to sensitise the police personnel on the implementation of the Juvenile Justice Act, 1986, at the Regional Institute of Correctional

Administration (RICA). Police personnel in Tamil Nadu were called upon to adopt a humanitarian approach while dealing with juvenile delinquents, in order to facilitate correction of their character.

specific identity of their own irrespective of caste, creed or religion and after adoption would get the identity of adoptive parents. The Juvenile Justice Board has been empowered to give such children in adoption even to a single parent, and allowed parents to adopt a child of the same sex, irrespective of the number of biological sons or daughters. (However, the issue of the rights of succession of such adopted children has not been specified in the present Act).

- The prime objective behind allowing adoption under present enactment is to ensure that the right to a family is not denied to any abandoned, orphaned or destitute child. The present enactment aims at facilitating the adoption of children who come within the purview of this law, and to bring in-country and inter-country adoptions at par.
- The rehabilitation and reintegration of a child shall begin during the stay of the child in a children's home or special home and rehabilitation and social reintegration of children shall be carried out by (i) adoption; (ii) foster-care; (iii) sponsorship; or (iv) sending the child to an after-care organisation.

Training of functionaries

67. At present, the GOI is providing training/sensitisation programmes to Juvenile Justice personnel such as judges, prosecutors, lawyers, law enforcement officials, immigration officers and social workers on the provision of the Convention and other relevant international instruments in the field of Juvenile Justice, including the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles deprived of their Liberty.¹⁰

68. The National Institute of Social Defence, a subordinate Office of the Ministry of Social Justice & Empowerment, GOI has allocated a budget of Rs 2.5 millions for the year 2000-2001 to publicise the provisions of the CRC¹¹.

Box 8.12: Conference on Juvenile Justice

A meeting with the Juvenile Justice Officers was convened at NALSAR, University of Law, Barkatpura, Andhra Pradesh, on 5 December 2000. The meeting was attended by the heads of Juvenile institutions in Hyderabad, as well as in other parts of the State such as Cuddhahapah, Eluru and Vishakapatnam.

Some of the issues that were raised in the meeting were:

1. Juvenile Justice Institutions were being primarily used for neglected children. Even in observation homes the number of children who were in contact with the Juvenile Justice System by reason of committing a delinquency was very small.
2. A need for setting up a Juvenile Bureau of Police at the mofussils was felt. These Boards would ensure that children who needed the protection of the Juvenile Justice System would come within its umbrella.
3. The participants felt the need for innovating other means of dealing with juveniles than institutionalisation of

children.

4. The participants felt that a number of probationary officers were in charge of observations homes in more than one district. This affected the quality of the report of the probationary officer.
5. It was also highlighted the Probationary Officers were not only responsible for Juvenile Homes but also for Correctional Institutions, Central Prisons, Borstal Schools within their jurisdiction. Thus it seemed unrealistic to expect probationary officers to function efficiently.
6. A common refrain from all Observation Homes related to absence of teachers and lack of any programme of occupation for the young persons. Many of the juvenile homes had vacant positions and lack of staff.
7. Lack of funds was another constraint expressed by the participants.
8. The in-charges of the Observation Homes and Juvenile Homes spoke of the inadequacies in their services.

Box 8.13: Key issues of concern

Some of the key issues of concern that emerged from the National Consultation on Juvenile Justice organised between 11-13 February 1999 are:

- Definition of terms such as delinquency and neglect.
- Special needs and different situations of children in especially difficult circumstances.
- Grave problems faced by children in conflict with law.
- Understanding the conceptual framework of JJA.
- Problems with the provisions and structure of the JJA.
- Problems with implementation of the Act.
 - a) Enforcement agencies such as the police.
 - b) Institutions—homes, boards, courts.
 - c) Poor implementation of procedures under the Act.
 - d) Lack of community participation and viable non-institutional measures and alternatives such as diversion.
 - e) Critique and challenge of the status reports of implementation by the State Governments.

Source: *A Report of the National Consultation on Juvenile Justice, Better Implementation of the Juvenile Justice System, 11-13 February 1999*, Susan Matthews, page 47

Progress made

69. Rules have been formulated by almost all the State Governments and Union Territory (UT) Governments under section 62 of the Juvenile Justice Act, 1986. Several States have set up their own JJ system as per the requirements of the Act. The Act of 1986 has been reviewed and revised to bring its provisions in conformity with the provisions of CRC. This exercise has been completed and a new Act titled “The Juvenile Justice (Care and Protection of Children Act, 2000” has been enacted by Parliament of India. This Act has come into force with effect from 1st April 2001. The child-oriented institutional mechanisms with Juvenile Welfare Boards, Child Welfare Committees and different types of Homes have to be setup under the new Act for implementing its provisions across the country. Several programmes are being carried out for the development, care and rehabilitation of neglected juveniles like street children in different states and cities of India. The above is being dealt in detail under the article “Physical and Psychological Recovery and Social Reintegration of the Child”.

70. The Ministry has taken the initiative of establishing a Chair of Juvenile Justice at the National Law School of India University (NLSIU), Bangalore. A grant of Rs 3 million was released to the NLSIU for this purpose. The tasks of the Chair *inter alia* include constant review and revision of the Juvenile Justice Act, 1986.

Thrust areas for the future

71. Considering that the official figures of juvenile delinquency since 1988 have shown an overall decrease in the violent or serious offences, it does not make sense to shift from a ‘care philosophy’ in India.¹²

72. Special attention is being given to tackle drug-abuse problems amongst socially and economically vulnerable groups such like street children, commercial sex workers, destitute women, etc. A project on reducing risk behaviours and HIV/AIDS, STD and drug-abuse among street children has been undertaken by the Ministry of Social Justice and Empowerment, United Nations Drug Control Programme, UNICEF, WHO, NACO, and ODA. City-level plans have been prepared for the cities of Bombay, Hyderabad, Calcutta and Delhi and a National Action Plan has been formulated.

Box 8.14: Recommendations

In the National Consultation Meet on the Juvenile Justice System and the Rights of the Child (21-22 January, 1999)- A Report, National Institute of Public Cooperation and Child Development (NIPCCD), some of the recommendations that were made were:

- Adequate importance should be given to the overall role of probation in the juvenile justice system.
- The variety of dispositions as suggested in the Beijing Rules should invariably be reflected in Section 16 and 21 of the JJA.
- There is need to constitute a committee in each State, consisting of experts, government officials, representatives of NGOs and persons from the corporate sector of the following:
 - a) Chairpersons and Members of the Juvenile welfare boards.
 - b) Social workers for appointment to the child forum.
 - c) Identification of non-official visitors to observation, Juvenile and special homes.
 - d) Selection of members to the advisory board.
- In consonance with Articles 5, 9 and 18 of the Convention, parents and families, in fact, must be encouraged to shoulder the responsibility of their children and there was need to reflect this aspect of the JJA.
- A need to develop a consistent policy on the family along with the parameters of State intervention and social and economic support for the family by the State.
- Adequate number of Juvenile welfare Boards, Juvenile Courts, Observation Homes, Juvenile Homes, Special Homes, After-care Organisations should be set up in all States.
- Institutionalisation of the Juvenile to be taken up as the last measure in the dispositional options with competent authority.
- There was an immediate need to professionalise the manpower responsible for implementation of the Juvenile Justice System in the Country in conformity with the new trends in the field, which among other thing, implied recruitment of professionally qualified functionaries who were not specialists in their own right but who were required to perform their roles and responsibilities in a scientific manner. Further, in order to keep them abreast of the latest tools and techniques for correction and rehabilitation of children coming in conflict with the law, there was need to organise sensitisation/training programmes for them. The meet advocated sensitisation programmes for all concerned—law makers, administrative authorities and court personnel dealing with juvenile cases.
- Training /sensitisation of the juvenile justice personnel should be concerned with knowledge, skills, attitude and ethics. The curriculum proposed to be devised for the purpose should include a core and a differential component.
- The meet recommended continuing education, preferably through distance education techniques, for enlarging the knowledge base and helping in the networking of actors in the juvenile justice system.
- Need for a manual on juvenile justice for different personnel involved in the administration of the JJA.
- Formulation of an apex body or a monitoring cell for monitoring the system of administration of JJA.
- Involvement of voluntary organisations which responded to children's complaint about abuses and violations of their rights in the overall monitoring of the juvenile justice administration.
- The scope of Section 53 and 54 of the JJA should be enlarged so as to include a wide range of people from society who could be entrusted with the overall role of monitoring the JJA. The Government must take the overall responsibility of providing adequate information about various provisions in the JJA to the common man. There was need to prioritise and strengthen non-institutional methods such as adoption, foster care and sponsorship through legal procedures so that placing a victim of abuse in an institution was not perceived as the only goal of protection.
- The recommended the following non-institutional approaches for prevention of delinquency and intervention strategy:
 - a) Strengthen the ability of the family to fulfil its primary obligations to instil social values in the younger generation.
 - b) Provide family surrogates to nurture children when no functional family unit was available.
 - c) Support core social institutions (schools, religious institutions and community organisations) in their role of developing capable, mature and responsible youth.
 - d) Intervene immediately and effectively when delinquent behaviour occurs in order to successfully prevent delinquent offenders from becoming chronic offenders.
 - e) Identify and control the small group of serious, violent and chronic juvenile offenders who have committed felony offences or who have failed to respond to intervention and community-based treatment and rehabilitation services.
- It was necessary to establish appropriate relationships with community-based welfare organisations, so as to reduce the contact of a juvenile with the police.
- Initiatives such as Childline should be strengthened.

Relevant Data

Juvenile delinquency (SLL) under different crime heads

73. According to information available in *Crime in India 1996*, there has been a declining trend of juvenile offences as a percentage of total Indian Penal Code (IPC) crimes since 1988. According to a report by National Law School, the economic factor was a major cause leading

Table 8.2: States reporting high pendency level in disposing of apprehended juveniles

State	% of Pendency Level
Himachal Pradesh	82.2
Goa	74.3
West Bengal	71.4
Kerala	70.5
NCT of Delhi	64.2
Rajasthan	63.5
Haryana	62.9

Source: National Consultation Meet on the Juvenile Justice System and the Rights of the Child (21-22 January 1999)-A Report, National Institute of Public Cooperation and Child Development (NIPCCD)

Table 8.3: Juveniles apprehended under IPC and SLL Crimes 1995 and 1996

Year	7-12 years		12-16 years		16-18 years		Total
	No.	%	No.	%	No.	%	
1995	3377	18.0	12,043	63.9	3403	18.1	18,823
1996	3471	18.2	14,397	59.7	4230	22.1	22,098

Source: National Consultation Meet on the Juvenile Justice System and the Rights of the Child (21-22 January 1999)-A Report, National Institute of Public Cooperation and Child Development (NIPCCD)

Table 8.4: Juvenile delinquency (SLL) under different crime heads during 1996 and % variation over 1995

Crime head	No of cases reported		% change in 1996 over 1995
	1995	1996	
Prohibition Act	732	1282	75.1
Indian Railways Act	7	16	128.6
SC/ST (Prevention of Atrocities) Act	8	18	125.0
Immoral Trafficking (Prevention) Act	50	104	108.0
Excise Act	182	378	107.7
Gambling Act	240	363	51.3

Source: National Consultation Meet on the Juvenile Justice System and the Rights of the Child (21-22 January 1999)-A Report, National Institute of Public Cooperation and Child Development (NIPCCD)

to delinquent behaviour in juveniles. Of the total juveniles who were involved in various crimes, 80 per cent were either illiterate or had education upto primary level.

74. The *Crime in India* statistics reflect that juvenile delinquents are associated mostly with all types of property offences defined in the Indian Penal Code and are largely intercepted for cheating, theft, robbery and dacoity, reflecting economic criteria of causation.¹³

Street Children

75. The phenomenon of street children is an off-shoot of the complex interplay of various factors in India. The phenomenon seems to have acquired a gigantic dimension in the wake of rapid industrialisation and urbanisation. The large-scale presence of street children is a disease that is widespread due to an exploitative social structure, lopsided development and iniquitous resource ownership. Other parameters contributing to its presence in India are large-scale unemployment, rapid urbanisation, fast population growth, extreme poverty, increasing disparities in wealth, high levels of child abuse by parents/society and a breakdown of traditional family and community structure. Human migrations from rural to urban areas have contributed significantly to a substantial increase in the number of street children. Migrants shift to cities in search of higher income and secure employment. However, they are able to secure jobs mostly in the unorganised or semi-organised, low-paid sector. Consequently, children are forced to live on the street and earn a livelihoods for themselves and also support their families.

76. India, with a population of more than 1 billion in 2000, has the largest population of street children in the world. A significant proportion of street children are working in the unorganised or informal service sector in every city, big or small, offering cheap labour, and catering to various needs of city-dwellers. The majority of children live or work on the streets of urban India, labouring as porters at bus or railway terminals; as mechanics in auto-repair shops; or as vendors of food, tea and handmade articles. They work as street tailors or as rag-pickers, picking garbage and selling usable materials to local buyers. They are often seen polishing shoes in shopping and commercial centres, working as domestic servants or as vegetable sellers, milk carriers and car cleaners. They carry heavy loads and work in cycle and automobile repair shops. They are also engaged in several hazardous industries and processes throughout the country. Many of them are also procured as sex workers. The parents/crime rings many a times use these children for begging around crossroads and places of worship.

77. These children suffer from the worst kind of deprivation and denial of basic necessities like education, health, food, shelter, physical protection, security and recreation.

78. Street children are susceptible drug/alcoholic addiction and to inhalants, such as cobbler's glue, correction fluid, gold/silver spray paint, nail polish, rubber cement, permanent/dry eraser makers and gasoline, which offer them an escape from reality and hunger. In exchange, they invite a host of physical and psychological problems, including hallucinations, pulmonary edema, kidney failure and irreversible brain damage. In order to secure a regular dose of drugs/alcohol and inhalants, they resort to pick-pocketing, petty theft and even more serious crimes. Many of these children eventually turn into hardened criminals controlled by organised crime rings for drugs trafficking, prostitution and other unlawful activities, thus placing a heavy burden on the law and order machinery.

Box 8.15: Street children in the metros of India: A case study**Calcutta**

The existing data estimate that the population of street children in Calcutta exceeds 100,000 with girls making up 47% of this population (Source: *Calcutta's Invisible Children: Who Are They? Save the Children Fund*).

A Study conducted by the Institute of Psychological and Educational Research (1992) suggests that only 10% of street children come as runaways or have been deserted by parents. A majority of these children were born in Calcutta. Among the rest of the population, while a few have migrated with their families from adjacent townships, there are a number of migrants from across the Bangladesh border.

The street girls are an extremely vulnerable group. They are under high risk of being lured into the sex trade or kidnapped Girls living in slums or in squatter colonies are in constant danger of being rape. Girls in the age-group of 10 to 16 years are prone to sexual abuse by adult men on the streets or even by their fathers or brothers at home.

Mumbai

The population of street children in Mumbai is very high and poses a significant and intense challenge to various development practitioners. These children can be categorised into three groups:

- Working children who live the street with their families.
- Children who live and seek shelter, food and a sense of belonging among with each other on the streets. A majority have no ties with families, the minority still have remote ties.
- Children who have no contact at all with their families, including orphans, runaways, and refugees.

In Mumbai, the percentage of boys varies from 65 to 83% of the street children. An analysis of admissions to the Children's Aid Society between 1984 and 1988 shows that street children in Mumbai are mostly in the age-group of ten years and above.

The majority of street children belong to the Muslim community. Almost 90% of them work as self-employed rag-pickers, and 10% as hawkers, shoe shine boys, etc. Mumbai's street children also turn to pick-pocketing and stealing. A number of children often become commercial sex workers. The remainder take to *hamali* (hard physical labour such as carrying heavy loads) or begging. One in every three street children puts in a 10 to 12 hour workday and one in every ten, a 13-hour workday.

These children seek shelter at night anywhere they can— at railway stations, near temples, *dargahs*, in market places, etc. Only a minority sleeps under a roof of any kind.

According to the NGO *Sneh Sadan*, the increase in the number of younger children could be a direct result of an increasing number of slum children taking to the streets after their parents split up. The majority of street children smoke, but drug addiction is one of the most pressing problems facing the street child.

Some sniff glue, three-fourth smoked *charas*, *ganja* and

bhang, many inhaled the intoxicating fumes of shoe polish, but it was only the addiction of brown sugar that street children regarded as serious and wanted help for it.

The most frightening aspect of drug addiction on the streets in not how these children manage to acquire drugs but that most of them do not even regard them as drugs.

The study found that street children live in constant dread of municipal authorities and policemen. Under the JJA, street children frequently find themselves in remand homes under trial as delinquents. If they are able to state where their parental home is, they may be sent back there. It is important to note that the majority of runaways tend to dodge the police, so the number of children coming to Mumbai annually would be much higher.

Delhi

It is difficult to get estimates of street children in Delhi. Panickar and Nangia (1992) estimated the number of street children at 1 lakh. Most of them, including the working children, are above 12 years of age (Source: *The Child-Friendly Capital: Plan of Action (1198-2202)*, December 1997, Government of NCT, Delhi). UNICEF estimates that there are over 30 million street children in the world and 11 million are in India (CRY in Action, *Who was on my side?*, Vol. 4, No. 1, 1998, Page 3). To this 11 million, the contribution of Delhi, according to a conservative estimate would be about five lakh. (*PRAYAS Reflections We have a reason to smile.*, 1998, Page 4). The majority of street children are boys. Their number is almost twice that of girls on the street. Street girls are not often visible though far more vulnerable.

Seventy-five to 80% of street children in Delhi live with their families. About 15% have little contact with their families, while a small proportion have no contact with their family.

Migrant and refugee children comprise the majority of street and working children of Delhi. They have migrated with their families from the Hindi-speaking areas of UP, MP, Bihar, and Rajasthan. Some of these children have come across the border (with or without families) from Bangladesh, Tibet, Nepal, Pakistan and Afghanistan. Most of them have set up camp at particular places while others prefer to be part of the already existing slums or *Jhuggi – Jhopri* clusters in the city or resort to pavements.

The sources of earnings of street children are as porters, vendors, shoe shine boys, rag-pickers, casual workers or workers in sundry jobs not requiring skills. The earnings vary from Rs 25 per day to Rs 50 per day.

Studies show that street children are mostly malnourished and are exposed to dirt, smoke and other environmental hazards. They suffer from chronic diseases like asthma, TB and other respiratory or gastro-intestinal diseases. They are neither covered under any health camp or programmes or schemes (like immunisation), nor do they have easy access to government or municipal hospitals or health centres. Most of them have had no schooling or are dropouts.

Box 8.16: Some NGO Initiatives

Don Bosco Ashalayam started working in Howrah, West Bengal, in 1985 with street and destitute children. Today, they have 17 homes sheltering children from 5 to 18 years. Don Bosco creates a family centre where children are provided schooling or skills training in a home atmosphere. There is a savings account in the main home where children are taught how to save and trade. In the morning, there is a craft session, (this creates a habit of work), and at the end of the month a remuneration is given for whatever they have produced. A part of the money they receive goes into their personal savings account, and the rest is for their personal expense. Don Bosco Ashalayam also provides an assistance booth in Howrah railway station. The Ashalayam had earlier worked with UNESCO on a 2-year project entitled "Impact of education in improving the quality of life of disadvantaged urban groups in Calcutta & Howrah". Now, a new project entitled "Education for social change" has been launched to provide street and working children with quality education and vocational training. The project integrates street and working children into formal schools and training centres; trains them to handle computers; informs them on sex education and HIV/AIDS; involves the community in educational activities. **"Butterflies"**, an NGO in Delhi, has been working with street and working children in Delhi since January 1988. It has eight points of contact with the children in areas where there is a concentration of street and working children. Most of the children are migrants to Delhi and are self-employed and are working as porters, shoe polishers, rag pickers and vendors or engaged in roadside restaurants, workshops, garages and small-scale industries.

Butterflies has a team of street educators who play an important role in initiating contact with street children, through regular visits to their places of work and abode. They make it a point to say "Hello," spend time with the children and occasionally organise recreational and group activities in order to overcome their initial fear and mistrust and develop a trusting relationship based on equality and respect.

Once a relationship has been established with the children, in the next step, they involve them in an activity that they help to design and develop. Experience has shown that unless a relationship is built, it is difficult to motivate the children to come together for collective action, to continue their education, or to discuss drug and gambling problems.

Children participate in planning most of their activities. They also contribute in a material way for all their activities. Nothing is given free. Children honour their commitments and participate in the planned activity with a feeling that it is their programme and therefore they have to make it a success.

Prayas Juvenile Aid Centre in Delhi started off by working with street and neglected working children, to rehabilitate them and reduce the incidence of vagrancy and delinquency among them. It now provides specially designed non-formal education for these children; vocational training and Child Empowerment Programmes (for those above 14 years); indoor and outdoor health care including a nursing home; mid-day meals for those who attend the non-formal education sessions regularly; counselling and recreational activities; family and community interventions; and a shelter for homeless children. It is the first NGO to run a juvenile home in Delhi. Through experience, Prayas has come to believe that "the basic needs of a child are synonymous with his basic rights." Deeply rooted in the slum-clusters, Prayas has emerged as a replicable model organisation in the country and at the international level. From 25 children in 1988, it now serves over 3,000 children in the slums of Delhi. It is now creating a National Institute for Neglected Child and Juvenile Justice in Delhi. In the last nine years, over 10,000 children have been drawn away from ragpicking and other such occupations and placed in formal schools. Through its Health Unit, it reaches out to thousands of street and working children; many have been provided vocational training and an occupational shift.

CINI ASHA (Child in Need Institute), a Calcutta-based NGO, was born in response to the cry of poor children living in degrading conditions. Its aim is to educate street children, child labourers and children of sex workers between the ages of 4 and 20 and place them in formal schools. CINI ASHA in partnership with UNESCO have been working to meet the needs of these children in areas most crucial to their survival, growth and development. In the first phase, facilities such as Drop-In-Centres, Night Shelters, Short stay residential homes (Half-Way-House), Clinic, Sick Bay, HIV/AIDS prevention programme for street children, preparatory centres and coaching centres for child labourers and evening centres for children of sex workers have been provided.

In the second phase launched in 2000. Under this, all children in the project area are to be enrolled and retained in formal schools. Special focus is being placed on the sustainability of the programme. The local community, therefore, is involved in the overall project. So are the Calcutta Municipal Corporation Ward councillors. Formal school teachers are being trained/oriented to gradually take up the activities carried out by CINI ASHA. The chief result of this programme is as follows: establishment of staff training sessions on teaching methodology, child psychology, child rights, counselling skills and communication skills; use of innovative educational material in Bengali, Hindi and Urdu; vocational training courses and weekly theatre workshops.

79. The increase in the number of street children-orphans, destitute, neglected and delinquent children is a matter of great concern to the Ministry Social Justice and Empowerment. Recognising the basic responsibility of the government towards these children, specific schemes are being put into effect, to provide immediate relief and succour to these children as well as meet their long-term development needs.¹⁴ To meet these needs, the Ministry of Social Justice and Empowerment, GOI, implements the Integrated Programme for the Street Children. The programme has been dealt with in detail under the article, “Children Deprived of their Family”.

Endnotes

- ¹ A Report of the National Consultation on Juvenile Justice, Better Implementation of the Juvenile Justice System, 11-13 February 1999, Susan Matthews, page 33.
- ² *ibid*, pp. 28-29.
- ³ National Consultation, Meet on Juvenile Justice System and the Rights of the Child (21-22 January 1999)—A Report, National Institute for Public Cooperation and Child Development, GOI, page 3.
- ⁴ National Consultation Meet on Juvenile Justice System and the Rights of the Child (21-22 January 1999)—A Report, National Institute for Public Cooperation and Child Development, GOI, page 21.
- ⁵ *ibid*, page 6.
- ⁶ Crimes in India, 1996, National Crime Research Bureau, Ministry of Home Affairs, GOI.
- ⁷ *ibid*.
- ⁸ National Consultation Meet on Juvenile Justice System and the Rights of the Child (21-22 January 1999)—A Report, National Institute for Public Cooperation and Child Development, GOI, pp. 5-11.
- ⁹ A Report of the National Consultation on Juvenile Justice, Better Implementation of the Juvenile Justice System, 11-13 February 1999, Susan Matthews, pp. 31,33.
- ¹⁰ NI/PC/SAP/132/2000/908 dated 31 July, 2000, National Institute for Public Cooperation and Child Development, GOI, pp. 71-72.
- ¹¹ Gujarat State Report on CRC, Government of Gujarat, GOI.
- ¹² A Report of the National Consultation on Juvenile Justice, Better Implementation of the Juvenile Justice system, 11-13 February 1999, Susan Matthews, page 31.
- ¹³ *ibid*, pp. 29-30.
- ¹⁴ Research Report on Situational Analysis of Education for Street Children and Working Children in India, A Study supported by UNESCO, New Delhi, conducted by Dr Bhupinder Zutshi, 2000, pp. 1-2, 21-22, 46.

8B-2

Children Deprived of their Liberty, including any Form of Detention, Imprisonment or Placement in Custodial Settings

Articles 37 b, d

Introduction

80. The Juvenile Justice (Care and Protection of Children) Act, 2000, is the most comprehensive legislation for juveniles in India and this is displayed in the entire process of dealing with juveniles who infringe the law—beginning with identifying a neglected or delinquent juvenile as defined under the Act, the consequent trial by exclusive Juvenile Courts, setting up of Welfare Boards and rehabilitation of juveniles in institutions that have been set up for such children, with facilities for shelter, accommodation, food, education, etc.

81. The State has a responsibility to protect children in custody—State officials are accountable for the way they treat children in their care, custody and control. Children apprehended and convicted are sent to homes set-up under the Juvenile Justice (Care and Protection of Children) Act, 2000, which are based on the doctrine of *parents patriae*, which means that the State is expected to provide protection like a parent to the child who deviates from the norms of society.¹

Arrest, detention or imprisonment of a Juvenile

82. The Juvenile Justice (Care and Protection of Children) Act, 2000, ensures that no child is deprived of his/her liberty arbitrarily or unlawfully. According to Section 12 of the Act:

- (1) When any person is accused of a bailable or non-bailable offence and a juvenile is arrested or detained or appears or is brought before a board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, be released on bail with or without surety but he shall not be released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice.
- (2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept in an observation home in the prescribed manner until he can be brought before a board.
- (3) When such person is not released on bail under sub-section (1) by the board it shall, instead of committing him to prison, make an order sending him to an observation home or place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.²

83. Arrest, detention or imprisonment of a child is used as a measure of last resort if there appears reasonable grounds under the Juvenile Justice (Care and Protection of Children) Act, 2000, for believing that the release of the child is likely to bring him/her into association with any known criminal or expose him/her to moral danger or that his/her release would defeat the ends of justice.

84. Section 13 of the Juvenile Justice (Care and Protection of Children) Act, 2000, states, “Where a juvenile is arrested, the officer in charge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform the following:

- the parent or guardian of the juvenile, if they can be found, of such arrest and direct them to be present at the board before which the juvenile will appear; and
- the probation officer, to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the board for making the inquiry.

85. Section 15 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 states, “Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the board, may if it thinks so fit:

- allow the juvenile to go home after advise or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
- direct the juvenile to participate in group counselling and similar activities;
- order the juvenile to perform community service;
- order the parent or the juvenile himself to pay a fine, if he is over 14 years of age and earns money;
- direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond with or without surety, as the board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- make an order directing the juvenile to be sent to a special home:
 - (i) in the case of the juvenile being over seventeen years but less than 18 years of age, for a period of not less than two years;
 - (ii) in case of any other juvenile for the period until he ceases to be a juvenile.

86. Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

- (1) The board shall obtain the social investigation report on the juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report, before passing an order.
- (2) Where an order under clause (d), clause (e) and clause (f) of sub section (1) is made, the board may, if it is in the interest of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with the law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order imposed such conditions as it deems necessary for the due supervision of the juvenile in conflict with the law.

- (3) Provided that if at any time afterwards, if it appears to the board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with the law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure good behaviour and well-being of the juvenile it may, after making such inquiry it deems fit, order the juvenile in conflict with the law to be sent to as special home.
- (4) The board shall, while making a supervision order under sub-section of (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forward one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

87. Thus Section 13 and 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, ensure that all positive corrective options are followed before sending the juvenile to a home.

88. As per Section 18(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, all children are to be kept separately from adults in the best interests of the child. The section states—“Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973, or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.”

89. Section 48 and Section 62 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, lay down provisions relating to the availability of health and educational facilities for the juvenile. According Section 48 (1) of the Act, when a juvenile or child who has been brought before a competent authority under this Act, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the juvenile or the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

90. Where a juvenile or child is found to be suffering from leprosy, sexually transmitted disease, Hepatitis B, tuberculosis or such other diseases or is of unsound mind, he shall be dealt with separately, through various specialised referral services or under relevant laws as such.

91. Section 62 (1) states, “The central Government or a State Government may constitute a central or a State Advisory Board, as the case may be, to advise that Government on matter relating to the establishment and maintenance of the homes, mobilisation of resources, provision of facilities for education, training, rehabilitation of children in need of care and protection of juveniles in conflict with the law, and coordination among various officials and non-official agencies concerned.

Respect for the views of the child

92. Section 8 (4) of the Juvenile Justice (Care and Protection of Children) Act, 2000, states that every juvenile who is not placed under the charge of a parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification according to his age-group, such as 7-12/12-16

years, and 16-18 years, giving due consideration to physical and mental status and degree of the offence committed, for further induction into an observation home.

93. Further, Section 9(1) of the Act empowers the State Government to establish and maintain by itself or under an agreement with voluntary organisations, special homes in each district or a group of districts as may be required, for reception and rehabilitation of juveniles in conflict with the law under this Act.

94. Section 11 of the Act states that any person in whose charge a juvenile is placed in pursuance of the Act shall, while the order is in force, have control over the juvenile as he would have if he were his parents, and shall be responsible for his maintenance, and the juvenile shall remain in his charge for the period stated by a competent authority, notwithstanding that he is claimed by his parents or any other person.

95. Section 13 (a) of the Juvenile Justice (Care and Protection of Children) Act, 2000, lays down that where a juvenile is arrested, the officer in charge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform the parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the board before which the juvenile will appear.

96. Further, Section 14 of the Act states that where a juvenile having been charged with the offence is produced before a board, the board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit, provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the board, having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

Endnotes

- ¹ National Consultation Meet on the Juvenile Justice System and the Rights of the Child (21-22 January, 1999), A Report, National Institute for Public Cooperation and Child Development, GOI, page 7.
- ² The Juvenile Justice (Care and Protection of Children) Act, 2000.

8B-3

The Sentencing of Children, with particular Reference to the Prohibition of Capital Punishment and Life Imprisonment

Article 37 (a)

97. Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2000, prohibits sentencing of a delinquent juvenile to death or imprisonment or commitment to prison in default of payment of fine or in default of furnishing security¹ (See Box 8.17). Similarly, the Indian Penal Code prohibits imposition of death penalty on children.²

98. Section 15 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 states, “Where a board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the board, may if it thinks so fit:

- allow the juvenile to go home after advise or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
- direct the juvenile to participate in group counselling and similar activities;
- order the juvenile to perform community service;
- order the parent the juvenile himself to pay a fine, if he is over 14 years of age and earns money;
- direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond with or without surety, as the board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

Box 8.17: Section 26: Orders that may not be passed against delinquent juveniles

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent juvenile shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of 16 years has committed an offence and the board is satisfied that the offence committed is of so serious nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juveniles in a special home, to send him to such special home and that none of the other measures provided under this Act is suitable or

sufficient, the board may order the juvenile in conflict with the law to be kept in such place of safety and in such a manner as it thinks fit and shall report the case for the orders of the State Government.

(2) On receipt of a report from a board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such a place and on such conditions as it thinks fit.

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

- direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- make an order directing the juvenile to be sent to a special home:
 - (i) in the case of the juvenile being over 17 years but less than 18 years of age for a period of not less than two years;
 - (ii) in case of any other juvenile for the period until he ceases to be a juvenile;
 - (iii) provided that the board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.³

Endnotes

¹ Juvenile Justice (Care and Protection of Children) Act, 2000.

² No UI/151.4/5/2000 dated 12 December 2000, Ministry of External Affairs, GOI.

³ Juvenile Justice (Care and Protection of Children) Act, 2000.

8B-4

Physical and Psychological Recovery and Social Reintegration of the Child

Article 39

Introduction

99. There are several programmes being implemented for the rehabilitation and development of juveniles in India. The principle agency involved is the Ministry of Social Justice and Empowerment along with the State Governments, autonomous bodies and NGOs.

100. A juvenile who requires physical and psychological recovery and social reintegration is helped to face these problems not only through care and protection in observation and special homes but also through appropriate after care schemes. The purpose of these after care schemes is to take care of juveniles after they leave the homes and to enable them to lead an industrious and useful life. Taking care also includes maintenance facilities like food, clothing and shelter.

Some schemes of the Ministry of Social Justice and Empowerment

A Programme for Juvenile Justice

101. During the year 1998-99, the Scheme was revised with a view to strengthening the implementation of Juvenile Justice Act, 1986 in the country and bring about a qualitative

improvement in the services provided under the scheme to both neglected as well as delinquent children. So far, 287 Observation Homes, 290 Juvenile Homes, 35 Special Homes and 50 After Care Institutions have been established. In addition, there are 189 Juvenile Courts and 271 Juvenile Welfare Boards operating in different parts of the country.

Process of rehabilitation and social integration

102. The Juvenile Justice (Care and Protection of Children) Act, 2000, states that the rehabilitation and social integration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social integration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, or (iv) sending the child to an after-care organisation (Section 40 of the Act).

103. The children's home or the State Government-run institutions for orphans shall be recognised as adoption agencies both for scrutiny and placement of such children for adoption in accordance with the guidelines issued under sub-section (3) [Section 41 (4) of the Act].

104. No child shall be offered for adoption without his consent in the case of a child who can understand and express his consent [Section 41 (5) of the Act]. Further the Board may allow a child to be given in adoption— (a) to a single parent, and (b) to parents to adopt a child of the same sex irrespective of the number of live biological sons or daughters [Section 41 (6) of the Act].

105. Section 44 of the Act states that the State Government may, by rules made under this Act,

- provide for the establishment or recognition of after-care organisations and the functions that may be performed by them under this Act;
- for a scheme of after-care programme to be followed by after-care organisations for the purpose of taking care of juveniles or children after they leave special homes or children's homes and for the purpose of enabling them to lead an honest, industrious and useful life.

106. Section 45 of the Act empowers the State Governments to make rules to ensure effective linkages between various governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social integration of the child.

107. The following measures have been taken by the Government of Tamil Nadu to ensure that the Rights of the Child in Juvenile Homes:

- Exclusive institutions have been established to provide care and protection for delinquent children. Monthly meeting of children and their family are organised.
- Probation Officer, psychologists have been appointed to coordinate the activities.
- A complaint cell is functioning in the Directorate of Social Defence.
- In all institutions, full-time medical officer/part-time officer has been appointed to look into the health needs of children. Similarly, all the institutions have facilities for imparting education up to class VIII. For higher education, children are sent to regular schools. Children are also provided with opportunities to pursue professional courses like medical/engineering, etc.
- The Tamil Nadu Legal Aid Board regularly deposes representatives from panel of lawyers to ensure that legal aid is provided to children in distress in the observation homes.¹

Box 8.18: Childline

After making an impact with earlier national projects for older citizens and the disabled the Ministry of Social Justice and Empowerment has now turned its attention to street children, with a stress on compassion. It has made child protection a work priority in the Ministry and sought public participation and support from the allied system, consisting of the police, healthcare and welfare, judiciary, education, transport, labour, media and the corporate sector.

The aim of Project Childline is to ensure that “a childhood to every child” is just a call away. Help can be sought by any child on the street or a victim of child abuse on telephone number 1098 through the night-and-day childline service. Help will arrive from the police and support from identified NGOs.

The National Initiative for Child Protection (NICP) is a campaign initiated by the Ministry of Social Justice & Empowerment through the National Institute of Social Defence (NISD) and CHILDLINE in India Foundation (CIF).

NICP aims at building partnerships with the Allied Systems for Child Protection and promotion of Child’s Rights. These Allied Systems are:

- The police
- The health care system
- The judicial system, especially the juvenile justice system
- The education system
- The transport system
- The Labour Department
- The media
- The Department of Telecommunication
- The corporate sector (especially hoteliers)
- The community at large (especially elected representatives and PCO owners)

NICP hopes to achieve this by training people who work within the Allied Systems. As awareness increases in this

group, it is believed that every child will get her or his rights. It is believed that this training will yield a greater understanding of the circumstances of the child and will also lead to:

- Greater access to services such as health care, education, justice, etc.
- Development of specialised services where they are needed.
- Allocation of resources including time, attention, money, infrastructure, etc.
- An attitudinal change in perceiving the needs of a child and helping him/her.

The partners for NICP include:

- Children
- Government at the Central, State and Local levels
- Non-Governmental Organisations
- Academic and Training Organisations
- UNICEF
- National Commission for Women
- The Allied Systems

The training activities are going to be supported by the Institute in partnership with concerned organizations. Training modules under this programme for various functionaries have already been developed. These training modules propose to use a multi-dimensional, multi-cultural and multi-layered approach. More than 600 training programmes have already been carried out and more training programmes have been planned for the future covering 14 cities of the country for training various levels of functionaries in the Police Department, Health Care Department, Judiciary—specially the Juvenile Justice functionaries, Education Department, Transport Department, Labour Department, Media Personnel, Department of Telecommunication, corporate sector, elected representatives and members of the community.

Source: Online edition of India’s National Newspaper on indiaserver.com, Wednesday, June 28, 2000

An Integrated Programme for Street Children

108. The objective of this programme is to prevent destitution of children and facilitate their withdrawal from life on the streets. The programme provides for shelter, nutrition, health care, education, recreation facilities to street children and seeks to protect them against abuse and exploitation. The target group of this programme is children without homes and family ties, that is, street children and children especially vulnerable to abuse and exploitation such as children of sex workers and children of pavement dwellers. In addition to voluntary organisations, State Governments, UT administrations, local bodies, and educational institutions are also eligible for financial assistance from the Government under this programme.

Childline Service

109. This service which was started in Mumbai is now available in 25 cities, namely, Ahmedabad, Alwar, Baroda, Bhopal, Bhubaneswar, Calcutta, Chennai, Cochin, Coimbatore, Delhi, Goa, Guwahati, Hyderabad, Indore, Kutch, Jaipur, Lucknow, Mumbai, Nagpur, Patna, Pune, Thiruvananthapuram, Varanasi, Vijayawada, Vishakapatnam. It is aimed to cover 30 cities by the end of the Ninth Five-Year Plan. The basic objectives of the Childline Service are as follows:-

- To respond to children in emergency situations and refer them to relevant Governmental and Non-Governmental Organisations.
- To create a structure ensures the protection of the rights of the child as ratified in the UN Convention on the Rights of the Child and the Juvenile Justice Act, 1986.
- To provide a platform for networking amongst organisations and to strengthen support systems that facilitate the rehabilitation of children in especially difficult circumstances.
- To sensitise agencies such as police, hospitals, municipal corporations and the railways towards the problems faced by these children.
- To provide an opportunity to the public to respond to the needs of children in difficult circumstances.

110. Childline is envisaged by the Ministry as a national service in each city. The service is being standardised to meet common norms and objects. Keeping in view the highly mobile character of street children the telephone number for accessing the service nation-wide is 1098. The Ministry of Communications has provided a toll-free dedicated line-1098.

Childline India Foundation

111. Childline India Foundation has been established as an umbrella organisation to identify, provide support-services and to monitor efficient service delivery of the centres at various locations. It serves as a link between the Ministry and NGOs in the field. The Secretary, Ministry of Social Justice and Empowerment, is the Chairperson of the Governing Board of the Foundation.

Rehabilitation of Children of Sex Workers

112. Children of sex workers are among the most disadvantaged and neglected children. The Ministry, recognising the need for their rehabilitation, commissioned a project in collaboration with voluntary organisations for this purpose. Grants-in-aid have been released to 25 voluntary organisations during 1999-2000 for implementation of this project. The grant is released for imparting vocational training, non-formal education, health-care and nutrition.

113. Besides the above projects, grants have also been released for day-care-centres for children of fishermen, construction of a home for destitutes and maintenance of 25 orphan girls in Port Blair.

114. The total amount of grant-in-aid released for all the above mentioned projects during 1999-2000 is Rs 73 lakh.

Endnotes

¹ State Report on CRC, Government of Tamil Nadu, 2000, page 12.

8C-1

Economic Exploitation of Children, including Child Labour

Article 32

Introduction

115. The phenomenon of working children is invariably associated with poverty and is usually considered to be a by-product of under-development. The highest incidence of child labour is said to be in the poorest countries of the world, and in the poorest regions of those countries. Globalisation, indebtedness and the widening income gap between the rich and the poor countries may also exacerbate the problem. Several studies have pointed out that globalisation does have a negative influence in the short term. Structural policies of adjustments have resulted in many developing countries spending less on basic services such as education.

116. However, a crucial distinction has to be made between child labour and child work. Child work should be used as the generic term, and should refer to any type of work in any mode of employment relationship. The concept of work, which is a description of a physical (or mental) involvement in a job, may be an activity which, rather than being harmful, is beneficial to the child in its formative socialisation. The concept of labour, on the other hand, should be restricted to the production and services which interfere with the normal development of children as defined by the CRC.

117. There is a perception that quite a lot of what has been subsumed under child labour, is actually work performed during a standard process of socialisation and not associated with labour exploitation or interfering with the quality of development which the child in the given circumstances could expect.¹

118. Towards fulfilling the national commitment of eliminating child labour, the Ninth Five-Year Plan is committed to enforcing the ongoing legal as well as remedial measures to eliminate child labour not only by strengthening various instruments that prevent/ combat the problem of child labour but also by ensuring their effective implementation.²

119. Non-availability of accurate, authentic, and up-to-date data on child labour has been a major handicap in planned intervention for eradication of this social evil. This, however, does not minimise the urgency and importance of drawing up concrete programmes for identification, release and rehabilitation of working children.

120. Poverty has been identified as a major factor compelling parents to send their children to work. Lack of awareness and educational opportunity and ineffective enforcement of child

Box 8.19: Amar came to Mumbai to meet Sachin Tendulkar

He happened to ask a policeman in plain clothes for the address. The policeman called Childline. Amar refused to go home, saying that he wanted to live in Mumbai. Childline referred him to a shelter. A few days later, a Childline volunteer escorted him home.

labour-related laws contribute to the existence and acceptance of this social evil. The improvement in the living, working and economic conditions of the parents is considered crucial to the elimination of child labour. The ultimate objective of the child labour programme is to convert working children into productive and participative members of the society.³ Success can be achieved only through social engineering on a major scale combined with national economic growth.⁴

Current situation

121. The 1991 census data on child labour, compiled by the Registrar General and Census Commissioner, estimates the number of working children in the country at 11.28 million.

122. The State with the highest child labour population in the country is Andhra Pradesh, which as per the 1991 census had 1.66 million working children. Other States where child labour population is more than one million are Madhya Pradesh, Maharashtra and Uttar Pradesh. More than 90 percent of child labour is engaged in rural areas, in agriculture and allied employment like cultivation, agricultural labour, livestock, forestry and fisheries.⁵

123. Although a major cause, poverty alone does not cause child labour. As ILO rightly warns, "Poverty is not the only reason for the existence of child labour. The picture varies across households and across regions and countries. Countries which are equally poor may yet have relatively high or relatively low levels of non-school-going children or of working children. Underlying child labour obviously also is the pull factor, the desire to maximise profits and to command an utmost docile and flexible labour force. The absence of a strong (adult) labour movement and a strong civic society in general, in combination with the inertia of government institutions will allow these tendencies a free hand." Thus, child labour is essentially associated with inequality in society.

124. In India, the correlation between child labour and regional poverty is inconclusive. Some of the poorer states, for different reasons, have a lower child labour count, and some of the richer states have a higher count.

125. Agricultural development as such may not reduce the incidence of child labour as much as direct efforts to improve the living conditions of marginal farmers and landless labourers. The intensity of child labour, it could be said, rather relates to the female labour-force participation rate.

126. Literacy rate is another variable which is often used to explain the differences in child employment ratios. Empirically, Kerala furnishes a strong correlation between literacy and the decline of child labour. It is not merely the economic advancement but the overall social development, including education, which plays a major role in the incidence of child labour. This is why Kerala has a lower incidence of child labour than Punjab, Haryana and several other states which have lower poverty ratios. Other states with a relatively high literacy level, like Maharashtra and Tamil Nadu, however, have an above average child labour

Box 8.20: Government's commitment

Government's commitment to addressing the problems of child labour is reflected in the National Agenda of Governance. The agenda states that the aim is to ensure that no child remains illiterate, hungry or lacks medical care, and that measures will be taken to eliminate child labour.

ratio, indicating that the demand for labour on the pull side is not balanced by a desire for education on the push-side. Educationally backward states like Bihar and Uttar Pradesh, on the other hand, have a relative low child labour ratio because of a falling demand for child labour.

127. An important fact that has been established by many surveys is that access to education is a general wish among parents and children, but this remains unfulfilled due to the lack of properly functioning government schools.⁶

Constitutional and Policy Framework

128. India has all along followed a pro-active policy with respect to the problem of child labour, and has stood for constitutional, statutory and developmental measures to combat child labour. Six ILO conventions relating to child labour have been ratified, three of these as early as the first quarter of the 20th century. The framers of the Indian Constitution consciously incorporated relevant provisions in the Constitution to secure compulsory universal primary education as well as labour protection for children (See Box 8.21).

129. If the provisions on child labour in international conventions such as the ILO standards and the CRC are compared with Indian standards, it can be said that the Indian Constitution articulates higher standards in some respects. The Constitution of India specifies that a child has a right not to be used in 'forced' or 'bonded' labour. The Constitution also specifies in its chapter on Fundamental Rights that 'no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous work.' The aspect of child labour is also covered under the Directive Principles of State Policy which are not legally enforceable, but are fundamental in the governance of the country. These Directive Principles specifically refer to the duty to formulate policies preventing exploitation of workers or prohibiting child labour, or contain general provisions on safeguarding a child's welfare and protecting children from exploitation. Equality provisions in the Constitution authorise affirmative action policies on behalf of the child.

130. Directive Principles of State Policy indicate that the government must take measures to achieve the goal of free and compulsory education for children under the age of 14 years. They also refer to the eradication of illiteracy by ensuring universal and equal access to education

Box 8.21: Constitutional provisions

Article 24—Prohibition of employment of children in factories, etc.:

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39—The State shall in particular, direct its policy towards securing:

- That the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength.

- That children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45—Provision for free and compulsory education for children:

The State shall endeavour to provide, within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years.

at all levels. In that sense, they postulate higher standards on education than the Convention, which focuses on free compulsory primary education.⁷

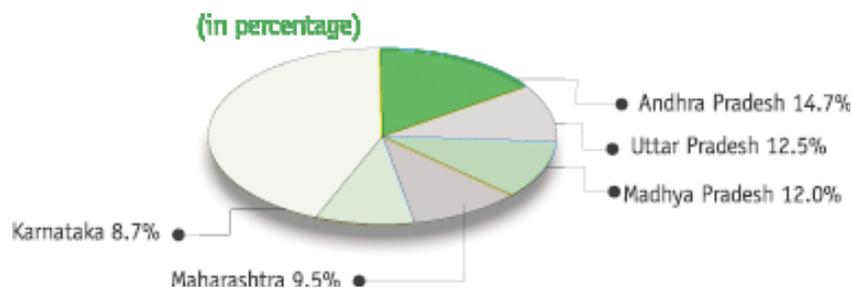
131. Labour Commissions and Committees have gone into the problems of child labour and made extensive recommendations. India's judiciary right up to the apex level has demonstrated empathetic responses against the practice of child labour. India's policy on child labour has evolved over the years in this backdrop.

132. The policy of the Government is to ban employment of children below the age of 14 years in factories, mines and hazardous employment and to regulate the working conditions of children in other employment.⁸

133. The GOI adopted a National Child Labour Policy in 1987. The objective of the policy was not only to place the issue on the nation's agenda, but also formulate a specific programme of action to initiate the process of progressive elimination of child labour. The policy consists of three complementary measures:

- (i) **Legal action plan:** The policy envisages strict enforcement of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986, and other child-related legislation.
- (ii) **Focus on general development programmes benefiting children, wherever possible:** The policy envisages the development of an extensive system of non-formal education for working children withdrawn from work, and increase in the provision for employment and income-generating schemes meant for their parents. A special cell—Child Labour Cell—was constituted to encourage voluntary organisations to take up activities like non-formal education, vocational training and provision of health care, nutrition and education for working children.
- (iii) **Area specific projects:** To focus on areas known to have high concentration of child labour and to adopt a project approach for identification, withdrawal and rehabilitation of working children.⁹

Figure 8.1: State-wise distribution of working children



Source: Annual Report, 1999-2000, Ministry of Labour, GOI

International Conventions

134. India has signed the following conventions related to child labour.¹⁰

1. **Convention No 5 of 1919**—It provides that children under the age of 14 years should not be employed or allowed to work in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed. The term “industrial

**Table 8.5: Distribution of working children
(as per 1991 census)**

State/Union Territory	Main workers	Marginal workers	Total workers
Andhra Pradesh	1,537,293	124,647	1,661,940
Assam	259,953	67,645	327,598
Bihar	795,444	146,801	942,245
Gujarat	373,027	150,558	523,585
Haryana	89,030	20,661	109,691
Himachal Pradesh	30,771	25,667	56,438
Jammu and Kashmir	*	*	*
Karnataka	818,159	158,088	976,247
Kerala	28,590	6,210	34,800
Madhya Pradesh	997,940	354,623	1,352,563
Maharashtra	805,847	262,571	1,068,418
Manipur	13,478	3,015	16,493
Meghalaya	30,730	3,903	34,633
Nagaland	16,106	370	16,476
Orissa	325,250	127,144	452,394
Punjab	132,414	10,454	142,868
Rajasthan	490,522	282,677	773,199
Sikkim	5,254	344	5,598
Tamil Nadu	523,125	55,764	578,889
Tripura	13,506	2,972	16,478
Uttar Pradesh	1,145,087	264,999	1,410,086
West Bengal	593,387	118,304	711,691
Andaman and Nicobar Islands	758	507	1,265
Arunachal Pradesh	11,632	763	12,395
Chandigarh	1,839	31	1,870
Dadra and Nagar Haveli	2,677	1,739	4,416
Delhi	26,670	681	27,351
Daman and Diu	741	200	941
Goa	3,938	718	4,656
Lakshadweep	17	17	34
Mizoram	6,391	10,020	16,411
Pondicherry	2,565	115	2,680
Total	9,082,141	2,203,208	11,285,349

* Census could not be conducted

Source: Registrar General of India

NB: Figures for 1991 relates to workers of age group 5-14 years

undertaking “includes mines, quarries, manufacturing industries, construction, maintenance and repairs and transport of passengers or goods by road, rail or inland waterways This convention was ratified by India on September 9, 1955.

2. Convention No 6 of 1919—It provides that young persons under 18 years of age are not to be employed during the night in any public or private industrial undertakings, which includes mines, manufacturing units, quarries, construction, transport. In case of India “industrial undertaking” includes only factories as defined by the Indian Factories Act, and the age is 14 instead of 18, as provided in the Convention. This convention was ratified by India on August 7, 1921

3. Convention No 15 of 1921—It provides that young persons under the age of 18 years are not to be employed on vessels as trimmers or stokers. India ratified this convention on November 20, 1922.

4. Convention No 16 of 1921—The convention provides for compulsory medical examination of children and young persons employed at sea. The fitness certificate is to be given at intervals of not more than one year. This convention was ratified by India on November 20, 1922.

Table 8.6: Child labour indicators from Multi-Indicator Cluster Survey-2

List of Indicators	All India (Weighted Average)
Percent of children aged 5-14 years working for someone outside the family	
• <i>For pay</i>	2.8
• <i>Not for pay</i>	2.9
• <i>Total</i>	—
Percent distribution of children working for someone outside the family by sector of work	
• <i>Agriculture and livestock</i>	28.3
• <i>Manufacturing</i>	5.1
• <i>Cottage industry</i>	3.7
• <i>Domestic labour</i>	18.8
• <i>Other</i>	27.5
Percent of children aged 5-14 years	
• <i>Engaged in household chores</i>	42.3
• <i>Engaged in household chores for more than four hours a week</i>	31.9
• <i>Engaged in family enterprise/work</i>	8.2
• <i>Engaged in family enterprise/work for more than four hours a week</i>	6.9
Median duration of work by children who are engaged	
• <i>For someone outside the family</i>	20.7
• <i>In household chores</i>	8.5
• <i>In family enterprise/work</i>	10.4

Source: MICS-2, UNICEF

5. **Convention No 90 of 1948**—This convention partly revises Convention No 6 of 1919. The term “night” signifies a period of at least 12 consecutive hours instead of 11 prescribed in Convention No. 6. India ratified this convention on February 27, 1950.

6. **Convention No 123 of 1965**—This convention provides that the minimum number of young persons to work in an underground mine, should be fixed in consultation with the employers and workers, organisations and that the age should not be less than 16 years. India ratified this convention on March 20, 1975.

Box 8.22: Employment of Children: protective legal provisions

Name of the Act	Protective provisions for children
<ul style="list-style-type: none"> ● The Children (Pledging of Labour) Act, 1933 ● The Factories Act, 1948 ● The Mines Act, 1952 ● The Motor Transport Workers Act, 1961 ● The Child Labour (Prohibition and Regulation) Act, 1986 	<p>Any agreement to pledge the labour of children is void. Employment of children under 14 years of age is prohibited under these various laws.</p> <p>Except in the process of family-based work or recognised school-based activities, children are not permitted to work in occupations concerned with:</p> <ul style="list-style-type: none"> ● Passenger, goods mail transport in railway ● Carpet weaving ● Cinder picking, cleaning of ash pits ● Cement manufacturing ● Building operation construction ● Cloth printing ● Dyeing, weaving ● Manufacturing of matches, explosives, fireworks ● Catering establishment in railway premises or port limits ● <i>Beedi</i> making ● Mica, cutting, splitting ● Abattoirs ● “Hazardous process” and “dangerous operations” as defined, notified in Section 2(cb) and Section 87 of the Factories Act 1948 respectively. ● Wool cleaning ● Printing, as defined in Section 2(k) of the Factories Act, 1948 ● Cashew and cashewnut descaling and processing ● Soldering processes in electronic industries <p>In occupations and processes other than the above mentioned, work by children is permissible only for six hours between 8.00 a.m. and 7.00 p.m. with one day’s weekly rest. Occupier of establishment employing children to give notice to local inspector and maintain prescribed register. Children/adolescents are allowed to work 27 hours a week. Child work is not allowed during night i.e. 7.00 p.m. to 6.00 a.m. Children are permitted to work in plantation only where certificate of fitness is granted by a certifying surgeon. On completion of 15 days, leave with wages is to be allowed.</p>
<ul style="list-style-type: none"> ● The Plantation Labour Act, 1951 ● The Minimum Wages Act, 1948 	

Legislation

135. The present regime of laws relating to child labour have a pragmatic foundation and are consistent with the International Labour Conference Resolution of 1979 which calls for a combination of prohibitory measures and measures for humanising child labour wherever it cannot be immediately outright in the short run. (See Box 8.22)

136. The Child Labour (Prohibition and Regulation) Act, 1986, seeks to achieve this basic objective. The Act prohibits employment of children in occupations and processes listed in Part A and B of the Schedule to the Act. Through a notification dated 27 January 1999, the Schedule has been substantially enlarged to add six more occupations and 33 processes to the Schedule, bringing the total to 13 occupations and 51 processes, respectively.

137. The Child Labour (Prohibition and Regulation) Act, 1986, provides for the constitution of a Child Labour Technical Advisory Committee to advise the Central Government for the purpose of addition of occupations and processes to the Schedule to the Act.¹¹

138. The Government recently amended the Central Civil Services (Conduct) rules to prohibit the employment of children. According to this, no Government employee shall employ any child below the age of 14 years.¹²

139. As an immediate response to the States which have made necessary changes to the State Service Rules are: Andhra Pradesh, Tamil Nadu, Karnataka, Assam, Goa, Himachal Pradesh, Jammu and Kashmir, Maharashtra, Madhya Pradesh, Mizoram, Sikkim, Tripura and West Bengal.¹³

140. The State Governments too have been taking steps to eliminate child labour. For instance, the Government of West Bengal has begun consultations with organisations of workers, NGOs and their agencies (to identify the worst forms of child labour). A steering committee

Table 8.7: Child labour as a percentage of child population—Rural

	1971	1981	Female labour participation rate 1991
Andhra Pradesh	14.1	16.6	30.1
Karnataka	9.9	13.8	22.7
Madhya Pradesh	9.7	13.9	22.8
Maharashtra	7.3	12.9	26.5
Tamil Nadu	7.0	10.8	25.1
Orissa	8.0	10.5	12.1
Rajasthan	8.0	9.9	13.0
Gujarat	9.9	8.6	13.7
Bihar	6.9	6.0	10.0
Uttar Pradesh	5.5	5.1	7.5
West Bengal	4.1	4.6	8.0
Punjab	5.4	NA	2.8
Kerala	1.9	0.7	12.8

Source: *Children, Work and Education - I, General Parameters, Economic and Political Weekly, June 10, 2000, page 2038*

has been set up to coordinate the process of eliminating the worst forms of child labour has been setup. It organises special hearings through the NGOs to receive input from child labourers for the design of the programme. It has started a process of consultation with organisations of workers, employers and other concerned groups on programmes of action against worst forms of child labour.¹⁴

141. The State of Kerala is drafting a legislation totally banning child labour, the first State to do so. The draft of the Bill has already been prepared by the Department of Labour and is expected to be presented before the assembly in due course. The State is also planning to set up a Child Labour Elimination Authority.¹⁵

Judicial interventions

142. Judicial interventions are one of the most powerful instruments available for combating child labour. Like many countries, the Indian judiciary has given appropriate importance to the issue of prohibiting the employment of children under a certain age and regulating working conditions for children above the minimum age.

143. The Supreme Court, in its judgement on December 10, 1996 in a writ petition [(Civil) No. 465/1986] has given certain directions regarding the manner in which children working in hazardous occupations are to be withdrawn and rehabilitated as also the manner in which the working conditions of children working in non-hazardous occupations are to be regulated and improved upon.

144. Important directions given in the judgement include:

- Payment of compensation amounting to Rs 20, 000/- by the offending employer for every child employed in contravention of the provisions of the Act.
- Constitution of the Child Labour Rehabilitation-cum-Welfare Fund.
- Giving alternative employment to an adult member of the family in place of the child

Box 8.23: Out of sight...out of mind...out of reach — A study of child domestic workers in Chennai

A study conducted by *Arunodhaya*, Centre for Street and Working Children, Chennai, Tamil Nadu, aimed at bringing the problem of child domestic workers into focus and identifying the factors which contributed to the problem, so that appropriate programmes of intervention could be initiated.

Functionaries of NGOs working in the field of child development and a cross-section of the public, including professionals, parents, employers, advocates and trade union leaders were interviewed to elicit opinions the issue of child domestic work and their participation to charter future course of action.

The study found that children were sent to work by compulsion and not by choice. They were found to have started working at a very young age. Parents did play a prime role in introducing children to the world of work.

But among the residential child workers, the hand of outsiders engaged as 'recruiters' was evident. The study also showed that the literacy level of the parents has a direct influence on the education of the child.

Regarding terms of employment, in the majority of instances (87 per cent), there was no contract or agreement of any kind. Everything was informally negotiated, leaving it to the employer's discretion to hire or fire the child worker.

By and large, the child domestic workers appeared to have been well adjusted to the reality of their employment situation. The concept of child rights was unknown to 90 per cent of the children. The 10 per cent who said that they have some knowledge of child rights said that children have the right to study, write, speak and play.

withdrawn from the hazardous occupation or payment of an amount of Rs 5000/- for each child employed in hazardous employment, by the appropriate Government.

- Constitution of a separate cell in the Department of Labour in the appropriate Government for the purpose of monitoring and completion of the survey of children working in hazardous employment within a period of six months.
- Payment of interest on the corpus of Rs 25,000/- (Rs 20,000/- to be paid by the employer and Rs 5000/- to be paid by the Government) to the family of the child withdrawn from work.
- Provision of education in a suitable institution for the child withdrawn from work.

145. In a related judgement on 7th May 1999, the Supreme Court of India in a writ petition (Civil No. 12125/84 and 11643/85)—*Bandhwa Mukti Morcha, etc. vs. Union of India and others*, has also given a number of directions on the identification, release and rehabilitation of child labour. The Court, *inter alia*, directed the GOI to convene a meeting with the State Government to evolve principles/policies for progressive elimination of employment of children below 14 years in all employment consistent with the scheme laid down in Civil Writ Petition No. 465/86. These directions were given by the Court in the context of employment of children in the carpet industries in the State of Uttar Pradesh. In this case, the Court issue the following directions to the Government of Uttar Pradesh:

- (i) Investigate the conditions of employment of children.
- (ii) Issue such welfare directions as are appropriate for total prohibition of employment below 14 years of age.
- (iii) Provide facilities for education, health, sanitation, nutritious food, etc.

146. The implementation of the directions of the Supreme Court is being monitored by the Ministry of Labour and compliance of the directions reported to the Court on the basis of information received from the State/UT Governments.¹⁶ The Ministry of Labour issued guidelines to State Governments. Receipt of materials from the State Governments is monitored and affidavits filed before the Court from time to time.

Programme interventions

National Child Labour Project (NCLP)

147. Under the project-based action plan, 12 National Child Labour Projects (NCLP) were started in Andhra Pradesh (Jaggampet and Markapur), Bihar (Garwah), Madhya Pradesh (Mandsaur), Maharashtra (Thane), Orissa (Sambalpur), Rajasthan (Jaipur), Tamil Nadu (Sivakasi) and Uttar Pradesh (Varanasi-Mirzapur-Bhadohi, Moradabad, Aligarh and Ferozabad). A major activity undertaken under NCLP is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, stipend, health care, etc., to children withdrawn from employment. During 1999-2000 (till end of January 2000), 100 NCLPs have been sanctioned in child labour endemic States for rehabilitation of nearly 2 lakh children who were removed from work (See Table 8.8).

International Programme on Elimination of Child Labour (IPEC)

148. The International Programme on Elimination of Child Labour is a global programme launched by ILO in December 1991. India was the first country to join it in 1992. The long-

Table 8.8: Coverage under National Child Labour Project

States	Number of districts covered	Sanctioned coverage		Actual coverage	
		Number of schools	Number of children	Number of schools	Number of children
Andhra Pradesh	22	915	58,050	797	50,508
Bihar	08	194	12,200	187	11,213
Karnataka	03	110	5,500	039	1,950
Madhya Pradesh	06	137	9,500	069	3,858
Maharashtra	02	74	3,700	061	3,170
Orissa	18	530	36,250	511	3,1456
Rajasthan	05	140	7,000	060	3,000
Tamil Nadu	09	425	21,900	353	17,190
Uttar Pradesh	11	350	22,500	170	11,730
West Bengal	07	279	14,000	232	11,650
Total	91	3154	190,600	2479	145,725

Source: Annual Report, 1999-2000, Ministry of Labour, GOI

term objective of IPEC is to contribute to the effective abolition of child labour. Important highlights of the IPEC programme in India are given in Box 8.24.

149. Altogether, 154 action programmes were taken-up for implementation under IPEC during 1992-99. The total number of children covered by these projects is 90,574. Further continuation of IPEC beyond December 1999 for two years has been signed by ILO and the GOI.¹⁷

National Authority for the Elimination of Child Labour (NAECL)

150. NAECL was constituted on September 26, 1994 under the chairmanship of the Labour Minister. Its functions are:

- (a) To lay down policies for elimination of child labour, particularly in hazardous employment.
- (b) To monitor the progress of implementation of projects and schemes for elimination of child labour.
- (c) To coordinate implementation of child labour-related projects of various GOI ministries to ensure convergence of services for the benefit of the families of child labour.

151. Secretaries to GOI in the Ministries of Labour, Information and Broadcasting, Welfare, Rural Development, Textiles and the departments of Expenditure, Education, Health, Family Welfare and Women and Child Development are members of NAECL.¹⁸

National Resource Centre on Child Labour (NRCCL)

152. NRCCL was set up in V.V. Giri National Labour Institute, NOIDA, Uttar Pradesh, in March 1993. The centre has been entrusted with the task of documentation, publication and

creation of data-bank on child labour, research and training, media management and technical support services etc. The main objective of the centre is to assist the national and state governments, NGOs, policy makers and other social groups in the field of child labour through a variety of supports, and to develop capabilities of various target groups towards progressive elimination of child labour.

153. During the period under review, training programmes were organised for various target groups involved with different aspects of child labour. A manual for trainers of enforcement officials in child labour legislation and enforcement material for factory and labour inspectors on child labour has been prepared. Orientation training on child labour for coordinators of NSS and NYK, trade union leaders, voluntary organisations and NGOs on child labour at Manipur, was conducted by the centre.

154. NRCCL has also taken up a number of research studies. To assess the fallout of child labour legislation, a major project on child labour in home-based industries was undertaken in nine areas. Other ongoing research projects include child labour in *beedi* rolling industry in Orissa; plastic bead-making industry of Bhiwandi, Maharashtra; textile industries of Surat, Gujarat; study on child labour as domestic servants; child labour as an indicator of backwardness, etc.¹⁹

Assistance to voluntary organisations

155. Under the grant-in-aid scheme, voluntary organisations are being financially assisted to the extent of 75 percent of the project cost, for taking up welfare projects to rehabilitate working children. Financial aid is also provided for useful action-oriented research and study on the

Box 8.24: Highlights of IPEC programme in India

- National Consultation with trade unions
- Survey of child labour in sports goods industry
- Workshop on policy changes for elimination of child labour in rural areas
- State-based approach against child labour in Andhra Pradesh
- Consultation meeting with States on child labour
- Adoption of UN system in India: Position paper on child labour
- UN-system support of community based education
- Development of training packages on child labour for NCLP project directors
- Project for providing pre-vocational training skills and basic education/literacy to child labourers released from bondage
- Combating child labour in stone quarries and brick kilns
- Development of training package on child labour for trade unions at the State/district level
- Consolidation of work done on the training of labour and factory inspectors on child labour
- Training module for elected representatives of *Panchayati Raj* institutions
- Training module for judicial officers
- Setting up a child labour cell in the State Labour Institute, Orissa
- Conducting a multi-centric action research study on child labour in home-based industry
- Sensitising office bearers and members of INTUC and its affiliates against child labour
- Composite approach against child labour: sensitising and education
- Sensitising trade unions activists on the worst forms of child labour and counselling child labourers in distress
- Integrated area-specific approach against hazardous and exploitative forms of child labour in Ferozabad
- Four integrated area-specific projects to be implemented by NCLPs in Mirzapur (Uttar Pradesh), Jaipur (Rajasthan), Tripur (Tamil Nadu), and Virudhunagar (Tamil Nadu).

subject of child labour and preventive measures to discourage further accretion of children into employment. During the year 1999-2000, 72 voluntary agencies spread across 13 States (Andhra Pradesh, Bihar, Haryana, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Delhi, Orissa, Tamil Nadu, Uttar Pradesh and West Bengal) received grant-in-aid.

156. Grant-in-aid projects are monitored through periodic reports, field visits, etc. All State Governments have been directed to undertake a comprehensive evaluation of the projects.²⁰

Monitoring and evaluation

157. A review of the implementation of various programmes for elimination of child labour reveals that in order to make a significant dent on this age-old social evil, a multi-pronged strategy coupled with massive mobilisation of resources, both physical and financial is required.

158. Before considering any expansion of the NCLP, it was considered appropriate to get the existing projects evaluated through independent evaluation agencies. Accordingly, five evaluation agencies evaluated child labour projects in Uttar Pradesh, Tamil Nadu, Andhra Pradesh, Orissa and Rajasthan. The report received showed that the magnitude of the child labour problem can be considerably reduced through rehabilitation measures by the projects and that there is need to continue the component of special schools or camp approach. The need for awareness-generation among the public was also highlighted.

159. Subsequently, inter-ministerial teams were constituted to assess the progress made so far under the NCLPs and to ascertain the strength and weakness of child labour projects. The team comprising representatives of the Department of Expenditure, Planning Commission, Department of Women and Child Development, Ministry of Labour and Controller of Accounts of the Ministry undertook extensive visits to NCLPs at Rangareddy (Andhra Pradesh), Kalahandi (Orissa), Varanasi (Uttar Pradesh), Sivakasi (Tamil Nadu) and Jaipur (Rajasthan). The teams interacted with State Governments, NGOs, officials of the project, parents of children admitted in the special schools and representatives of the public in order to make an objective assessment, and ascertain the strengths and weaknesses of implementation of the NCLPs. Some of the observations and recommendations of teams are as follows:

- (i) NCLPs, which were set-up with the main objective of withdrawing children hazardous occupations and mainstreaming them to the formal school system, have succeeded in achieving the desired objective to a large extent.
- (ii) They have bridged an important gap in the education system and have been able to ensure rehabilitation of children withdrawn from hazardous employment, through education in special schools.
- (iii) Performance of some of the projects is appreciable and worthy of replication.
- (iv) As working children are from different socio-economic backgrounds and have different skills and experience, the schools essentially act as a bridge to facilitate their entry to the formal schools. Their continuance is therefore necessary.
- (v) One of the main weaknesses observed by the team was lack of systematic and periodic monitoring and inspection, both through the State Governments and periodic visits from the Ministry. Enforcement of labour laws also needs to be stepped-up.

Box 8.25: Some NGO initiatives

The **NGO Forum for Street and Working Children**, established in 13 cities, with more than 60 organisations working with street children, has played an important role in awareness building and empowerment of street children. The primary objectives of this group are to promote networking and co-ordination among NGOs, groups and individuals concerned with street children and to initiate and promote a common programme of action in the areas of health care, education, awareness-building, etc.

- The **Bachpan Bachao Andolan** came into being during the Uttar Pradesh Legislative Assembly election in 1993. It emerged as a strategy by the South Asian Coalition of Child Servitude (SACCS), a Delhi-based NGO, to inject the issue of child labour into the electoral campaign. This group organises direct action like raids and freeing children from bondage; mobilising public opinion on the issue and building pressure groups for an effective implementation of child labour laws and rehabilitation schemes.
- The **Andolan** has State units in UP, Bihar, Madhya Pradesh, Rajasthan, Maharashtra, Haryana and Delhi. SACCS is the first Asian joint NGO initiative against bonded child labour and servitude. The initiative has freed more than 27,000 children from servitude through raids and with the help of Supreme Court and High Court orders—from the carpet, glass, brick kiln, stone and construction sectors. The group has developed the Rugmark label. Besides, it has also set up 14 non-formal schools for working children and two rehabilitation centres for freed child labourers.
- The **Campaign Against Child Labour (CACL)**, initiated in 1992, is a nationwide effort seeking eradication of child labour. It is one of the most significant advocacy campaigns, and addresses the question of child labour as a violation of basic human rights. Its major focus is on the mobilisation of public opinion for the eradication of child labour; establishing linkages with other issues, movements and struggles; and intervening in specific cases of child rights violation. At present, CACL is active in 12 States of India. Within a short span of eight years, it has succeeded in building up a network of more than 500 social action groups, voluntary organisations and activists to work together on the issue of child labour. A two-pronged advocacy strategy has been adopted—that of building public opinion on child labour and using both conventional and non-conventional media, and of persuading the Government to enforce existing laws and to enact legislations to ensure the rights of children.
- The **M V Foundation**, established in 1981, has been combating child labour and providing non-formal education, particularly for girl children and bonded labourers in the agricultural sector of Rangareddy district of Andhra Pradesh for over a decade. The child labour project was instituted to provide non-formal education to working children and thereby to motivate them to enrol in regular schools.
- The project is operational in 10 *mandals* and 300 villages of Rangareddy districts. Over 80,000 children in the 5-8 age group have been enrolled into schools and have been retained. These include 1200 formerly bonded children and 25,000 adolescents girls who have been released from work and have been enrolled and retained in schools. Over 500 teachers were appointed through the Parent-Teacher Association/Community/*Gram Panchayat* support. Over 1200 para-teachers, 7000 youth volunteers and 300 government teachers have been motivated and trained by the M V Foundation, and they in turn have motivated parents to release their children from work and send them to school. Strong community participation is the hallmark of the programme's success. Parents committees and village level committees were formed to help the local community understand the importance of educating their children. An advocacy campaign was launched in the community and as part of this, posters, handouts, spots in the electronic and print media were used to raise awareness of parents and teachers about the importance of universal primary education.
- The **Pratham Mumbai Education Initiative** adopted the plan of using early childhood education as a stepping stone to universalise primary education when it started work in the city of Mumbai. Begun with UNICEF initiative, *Pratham's* defined objective is to ensure that all children in the age-group of 3-10 years in Mumbai city are enrolled in pre-school centres or primary schools. *Pratham* has developed a low-cost and effective model for ECCE that is community based.
- The **Mabadi** (our school) project in Andhra Pradesh has set up schools run by the local community with support from the Integrated Tribal Development Authority (ITDA). Mabadi is a full-time school and has classes upto class II. After completion of the course at *Mabadi*, the teachers encourage parents to admit their children to the nearby *ashram* or residential schools. A local youth who has received education upto class VII is appointed by the village education committee (VEC) to teach in the school.
- The **Lok Jumbish** (people's movement) project in Rajasthan tries to address the needs of children who have been left out of the mainstream educational system through the *Sahaj Shiksha Kendras* (non-formal learning centres).

160. Thereafter, a Central Monitoring Committee for the overall supervision, monitoring and evaluation of NCLP has been set-up under the Chairmanship of Secretary, Ministry of Labour.

161. Action is also being taken at the district and State levels to monitor the pace and progress of operationalisation of NCLPs. Detailed instructions have been issued to Project Societies regarding the manner of operationalisation of projects, selection and training of teachers, curriculum, course content and textual material, evaluation of learning outcomes, mainstreaming of children etc.

162. A revised scheme of NCLPs has been formulated taking into account various constitutional provisions related to child labour, the National Policy on Child Labour, 1987, country's commitment to various ILO resolutions and conventions, the present Government policy on child labour as enunciated in the National Agenda for Governance and the observations and recommendations made by the inter-ministerial teams²¹.

Future strategies

163. Child labour is a violation of Child Rights in the most extreme manner, and adversely affects health, education, recreation and optimal development of children. Child labour does not allow a child to develop upgraded skills, and hence traps the child in ill health, illiteracy and poverty.

164. A study commissioned in Karnataka by the Commissioner for Labour, Government of Karnataka and UNICEF, Hyderabad, on child labour in the sectors of agriculture, domestic work, sericulture and hotels attempts to reconcile the diverse views on child labour and has indicated a minimum non-negotiable agenda for action, which is imperative from a human rights and child rights perspective.²²

Some of the non-negotiable principles put forward by the study are:

- Child labour is a violation of human rights—political, civil, economic, social and cultural—and should be treated as such.
- Exploitation of poverty rather than poverty per se is the prime reason for child labour but one need not wait for poverty to be eradicated to end exploitation. Ending the exploitation will bring about an end to poverty.

Box 8.26: Rapid assessment of child labour in a few districts

The National Child Labour Project (NCLP) was formulated with the basic objective of suitably rehabilitating children withdrawn from employment through education in special schools/learning-cum-rehabilitation centres, where they were provided non-formal education, vocational training, stipend, nutrition, etc. In view of this, 26 such districts in 9 states have been identified under the NCLP by the Ministry of Labour for consideration of UNICEF. The Ministry has requested UNICEF to develop a comprehensive communication and social mobilisation strategy for the elimination of child labour in the country, with an initial focus on four districts in four states, representing different regions of the country, viz. Rangareddy in A.P., Kalahandi in Orissa, Varanasi in U.P and Udaipur in Rajasthan.

In order to develop this communication strategy, a rapid assessment of child labour was commissioned in the four

districts. The assessment involved various dimensions of child labour such as the age of children involved in child labour, types and magnitude of child labour prevalent in the area, factors influencing child labour, role of government, international agencies, NGOs and mass media in eliminating child labour, and Information, education and communication (IEC) strategies followed at present.

The rapid assessments have thrown a lot of light on the nature and extent of child labour in these districts, their conditions of work, perceptions of employers, parents and children engaged in child labour, inadequacy of implementation of child labour laws, shortcomings of the NCLP schools, lack of coordination between various government departments in tackling child labour issues, lack of awareness on welfare schemes, and the low profile of IEC activities.

- While efforts to address the structural roots of poverty, end exploitation, meet the basic needs of all and adopt development models which are non-displacing and provide labour-intensive, low-cost, sustainable livelihoods to all should continue, these should be combined with immediate practical action to prevent, remove and rehabilitate child labour by targeting individual child labourers and their families for assistance so that it becomes unnecessary for these families to rely on children's contributions.
- A broad social alliance including all sections of society, government, elected representatives, trade unions, employers, legal and judicial fraternity, NGOs, academia and media, should be formed to voice a strong societal outcry against child labour and to implement the agenda for action. Alliance to become effective through social mobilisation of all societal groups.
- Prevention of child labour through enforcement of free and compulsory education and eradication of poverty should take precedence over rehabilitation.
- In addition to government accountability in enforcing laws on child rights strictly, participatory approaches at community level, with full involvement of local bodies, parents, civil society groups, etc., in the implementation and monitoring of laws on child rights should be the preferred mode of enforcement.

Some of the major proposals suggested by the study in its agenda for action are:

- The 83rd Constitution Amendment Bill should be passed by Parliament at the earliest to make education free and compulsory for all children from 6-14 years. The phased manner of its implementation should be built into the legislation as delineated above. Obligation to be placed simultaneously on the State and parents to ensure that every child is "compulsorily" educated.
- The costs of the necessary resources and infrastructure for the total enrolment and retention of all current six-year-olds and imparting of quality education to them should be calculated realistically and made available mandatorily. This amount should be increased each year to accommodate one additional agenda.
- Incentives/scholarships for preventing children from dropping out to be provided by the State to all children in need, based on a stringent assessment of assets and incomes of families, on condition that the children complete the minimum years of compulsory schooling.
- Incentives can be in the form of free uniforms, books, stationery and transport, or free residential school, etc., for all children in need. Instead of all other incentives, paying of a lump-sum amount of about Rs 10,000 to the genuinely needy child on completion of eight years of compulsory schooling could also be considered.

165. Efforts and initiatives of many States for the elimination of child labour have culminated into action plans. At a time when human resource development is gaining centre-stage as a pre-condition of human development, child labour cannot be a peripheral issue. The magnitude of child labour being enormous in India, the stakes are also high. It is being realised that child labour elimination needs a multi-sectoral and multi-dimensional approach and the emerging action plans are a statement of this approach.

166. For example, the Vision 2020 document of Andhra Pradesh clearly outlines, "A major element of the strategy to achieve Vision 2020 will be to work towards removing all the environmental and structural constraints that inhibit the fullest development of the children

of Andhra Pradesh.” Towards this end, an Action Plan for the Elimination of Child Labour has been developed. Among the major proposals in the Action Plan are:

- The Department of Women Development and Child Welfare in coordination with other sectors will prioritise the withdrawal of children in hazardous employment focusing on both preventive aspect as well as rehabilitation.
- Strengthen and make available ‘bridge courses’ for working children, especially in hazardous employment. The National Child Labour Project will focus on mainstreaming children on withdrawal from work, and qualitative improvements will be taken up with the assistance of UNICEF and other organisations active in this aspect.
- Provision of self-employment to families of working children through the Department of *Panchayati Raj* and Rural Development. Priority will be given to parents of working children in CMEY, DWCRA, and other development schemes.
- The Government will ensure that the cross-sectoral approach to the child labour issue is incorporated in the training strategy.
- An intensive refresher training for all sectoral department managers, from education, social welfare, labour and women and child development will be made mandatory annually.
- Mapping of schools in child labour intensive areas will be undertaken to locate and assess availability of schools within 1 km of every village/or habitation. Self-help groups and local bodies to initiate action.
- *Gram panchayats* (village local bodies) to liaise with village committees, *panchayat* members, village elders, teachers, parents and NGOs to monitor the education system and make it accountable to the local community with emphasis on 100 per cent enrolment/retention and school amenities.
- Set up a Child Labour Eradication Committee at the *Zilla/Gram Panchayat* level involving elected representatives, officials, NGOs, trade unions, employers and farmers’ associations, etc., and review the state of child labour/enrolment percentage in schools, as a standing agenda of *Gram Panchayat/Taluk Panchayat/Zilla Panchayat*.
- Identify families below the poverty line and provide them with incentives such as land, IRDP loans, jobs at need-based minimum wages through Employment Guarantee Schemes, easy credit, etc., on the condition that they send their children to schools.
- Sustained media advocacy will be taken up in collaboration with NGOs, women’s groups and others to create public awareness on the issue of child labour. Doordarshan, private television channels, radio will be extensively used for propagating the elimination of child labour. *Kala jathas* and other cultural activities will be used to create public opinion against employment of children. Voluntary organisations, trade unions and others will be asked to participate and share successful experiences with the government.²³

Endnotes

- 1 Children, Work and Education I—General Parameters, G.K Lieten, *Economic and Political Weekly*, June 10, 2000.
- 2 Ninth Five-Year Plan, 1997-2002, Volume-II (Thematic Issues and Sectoral Programmes), Planning Commission, GOI, page 347.
- 3 Annual Report, 1999-2000, Ministry of Labour, GOI, page 169.
- 4 www.indianembassy.org, Child Labour and India, Embassy of India, Washington DC, page 1.
- 5 Annual Report, 1999-2000, Ministry of Labour, GOI, page 161.
- 6 Children, Work and Education II—General Parameters, G.K Lieten, *Economic and Political Weekly*, June 17, 2000.
- 7 *Children, Law and Justice: A South Asian Perspective*, Savitri Goonesekere, SAGE, 1998, pp. 214-215.
- 8 Annual Report, 1999-2000, Ministry of Labour, GOI, page 156.
- 9 www.indianembassy.org, Child Labour and India, Embassy of India, Washington DC, page 4.
- 10 *Child Labour-A Precarious Future*, S P Gomango, 2001, Authorspress, pp. 264-267.
- 11 Annual Report, 1999-2000, Ministry of Labour, GOI, page 157.
- 12 <http://www.globalmarch.org/worstformsreport/implementation/steps.html>
- 13 *ibid.*
- 14 *ibid.*
- 15 *ibid.*
- 16 Annual Report, 1999-2000, Ministry of Labour, GOI, page 164.
- 17 *ibid.*, pp. 167-168.
- 18 *ibid.*, page 162.
- 19 *ibid.*, page 167.
- 20 *ibid.*, pp. 164-165.
- 21 *ibid.*, page 164.
- 22 *Child Labour in Karnataka*, Kathyayini Chamaraj, Produced with Support from UNICEF & Department of Labour, Government of Karnataka, December 1999.
- 23 Action Plan for Elimination of Child Labour, Government of Andhra Pradesh, 1999.

Drug Abuse

Article 33

Introduction

167. The problem of drug abuse has emerged as a major concern having far reaching socio-medical and economic consequences. The process of industrialisation and the consequent urban drift, stresses and strains of modern life have rendered individuals more vulnerable to substance abuse than ever before. Addiction to drugs does not merely affect the physical and mental health of the individuals involved, it also disrupts their families and social relationships. An addict is not only a loss to himself or herself but also to society as a productive individual and to the nation as an asset for development. This trend is ominous for a developing country like India, which is still struggling to overcome its basic problems of poverty, hunger and disease.

168. The use of dependence-producing substances, in some form or the other, is not new. In India too, the abuse of alcohol, opium and cannabis has been known for long, but the consumption of drugs like heroin, *hashish*, LSD, etc., is altogether a new trend. Within the last decade or so, the extent of usage of such drugs in various segments of society has acquired alarming dimensions.

169. Today, India is no more merely a transit country for illicit trafficking of drugs from the “golden triangle” or “golden crescent”, but is also becoming a significant consumer in the global scenario. As long as addiction was a problem of certain individuals or socially alienated groups and was well contained by informal social control mechanisms, it did not evoke much attention. Now, with its spread amongst all socio-cultural and economic strata and an increasing perception of its disruptive influence on the individual, the family and society at large, drug abuse has emerged as a vital issue for planners.

170. Experience has shown that the demand for drugs can be curbed effectively only in a climate of abstinence among the people, that can be created by propagating a lifestyle that rejects the use of dependence producing substances. By and large, abstinence is still deeply rooted in our culture and is strongly supported by the family, community and religion.¹

Current situation

171. The estimated or projected number of drug abusers in India is 3 million and that of drug dependants is 0.5-0.6 million.² Drug addiction is especially severe in the North-eastern states of the country.³

172. The Ministry of Social Justice and Empowerment, GOI, has embarked upon the first ever initiative in collaboration with the UNDCP for carrying out a national survey to assess the extent, trend and pattern of alcohol and drug abuse in the country. This survey provide authentic information on the actual dimensions of the problem and facilitate appropriate need-based interventions to address the problem of alcoholism and drug abuse in the country.⁴

Box 8.27: Kinds of drugs used by children

According to the NGOs working in the area, the most commonly used intoxicants used by children in Gujarat are betel, thinner (acetone), petrol, solvent oil, opium, snuff, *gutkha*, *hukka*, *beedi*, and locally brewed liquor. Children have also been known to be involved in the illicit trafficking of liquor. Gujarat is a dry state and prohibition is in force throughout the state.

Source: Gujarat State Report, Government of Gujarat

International instruments

173. India is a signatory to all the major global conventions related to drug abuse. At the regional level, it has signed the South Asian Association for Regional Cooperation (SAARC) Convention on Narcotic Drugs and Psychotropic Substances, 1990. Besides, India has also signed many bilateral agreements with various countries on combating drug trafficking. These conventions and agreements, however, remain ineffective, because most neighbouring countries, although signatories to the bilateral agreements, are yet to translate them into national legislation.

174. Through various governmental efforts, India is trying to make these countries realise the threats posed by drug trafficking to their societies and polity. The Indian Government has also initiated efforts to sign a convention at the regional level to check the smuggling of chemicals known as “precursors” that are essential to produce heroin out of opium.

175. The Indian Government adopted a UN-sponsored Single Convention in 1960 on narcotic drugs, which instantly criminalised use of intoxicants in any form, save the consumption of alcohol.

Legislative measures

176. In India, the Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985, provides the current framework for drug abuse control in the country. Essentially, the Act deals with supply reduction activities. However, certain provisions for health care of drug-dependent individuals exist. It authorises the GOI to take necessary measures for identification, treatment, after care and rehabilitation of addicts and preventive education. It also gives the Central Government the power to establish, maintain and regulate treatment centres. The Act permits

Box 8.28: 125,170 drug addicts in India, says UN report

Of the four million registered drug addicts in South Asia, 125,170 are in India, according to latest figures quoted by a United Nations report. Among the drug-takers in India, 42 per cent use alcohol, 20 per cent opium, 13 per cent heroin, 6.2 per cent cannabis and 18 per cent other drugs, according to the ‘Drug demand reduction report on South Asia’ of the United Nations International Drug Control Programme (UNDCP).

Stating that there had been reports of increase in abuse of prescription medicines like buprenorphine, morphine, pethidine, propoxyphene, nitrazepam and diazepam, the report said adulterated heroin (smack) abuse had also

witnessed an upward trend with such users now estimated to be around 40,000. “Dependence on psychotropic substances is of very recent origin. Most of these substances are medicinal compounds that are controlled, and obtained through the illicit market,” it said. Pointing out that drug users were mostly unmarried, from the lower socio-economic strata and self-employed, it said 33 per cent of them were engaged in anti-social activities.

The report said while traditional use of opium was continuing in Punjab, Rajasthan, Madhya Pradesh, Uttar Pradesh and Gujarat, injectable heroin was more prevalent in the north-eastern states.

Source: United Nations Information Service

supply of 'drugs' to registered addicts, and use of these substances for medical and scientific purposes.

177. The Act provides a light penalty for possession of a small quantity of drugs (defined as per Government notification) for personal consumption. In such a situation, a person may be directed by the court to undergo treatment in recognised treatment centres.

178. With the passing of the NDPS Act, cultivation and consumption of cannabis, which were native to India for centuries, was criminalised and rendered illegal.

179. As a follow up to the Act, the GOI created the Narcotics Control Bureau (NCB) in March 1986 and empowered it to coordinate all activities for administration and enforcement of the Act.

180. Under the NDPS Act, an advisory committee called the Narcotic Drugs and Psychotropic Substances Consultative Committee was constituted in February 1988 to formulate a national policy towards drug control measures. The 20-member committee was broad-based and included members of Parliament, professional experts, social scientists, and secretaries of all concerned Central Government ministries. A National Fund for Control of Drug Abuse was also established. Several other measures followed.

181. Following recommendations made by an expert committee, five centres were established with Central Government assistance. In July 1988, specific programme documents were developed on drug demand reduction as a collaborative activity between UNFDAC (now UNDCP) and GOI.

Programmes and interventions

182. In order to tackle the problem of drug abuse in the country, the Government has adopted a two-pronged strategy of supply control and demand reduction of drugs. While the aspect of control of supply is taken care of by the Narcotics Control Bureau and the police, the Ministry of Social Justice and Empowerment has the responsibility of looking after the educational and rehabilitation aspects of drug addiction. The Ministry is working towards:

- (i) Building awareness and educating people about the ill-effects of drug abuse.
- (ii) Dealing with the addicts through a well-rounded programme of motivation, counselling treatment, follow-up and social reintegration of curbed drug addicts.
- (iii) Imparting drug abuse prevention and rehabilitation training of volunteers.

Approach

183. Drug abuse and alcoholism being a psycho-socio-medical problem, the approach of the Ministry of Social Justice and Empowerment is to provide a whole range of services including:

- awareness generation
- identification, treatment and rehabilitation of addicts through voluntary organisations with a view to reducing the demand for and consumption of alcohol and dependence producing substances.

184. The thrust is being laid on preventive education programmes and reintegration of addicts into the social mainstream of society. The Ministry of Social Justice and Empowerment has revised the 'scheme for Prevention of Alcoholism and Substance (Drugs) Abuse. The scheme has been implemented from April 1, 1999 in the light of the approach and objectives envisaged in the Ninth Five-Year Plan.

Box 8.29: Institutional measures

Two types of efforts—deaddiction and counselling, are being made in Rajasthan. Presently 13 centres have been functioning in the State. Among them, seven are drug-deaddiction centres and six drug counselling centres; the former take curative measures, the latter preventive measures. Most of these centres are in the western part of Rajasthan—7 in Jodhpur and 2 in Bikaner districts where use of opium is common. There are three centres in

Jaipur district and one in Bharatpur district. Through these centres are not exclusively for children, yet a large number of adolescents benefit from them. Each centre has a capacity for accommodating 15-30 beds. These institutions are being run by NGOs with government aid under the scheme for Prohibition and Drug Abuse Prevention by the GOI. NGOs receive 90 per cent of grant for this purpose.

Source: Rajasthan State Report on CRC, Government of Rajasthan

185. While the Government provides financial support to the organisations for institutionalised activities, the stress is now being laid on mobilisation of community participation through setting up of treatment-cum-rehabilitation and drug awareness, counselling and assistance Centres for awareness building, screening of addicts, counselling to addicts and their families, referral of hard-core addicts and follow-up assistance to former addicts. The programme has now expanded to cover most States and Union Territories through setting-up of:

Drug awareness, counselling and assistance centres

186. These centres provide community-based services for awareness building, screening of addicts, counselling to addicts and their families, referral of hard-core addicts to treatment-cum-rehabilitation centres and follow-up assistance to former addicts.

Treatment-cum-rehabilitation centres

187. These centres provide community-based services for awareness, identification, motivation, counselling, deaddiction, after-care and reintegration of addicts into the social mainstream.

Deaddiction camps

188. To give wider coverage, deaddiction camps have been provided in urban and rural areas where treatment-cum-rehabilitation centres have not yet been established but there is a need for the service. These camps are organised only by organisations which are running treatment-cum-rehabilitation centres.

Workplace prevention programme

189. In order to encourage a workplace prevention programme, financial assistance of up to 25 per cent of the expenditure for the setting up a 15-bedded or 30-bedded treatment-cum-rehabilitation centre is provided to industrial units/enterprises having at least 500 workers on their rolls.

Awareness generation programmes

190. There is still much ignorance in society about the ill-effects of drug abuse on the individual, the family and the community. The Government therefore took a deliberate decision to set up awareness generation programmes, including seminars, conferences, workshops, corner meetings, essay/debate competitions, publicity through mass media, etc. Several radio and

TV programmes have been launched and films produced to create awareness about the role of parents, teachers and opinion leaders in the prevention of alcohol and drug abuse. Voluntary organisations are being financially assisted to undertake educational work amongst the community and target groups.

191. The total number of centres was 432 in December 1999, of which 176 were drug awareness, counselling and assistance centres and 256 were treatment-cum-rehabilitation centres. (See Table 8.9).

International co-operation

192. In order to provide for better training and qualified personnel amongst the service providers, the Government in, collaboration with UNDCP and ILO, has taken up a number of projects including the Community Drug Rehabilitation and (Workplace) Prevention Programme. Under this programme, 20 NGOs have been identified in different parts of the country with the objective of training at least 4000 service providers in rehabilitation of drugs.

193. The Government has also launched two major projects—Community-wide Drug Demand Reduction in India and Community-wide Drug Demand Reduction in the North-East States of India, to be implemented in collaboration with UNDCP and ILO during the year 1999-2000.

194. The projects are expected to result in the biggest ever GOI-UNDCP/ILO collaborated initiative for demand reduction in terms of allocation of external resources and coverage and developing the capacity of the programmes and the institutions involved to adequately address the increasing incidence of alcoholism/drug addiction in the country.

195. The projects have been designed specially keeping in mind the needs of the north-eastern States of the country, the border regions, the high-risk groups and the disadvantaged sections of the society.⁴

Monitoring mechanisms

196. Monitoring forms an integral part of the scheme for Prevention of Alcoholism and Substance (Drugs) Abuse. The programme is evaluated on the basis of information and statistics pertaining to addicts coming for counselling/treatment, collected in prescribed proforma on a quarterly and annual basis from the treatment-cum-rehabilitation centres and counselling centres funded by the Government. The feedback enables the Ministry of Social Justice and Empowerment to evaluate the performance of voluntary agencies. The State Governments/UT administrations conduct yearly inspection of the agencies and send their report to the Ministry. Further instalments of the grant are released only on the basis of the inspection report and recommendation of the State Governments or designated agencies. Further, to evolve a more effective monitoring/evaluation mechanism under the scheme, services of retired defence personnel are also being utilised for inspection/evaluation of NGOs.⁵

Thrust areas for the future

197. Special attention is being given to tackle the drug abuse problem amongst the socially and economically vulnerable groups such as street children. A project on reducing risk behaviours and HIV/AIDS/STD and drug abuse among street children has been undertaken by the Ministry, UNDCP, UNICEF, WHO, NACO and ODA. City-level plans have been prepared for the cities of Mumbai, Delhi, Hyderabad, and Calcutta and a National Action Plan has been formulated.

Table 8.9: Number of NGOs and counselling/treatment-cum-rehabilitation centres

State	Number of NGOs	Counselling centres	Deaddiction centres
Andhra Pradesh	14	2	12
Assam	6	2	4
Bihar	25	16	11
Goa	3	4	1
Gujarat	7	6	7
Haryana	12	9	11
Jammu and Kashmir	2	-	-
Karnataka	11	3	10
Kerala	21	14	15
Madhya Pradesh	10	2	9
Maharashtra	39	9	37
Manipur	20	11	17
Meghalaya	2	1	2
Mizoram	8	4	6
Nagaland	7	2	6
Orissa	31	8	28
Punjab	12	4	13
Rajasthan	8	4	7
Sikkim	1	1	-
Tamil Nadu	28	25	11
Tripura	2	1	1
Uttar Pradesh	52	30	26
West Bengal	18	10	11
Chandigarh	2	1	1
Delhi	7	6	7
Pondicherry	2	1	1
Total	350	176	256

Source: Annual Report, 1999-2000, Ministry of Social Justice and Empowerment, GOI

198. In consonance with the directives of the Prime Minister of India, a special focus has been given to the Drug Abuse Prevention Programme in the North-East, where a three-pronged strategy has been adopted:

- (i) to train and enhance the capabilities of NGOs in the area;
- (ii) to extend the outreach of drug abuse prevention scheme of the Ministry by opening new centres; and
- (iii) to develop awareness and education programmes for the North-East.

199. Five training programmes for trainers, 15 training courses for service providers in the

North-East and training of service providers in reputed centres are also being implemented. A committee has been constituted by the Ministry to visit the north-eastern states to review the working of existing NGOs, exploring possibilities for opening new centres and identifying service providers for the purpose of training.⁶

Endnotes

- ¹ Annual Report, 1999-2000, Ministry of Social Justice and Empowerment, GOI, pp. 69-70.
- ² South Asia Drugs Demand Reduction Report, UNDCP Regional Office for South Asia, New Delhi, India, page 260.
- ³ Annual Report, 1999-2000, Ministry of Social Justice and Empowerment, GOI, page 74.
- ⁴ *ibid.*
- ⁵ Annual Report, 1999-2000, Ministry of Social Justice and Empowerment, GOI, page 73.
- ⁶ *ibid.*

8C-3

Sexual Exploitation and Abuse

Article 34, and

8C-4

Sale, Trafficking and Abduction

Article 35

Constitutional provisions

200. Article 23 of Part III of the Indian Constitution relates to Fundamental Rights and, under the caption “Right Against Exploitation”, prohibits the trafficking of human beings and provides that any contravention of this right shall be an offence punishable by law. The Directive Principles of State Policy under Part IV of the Constitution in Article 39(e) and (f) declare that state policies should be directed towards securing that the tender age of children is not abused and that childhood and youth are protected against exploitation and material abandonment.¹

Legislation

201. Building on the constitutional principles, the suppression of Immoral Traffic in Women and Girls Act was enacted in 1956. The Act was amended in 1986 and retitled as the Immoral Traffic (Prevention) Act (ITPA). The amended Act continues to prohibit prostitution in its commercialised form without making prostitution an offence *per se*. Section 26 (b) of the Act states “Prostitution means the sexual exploitation or the abuse of a person for commercial purposes and the expression ‘prostitutes’ shall be construed accordingly.” The Act prescribes

stringent action against those inducting children (below 16 years) and minors (16 to 18 years) for the purpose of prostitution. If the offence is committed against a child, the punishment is rigorous imprisonment for a term not less than 7 years, which may extend to life. The Act provides for the setting up of protective homes for adult prostitutes rescued from brothels.²

202. The Act does not directly deal with child sexual abuse but the definition of a neglected juvenile includes a juvenile who lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or who is being or is likely to be abused or exploited for immoral or illegal purposes. Such neglected children are produced before a Juvenile Welfare Board who may, after an inquiry, send the child to a Juvenile Home for care, protection and rehabilitation.

203. Under the Juvenile Justice (Care and Protection) Act, 2000 a prostitute's child is automatically a neglected child. The magistrate has the power to segregate the prostitute from her child and place the child in a corrective institution. Both boys and girls below the age of 18 are considered children.

204. The Indian Penal Code (IPC) deals with sexual abuse of children in the form of rape (Section 375), unnatural practices (Section 377), molestation and outraging the modesty. Exploitation is addressed in the form of obscenity, indecent representation, selling and procuring persons for the purpose of prostitution and trafficking (Section 372 and 373).

205. The common forms of sexual abuse of children do not come under the definition of rape. Section 375 of the Indian Penal Code defines rape. Section 376 of the Indian Penal Code provides for the punishment of rape which shall not be less than seven years but which may be for a term that may extend to ten years, unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment for a term which may extend to two years or with fine or both³.

Definition

206. There have been a number of definitions of the phrase 'child sexual abuse' (CSA). CSA has been defined as any kind of physical or mental violation of a child with sexual intent, usually by a person who is in possession of trust or power *vis-à-vis* the child. CSA is also defined as any sexual behaviour directed at a person under 16, without informed consent. There is no uniformly accepted definition of child abuse.

207. What emerges from these definitions is that CSA covers the sexual mistreatment of both children and young people. The perpetrator can be anyone who exploits the child's vulnerability to gain sexual gratification. It can also include activities which do not involve direct touching. Sexual exploitation takes different forms such as:

- Child labourers and young domestic workers are frequently used for the sexual gratification of employers and other adults.
- Children are sexually abused within the family. Rape within a family has its own alarming numbers.
- With the advent of HIV/AIDS, there is an increased demand for younger child prostitutes.
- Children are used as attractions in sex tourism. Children are victims of a globally organised sex trade. In some countries, this helps in bringing much-needed foreign exchange.

- Children are abused within the context of cultural or traditional practices such as child marriage.
- Children in institutions are vulnerable to sexual abuse from those who are supposed to take care of them.
- Children in situations of conflicts, displaced, migrant and refugee children are particularly vulnerable to all forms of sexual exploitation.⁴

208. Trafficking has been defined by the UN General Assembly as the illicit and clandestine movement of persons across national and international borders, illegally from developing countries, with the goal of forcing women and girl children into economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates.⁵

International Conventions

209. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) enjoins State Parties to take all appropriate measures, including legalisation, to suppress all forms of traffic of women.⁶

210. India is in the process of ratifying the International Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Current scenario

211. It is difficult to estimate the number of girl children living in the brothels of major cities because the adults who control these children are aware of the significance of their crime and thus keep the children hidden. The only reliable numbers available concern prostitution in the six major cities studied by the GOI in 1994 (Calcutta, Mumbai, Delhi, Chennai, Bangalore and Hyderabad): 30 per cent of prostitutes in these cities were under the age of 20 and 39.4 per cent entered the profession before they turned 18 (GOI, 1994). Evidence provided by social workers in red-light districts supports these figures.

212. The question that must be asked concerning the stable child-prostitute population, then, is how these girls arrive in brothels at such a young age. The demographic breakdowns of the prostitute populations, combined with the testimonies of social workers, reveal that the bulk of prostitutes within a city were born in the rural areas surrounding the city and were brought in by traffickers, although a substantial percentage are trafficked over longer distances. Only 4 per cent of the prostitutes interviewed in a study done in Calcutta in 1990 were born within Calcutta itself, for example, while 73.8 per cent were born in West Bengal.

213. Two-thirds of the original families of the prostitute population studied by the GOI (1994) lived below the poverty line; 36 per cent were from the Scheduled Castes and Scheduled Tribes and 24 per cent were from the backward classes. Economic stress, combined with the discrimination suffered by an Indian girl within her family, pushes her into prostitution. Families sometimes force a girl to become a prostitute to earn extra money. Even in the absence of financial stress, oppression of girls within the family could cause their entry into prostitution. Eight per cent of child prostitutes found themselves in red-light areas after fleeing incest, according to the Indian Health Organisation.

214. Such conditions make young girls easy targets for traffickers and/or family members who want to make a profit. Traffickers make it their business to canvass regions that are particularly

impoverished. Some traffickers, however, simply abduct their victims. Family members are also frequently responsible for pushing a girl into prostitution. Of a sample of 1000 women and girls in prostitution, 353 of them (33 per cent) said family members forced them to become prostitutes. Family members might sell the girl to a trafficker, or they might simply undertake the operation themselves. The girl's desire for a better life and her belief in the quasi-mythological glamour of the cities contribute to her decision to accompany the older woman, but the girl is invariably kept ignorant about what her life in the city will actually become.

215. The average prostitute has frequent abortions. Prostitutes, barred forever from mainstream family life, create their own families by refusing to abort at least one of their pregnancies and then raising the child in the red-light districts. That they raise their children as lovingly as possible is proved by the 32 per cent rise in the literacy rate between the generation of prostitutes studied by the GOI (1994) and that of their children. Yet the daughters of prostitutes overwhelmingly become prostitutes.

216. The brothel environment explains much of this phenomenon. Consciously or not, these girls often come to view their mother's subjection as a glimpse of their own inevitable future. This feeling of hopelessness is intensified by the sexual abuse at the hands of brothel owners and pimps that most daughters of prostitutes suffer at least once in their childhood. Ostracism suffered in the primary school, where prostitutes' children have no answer when asked the name of the father, reinforces their feeling that they will never be accepted in the mainstream society.⁷

217. According to the study done by the Joint women's programme, the problem of trafficking cannot be viewed in isolation. It stems from gender inequalities, low literacy and poverty, cultural practices and traditions. It is also found to be rampant in poor, drought-affected and backward districts. Some major causes of child prostitution are:

- Globalisation and liberalisation policies of the government, which have served to widen the gap between the rich and the poor.
- Rising consumerism and aspirations of families to a better standard of living has become an important factor in pushing girls out of villages.
- Increased migration from rural to urban areas owing to failure of development projects.
- Families are displaced due to industrialisation, construction of dams and environmental degradation.
- AIDS scare drives customers to children.
- The growing sex tourism industry has added another destination to the trafficker's list.
- Male attitudes and perceptions of women's low and unequal socio-economic status are also responsible.⁸

Plan of Action

218. The Supreme Court of India passed an important judgement on the subject of commercial sexual exploitation of children and women in the case of Gaurav Jain vs Union of India on 9 July 1997 and directed, *inter alia*, the constitution of a committee to make an in-depth study of the problems of prostitution, child prostitutes and children of prostitutes, and to evolve suitable schemes for their rescue and rehabilitation.

219. In pursuance of the directions of the Supreme Court, the committee on prostitution, child prostitutes and children of prostitutes, headed by the Secretary, Department of Women and Child Development, made an in-depth study of the commercial sexual exploitation and trafficking of women and children, by widely touring across the country and meeting law

enforcement officers, officers in charge of the boards of the Department of Women and Child Development, Social Defence, Scheduled Castes/Scheduled Tribes Welfare, and NGOs. Reports of CSWB, NCW and of the Central Advisory Committee on eradication of child prostitution were also studied. On the basis of this exercise, a Plan of Action to combat trafficking and commercial sexual exploitation of women and children has been drawn up.⁹

220. This Plan of Action guides the actions of all ministries/departments of Central Governments, State Governments, NGOs, the public and private sector and other sections of the civil society. The Plan of Action aims to look into (i) prevention, (ii) trafficking, (iii) awareness generation, (iv) health care, (v) education and child-care, (vi) housing, shelter and civic amenities, (vii) economic empowerment, (viii) legal reform and law enforcement, (ix) rescue and rehabilitation and (x) institutional machinery.¹⁰

Government initiatives

221. Protective Homes have been established by Government under Section 21 of the ITPA exclusively for girls/women detained under ITPA and also for those who seek protection from being forced into prostitution. The number of such protective homes is estimated to be about 80. These homes provide custodial care and protection in addition to providing education and vocational training and arranging marriage for rehabilitation of the inmates.

222. The Central Social Welfare Board provides financial assistance to NGOs to run Development and Care Centres for the children of victims of prostitution. These centres are set up in red light areas and provide facilities of crèche and day-care centres, educational support programme, supplementary nutrition, health care, counselling, excursions, etc, and are manned by trained social workers and trained teachers. The Ministry of Social Justice & Empowerment also provides financial assistance to NGOs for rehabilitation of children of prostitutes.

223. In some red light areas, projects have been sanctioned by the GOI for starting centres under the ICDS. However, the response from the NGOs in starting these sanctioned centres is not encouraging. A number of voluntary agencies are also independently involved in the care and rehabilitation of women victims, including child victims and advocacy for their problem. Projects for rehabilitation of *devdasis*, *jogins*, women victims, are also taken up under various schemes for training and employment of women like Support for Training and Employment Programme (STEP), setting up of Training cum Production Unit (NORAD) and by *Shramik Vidyapeeths* assisted by the Central Government.

224. A 40 percent reservation for women has been provided under the integrated rural Development Programme. The *Rashtriya Mahila Kosh* (National Women's Saving) has been set up to provide micro-credit to poor women in the informal sector with low transition cost through the mediation of NGOs.

Educational and social initiatives

225. In the last few years, the Government has initiated national-level activities like the Total Literacy Campaign (TLC), Integrated Child Development Services (ICDS), Training Rural Youth for Self-Employment (TRYSEM), *Jawahar Rozgar Yojana* (Jawahar Employment Scheme), etc., to address illiteracy, ill-health, poverty and other retarded areas of development.

226. All over India, State Governments are making considerable efforts to stop the induction of

girls into commercial sex-trade by strengthening the primary school system. Further, through the implementation of ICDS, parents are motivated to send their girl children to school.

227. The Governments of Andhra Pradesh, Madhya Pradesh and Orissa have felt that the problem of child prostitution is linked to that of the general problem of prostitution in society. A number of steps have been initiated for the development of girl children in the recent past. In these states, various programmes of economic development in several trades have been undertaken by the State Government. The children of prostitutes are also given preference in admission to schools and vocational training institutes. In addition, income-generating assets like milch cattle, and training in micro-business enterprises, rope and basket making, etc., are also being provided to them.

228. In Madhya Pradesh, the State Government has initiated the *Jawali Yojana* to tackle the issue of girl child prostitution by social reform in the Bedia community. The scheme would be implemented in two stages. The first stage would comprise enrolment of six-year-old girls in primary schools. The second stage would be to admit the girls in middle schools or provide vocational education or training so that they do not fall prey to the flesh trade.

229. Thrift and credit groups and self-help groups are popular in Maharashtra, Tamil Nadu, Karnataka and Andhra Pradesh. Through the *Rastriya Mahila Kosh* (RMK), the Government is providing funds to NGOs, which in turn fund self-help groups of women.

230. In Mumbai, a special unit called the Juvenile Aid Police Unit (JAPU) has been formed to deal with cases of juveniles who are pre-delinquent, socially handicapped and victimised. The social security scheme of the police came into operation in 1976 in the wake of a series of complaints of young girls being lured away from their homes by traffickers and sold to brothels. The object of this scheme is to assist and guide young boys and girls who come in search of employment to Mumbai. The police officials maintain a special vigil in and around State transport bus stands and railway stations. Special attention is paid to girls. It is the endeavour of the police to ensure that these minors who have come to Mumbai without the knowledge of their parents, do not fall into wrong hands. The girls are sent to various reception centres for temporary shelter, and after due enquiry they are restored back to their homes, failing which they are sent to different institutions for rehabilitation.¹¹

231. The Department of Women and Child Development is implementing various schemes for the welfare of “*devdasis*”—girls who are “married off” to the local deity and who become prostitutes. In 1990, the Government of Maharashtra appointed a study group under the chairmanship of Prakash Awade for their rehabilitation. On the recommendation of the study group, a number of the schemes are being implemented in Maharashtra.¹²

232. A monthly pension of Rs 300/- is sanctioned to *devdasis* upon the following terms and conditions:

- The *devdasi* must be over 40 and her annual income must be less than Rs 15,000/-.
- The pension is admissible only to women *devdasis* and not to others like *aradhi*, *jogate* etc.
- The scheme has been implemented with effect from July 1, 1997.¹³

233. Financial assistance of Rs 10000 is given for the marriage of unmarried *devdasis* or for the marriage of the daughter of a *devdasi*. An amount of Rs 2000/- is sanctioned for the marriage expenses and an amount of Rs 8000/- is deposited in the joint bank account of the newly married couple.¹⁴

234. Compelled to wander from one village to another to earn a living, without any support

from family or relatives, most *devdasis* turn to prostitution. As a result, their daughters end up as *devdasis* too. To break this cycle, rehabilitative hostels, which provide vocational training and education, have been built as Gadahinggalaj, district Kolhapur, Maharashtra and at Jat, district Sangli, Maharashtra. Each hostel houses 75 boys or girls.¹⁵

235. The *devdasi* system is a kind of superstition. It is necessary to work continuously to eradicate such superstitions from society, it is not enough to awaken the minds of the *devdasis* alone. Hence, an assistance of Rs 10000/- per year is given to registered NGOs who work for eradicating the *devdasi* system from society.

236. Seed capital up to Rs 35,000 is sanctioned to *devdasis* to start small businesses concerned with agriculture, transport, rural development, cottage industries, small-scale industries, etc. A loan of up to Rs 35,000 is sanctioned by nationalised banks. While getting the loan from the bank, 25 per cent of the seed capital is deposited in the bank by the State Government and the bank pays the consolidated amount to the *devdasis*. This 25 per cent is recovered by the State Government from the *devdasis* at an interest of Rs 4 per annum and the loan sanctioned by the bank is recovered from the *devdasis* with interest at the rate prescribed by the bank.¹⁶

237. **Scheme of Financial Assistance to Destitute Widows for Re-Marriage and Devdasi's Marriage:** Financial Assistance of Rs 10,000/- is being given for the marriage of destitute widows. The destitute widow should be in the age group of 18 and 35 years and she must be domiciled in Karnataka for more than 5 years. The Annual income should be as per the Integrated Rural Development Programme norms. Rs 5,000/- is given to the couple to meet the expenses of the marriage and the remaining amount of Rs.5000/- should be kept in the form of National Saving Certificate in the name of widow. Financial Assistance of Rs.10,000 is being given to a couple where the bride is a Devdasi. The Devdasi women should be in the age group of 18 to 35 years. The Devdasi women/girl must be domiciled in Karnataka for more

Box 8.30: Convention of Rehabilitated *Devdasi* Women

The National Commission of Women and the Karnataka State Commission of Women convened a convention of the rehabilitated *devdasi* women on 11th and 12th September 1997 with the co-operation of Karnataka SC/ST Development Corporation, Karnataka State Women Development Corporation and Vimochans, an NGO in Belgaum, Karnataka. About 500 rehabilitated *devdasi* women participated in the convention. The representatives of the rehabilitated *devdasi* women presented their experience and the problems faced by them during the convention.

The following are some of the resolutions were made during the convention:

1. Co-ordination committee of all agencies involved in *devdasi* rehabilitated work must be formed at the State and District level.
2. There must be representations of the NGOs working for *devdasi* rehabilitation in the temple trust of *Yellamma Devi* (Name of the Goddess). The trust should in future spend money towards awareness programme for eradication of *devdasi* system.
3. There should be special allotment of houses for homeless rehabilitated *devdasi* women.
4. There should be preference given to children of rehabilitated *devdasi* women in allotment of seats in free hostels and for higher education.
5. All rehabilitated *devdasi* women should be given old age pension.
6. Reservations in Government and Semi-Government departments for educated *devdasi* and children of *devdasi*.
7. Health identity cards for *devdasi* for free medical checkup and drugs.

than 2 years. The suitor should be above 21 years of age at the time of submitting application. He should have a permanent source of income not less than Rs.500/- per month.

238. Special Cell for the Eradication of Social Evils: A Special Cell was created in the Directorate of Women and Child Development with two Mini Cells attached to the District Offices of the Assistant Director of Women and Child Development at Belgaum and Raichur in order to deal with the eradication of various social evils such as Dowry system, Child Marriage, Devdasi System, Drug Addiction and atrocities on women. The functions of the cell are:

- (1) to create public awareness so as to highlight the harmful effects of these systems
- (2) to launch anti-dowry campaigns through education and publicity with the involvement of voluntary organisations
- (3) to take action on the representations received from the victims of dowry disputes and other atrocities on women in the State.

239. Publicity campaigns are held in the districts to create awareness among public on the amended Dowry Prohibition Act, Devdasi Act (Prohibition of Dedication) and other social evils prevalent in society. Workshops and Seminars are also conducted to create awareness about the benefits available under various schemes of the Department.¹⁷

Rehabilitation and reintegration

240. Under Section 21 of the ITPA, 1986 the Government has established protective homes'. These homes provide custodial care and protection in addition to education and vocational training and arranging marriage for rehabilitation of the inmates.

241. The Government also has an extensive network of short stay homes and juvenile homes, set up under the Juvenile Justice (Care and Protection Children) Act, 2000, for protection and rehabilitation of victims. The services of qualified doctors and psychiatrists are available in the short stay homes'. The Central Social Welfare Board provides financial assistance to NGOs to run child development and care centres for the children of sex workers. These centres, set up in red-light areas, provide crèche and day-care facilities, supplementary nutrition, health care, counselling and educational support programmes and are manned by trained social workers and trained teachers.¹⁸

Relevant bilateral, regional and multilateral agreements

242. The Beijing Platform for Action (PFA) succeeded in bringing to the forefront of the international human rights agenda, the issue of trafficking of girls and women into prostitution. The PFA resulted in an intensification of international discourse at the ideological level. At the regional level, further empowered by the PFA, women's organisations in South Asia lobbied for an inter-country instrument that would provide a framework for preventing and controlling trafficking. The Rawalpindi Resolution, 1996, urges member states to combat inter- and intra-country trafficking in children; abolishing hazardous child labour by the year 2000 and to end all forms of child labour by 2010.¹⁹

243. At the SAARC Summit in Male, 1997, member states (including India) agreed to work together to eliminate trafficking, and towards this end the creation of a regional convention on trafficking was initiated. The Convention on Preventing and Combating Trafficking of Women and Children into Prostitution has been drafted and is expected to be ratified at the next SAARC Summit. This convention seeks to take measures to prevent cross-border trafficking

through proper international and governmental coordination, as well as harmonising various laws and legal provisions relating to trafficking and rehabilitation of rescued victims.

244. At UNIFEM's South Asian regional workshop on trafficking in women and children (May 2000), the inter-country South Asia Forum against Human Trafficking (SAFATH) was established to facilitate and support activities of national, regional and local networks and organisations, as well as to facilitate an exchange of information and experience among members.

245. India is a signatory to most of the international human rights instruments that are relevant to the prevention of all forms of sexual abuse and exploitation and to the effective protection of child victims. The Conventions are as follows:

- Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitutes and Others, 1949.
- The International Covenant on Civil and Political Rights (ICCPR).
- The Anti-Slavery Conventions.
- Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979.
- Convention on the Rights of the Child, 1989.
- The Minimum Age Convention, 1973.
- Forced Labour Convention, 1930 (some sections of which India has not yet ratified).
- The Copenhagen Declaration and Plan of Action of the World Summit on Social Development.
- The Beijing Declaration and Platform for Action of the Fourth World Conference on Women, 1995, aims to "eliminate trafficking in women and assist victims of violence due to prostitution and trafficking."
- The World Conference on Human Rights, Vienna, 1993, stresses "... the elimination of all forms of sexual harassment, exploitation and trafficking in women."²⁰
- India is in the process of ratifying the International Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Issues of concern and areas of action

246. While considering strategies to end the intolerable practice of child prostitution, the difficulties of rehabilitating children after they have been freed from the trade must be recognised. One of the factors which makes the rehabilitation of child prostitutes "almost impossible" in the view of many social workers is the likelihood that they will be ostracised by their own communities. Hence, given the victims' culture of intense subordination and limited financial resources, we believe that interventions to address child prostitution should focus on prevention, targeting both the exploiters and the exploited. These include broad policy shifts, improved law enforcement and promotion of awareness and education amongst the community in supply and traffic prone areas. Schemes supporting prevention, enforcement and rehabilitation, to be operated through NGOs' are under finalization in the Department of Women and Child Development.

247. Vigorous investigation and prosecution is necessary to curtail the operations of the traffickers involved in procuring and trafficking in children. Section 13(4) of the ITPA empowers the Central Government to appoint special police officers with nationwide jurisdiction for the investigation of cases related to inter-state trafficking in women and children for the purposes

of prostitution. The Department of Women and Child Development has initiated such a proposal and it is at present under the active consideration by Government.

248. The Supreme Court has already directed the State Governments to vigorously implement the provisions of the ITPA and IPC on the subject of trafficking and prostitution. In vulnerable areas, which are sources of child prostitutes, or where child prostitution is prevalent, the State Government must appoint special officers under Section 13 of the ITPA. Under section 13 (3) of the Act, the special officers should be assisted by an advisory body comprising leading social welfare workers of the area. This will create a mechanism at the field level to take stock of the problem and initiate and sustain appropriate action. Under Section 14 of the ITPA, a Special Officer or subordinate officers empowered by him may arrest a person without a warrant and enforce other provisions of the Act. However, it is felt that the implementation of the provisions of ITPA requires much greater police training and vigilance. Government have taken an initiative under the GOI-UNICEF Plan of Operations to prepare an Advisory Manual for the District and Taluk level judiciary under the auspices of the National Human Rights Commission. A Manual for the sensitisation of the Police machinery responsible for implementation of the ITPA is also under preparation.

249. The Government has almost completed the process of amendment of the ITPA. The objective of the proposed amendments is to enhance penalties and place complete criminal culpability on the traffickers. The amendment also seeks to involve the NGO sector to assist the Police in registration of cases and prosecution of offenders. Emphasis is also being placed on streamlining procedures to ensure a speedy trial. It is expected that the Amendment Bill will be placed before Parliament very shortly.

250. A Regional Protocol of the SAARC countries for the Prevention of Trafficking in Women and Children has been approved in principle by the member states and is expected to be ratified at the next SAARC meeting. This Protocol provides, *inter alia*, for exchange of information, extradition of traffickers, and regional monitoring of cross-border trafficking.

251. Surveys regarding the dimensions of the problem, its sociological and economic causes, and the most effective methods of rehabilitation are being carried out, through the NHRC and DWCD for trafficking within the country, and in collaboration with the Asian Development Bank for inter-country Trafficking.

252. The UN Special Rapporteur on Violence against Women visited the region in October, 2000. She has submitted her report which is receiving the highest consideration for necessary action.

253. The Government believes that fundamental to the sustained elimination of child labour in general, as well as child prostitution in particular, is the implementation of compulsory primary education. A literate informed population, educated to at least the identified minimum levels of learning, is much better able to articulate demands and lobby for social change which would ameliorate the conditions leading to child sale, trafficking and prostitution. Specific action to retain girls in school is especially important for improving their status in society. To this end, we are confident that the Sarva Shiksha Abhiyan will have a very positive ripple effect.

254. Powerful information campaigns bringing the facts to the public would assist in creating a groundswell of popular indignation necessary to promote reform in the police force as well as other sectors. It is encouraging that the media in India has begun to play an active role in

informing the general public about the facts concerning child prostitution and trafficking. Articles on child trafficking and prostitution, which are now appearing regularly in the popular press in India, are doing much to break the silence shrouding this understandably sensitive subject.²¹

Kidnapping

255. IPC contains several provisions which make kidnapping unlawful. These provisions are as follows:

- | | |
|------------------|---|
| 1) Section 361 | Kidnapping from lawful guardian |
| 2) Section 366 | Kidnapping and abduction of any woman/girl for immoral purpose |
| 3) Section 366 A | Procuring of a girl under the age of 16 years |
| 4) Section 366 B | Import of girl under the age of 21 years from a foreign country or from the State of Jammu and Kashmir for immoral purposes |
| 5) Section 372 | Selling, letting for hire or otherwise disposing of any person under the age of 18 years |
| 6) Section 373 | Buying or hiring or otherwise obtaining possession of a minor girl for the purpose of prostitution. ²² |

Endnotes

- ¹ *The Reality of Child Prostitution: Profiting from Girl Child Vulnerability*, Richard Young, Sankar Sen and Helen Chernikoff, UNICEF, page 12.
- ² *ibid.*
- ³ Child Sexual Abuse and the Law, Paper presented at the Regional Workshop on the "Role of Electronic Media in Promoting the Child's Right to Protection from Sexual Exploitation and Abuse of Children" held at Nova, Goa, Panaji on 25-27 November 1999, Asha Bajpai, Faculty (Law), Tata Institute of Social Sciences, Mumbai, pp. 2-3.
- ⁴ *ibid.*, page 1.
- ⁵ *Child Trafficking*, Munira Sen, Madhyam, Bangalore, India, page 2.
- ⁶ Child Sexual Abuse and the Law, Paper presented at the Regional Workshop on the "Role of Electronic Media in Promoting the Child's Right to Protection from Sexual Exploitation and Abuse of Children" held at Nova, Goa, Panaji on 25-27 November 1999, Asha Bajpai, Faculty (Law), Tata Institute of Social Sciences, Mumbai, page 7.
- ⁷ *The Reality of Child Prostitution: Profiting from Girl Child Vulnerability*, Richard Young, Sankar Sen and Helen Chernikoff, UNICEF, pp. 18-10.
- ⁸ *Child Trafficking*, Munira Sen, Madhyam, Bangalore, India, page 3.
- ⁹ Responses to Questions on India's First Report on CEDAW, 22nd Session of CEDAW (New York, 24-31 January 2000), Department of Women and Child Development, Ministry of Human Resource Development, GOI, pp. 11-12.
- ¹⁰ Annual Report, 1999-2000, Department of Women and Child Development, Ministry of Human Resource Development, GOI.
- ¹¹ *ibid.*, page 50.
- ¹² No. CRC 2000/C.R. 259/d.3, Updated Information of the Schemes & Programmes Initiated for the Welfare of Devdasis, Government of Maharashtra, June 28, 2000.
- ¹³ *ibid.*
- ¹⁴ *ibid.*
- ¹⁵ *ibid.*
- ¹⁶ *ibid.*
- ¹⁷ www.kar.nic.in (DWCD/Women's Programme).

- ¹⁸ No. NI/PC/SAP/132/908 dated July 31, 2000, National Institute for Public Cooperation and Child Development, GOI, page 86.
- ¹⁹ Platform for Action: Five Years after—An Assessment, Department of Women and Child Development, Ministry of Human Resource Development, GOI, June 2000, page 96.
- ²⁰ Situational Report on Trafficking of Children for Prostitution, Department of Women and Child Development, Ministry of Human Resource Development, GOI, page 62.
- ²¹ *The Reality of Child Prostitution: Profiting from Girl Child Vulnerability*, Richard Young, Sankar Sen and Helen Chernikoff, UNICEF, pp. 13-16.
- ²² Girl Child Prostitution in India (Policies and Programmes), Dr. K. K. Mukherjee, National Commission for Women, GOI, page 38.

8C-5

Other Forms of Exploitation

Article 36

Child marriages

256. According to decades of research, child marriages contribute to virtually every social problem that keeps India behind in women's rights. The problems include soaring birth rates, high malnutrition, illiteracy infant mortality, and low life expectancy, especially among rural women. Concern focuses on an arc of populous northern states where child marriages are most deeply rooted: Rajasthan, Madhya Pradesh, Uttar Pradesh, Bihar and West Bengal, with a combined population of 420 million, about 40 per cent of all Indians.¹

257. Statutory changes in the Hindu Law, affecting women's rights have been in force for quite a long time. For example, the Child Marriage Restraint Act, 1929, known as the Sharada Act, came into being after a lot of debate throughout the country, because of the existence of a large number of child widows in various parts of the country. It sets 18 as the minimum age for a woman to marry and 21 for a man.

258. In India the role of early marriage in maintaining the high fertility and high growth rate of the population is now well recognised. The mean age of marriage of girls in India was 14.5 years in 1951, 16.1 years in 1961, 17.2 years in 1971 and 18.3 years in 1981. In 1991, it was about 19 years. There is lot of variation in the age of marriage among the States, especially between the northern and southern states, and within states, among castes, communities and across other social strata. The mean age of marriage for men is 23.3 years and 18.3 years for women. However, there are glaring regional imbalances with 21.8 years for women in Kerala and 16.1 years in Rajasthan. In Uttar Pradesh, Madhya Pradesh, Rajasthan and Bihar 50 per cent of the girls are married before the age of 16. Early marriage, frequent pregnancies and deliveries take their toll and 13 per cent of deaths before the woman reaches 25 are due to complications in child-birth.

259. The States in the south, north-west and east have relatively higher mean age of marriage for females, than do the others. So states like Assam, West Bengal, Tamil Nadu, Kerala and

Karnataka have a significantly higher mean age of marriage than the national averages whereas states like Jammu and Kashmir, Punjab, Orissa, Gujarat and Maharashtra have a mean age at marriage close to the national average. States like Madhya Pradesh, Bihar, Rajasthan and Uttar Pradesh have a substantially lower age of marriage.

260. In Rajasthan, a survey of more than 5,000 women conducted by the National Government in 1993 showed that 56 per cent of girls were married before they were 15. Of these, three per cent married before they were five and another 14 per cent before they were 10. Barely 18 per cent were literate, and only three per cent used any form of birth control other than sterilisation. Large families and poor health of children and mothers were among the results. The survey showed that of every 1000 births, 73 children died in infancy, and 103 were under the age of five when they died. Sixty-three per cent of children under four were found to be severely undernourished. Average life expectancy for women was 58 years.²

The tradition of *gauna*

261. Given that girls are married before reaching menarche and are not physically mature enough to consummate the marriage, customarily *gauna* (beginning of effective married life) is performed some time after the girl has reached menarche. It seems that *Gauna* does not function to protect young girls as only five to ten per cent of girls consummate their marriage after the age of 20. It was found that 94.7 per cent of the marriages in Doroli village and 91.7 per cent of the marriages in Kathaputali colony exposed young girls to the risk of teenage pregnancies.

Child marriages in tribal societies

262. Girls in tribal societies were given in marriage generally after puberty. According to the 1971 census at the national level, the age of marriage for tribal women was higher (16.39) than that of rural women in general (15.39). The mean age of marriage of tribal females in Assam, Gujarat, Himachal Pradesh, Kerala, Manipur, Meghalaya, Nagaland, the Andaman and Nicobar Islands and Arunachal Pradesh was more than 18 years, the highest being in Nagaland (21.33). On the other hand, it was less than 15 years in Rajasthan and Uttar Pradesh, the lowest being in Uttar Pradesh (14.50).

263. A few micro-level studies which dealt with the age at marriage of some individual tribes found the following mean age at marriage of females: Ao Naga (16-20), Bhil (16), Khasi (13-18), Koli (12-16), Bodh (19), Gond (18), Munda (18), Oraon (16). Jaunsads (12.2) Dudh Kharias (21.41), and Santhals (17.87). Jaunsaris of Jaunsar-Bawar, Dehradun, are a polyandrous tribe and they follow the custom of child marriage which is still a part of their cultural behaviour. Investigation showed that 33.83 per cent of the Jaunsari females got married before or at eight, 29.70 per cent in the age group of 9-15, 30.33 per cent in the age group of 15-20 and the remaining 5.6 per cent got married above the age of 20. In contrast, the north-eastern states, the age at marriage was found to be relatively high.³

Current initiatives

264. The Child Marriage Restraint Act, 1929, is a personal law falling in the Concurrent List of the Constitution, wherein both the Centre and the States exercise powers jointly or singly. The Centre has solicited the support of the States and Union Territories to its proposal to

Box 8.31: Positive interventions in Rajgarh district

The last three years have witnessed an annual campaign by the district administration around the time of the *Akshaya Tritiya*. The 1999 campaign was with a difference. These, who had recently been freed from the bondage of illiteracy met in an unusual gathering.

These *samaj sammelans* (community seminars) and *mahila sammelans* (women seminars) made a lot of difference to the routine campaign. Their appeal made a better impact on the masses in terms of delaying the marriages.

Following this, it was decided to develop a database on the child marriage scenario in a time frame and social background. A set of questionnaires was printed and information sought from all the households in all villages of the district on the age and sex distribution of children to enter into wedlock. This database sets the benchmark for all future comparisons and analysis. (It must be remembered that since this was the first time that a format was prepared, there were certain limitations on the data. These would be taken into account in 2000 survey.)

Source: Childhood in Rajgarh: Too young for Wedlock, Too old for Cradle, Rajeshwar Chandrashekran, Economic and Political Weekly 31(40), October 5, 1996, pp. 2721-2722.

amend the Child Marriage Restraint Act (CMRA), 1929, to prevent child marriages in the country. Under the CMRA, the marriageable age for females is 18 years and for males, 21 years. Marriage below the age fixed under this Act is punishable. However, child marriages are still rampant in the country and the Centre feels that there is a need to prevent it altogether with iron hands for the better health of the nation.

Review of the Child Marriage Restraint Act: National Commission for Women (NCW)

265. One of the important functions of the NCW is to review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto. It also suggests remedial legislative measures to meet any lacunae, in such legislation. An expert committee has been set up for advice and guidance. Right from its inception, the NCW has been perturbed over the reports in the media regarding child marriages, notwithstanding the enactment of the CMRA as far back as 1929. The NCW with the National Human Rights Commission (NHRC) has taken up this issue with the Government, at length.

266. The following recommendations have been made and the Act is being considered for amendment accordingly:

- The Government should immediately appoint child marriage prevention officers.
- The punishment provided under Section 23 of the CMRA 1929, should be amended to make it more stringent.
- A new provision should be included in the Act to the effect that any marriage performed in contravention to the order made by the child marriage prevention officer should be void.
- A new provision should be included in the Act for creating a penal obligation on every person present at a child marriage, for objection to or advising the person concerned against such marriage or reporting to the child marriage prevention officer, of the solemnisation of the child marriage.

- Section 7 of the Act should be replaced by a provision for making the offences under the Act as cognisable without any qualifying clause.

267. Further, it may be necessary to make a systematic effort to spread awareness about the evils of child marriage, which may include setting up of committees to spread the message.⁴

Current interventions

268. Realising the situation of the girl child, the heads of governments of the SAARC region met at Male in 1990 and declared 1991-2000 AD as 'SAARC Decade of the Girl Child'. In fulfilment of this commitment, the GOI has formulated a National Plan of Action (NPA) around the theme of 'Survival, Protection and Development' to attend to gender-specific needs and requirements to the fullest possible extent. This was a conscious effort to ensure equitable rights, opportunities, benefits and status to girl children who face discrimination much before birth and throughout their life.

269. The NPA broadly envisages three gender-specific goals which are akin to those of the 'World Declaration on the Survival, Protection and Development of Children' in 1990, and the 'Male Declaration of SAARC'. Efforts are on to formulate State Plans of Action suitable to the indigenous, culturally diverse situations and area-specific problems. These include child marriages in Rajasthan, dedication of girl children as *devdasis* in Karnataka, sale of girls in marriage in Andhra Pradesh and Kerala and the problem of female infanticide in Tamil Nadu. So far, the Governments of Karnataka, Madhya Pradesh, Tamil Nadu and Goa have formulated State Plans.⁵

270. The GOI constituted on July 19, 1993, an Expert Group on Population Policy, here after referred to as the Expert Group, to prepare a preliminary draft of the National Population Policy. This group submitted its report, called the Draft National Population Policy on May 23, 1994, to the Minister for Health and Family Welfare. One of the 10 socio-demographic goals to be achieved by the country by 2010 is the reduction of the "incidence of marriage of girls below the age of 18 years to zero" (Ministry of Health and Family Welfare, 1994:98). Another recommendation was to ensure the full coverage of registration of births, deaths and marriages. Raising of female age at marriage has therefore been recognised as one of the important policy interventions that might be able to influence population growth rates apart from the national family planning programme.⁶

Female age at marriage in India: Trends and determinants

271. Traditionally social and cultural factors have tended to support early as well as universal marriage for girls in India. The average age at marriage of females in India was too low at 12.5 years during 1921-31. After the enactment of CMRA, 1929, although there was a slow upward shift in the female age at marriage. Even 1951 the marriage age of females was reported to be about 15.6 years. As per the census information, the two decades 1961-71 and 1971-81 recorded larger increases in female age at marriage at the national level as compared to earlier decades.

272. The NFHS-II Survey shows that there is a steady rise in the age at first marriage in India. The proportion married by exact age 15 falls steadily from the oldest to the youngest age group, but even more remarkable is the fact that the proportion falls from 24 percent for

women age 20-24 to 14 percent for women age 15-19 who are only five years younger, on average. In rural areas, the proportion of women by age 15 declines from 29 percent among women age 20-24 to 18 percent among women age 15-19; the corresponding decline in urban areas is from 9 percent to 5 percent. The practice of very early marriage (before age 13) has virtually disappeared in urban areas and has become quite rare in rural areas as well.

273. Despite the evidence of a rising age at marriage, the majority of women age 20-49 in India married before they reached the legal minimum age at marriage of 18 years as set by the Child Marriage Restraint Act, 1978. Specifically, 61 percent of all women, 69 percent of rural women, and 41 percent of urban women age 20-49 married before age 18.

274. There are considerable differences across States in the age at first marriage of women. About half of women age 25-49 married before age 15 in Madhya Pradesh, Bihar, Uttar Pradesh, Andhra Pradesh, and Rajasthan, and about four-fifths of women in these States married before reaching the legal minimum age at marriage of 18 years. By contrast, the median age at first marriage is 22-23 years in Goa, Mizoram, and Manipur, and 20 years in Kerala, Nagaland, Punjab, and Sikkim. Notably, however, in Kerala, Nagaland, Punjab, and Manipur at least one out of five women are already married by age 18.⁷

Endnotes 8C-5

- 1 Excerpts from a speech delivered by the author, a senior advocate, on September 24, 1998, as part of the Sri T.V. Muthukrishna Iyer Endowment Lecture at the Madras University Centenary Building.
- 2 Analysing Female Nuptiality pattern at Micro-Level: A Case of Uttar Pradesh, Ajay Pandey, Arvind Pandey, IASSI, Quartering 1997, 16(3&4).
- 3 Women and Violence, A Human Rights Perspective, Kalindi Mazumdar, page 28-48; in Violence Against Women, Women Against Violence edited by Shinin Kudchedakar and Sabina, AI-ISSA.
- 4 indiaserver.com, Online edition Indian Newspaper, September 12, 2000.
- 5 Annual Report, 1996, National Commission for Women, GOI.
- 6 Responses of the Government to the Problems of the Girl Child, by Sarala Gopalan and Vijay Bhaskar, *Women Link* 4(3), July-September, 1998.
- 7 NFHS-II, pp. 54-57.

Children belonging to a Minority or Indigenous Group

Article 30

Introduction

275. Protection of minorities is the hallmark of any civilised nation. According to Mahatma Gandhi, the claim of a country to civilisation depends on the treatment it extends to its minorities. In keeping with this, the founding fathers of the Indian Republic were deeply concerned about ensuring full and meaningful protection to members of minority communities, individually and collectively. This concern was translated into extensive constitutional safeguards and provisions for the protection and promotion of minorities in the form of Articles 25-41. Apart from this, India is also party to several international and multilateral conventions and declarations that uphold the rights of minorities. Measures have been taken for the development of children belonging to minority groups, especially in the areas of education and health. However, in most other aspects, the status of the children of minorities may be determined by the status of the community that they belong to. In this regard, therefore, this section elaborates the constitutional safeguards and national mechanisms for implementing these safeguards, and the general status of minorities with respect to their education, health, etc.¹

International scenario

276. The international community, through the UN Declaration on Minorities (1992), has put an obligation on member states, not only to protect the existence and identity of minorities within their respective territories, but also 'to encourage conditions for the promotion of their identity,' and the States are required to take appropriate legislative and other measures to achieve those ends [Article 1(1) and (2)]. India as part of the UN General Assembly has adopted this convention among others and is obliged under these to secure the rights of its resident minority communities.

277. The UN system has not been able to evolve an agreed definition of 'minority' from 1947, when it created a Sub-Commission on Prevention of Discrimination and Protection of Minorities, through 1966, when Article 27 of the International Covenant of Civil and Political Rights provided for the rights of persons belonging to minorities, to the 1992 declaration on the rights of minorities. This failure partly derives from the desire to have a single, universally applicable, comprehensive formulation applicable to all minority situations in all parts of the world. It would, however, be more appropriate to indicate universality of minority situations and status, leaving scope for accommodating the specifics of every particular country's situation.

Constitutional provisions, legislative, administrative and budgetary measures

278. The expression 'minority' is not defined in the Constitution. The Indian Constitution accords recognition to minorities largely in its Articles 25–40, based on religion, language

Box 8.32: UN Conventions and declarations related to minority rights ratified by India

- Charter of United Nations, 1945.
- Universal Declaration of Human Rights, 1948.
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965.
- International Covenant on Civil and Political Rights [ICCPR] 1976.
- International Covenant on Economic, Social and Cultural Rights [ICESR], 1976.
- Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, 1981.
- Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.
- World Conference on Human Rights, Vienna Declaration and Programme of Action, Vienna, 14-25 June, 1993.

Source: *Readings on Minorities, Perspectives & Documents, Vol.1, by Iqbal A. Ansari, published by Institute of Objective Studies, 1996*

and culture, as those who have been guaranteed the right to conserve their language, script and culture and to establish and administer educational institutions of their choice (See Box 8.33). Indian judicial view has been that those who constitute less than 50 per cent of the population of State or the country, as the case may be, shall be considered a minority under the State or Union legislation. That minorities are characterised by religious, linguistic or cultural identities, which they would like to preserve, has been accepted as a fact, by framers and interpreters of the Constitution.²

279. Issues relating to cultural or religious minorities are in the Concurrent List of the Indian Constitution, where both the Centre and States can make laws with the understanding that in case of conflict, the Central laws will take precedence. This ensures the institutionalisation of unity as well as diversity.³

Minorities of India

280. According to the 1991 census, the Scheduled Castes account for 138.22 million, representing 16.48 per cent of the country's total population. Of these, 81 per cent live in rural areas. The Other Backward Classes, as per the GOI's notification dated September 8, 1993, comprise castes and communities whose names figure in the list of the Mandal Commission and in the lists of the individual State Governments. In the absence of specific census data, it

Box 8.33: Constitutional provisions for minorities in India

Right to freedom of religion

Article 29: Protection of interests of minorities.

Article 30: Right of minorities to establish and administer educational institutions.

Right to Constitutional remedies

Article 349: Special procedure for enactment of certain laws relating to language.

Special Directives

Article 350: Language to be used in representations for redress of grievances.

Article 350 a: Facilities for instruction in mother tongue at primary stage.

Article 350 b: Special officer for linguistic minorities.

Article 351: Directive for development of the Hindi language.

Source: *Readings on Minorities, Perspectives & Documents, Vol. 2, by Iqbal A. Ansari, published by institute of Objective Studies, 1996*

is not possible to quote the exact figure of their population. However, the Mandal Commission made a rough estimate of OBCs constituting 52 per cent of the country's total population. The population of Muslim, Christian, Sikh, Buddhist and Zoroastrian communities is 145.31 million (17.17 per cent), as per the 1991 census⁴.

Administrative measures

281. The constitutional commitments made in favour of the socially disadvantaged groups prompted policy makers and planners to accord high priority to the welfare and development of these groups right from the beginning of the country's developmental planning, launched in 1951. To ensure a focused attention on improving the lot of these groups, the Ministry of Social Justice and Empowerment was set up in 1985. Consequently, all the hitherto scattered programmes of SCs, STs, OBCs and minorities were brought under one single umbrella during the 1990s and were put into effective operation with the ultimate objective of achieving the constitutional commitment of raising the status of these disadvantaged groups. In 1986, a scheme called the Prime Minister's 15-Point Programme for the upliftment of minorities was launched.⁵

282. The 1990s have witnessed an upsurge in social legislation and creation of institutions for protecting the rights of the underprivileged and the socio-economically backward. The Constitution was amended in 1990 to provide for a National Commission on Scheduled Castes and Scheduled Tribes, which was entrusted with a variety of duties, including the duty "to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes" (Article 338). Similarly, the National Commission for Minorities Act, 1992; the National Commission for Backward Classes Act, 1993; and the Protection of Human Rights Act, 1993, led to the constitution of such Commissions at the national level. The National Commission for *Safai Karamcharis* Act, 1993, led to the formation of the National Commission for *Safai Karamcharis* (NCSK).

283. A Ministry of Tribal Affairs was created in October 1999. The work relating to tribal development has now been transferred to this ministry.⁶

Budgetary measures

284. The Special Component Plan (SCP) is an umbrella programme under which all the schemes implemented by the State and Central Governments are dovetailed for addressing different needs of Schedule Castes. The SCP outlay as percentage of total State Plan outlay increased marginally from 11.03 per cent in the Eight Five-Year Plan to 11.88 per cent in the Ninth Plan.

285. The Ninth Plan (1997–2002) commits to the empowerment of SCs, STs, OBCs and minorities as the agents of socio-economic change and development. Empowerment of these groups will, therefore, be attempted in an integrated manner, essentially encompassing the three vital and inter-related components, viz., social empowerment economic empowerment; and social justice.⁷

The right to enjoy one's culture

286. A significant provision of the historic Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, which was accepted by the General Assembly, including India, without any member States voting against it on December 18, 1992, is Article 4.4. This requires the States to "take measures in the field of education, in order

to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of society as a whole.

287. The Indian Constitution provides for cultural and educational rights:

- **Article 29: Protection of the interests of minorities.**

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

- **Article 30: Right of minorities to establish and administer educational institutions**

288. Besides the above safeguards, the Indian Constitution has made provisions for the reservation of seats in the House of People (the lower house of Parliament), the legislative assemblies of States and in certain services and posts for the members of Schedule Castes and Schedule Tribes (Article 243 D: Special Provision relating to Classes). Not only this, there are seats reserved for the members of these communities in all Government educational institutions. Members of the religious minorities are entitled to reserve 50 per cent of the seats in their institutions members of their community.⁸

Right to profess and practice one's religion

289. The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, requires signatory States, including India, to “take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law,” (vide Article 4.1). Article 4.2 further obliges the States to “take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, tradition and customs.” It is clarified by Article 8.3 that these measures “shall not prima facie be considered contrary to the principle of equality”.

Some related issues

290. Freedom of religion guaranteed by Article 25 is not confined to citizens but extends to every person. It includes the right not merely to profess and practice one's religion but also the right to propagate it. The exercise of this freedom is subject to public order, morality and health. The expression “propagate” received a restrictive interpretation by the Supreme Court in *Rev. Stainslaus vs. State of Madhya Pradesh* [AIR (1977) SC 908]. The court held that the propagation of religion does not include the right to convert another person to one's own religion.⁹

Right to use one's own language

291. The Commission for Linguistic Minorities in India is appointed by the President of India and for all purposes, is independent of the cross-currents of India's national and regional politics.

292. This institutional defence of the rights of minorities is of paramount importance. For the

protection of the other languages in use, the following directives are provided. For the submission of representation for the redress of any grievances to any officer or authority of the Union or a State, the petitioner is authorised to use any of the languages used in the Union or in the State, as the case may be (Article 350). Every State and local authority within a State is directed to provide adequate facilities for instruction in the mother tongue at the preliminary stage of education to children belonging to linguistic minority groups and the President is authorised to issue such directions to any State, as she/he may consider necessary for the securing of such facilities (Article 350 (a)). A special officer for linguistic minorities is appointed by the President to investigate all matters relating to the safeguards provided by the Constitution for linguistic minorities and to report to the President upon those matters. It shall be the duty of the President to cause all such reports to be laid before each House of Parliament and also to be sent to the Government of the State concerned (Article 350 B).¹⁰

Situation of ethnic, religious or linguistic minorities

Scheduled Castes and Scheduled Tribes in India

293. There has been an increase in the percentage of SC population to the total population from 15.28 in 1981 to 16.48 in 1991, with a decadal growth rate of 3.20 per cent during 1981-91. They are dispersed all over the country, except in one State and two Union Territories, viz., Nagaland, Andaman and Nicobar Islands and Lakshadweep. Uttar Pradesh the largest State, accounts for 21 per cent of the total SC population of the country.

294. Nearly 84 per cent of the country's total SC population live in 10 States, viz., Andhra Pradesh (7.66 per cent), Bihar (9.09 per cent), Karnataka (5.33 per cent), Kerala (2.09 per cent), Madhya Pradesh (6.96 per cent), Maharashtra (6.34 per cent), Rajasthan (5.50 per cent), Tamil Nadu (7.75 per cent), Uttar Pradesh (21.18 per cent) and West Bengal (11.63 per cent). In a few States, SCs constitute more than 20 per cent of the total population. These include Punjab (28.31 per cent), Himachal Pradesh (25.34 per cent), West Bengal (23.62 per cent) and Uttar Pradesh (21.05 per cent).

295. Scheduled Tribes account for 67.76 million or 8.08 per cent of country's total population. Of these, 1.32 million (1.95 per cent) are primitive tribes. STs too, have shown a decadal growth rate of 3.12 per cent during the period 1981-91. The actual increase in the percentage of ST population was from 7.53 in 1981 to 8.08 in 1991.

296. STs inhabit all the States except Haryana, Punjab, Chandigarh, Delhi and Pondicherry. The highest concentration of ST population is found in the north-eastern States of Mizoram (94.75 per cent), Nagaland (87.70 per cent), Meghalaya (85.53 per cent) and Arunachal Pradesh (63.66 per cent) and in the UTs of Lakshadweep (93.15 per cent) and Dadra and Nagar Haveli (78.99 per cent), while there are high concentrations in the States of Madhya Pradesh (23.27 per cent), Orissa (22.21 per cent), Gujarat (14.92 per cent), Maharashtra (9.27 per cent) and Bihar (7.66 per cent).

Other Backward Classes

297. The Other Backward Classes, as per the GOI's notification dated September 8, 1993, comprise castes and communities which are found common in the list of the Mandal

Commission and in the lists of the individual State Governments. In the absence of specific census data, it is not possible to quote the exact figure of their population. However, the Mandal Commission made a rough estimate of OBCs constituting 52 per cent of the country's total population.¹¹

Religious minorities

298. Muslim, Christian, Sikh, Buddhist and Zoroastrian communities constitute 145.31 million (17.17 per cent) of India's population, as per the 1991 Census.

299. The following are the main religious communities in the country as a whole. These are arranged in order of numerical strength at the all-India level, excluding figures of Jammu and Kashmir, where the 1991 census was not held.

300. The three Christian-dominated States of India together have a Christian population of a little over eight million—Mizoram (5.9 million), Meghalaya (1.15 million) and Nagaland (over 1.06 million). Next to Mizoram, the largest population of Christians is in Kerala (5.62 million), and Tamil Nadu (3.18 million). Percentage-wise, the Christian population is quite high also in Manipur (34 per cent), Goa (30 per cent), Andamans (24 per cent) and Kerala (19.32 per cent).¹²

301. Sikhs constitute the majority in one State, Punjab (63 per cent), and one-fifth of the population in one UT, Chandigarh (20 per cent). Their population is between 16 per cent in Himachal Pradesh, Rajasthan, Delhi and Haryana; while it is below one per cent elsewhere in the country. Their total population in India according to the 1991 census is about 16 million.

302. There is no Buddhist-dominated State or UT in the country. Number-wise, the highest population of Buddhists is found in Maharashtra (over 500,000), followed by Uttar Pradesh (221,000), Madhya Pradesh (216,000) and West Bengal (203,000). Percentage-wise, the highest Buddhist population is in Sikkim (27 per cent), followed by Arunachal Pradesh (13 per cent).

303. There are about 3.3 million Jains in India and their highest population is in Maharashtra (0.96 million), followed by Rajasthan (0.56 million) and Madhya Pradesh (0.49 million).

304. The successive census reports specify the Jains as an independent religious community.

Table 8.10: Major religious communities in India

Religious communities	Percentage to total population	Persons	Males	Females	Sex ratio (Females per 1000 males)
Hindu	82.00	687,646,721	357,252,833	330,393,888	925
Muslim	12.12	101,596,057	52,631,365	48,964,692	930
Christian	2.34	19,640,284	9,848,930	9,791,354	994
Sikh	1.94	16,259,744	8,610,508	7,649,236	888
Buddhist	0.76	6,387,500	3,272,200	3,115,300	952
Jain	0.40	3,352,706	1,722,715	1,629,991	946

Source: Registrar General of India

305. The Parsi population in India is only about 76,000 and it is concentrated in two western states, Maharashtra (60,000) and Gujarat (13,000). In the rest of the country, the Parsi population is only about 3,000.

306. India with a Baha'i population of over 2,00,000, is host to the largest Baha'i community in the world. The Natural Spiritual Assembly of the Baha'is of India is their representative organisation in India. A large number of believers reside in the Hindi-speaking rural belts.¹⁴

307. The Jews of India one singular community. Among themselves they are divided into different communities. Each community has its own different culture, background and origin. Each community claims its arrival in India in different ways and it is not always clear how they really came to India. The three main Jewish communities of India are: the Bene Israel, Cochin and Baghdadi. Besides there are the Ashkenazi Jews and a community in east India which claims Israeli origin and calls itself the Ben Menashe.¹⁵

Languages in India

308. Table 8.13 shows the major language groups in India.

309. The figures for persons speaking a language subsidiary to their mother tongue are quite

revealing: Hindi (5.10 per cent), Oriya (5.75 per cent), Malayalam (7.11 per cent), Gujarati (7.31 per cent), Tamil (8.11 per cent), Bengali (8.65 per cent), Assamese (8.96 per cent), Marathi (10.47 per cent), Kashmiri (10.69 per cent), Telugu (14.03 per cent), Punjabi (14.16 per cent), Kannada (14.43 per cent) and Urdu (22.09 per cent). Besides, differences arising out of language and religion are non-overlapping. Both Hindus and Sikhs speak Punjabi; Urdu is understood by Muslims, Hindus and Sikhs; and the Bengali literary pantheon counts several Muslim writers along with Hindus among its stars.¹⁶

Languages	Percentage	Millions of people (1993)
Indo-Aryan Languages		
Hindi	30.1	238.1
Bengali	7.7	65.5
Marathi	7.6	64.6
Gujarati	4.6	39.1
Oriya	3.6	30.6
Punjabi	2.5	21.3
Assamese	1.6	13.6
Dravidian Languages		
Telugu	8.6	73.1
Tamil	7.0	59.5
Kannada	4.0	34.0
Malayalam	3.9	33.2
Other		
English	2.5	21.3
Urdu	5.3..	45.0

Source: *Language And Federalism: The Multi-Ethnic Challenge*, Subrata K. Mitra, Department Of Political Science, South Asia Institute, Heidelberg, Germany, [www. Forum of Federations Documents page-mitra.htm](http://www.Forum of Federations Documents page-mitra.htm)

The minority child and family law

310. The rights of children of minorities in India with regard to marriage, adoption and maintenance falls in the area of family law, where the right of children in the family will depend on the religion to which the child's parents belong and marry into. The broad spectrum of family law covers the rights of parents over the custody and guardianship of their children, and the rights of the child to maintenance. While legislation in some cases does take care of the interests and well-being of the child, it is more attuned to the rights of the parents over the child.

311. The rights of children born to Hindus are governed by the Hindu Marriage Act (HMA), Hindu Minority and Guardianship Act (HMGA), the Hindu Adoption and Maintenance Act (HAMA) and the Hindu Succession Act (HSA). Muslim children are governed by customary Islamic law, while Christian children are governed by the Guardian and Wards Act (GWA). The GWA, however, will also apply to all children under certain circumstances. In addition to these, other legislation that might govern the rights of a child in case of a dispute between parents are the Indian Divorce Act (IDA), the Parsi Marriage and Divorce Act (PMDA) and Special Marriage Act (SMA). The Special Marriage Act also recognises the right of the children born of a void marriage to inherit from both the parents. (Sec. 26) Parsi, Muslim and Christian children cannot inherit from their father according to their personal laws.¹⁷

312. Similarly, there are such laws for Schedule Castes and Tribes; all these laws have been elaborately discussed in the following pages.

Institutional mechanisms

313. To ensure a focused attention improving the lot of minority groups, the Ministry of Social Justice and Empowerment was set up in 1985. Consequently, all the hitherto scattered programmes of SCs, STs, OBCs and minorities were brought under one single umbrella during the 1990s and were put into effective operation with the ultimate objective of achieving the constitutional commitment of raising the status of these disadvantaged groups.

National Commission on Scheduled Castes and Scheduled Tribes

314. The Constitution was amended in 1990 to provide for a National Commission on Scheduled Castes and Scheduled Tribes, as also provided for in the Indian Constitution (Article 338: National Commission for Scheduled Castes and Scheduled Tribes), and was entrusted with a variety of duties, including the duty “to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and the Scheduled Tribes.”

315. As per the guidelines of State Government/Union Territory is expected to allocate funds in proportion to SCs/STs population in that State/UT. The Commission on such allocations keeps a watch and that they are spent for the welfare of SC and ST in that State to which she/he has migrated.¹⁸

National Commission for Minorities

316. To safeguard secular interests and promote communal harmony, the erstwhile Minority Commission set up in 1978, was given a statutory status through the enactment of the National Commission for Minorities (NCM) Act, 1992.

317. The Commission has also constituted a Minority Education Cell to exclusively look at the problems faced by minority educational institutions in regard to recognition, affiliation, grants-in-aid, etc.²⁰

Wakf Administration

318. The Ministry of Social Justice and Empowerment is responsible for the administration of the *Wakf* Act, 1995, the Dargah Khwaja Saheb Act, 1955, and work relating to the Evacuee Property Act, 1950. It has taken the issues of common concern to promote the interest of *Wakfs* in the country. The institution of *Wakf* is a striking feature of Islamic jurisprudence, The word

refers to any property, movable or immovable, dedicated for purposes recognised by Muslim law as religious, pious or charitable. *Wakfs* constitute a national assets as a very large number of them support schools, colleges, technical education, libraries, etc., which benefit the general public, irrespective of caste or creed. Identified as charitable and religious endowments in Section 28 of the Concurrent List of the Seventh Schedule of the Constitution, supervision over their administration is a responsibility of both the Central and State Governments. The Central *Wakf* Council collects six per cent donation on loan advanced by it to *Wakf* institutions under the scheme for the development of Urban *Wakf* Properties and the amount thus received is deposited with the education fund—utilised for financing scholarships to students undergoing technical and professional courses, ad-hoc grants to poor and needy students, etc.

National Commission for OBCs (NCBC)

319. During 1993, a National Commission for OBCs (NCBC), which is a permanent body at the Centre to look into complaints and requests, besides recommending inclusion of certain communities in the lists of OBCs, was set up. There is a provision for such a commission to be set up in the Indian Constitution (Article 340: Appointment of a commission to investigate the conditions of backward classes). So far, on the basis of this commission's recommendation, the Central list of OBCs in respect of 21 States and four UTs has been notified by the Central Government. The Government has also extended to the OBC candidates the benefit of relaxed standards in respect of written examinations and interviews, with effect from October 1994. Under the scheme, of pre-examination coaching centres for weaker sections, candidates belonging to OBCs receive coaching to compete with general candidates in various competitive examinations.

320. The welfare and development of OBCs started receiving special attention during the Eighth Plan with a definite percentage of reservation in Government employment, besides a definite share in the assistance for both educational and economic development programmes. The setting up of the National Backward Classes Finance and Development Corporation (NBCFDC) in 1992 was a major achievement towards the welfare of OBCs.²¹

Ministry of Tribal Affairs

321. The Ministry of Tribal Affairs, which came into separate existence in October 1999, implements various central sector/centrally sponsored schemes for the social, educational and economics-development of tribals in the country. The Five-Year and Annual Plans approved by the Planning Commission and implemented by the Ministry of Tribal Affairs receive the Annual targets and monitor the achievements in this regard.

Tribal research institutes

322. There are 14 tribal research institutes in Andhra Pradesh, Assam, Bihar, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu, West Bengal, Uttar Pradesh, Manipur and West Bengal. These institutes, set up by the States, conduct research and evaluation studies on matters relating to all aspects and help in policy formulation with regard to tribals. They also promote and foster various aspects of tribal culture including music and dance, literature and language, festivals and fairs. There are several tribal museums

with a fairly large stock of exhibits on tribal culture.²²

323. The Central Institute of Indian Languages (CIIL), Mysore, prepares text-books, primers, grammar books, dictionaries and bilingual textbooks, facilitating translation from regional languages into tribal languages. It also undertakes training of tribal teachers in bilingual education and socio-linguistic surveys and research. The CIIL through its programme has worked in 75 tribal and border languages and has prepared different kinds of linguistic material like grammars, phonetic readers, primers, etc.

324. Besides the above, there are other schemes under the nodal Ministry of Social Justice and Empowerment which contribute to the economic development of SCs/STs. These include vocational training in the tribal areas, under which financial assistance is extended for setting up of vocational training centres in tribal areas and grants-in-aid to State Tribal Development Cooperatives/ Corporations for minor forest produce to ensure remunerative prices to tribals.²³

National Commission for Linguistic Minorities

325. The Commission for Linguistic Minorities in India, also provided for in the Constitution (Article 350 B: special officer for linguistic minorities), headquartered in Allahabad with one deputy commissioner and assistant commissioners posted in various regions, is appointed by the President of India and for all purposes, is independent of the cross-currents of India's national and regional politics. Linguistic Minorities Commissions have been constituted in various states State linguistic minority officers also stand appointed.²⁴

326. It is relevant to discuss here the organisations associated with religious communities that have been involved in the development and betterment of the members of their communities. Also, it is important to note that some amount of work is being done by the religious institutions themselves. For example it is obvious that much of the advancement in the living conditions of the Christian population has been because of missionary activity—not confined to conversion in the narrow sense, but also in reaching literacy, health-care and other basic empowering resources to the poor.

327. There are several educational institutions that have been set up by minorities according to the provisions of the Constitution. The Aligarh Muslim University and Jamia Milia Islamia are premier national institutions run by the Muslim community.

328. The Hamdard Educational Society has carried out several surveys and taken out campaigns and caravans for raising awareness among Muslims in Delhi and Uttar Pradesh on the importance of education. In October 1999, the Society held a series of health and hygiene camps in Uttar Pradesh.²⁵

Program interventions

329. Various schemes of the Government are executed through the relevant Central ministries for education and health of the children of minorities in India.

Schemes for education

330. The Department of Education, Ministry of Human Resource Development, has started programmes of educational development in 41 identified districts in the country with minority concentration. An area-intensive programme is being implemented at the block level in these districts to provide basic educational infrastructure and facilities. The Department of Education

Box 8.34: Special financial instruments

The five National Finance Development Corporations for the disadvantaged sections are the National SC and ST Finance and Development Corporation (NSFDC), New Delhi, Tribal Cooperative Market Development Federation of India Ltd. (TRIFED), Mumbai, National *Safai Karamchari* Finance and Development Corporation (NSKFDC), New Delhi, National Minorities Development and Finance Corporation (NMDFC), New Delhi, and the National Backward Classes Finance and Development Corporation (NBCFDC), New Delhi. These act as national-level apex agencies for networking, coordinating and streamlining various employment, credit and income-

generation activities to better the economic status of the disadvantaged groups, viz., SCs, STs, OBCs and minorities. In fact, they are the major catalytic agents which transact business on behalf of the Government. While these apex agencies work through their State-level channelising agencies which would help/identify the beneficiaries; finance the projects through credit/subsidies; and extend technical advice and operate/control the activities, TRIFED continues to purchase minor forest produce and agricultural surplus produce by offering remunerative prices to the tribals and thus prevents exploitation by middlemen.

Source: GOI, National Commission For Scheduled Castes & Scheduled Tribes, Dated: 26/04/2000

is also implementing a scheme to provide financial assistance for modernisation of *madrassa* education and for teaching of science, mathematics, social studies and languages in these traditional educational institutions on a voluntary basis. Under this scheme 100 per cent grant is given by the Central Government.²⁶

331. The 41 minority concentration districts have also been brought under the scheme of Community Polytechnics to impart technical skills to eligible persons belonging to minority communities. The Ministry of Labour has set up Industrial Training Institutes (ITIs) in 19 out of 41 districts and introduced trades relevant for minority artisans and workers. Instructions were also issued to States/UTs to sponsor candidates belonging to minority communities for vocational training courses.²⁷

332. To enable minorities to take part in competitive examinations, pre-examination coaching centres were set up in 21 universities and 32 colleges.

333. Pre-examination coaching, launched in 1992-93, has covered 188 institutions, with 9480 candidates receiving coaching for various competitive examinations. The Department of Personnel made it mandatory for all recruiting authorities of the Central Government and PSUs to have at least one member belonging to the minority communities in the selection boards/committees constituted for the recruitment of Group C and D posts/ services.

334. The Ministry of Tribal Affairs has exclusive schemes for educational development of Scheduled Tribes, such as assistance to State Governments for construction of boys/girls, hostels, *ashram* schools, educational complexes for ST girls in low literacy pockets and vocational training in tribal areas.

335. Although there has been a visible increase in the literacy rates of SCs and STs during the last three decades, the gap between the literacy rates of SCs/STs and those of the general population still persists.

336. The enrolment ratios of SC and ST girls and boys have continued to show a progressive trend along with the rest of the population. The other revealing factor was the better pace of progress maintained by STs at primary level (43.0 per cent) over SCs (29.7 per cent), especially that of ST girls (49.0 per cent) over SC girls (37.3 per cent) during 1981-96. Above all, the overall progress made by SCs and STs in terms of enrolment ratios at primary and middle levels during 1980-81 and 1995-96 has been impressive, as they proved better than the general population.²⁸

337. The dropout rate is a crucial indicator in the field of education. There has been a steady decline in the dropout rates of SCs and STs as given in the Table 8.15.

Pre-matric scholarship for the children of those engaged in 'unclean' occupations and other backward classes

338. This scheme provides financial assistance to enable children of families involved in 'unclean' occupations to pursue pre-matric education courses in recognised institutions. Under the scheme, central assistance is provided to the State Governments on a 50:50 basis and 100 per cent to UT administrations, over and above their committed liabilities. This scheme has been extended to cover OBCs recently.

339. The scheme of pre-matric scholarships for the children of those who are engaged in 'unclean' occupations was revised in February 1994 to remove the restrictive clause of one child per family up to class VIII, subject to the condition that if a third child is born after 1.4.93, a total of only two children in the family would be eligible for these scholarships, extension of the benefits to day scholars studying in class III to X, removal of the income ceiling of Rs 1500/- per month of parents/guardians and relaxation of the restrictive clause on two children in class IX and X. These positive amendments led to the award of 326,000 (provisional) pre-matric scholarships in 1996-97, the end of the Eighth Plan and the central assistance released also increased from Rs 6.39 crore in 1992-95 to Rs 14.04 crore in 1996-97. In 1997-98, about 3.80 lakh students whose parents were engaged in 'unclean' occupations were provided with pre-matric scholarships.

340. The main objective of the scheme is to check the dropout tendency and to provide financial assistance to the children of traditional scavengers of dry latrines, tanners, flayers and

Table 8.12: Gross enrolment ratios of SCs & STs and general population

Years/level	Gen. population			Scheduled Castes			Scheduled Tribes		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
1980-81									
I-V (6-11Yrs)	95.8	64.1	80.5	105.4	57.8	82.2	94.2	45.9	70.0
VI-VIII (11-14Yrs)	54.3	28.6	41.9	41.4	16.2	29.1	28.2	10.8	19.5
1990-91									
I-V (6-11Yrs)	114.0	85.5	100.1	122.7	80.6	102.2	126.8	78.6	103.4
VI-VIII (11-14Yrs)	76.6	47.0	62.1	61.4	33.3	47.7	51.3	27.5	39.7
1995-96									
I-V (6-11Yrs)	114.5	93.3	104.3	127.6	95.1	111.9	130.0	94.9	113.0
VI-VIII (11-14Yrs)	79.5	54.9	67.6	74.9	46.8	61.3	61.6	37.6	50.0
Pace of progress									
I-V (Primary level)	18.7	29.2	23.8	22.2	37.3	29.7	35.8	49.0	43.0
VI-VIII (Middle level)	25.2	26.3	25.7	33.5	30.6	32.2	33.4	26.8	30.5

Source: Selected Education Statistics, 1995-96, Department of Education, New Delhi.

sweepers. The scheme includes the students residing in hostels from class III–X, as well as day scholars from class I–X.

Hostels for boys and girls belonging to SCs and OBCs

341. Under this scheme, Central assistance is provided to the State Governments on a 50:50 basis, 100 per cent to UT administrations and 90 per cent to centrally controlled universities and 45 per cent to other universities for construction of hostel buildings for SC and OBC boys and girls studying in middle schools, higher secondary schools, colleges and universities. A few rooms/blocks of the hostels are constructed barrier-free, and facilities like ramps, etc. should be incorporated in the design of their construction so as to enable disabled SC students to reside in them conveniently. Land has to be provided free of cost by the State/UT or beneficiary institution. The cost of construction of hostels is worked out on the basis of State/CPWD schedule of rates. The expenditure on maintenance of these hostels is to be borne by the State Governments from their own funds. During the Eighth Plan, around 1503 hostels were built to benefit 122,000 SC boys and girls and 553 hostels to benefit 22,120 ST boys and girls by the end of the Eighth Plan. During 1997-98, 143 SC/ST girls, and 86 SC/ST boys, hostels were sanctioned.²⁹

Stipend to children belonging to Vimukta Jatis (other than backward classes/denotified tribes)

342. The objective of the scheme is to provide financial assistance to students of denotified tribes and thus, motivate them to attend schools. An enhancement in the budget provisions and expenditure over the scheme has been noticed.

Special education development programme for girls belonging to SCs in very low literacy level districts

343. Under this scheme, free residential schools are established for SC girls who are first-generation learners and who belong to families below the poverty line in districts with Scheduled Caste female literacy below two per cent (1981 census). These districts are in Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh.

344. The scheme was introduced during 1996-97 on a pilot basis Grant-in-aid under the scheme comprises of a package of Rs 11,340/- per student, in class I only, which includes direct facilities to the students as well as cost towards infrastructure, staff and other running cost. No fees, charges or contributions are recovered from the students. The

Table 8.13: Dropout rates amongst SCs and STs at various stages of education

Category	Classes (I-V)		Classes (I-VIII)		Classes (I-X)	
	1980-81	1989-90	1980-81	1990-91	1980-81	1990-91
General	58.70	48.08	72.70	63.40	82.46	71.34
SC	60.16	49.03	76.84	72.09	86.91	80.58
ST	75.66	63.81	86.71	80.10	91.18	86.00

Source: Educational Development of SCs and STs (1995) and Unpublished Data of the Department of Education

- Note:
1. Since the latest data on the dropout rates of SCs and STs is available only for 1990-91, data for the general population was also used for the same year for effective comparison.
 2. Figures for 1990-91 in respect of SCs and STs are not available for primary level.

scheme is implemented by the *Zilla Parishads* (district-level panchayats) of the concerned district. The *Zilla Parishads* may run the schools themselves or through credible NGOs of proven integrity, competence and experience. The grant is given directly to concerned *Zilla Parishads*, which are required to send their proposals to the Ministry, through their State Governments.

Central sector scheme of upgradation of merit of SC/ST students

345. The objective of the scheme is to upgrade the merit of SC/ST students by providing them with facilities for all-round development through education in residential schools. Hundred per cent Central assistance is released to States/UTs for arranging remedial and special coaching for SC/ST students studying in classes IX-XII. While remedial coaching aims at removing deficiencies in school subjects, special coaching is also provided with a view to preparing students for competitive examinations for entry into professional courses like engineering, medicine, etc. Under this scheme, coaching is provided in linguistic skills, science and mathematics. The number of awards in respect of each State/UT are pre-determined under the scheme, but each State/UT will have a minimum of five awards. A package grant of Rs 15,000 per year per student will be given. Students with disabilities will be eligible for additional grants as provided for in the scheme.

346. The Ministry launched five new schemes for the welfare of the OBCs. They include pre-examination coaching, hostels for boys and girls, pre-matric and post-matric scholarships and assistance to voluntary organisations working for the welfare of OBCs.

Educational development programmes of Wakfs

347. The Central *Wakf* Council collects six per cent as donation on loans advanced by it to *Wakf* institutions under the scheme for the development of urban *Wakf* properties. The amount thus received is deposited in the education fund. The interest earned on the bank deposits, as well as interest accrued from the revolving fund is also credited to the education fund. This fund is utilised in financing:

- Scholarship to students undergoing technical/professional degree courses (B.Tech. MBBS, BUMS, B.Pharm, MCA, etc.) at Rs 6,000 per annum.
- Ad-hoc grants to poor and needy students of general degree courses at Rs 3,000 per annum.
- Matching grant to State *Wakf* Boards for scholarship to the students of diploma courses in technical education, higher secondary and *madrassa* education.
- Fifty per cent matching grant to technical institutes for starting fresh courses or strengthening the existing trade courses.

Box 8.35: Passing marks limit reduced for SC, ST candidates

The Supreme Court on Saturday held that reduction to an extent of 10 per cent of passing marks for Scheduled Castes and Scheduled Tribes departmental candidates *vis-a-vis* passing marks for general category candidates is permissible

when recruitment to higher posts in the department is confined only to SC/ST candidates, who compete for posts reserved for them in the hierarchy of departmental cadres.

- Financial assistance for vocational training courses.
- Financial assistance to book banks school libraries and reading rooms.³⁰

Ashram schools for the education of tribal children

348. The concept of *ashram* Schools originated in Gujarat in 1922, when Thakkar Bapa, a social reformer initiated an experiment in Panchmahal for the benefit of tribal children. His successful experiment imparted education along with training in vocations/crafts. Later, he introduced the scheme in Maharashtra and Bihar as well. After Independence, various voluntary organisations in Maharashtra, Gujarat and Orissa established *ashram* schools as part of their developmental work. During the First Five-Year Plan, there was an attempt by the Government to open such *ashram* schools in tribal areas, which gained momentum from the Third Five-Year Plan onwards.

349. *Ashram* schools have been viewed as effective institutions to meet the educational needs of tribals living in backward and scattered habitations, where opening a normal school is unviable. The *ashram* school provides an atmosphere in which the inmates are offered full opportunities for total personality development and growth. These schools are residential, wherein free boarding and lodging along with other facilities and incentives are offered. The major thrust of *ashram* schools is on imparting skills in crafts and vocations, along with providing general education.³¹

350. As many as 353 *ashram* schools in TSP Areas were envisaged by the end of the Eighth

Box 8.36: Evaluation of Ashram schools

A research study was sponsored by the Ministry of Social Justice and Empowerment, GOI. The study, which began in 1996, was carried out in eight states having a concentration of tribal population. These included Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and West Bengal. The study was of an evaluative type, in which 20 *ashram* schools were selected from each of the eight States. From these 160 selected schools, 2,589 students were selected and the required information about the school, the hostel, teaching, etc., was gathered from these students with the help of a semi-structured interview schedule. The background information of the students was gathered along with the requisite information. Some interesting findings:

- About 41 per cent students females and the highest percentage of female students was found in Madhya Pradesh.
- About 68 per cent students belonged to the 11-15 age-group, whereas about 16 percent were in the age-group of above 15 years.
- The respondents belonged to 19 different tribes, and the highest percentage of respondents belong to the Gond tribe (12.6 per cent), followed by Santh al (10

per cent), Meena (9.5 per cent) and Oraon (7.9 per cent).

- About 47 per cent fathers and 81 per cent mothers of the respondents were illiterate. About 2.4 percent fathers had educational levels of graduation and above. On the other hand, there is only one case of a graduate mother from Bihar.
- About 75 per cent of the fathers of the respondents were in agricultural occupation and only about eight per cent fathers were in service. In the case of mothers, about 59 per cent were agricultural labourers, 14.2 percent were wage earners and about 25 per cent were housewives.

There was an upward trend in the admission of tribal students from the year 1991. There was a jump of 50 per cent in admissions in 1991 as compared to 1990. However, in 1995 there was a slight decline as compared to the figures of 1994.

About 84 per cent students reported that there no other education-cum-residential facilities available near their village, and the main reason for their seeking admission in such schools.

Box 8.37: Delhi: A Case Study

The Urdu-medium schools of the Municipal Corporation of Delhi (MCD), along with other voluntary organisations working in the field of education, have played an important role in providing education to Muslim girls in Muslim concentrated areas of Delhi. They have identified Muslim boys and girls in the age group of 6-11 not coming to schools, brought them to MCD Urdu-medium schools and got them admitted. MCD has opened some new Urdu-medium classes in the already existing MCD schools and appointed Urdu teachers (lady teachers for girls) for these new schools. They have also opened some purely Urdu-medium schools for girls and boys.

Some Findings

During 1983-89:

1. The number of MCD Muslim (Urdu Medium) girls' schools increased from 49 to 60 .

2. The number of Urdu-Medium lady teachers increased from 400 to 600
3. The number of Muslim girl students increased from 20,000 to 30,000
4. The achievement level of these girls increased by 23 per cent, from 34 per cent to 57 per cent (even more than that of Muslim boys, which 17 per cent increased, from 36 per cent to 53 per cent) (Table-III).
5. The dropout rate of girls decreased by 38 per cent, from 45 per cent to 7 per cent (compared to that of Muslim boys, which was 27 per cent, from 35 per cent to 8 per cent).

The study shows that Muslim girls are performing better than Muslim boys in primary and secondary schools in Delhi. Girls' achievement level is 57 per cent, while the boys are at 53 per cent. It is a healthy trend that Muslim parents are taking girls' education seriously.

Source: Centre for Research in Rural and Industrial Development, Chandigarh, 1981

Plan (1996-97). During 1997-98, the construction of 101 *ashram* schools was taken up to accommodate 1270 ST inmates/students.

Education of children of linguistic minorities

351. In terms of the recommendations in the Fifth Report of the Commission for Linguistic Minorities, a pamphlet giving general information on the safeguards and facilities provided by the State Government to linguistic minorities in the State is being printed and published by the State Governments. As per these pamphlets, by and large, the criterion for providing facilities for instruction in the mother tongue in lower primary schools is fixed at a minimum of 10 pupils for each standard or an aggregate of 40 pupils in standard I - IV. In the upper primary schools, these figures are fixed at 10 pupils for each standard or an aggregate of 30 pupils in standard V - VII. In secondary schools, these figures are fixed at 15 for each standard or 45 pupils in standard VIII - X and 60 pupils in standard VIII - XI of higher secondary schools. In order to implement these safeguards, all primary schools are to entertain applications from parents of children belonging to linguistic minority groups for a period of three months, ending a fortnight before the commencement of the school year. Heads of all primary schools are to open registers for entering such applications three months prior to the date of closing of admission in schools. In the case of private schools, the education officers are authorised to call upon any management to open separate divisions in schools for the linguistic minorities. Language and subject textbooks of minority languages are published by the Government for use by primary and secondary school pupils. Guidelines are also laid down by the Government permitting Government correspondence, publicity materials and maintenance of records in minority language in areas where 15 per cent or more of the population speaks a language different from the majority language of the State. Instructions are also issued by the Government to give adequate representation to linguistic

Table 8.14: Literacy rates of STs

Category	1971	1981	1991
Male	17.63	24.52	40.65
Female	4.85	8.04	18.19
Total	11.30	16.35	29.60

Source: Registrar General of India

minorities in various committees according to merit. Guidelines are also issued enabling the linguistic minorities to take their recruitment tests to public services in the State in their mother tongue.³²

Health interventions

352. The health and nutrition status of the socially disadvantaged groups, especially that of SCs and STs continues to be a major concern of the Government, as these communities live mostly in such areas which are neglected, remote, inaccessible and are endemic with diseases like malaria and tuberculosis. Keeping their specific needs in mind, the Government has been paying special attention by setting up Primary Health Centres (PHCs) with relaxed norms. However, a review of the existing situation reveals that the health and nutrition status of these special groups needs priority attention in the Ninth Plan.

353. The National Health Policy (1993) while recognising the heterogeneous tribal population and their varied health problems, accorded a high priority to extending health services to those residing in backward rural areas, with a concentration of SCs and to hilly and remote areas with tribal population. It laid special attention on endemic diseases like malaria, and tuberculosis. The strategy adopted for meeting the health care needs during the Eighth Plan period includes provision of preventive as well as curative services through health care institutions and at the village level through health guides and trained *dais* (midwives).³³

354. As the tribal population concentrations and habitations are located in difficult and isolated hill/forest areas and terrain, the Government has adopted relaxed norms for PHCs viz., one PHC for every 20,000 population and one sub-centre for every 3,000 population. In order to give focused attention to SCs, the State Governments were advised to set up at least 15 per cent of the

Table 8.15: Literacy rates of STs

	Total			Rural			Urban		
	Total	M	F	Total	M	F	Total	M	F
India	16.35	24.52	8.04	14.92	22.92	6.81	37.93	47.60	27.32
W.B.	13.21	21.16	5.01	12.72	20.69	4.53	25.72	32.36	18.02
M.P.	10.68	17.74	3.60	10.05	16.91	3.19	27.62	38.64	15.18
A.P.	7.82	12.02	3.46	6.80	10.68	2.78	23.27	31.50	14.14
Orissa	13.96	23.27	4.76	13.42	22.63	4.34	25.18	36.05	13.69

Source: Registrar General of India

sub-centres in villages and habitations having 20 per cent or more SC population and to direct 7.5 per cent of their annual targets to tribal areas. To the same effect, mobile dispensaries and medical camps were organised to provide health facilities in States and UTs.³⁴

Legislative measures

Protection of Civil Rights (PCR) Act, 1955

355. As per provisions under Section 15-A of the PCR Act, the State Governments take measures to ensure that the rights arising from the abolition of untouchability are made available to, and availed of, by persons subjected to untouchability. These measures may include the provision of adequate facilities, including legal aid, appointment of officers for initiating or exercising supervision over prosecution for the contravention of the provisions of this Act, setting up of Special Courts for the trial of offences under this Act, etc.

356. Special measures such as constitution of committees/special cells/squads have been taken up by most States for supervising implementation of the Act properly. Assistance is provided to SC/STs in various kinds of cases indirectly related to untouchability offences and atrocities, such as land disputes, by the State/ UT Government.

Schedule Caste and the Schedule Tribes (Prevention of Atrocities) Act, 1989

357. In order to check and deter crimes against SCs/ STs by persons belonging to other communities, this Act was brought into force from January 1, 1990. The POA Act defines categories of offences against SCs and STs as 'atrocities' for the purposes of the Act. Rules were also notified under the POA Act in 1995, which lay down among other things, norms for relief and rehabilitation. The POA Act prescribes punishments for corresponding offences under the Indian Penal Code. Under the POA Act, State Governments are required to take various measures which may include the provision of adequate facilities, including legal aid, relief and rehabilitation to victims and dependents of victims of atrocities.

358. The identification of areas where persons are under any disability arising out of untouchability, and atrocity-prone areas are made and adoption of measures in such areas to ensure safety of vulnerable sections is undertaken under both the above measures.³⁵

359. Besides the IPC, the Protection of Civil Rights (PCR) Act of 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, are the two major legal instruments which help prevent atrocities against SCs and STs. Under these acts, as many as 434 special courts/mobile courts were set up in seven States. In addition, special cells/ squads/officers

Table 8.16: No. of crimes against SCs and STs during 1996-98

Year	SCs		STs	
	No. of crimes	% variation	No. of crimes	% variation
1996	31,440	-4.7	4973	-9.5
1997	27,944	-11.1	4644	-6.6
1998	25,638	-8.3	4276	-7.9

Source: *Crime in India 1998*, National Crime Records Bureau, Ministry of Home Affairs, GOI

Box 8.38: Strategy for the Ninth Plan

The Ninth Plan commits to empower the SCs, STs, OBCs and Minorities as the agents of socio-economic change and development.

For this, the most effective instrument which provides a special cushion for these categories in meeting their basic needs is the Special Plan of Action of 1998. In this direction, efforts are being initiated to fill the critical gaps in providing the basic minimum services to those living below the poverty line. These special efforts are expected to ensure that every habitation with concentration of these groups will have access to potable drinking water, nutrition supplements with both macro and micro nutrients, primary health care services, primary education facilities, sanitation and housing for the shelterless poor.

While formulating/implementing programmes for these groups, the Ninth Plan will strive to ensure 'People-Centred Development' and 'People's Participation' with effective involvement of Panchayati Raj Institutions, in pursuance of the recent Constitutional (73rd and 74th) Amendments. Immediate steps will also be taken for the devolution of financial as well as administrative powers to the local self-Governments, so that the marginalised groups will also get the opportunities to participate not only in formulating the need-based programmes but also in their effective implementation, supervision and monitoring. This will not only go a long way in empowering these groups but will also ensure that the implementation of various developmental programmes is carried out in the true sense of co-operative federalism.

In the Ninth Plan, the vital ongoing programmes for the advancement of these socially disadvantaged groups will be streamlined, strengthened and enriched to accomplish the unfinished task of bringing these sections on par with the rest of the society. Simultaneously, new measures, wherever necessary, will be initiated to accelerate the process of empowering these weaker sections. Empowerment of these groups will, therefore, be attempted in an integrated manner, essentially encompassing the three vital and inter-related components viz., i) Social Empowerment; ii) Economic Empowerment; and iii) Social Justice.

Scheduled Castes and Scheduled Tribes

The National Agenda of Governance clearly spells out the commitment of the Government to safeguard adequately the interests of SCs, STs and OBCs through appropriate legal, executive and societal efforts and by large scale education and empowerment.

Education, being the most effective instrument for socio-economic empowerment, high priority will be accorded to improving the educational status of SCs and STs, Particularly that of the women and the girl children. The need for a time-bound programme to improve the educational status of the socially disadvantaged groups has been identified as one of

the immediate tasks to be fulfilled during the Ninth Plan as part of the total commitment of making the country fully literate by 2005.

The earlier initiative of the Government to start creche facilities within the school campus or nearer to the school will be revived/intensified to ensure that the girl children are not deprived of education as they have to play the role of a mother-substitute in many respects, when the mothers go out for work to supplement the family income. Also, much-needed nutritional support through the national feeding programme of Mid-Day Meals (MDM) will be expanded/ universalised to reach the most interior and inaccessible rural, tribal and hill areas.

The spread of literacy through the efforts of the National Literacy Mission will be ensured so as to reach the backward rural, tribal and urban slums. The recent launching of Kasturba Gandhi Swatantrata Vidyalayas in 1997 is one of such initiatives exclusively meant for the educational improvement of girl children belonging to SCs, STs, OBCs and Minorities.

Employment-oriented education and diversified vocational training, which has been recognised as the need of the day, will be given top priority.

Other Backward Classes (OBCs)

Efforts will also be made to ensure that the National and the State Commissions, in pursuance of the directives of the Supreme Court, will bring out their final Lists of OBCs.

Minorities

The emphasis during the Ninth Plan will be on the overall socio-economic development of minorities with special focus on their education. The existing scheme of Maulana Azad Education Foundation, New Delhi will be further strengthened and supported to enable to expansion of its activities and promotion of education amongst women by providing additional facilities of schools, colleges and hostels, offering remedial coaching, upgrading the existing institutions and networking with vocational and technical education. In order to promote higher and technical education amongst the minorities, support will be extended to provide scholarships/ fellowships.

Plan outlays

While a total outlay of Rs 53.99 billion has been earmarked for both Central and Centrally Sponsored Schemes including Special Central Assistance (SCA) to Special Component Plan (SCP) for SCs, an amount of Rs 95.68 billion (Provisional) has been allocated for State Sector Schemes for empowering the Socially Disadvantaged Groups viz., SCs, STs, OBCs and minorities in the Ninth Five-Year Plan (1997-2002). In addition to these, Plan allocations are also earmarked through Special Central Assistance (SCA) to Tribal Sub-Plan (TSP) and under Article 275 (1) for the development of the Schedule Tribes and Schedule Areas.

have also been appointed in 19 States to ensure effective implementation of the Act. In accordance with the PCR Act of 1955, special legal aid was also extended to victims of untouchability and other crimes through special officers, who ensured effective implementation of the Act, besides extending support for social and economic rehabilitation of the SC/ST victims.

The Child Marriages Restraint Act, 1929

360. The Act prescribes the minimum age for marriage as 21 in case of males and 18 in case of females. It also provides for punishment in case where the statutory prescription of age is violated (Section 3 to 6). No woman can be punished under the Act. However, while the Act prohibits marriages below the age of consent, child marriages are valid under all personal laws except in the case of Parsis and those married under the Special Marriage Act.

361. The Child Marriage Restraint Act is applicable to all Indians irrespective of their religion.

Guardianship

362. All personal laws till 1998 recognised the father as the natural guardian, giving the mother only the right of custody, where the mother became the guardian only after the father's death, or if she obtained a declaration that the father was unfit to be the guardian of the child. The mother was also the natural guardian overriding the father if the child was illegitimate. However, on February 18, 1999, the Supreme Court handed down a landmark judgment in the Gita Hariharan case, that can be described as a ray of hope for Indian women on the eve of the new millennium. The Court held that "in all situations where the father is not in actual charge of the affairs of the minor, because of his indifference or because of an agreement between him and the mother of the minor (oral or written) and the minor is in the exclusive care and custody of the mother, or the father for any other reason is unable to take care of the minor because of his physical or mental incapacity the mother can act as the natural guardian of the minor." The Court added that "all her (the mother's) actions would be valid even during the lifetime of the father who would be deemed to be absent for the purposes of the two sections of the Acts."

363. The Guardian and Wards Act (GWA) is the substantive law that governs the appointment of guardians for all classes of Indians irrespective of their religion. Under the GWA, a guardian is appointed for the person and the property of the child. A guardian need not always be a parent. And while appointing a guardian the court must always take note of what is in the best interest of the minor. The court has to be guided by the age, sex and religion of the minor, the character and capacity of the proposed guardian and his relationship with the minor and the wishes of the deceased parent. If the child is able to exercise an intelligent preference, the court should take note of it (Section 17, GWA). These are the broad parameters for proceedings under GWA to appoint a guardian. Proceedings can be initiated in district court and a high court in its original jurisdiction.

364. The Act is exhaustive, with 51 sections dealing with matters pertaining to a minor's person and property. The ultimate thrust is on safeguarding the interests of the child.

365. Under Muslim law, a father is entitled to the custody of male children over seven years. This provision prevailed even though the minors expressed their wish to stay with their mother as they were not of an age when they could make an intelligent preference (AIR 1989 Bombay P. 357, Farzanabi vs S.K. Ayub Dadamiya).

Disaggregated data on minorities

366. There has been a gradual increase in the literacy rates of SCs and STs since independence.

367. The reports of the National Commission on Scheduled Castes and Scheduled Tribes indicate that the vast majority of *Dalits* and tribals remain poor, illiterate and lack requisite skills for competing in the modern world. Educational backwardness of female STs and SCs has been both the cause and the result of their low status and subjugated position in society.

368. The crimes committed against SCs and STs *vis-à-vis* the general population as reported by the National Crimes Record Bureau, New Delhi, are indicated in Table 8.18.

369. The total incidence of crimes against SCs and STs under the Indian Penal Code (IPC) and under Special Laws (SL) such as the Protection of Civil Rights Acts, 1955 and The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was reported to be 25,638 and 4,276 respectively during 1998. These crimes have shown a continuous declining trend during the last three years.³⁶

Endnotes

- 1 Reading on Minorities, Perspective and Documents, Vol 1, Iqbal A Ansari, Institute of Objective Studies.
- 2 *ibid.*
- 3 www. Forum of Federation, Document page-mitra.htm., Language and Federalism, the Multi-Ethnic Challenge, Subrata K Mitra, Department of Political Science, South Asia Institute, Hiedelberg, Germany.
- 4 Ninth Plan, 1997-2002, Vol 1, Planning Commission, GOI.
- 5 *ibid.*
- 6 Annual Report, 1999-2000, Ministry of Social Justice and Empowerment, GOI.
- 7 Ninth Plan, 1997-2002, Vol 1, Planning Commission, GOI.
- 8 *ibid.*
- 9 *ibid.*
- 10 www. Forum of Federation, Document page-mitra.htm., Language and Federalism, the Multi-Ethnic Challenge, Subrata K Mitra, Department of Political Science, South Asia Institute, Hiedelberg, Germany.
- 11 Ninth Plan, 1997-2002, Vol 1, Planning Commission, GOI.
- 12 Registrar General of India.
- 14 Pamphlets and brochures on Baha'i Literacy Programme in India, Baha'i Vocational Institute for Rural Women, the Baha'is and Excerpts of Discussion with Ms Farida Vahedi, Director of the Baha'i Office for Advancement of Women, an agency of the National Spiritual Assembly of the Baha'is of India, September 8, 2000.
- 15 Source: On-line edition of India's National Newspaper on indiaserver.com, Monday, July 10, 2000.
- 16 www. Forum of Federation, Document page-mitra.htm., Language and Federalism, the Multi-Ethnic Challenge, Subrata K Mitra, Department of Political Science, South Asia Institute, Hiedelberg, Germany.
- 17 Child and Law, 1998, Indian Council for Child Welfare, Tamil Nadu.
- 18 Reply dated 26/04/2000, National Commission for Scheduled Castes and Scheduled Tribes, GOI.
- 20 Annual Report, 1999-2000, Ministry of Social Justice and Empowerment, GOI.
- 21 Ninth Plan, 1997-2002, Vol 1, Planning Commission, GOI.
- 22 Reply dated 26/04/2002, National Commission for Scheduled Castes and Scheduled Tribes, GOI.
- 23 *ibid.*

- ²⁴ www. Forum of Federation, Document page-mitra.htm., Language and Federalism, the Multi-Ethnic Challenge, Subrata K Mitra, Department of Political Science, South Asia Institute, Hiedelberg, Germany.
- ²⁵ Excerpt from the discussion with Mr. Syed Hamid, Vice Chancellor, Jamia Milia Islamia University
- ²⁶ Ninth Plan, 1997-2002, Vol 1, Planning Commission, GOI.
- ²⁷ *ibid.*
- ²⁸ Ninth Plan, 1997-2002, Vol 1, Planning Commission, GOI.
- ²⁹ *ibid.*
- ³⁰ Annual Report, 1999-2000, Ministry of Social Justice and Empowerment.
- ³¹ Educating Tribals in India, A Study of Ashram Schools, B. S. Negi, Council for Social Development, pp. 61-67.
- ³² <http://culture.konkani.com/language/43-konkani-au-a-Ling.htm>, Konkani—Constitutional Rights and Privileges, H B Shenoy.
- ³³ Reply dated 26/04/2000, National Commission for Scheduled Castes and Scheduled Tribes, GOI.
- ³⁴ Ninth Plan, 1997-2002, Vol 1, Planning Commission, GOI.
- ³⁵ Annual Report, 1999-2000, Ministry of Social Justice and Empowerment, GOI.
- ³⁶ Crime in India 1998, National Crime Records Bureau, Ministry of Home Affairs, GOI.